

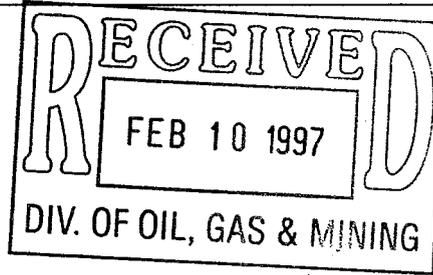
0027



**CYPRUS PLATEAU
MINING CORPORATION**
A Cyprus Amax Company

Cyprus Plateau Mining Corporation
Post Office Drawer PMC
Price, Utah 84501
(801) 637-2875

February 6, 1997



Mr. James W. Carter
Division of Oil, Gas and Mining
1594 West North Temple, STE 1210
Box 145801
Salt Lake City, UT 84114-5801

Re: Permit Renewal, Cyprus Plateau Mining Corporation, Star Point Mines, ACT/007/006,
Folder #3, Carbon County, Utah

Dear Mr. Carter:

Enclosed please find a signed copy of the aforementioned.

Sincerely,

Johnny Pappas
Sr. Environmental Engineer

Enclosures

Env: Env 4.1.6.1
Chrono: JP970201.ltr

Fireproof file

Copy to #3

Print Binders

**UTAH DIVISION OF OIL, GAS AND MINING
STATE DECISION DOCUMENT**

**Cyprus-Plateau Mining Corporation
Star Point Mine
Permit Renewal**

**Carbon County, Utah
ACT/007/006
January 28, 1997**

CONTENTS

- * Administrative Overview
- * Location Map
- * Permitting Chronology
- * Findings
- * Permit
- * Affidavit of Publication
- * Memo to File, AVS Recommendation

A:/SDD&TA.SP

ADMINISTRATIVE OVERVIEW

Cyprus Plateau Mining Corporation
Star Point Mine
Five Year Renewal
ACT/007/006
Carbon County, Utah

January 28, 1997

PROPOSAL

Cyprus Plateau Mining Corporation proposes to renew the permit for the Star Point Mine.

BACKGROUND

The original permit for the Star Point Mine was issued on January 28, 1987, and was renewed on January 28, 1992. A reclamation surety bond in the amount of \$5,180,000 is currently posted for reclamation at the Star Point Mine.

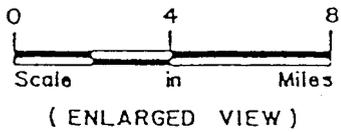
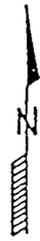
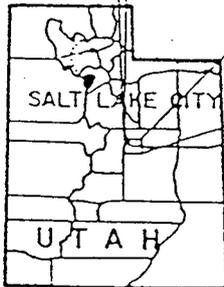
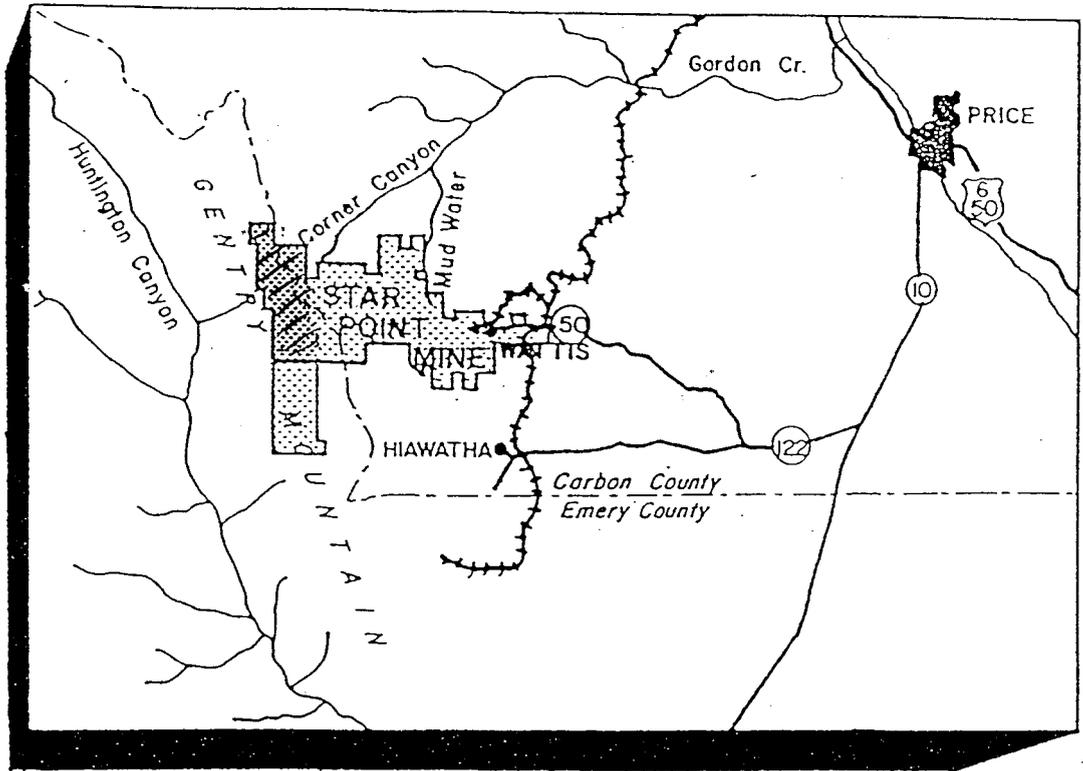
Cyprus Plateau Mining Corporation submitted an application for the entire Castle Valley Ridge Lease Area, approximately 2000 acres, in September 1991, with the permit renewal application. The original permit was renewed in January 1992 without approval of the Castle Valley Ridge Federal Lease. Three incidental boundary changes have been approved for this lease dated September 27, 1991, July 1, 1993, and January 13, 1994. The entire Castle Valley Ridge Lease received mining plan approval on February 1, 1995.

The permit renewal application was received on September 27, 1996 with a number of permit changes, the most significant being the changes to the reclamation plan for the refuse pile. On October 17, 1996, the Division notified the permittee that these permit changes would be processed separately.

Therefore, the permit renewal for the Star Point Mines is considered a successive renewal of the current mining and reclamation plan.

RECOMMENDATION

The application for a successive permit renewal has met the requirements for approval. The permit renewal was advertised in the Sun Advocate and Emery County Progress on November 6, 12, 19, and 26, 1996 with no comments. The permit renewal should be approved.



LOCATION MAP

PLATEAU MINING COMPANY
CARBON & EMERY COS., UTAH

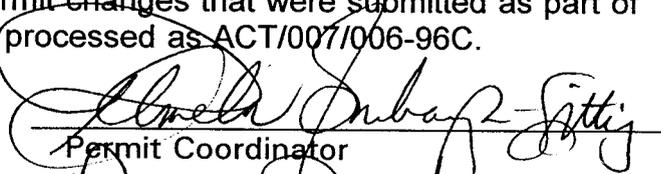
PERMITTING CHRONOLOGY
Permit Renewal
Star Point Mines
Cyprus Plateau Mining Corporation
ACT/007/006

January 28, 1997

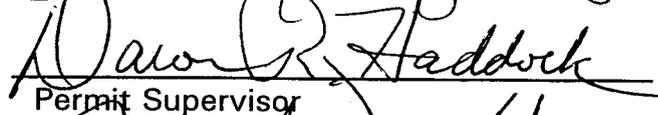
September 27, 1996	Permit Renewal Application received.
October 17, 1996	Notification to Cyprus Plateau Mining Corporation that the permit changes associated with the permit renewal application will be processed separately and the completeness determination made.
November 5, 12,19, and 26, 1996	Advertisement of permit renewal for the Star Point Mines in the <u>Emery County Progress</u> and <u>Sun Advocate</u> .
November 7, 1996	Letter of Determination of Completeness for permit renewal for distribution to agencies.
January 28, 1997	No adverse comments received. Permit renewed.

FINDINGS
FIVE-YEAR RENEWAL
Cyprus Plateau Mining Corporation
Star Point Mines
ACT/007/006
January 28, 1997

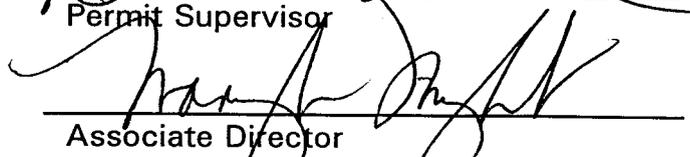
1. Application for a permit renewal was made on September 27, 1996 (R645-303.233.100.)
2. The terms and conditions of the permit within the approved boundaries of the existing permit area are being satisfactorily met. (R645-303-233.110)
3. The present coal mining and reclamation operations are in compliance with the environmental protection standards of the State Program. (R645-303-233.120)
4. The requested renewal does not substantially jeopardize the operator's continuing ability to comply with the State Program on existing permit areas. (R645-303-233.130)
5. The operator has provided evidence of having liability insurance (RMGL - 1437605, National Union Fire Insurance Company of Pittsburg, PA). (R645-303-233.140)
6. The operator has provided evidence that a performance bond is in effect for the operation and will continue in full force and effect for the proposed period of renewal (Aetna Casualty and Surety Company - Bond Number 645100208576 BCA in the amount of \$5,180,000). (R645-303-233.150)
7. For the most recent permit term, permit changes ordered by the Division and notices of violation requiring a permit change have been incorporated into the permit. There are outstanding permit changes that were submitted as part of the permit renewal and are being processed as ACT/007/006-96C.



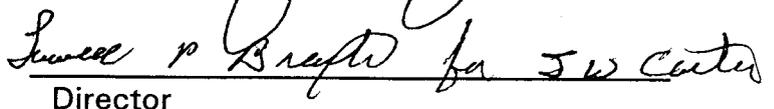
Permit Coordinator



Permit Supervisor



Associate Director



Director

FEDERAL

PERMIT
ACT/007/006

JANUARY 28, 1997

STATE OF UTAH
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING
1594 West North Temple, Suite 1210
Salt Lake City, Utah 84114-5801

This permit, ACT/007/006, is issued for the State of Utah by the Utah Division of Oil, Gas and Mining (Division) to:

Cyprus Plateau Mining Corporation
P.O. Drawer P M C
Price, Utah 84501
(801) 637-2875

for the Star Point Mines. A Surety Bond is filed with the Division in the amount of \$5,180,000, payable to the State of Utah, Division of Oil, Gas and Mining and the Office of Surface Mining Reclamation and Enforcement (OSM). The Division must receive a copy of this permit signed and dated by the permittee.

Sec. 1 STATUTES AND REGULATIONS - This permit is issued pursuant to the Utah Coal Mining and Reclamation Act of 1979, Utah Code Annotated (UCA) 40-10-1 et seq, hereafter referred to as the Act.

Sec. 2 PERMIT AREA - The permittee is authorized to conduct underground coal mining activities on the following described lands within the permit area at the Star Point Mines situated in the state of Utah, Carbon County, and located in:

Township 14 South, Range 7 East, SLB & M

Section 34: Lots 3, 4, N1/2 SE1/4

Township 15 South, Range 7 East, SLB & M

Section 1: S1/2;

Section 2: Lots 2 through 7, 10 through 12, SW1/4, W1/2SE1/4

Section 3: Lots 1,2, 7 through 10, E1/2SE1/4, E1/2W1/2SE1/4

Section 10: E1/2E1/2, E1/2NW1/4NE1/4;

Section 11: All;

Section 12: All;

Section 13: N1/2

Section 14: All;
Section 15: E1/2E1/2NE1/4, E1/2E1/2SE1/4
Section 22: E1/2E1/2NE1/4NE1/4, Parts of
E1/2SE1/4NE1/4, Parts of E1/2NE1/4SE1/4, Parts of
E1/2SE1/4NE1/4;
Section 23: All;
Section 25: W1/2NW1/4;
Section 26: N1/2;
Section 27: Parts of E1/2E1/21/2NE1/4NE1/4.

Township 15 South, Range 8 East

Section 5: Lots 4, 5, 12, NW1/4 SW1/4;
Section 6: Lots 2, 3, 6, 7, 8, 10, 11, 14, E1/2 SW1/4, SE1/4;
Section 7: All;
Section 8: W1/2 NW1/4, SW1/4, SE1/4 SE1/4, S1/2
SE1/4;
Section 9: SW1/4 SW1/4, E1/2 SW1/4, SE1/4;
Section 10: SW1/4, W1/2 SE1/4, SE1/4 SE1/4;
Section 15: N1/2 N1/2;
Section 16: All;
Section 17: E1/2, NW1/4, NW1/4 SW1/4 North of the
Right Fork North Fork Miller Creek;
Section 18: N1/2, N1/2 SE1/4, NE1/4 SW1/4, N1/4 NW1/4
SW1/4;
Section 20: NE1/4;
Section 21: E1/2 NW1/4.

This legal description is for the permit area of the Star Point Mines. The permittee is authorized to conduct underground coal mining activities and related surface activities on the foregoing described property subject to the conditions of all applicable conditions, laws and regulations.

Sec. 3 **COMPLIANCE** - The permittee will comply with the terms and conditions of the permit, all applicable performance standards and requirements of the State Program.

Sec. 4 **PERMIT TERM** - This permit becomes effective on January 28, 1997 and expires on January 29, 2002.

- Sec. 5** **ASSIGNMENT OF PERMIT RIGHTS** - The permit rights may not be transferred, assigned or sold without the prior written approval of the Division Director. Transfer, assignment or sale of permit rights must be done in accordance with applicable regulations, including but not limited to 30 CFR 740.13{e} and R645-303-300.
- Sec. 6** **RIGHT OF ENTRY** - The permittee shall allow the authorized representative of the Division, including but not limited to inspectors, and representatives of the Office of Surface Mining Reclamation and Enforcement (OSM), without advance notice or a search warrant, upon presentation of appropriate credentials and without delay to:
- (a) have the rights of entry provided for in 30 CFR 840.12, R645-400-220, 30 CFR 842.13 and R645-400-110;
 - (b) be accompanied by private persons for the purpose of conducting an inspection in accordance with R645-400-100 and R645-400-200 when the inspection is in response to an alleged violation reported to the Division by a private person.
- Sec. 7** **SCOPE OF OPERATIONS** - The permittee shall conduct underground coal mining activities only on those lands specifically designated as within the permit area on the maps submitted in the approved plan and approved for the term of the permit and which are subject to the performance bond.
- Sec. 8** **ENVIRONMENTAL IMPACTS** - The permittee shall take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from noncompliance with any term or condition of the permit, including, but not limited to:
- (a) Any accelerated or additional monitoring necessary to determine the nature of noncompliance and the results of the noncompliance;
 - (b) Immediate implementation of measures necessary to comply; and
 - (c) Warning, as soon as possible after learning of such noncompliance, any person whose health and safety is in imminent danger due to the noncompliance.

- Sec. 9 DISPOSAL OF POLLUTANTS** - The permittee shall dispose of solids, sludge, filter backwash or pollutants in the course of treatment or control of waters or emissions to the air in the manner required by the approved Utah State Program and the Federal Lands Program which prevents violation of any applicable state or federal law.
- Sec. 10 CONDUCT OF OPERATIONS** - The permittee shall conduct its operations:
- (a) In accordance with the terms of the permit to prevent significant, imminent environmental harm to the health and safety of the public; and
 - (b) Utilizing methods specified as conditions of the permit by the Division in approving alternative methods of compliance with the performance standards of the Act, the approved Utah State Program and the Federal Lands Program.
- Sec. 11 EXISTING STRUCTURES** - As applicable, the permittee will comply with R645-301 and R645-302 for compliance, modification, or abandonment of existing structures.
- Sec. 12 RECLAMATION FEE PAYMENTS** - The operator shall pay all reclamation fees required by 30 CFR Part 870 for coal produced under the permit, for sale, transfer or use.
- Sec. 13 AUTHORIZED AGENT** - The permittee shall provide the names, addresses and telephone numbers of persons responsible for operations under the permit to whom notices and orders are to be delivered.
- Sec. 14 COMPLIANCE WITH OTHER LAWS** - The permittee shall comply with the provisions of the Water Pollution Control Act (33 USC 1151 et seq.), and the Clean Air Act (42 USC 7401 et seq.), UCA 26-11-1 et seq., and UCA 26-13-1 et seq.
- Sec. 15 PERMIT RENEWAL** - Upon expiration, this permit may be renewed for areas within the boundaries of the existing permit in accordance with the Act, the approved Utah State Program and the Federal Lands Program.

- Sec. 16** **CULTURAL RESOURCES** - If, during the course of mining operations, previously unidentified cultural resources are discovered, the permittee shall ensure that the site(s) is not disturbed and shall notify the Division. The Division, after coordination with OSM, shall inform the permittee of necessary actions required. The permittee shall implement the mitigation measures required by Division within the time frame specified by Division.
- Sec. 17** **APPEALS** - The permittee shall have the right to appeal as provided for under R645-300-200.
- Sec. 18** **SPECIAL CONDITIONS** - There are special conditions associated with this permitting action, as described in Attachment A.

The above conditions (Secs. 1-18) are also imposed upon the permittee's agents and employees. The failure or refusal of any of these persons to comply with these conditions shall be deemed a failure of the permittee to comply with the terms of this permit and the lease. The permittee shall require his agents, contractors and subcontractors involved in activities concerning this permit to include these conditions in the contracts between and among them. These conditions may be revised or amended, in writing, by the mutual consent of the Division and the permittee at any time to adjust to changed conditions or to correct an oversight. The Division may amend these conditions at any time without the consent of the permittee in order to make them consistent with any federal or state statutes and any regulations.

ACT/007/006
Permit
January 28, 1997
Page 6

THE STATE OF UTAH

By: James P. Briston for Jim Carter

Date: 1/28/97

I certify that I have read, understand and accept the requirements of this permit and any special conditions attached.

PERMITTEE

Jack D. Kachmar
Authorized Representative of
the Permittee

2/3/97
Date

ATTACHMENT A

Special Conditions

- #1 The permittee must drill horizontally ahead of the advance of the mains in a westerly direction toward the fault zone. If water is encountered during drilling in excess of the amounts anticipated in the PHC and CHIA, Cyprus Plateau Mining Corporation must cease driving entries to the west and contact the responsible officials of the Division of Oil, Gas and Mining, the Bureau Land Management, and the Forest Service. Further advance of the entries to the west will not be authorized unless the operator can demonstrate that significant impacts to the ground water will not occur.

- #2 Cyprus Plateau Mining Corporation must continually comply with the Pittston's settlement agreements as identified in the Applicant Violator System, see memo dated January 27, 1997 from Pamela Grubaugh-littig to File.

AFFIDAVIT OF PUBLICATION

STATE OF UTAH)

ss.

County of Carbon,)

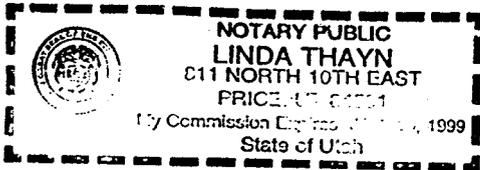
I, Kevin Ashby, on oath, say that I am the Publisher of the Sun Advocate, a twice-weekly newspaper of general circulation, published at Price, State and County aforesaid, and that a certain notice, a true copy of which is hereto attached, was published in the full issue of such newspaper for 4 (Four) consecutive issues, and that the first publication was on the 5th day of November, 1996 and that the last publication of such notice was in the issue of such newspaper dated the 26th day of November, 1996.

Kevin Ashby
Kevin Ashby - Publisher

Subscribed and sworn to before me this 26th day of November, 1996.

Linda Thayne
Notary Public My commission expires January 10, 1999 Residing at Price, Utah

Publication fee, \$274.08



NOTICE OF APPLICATION FOR PERMIT
CYPRUS PLATEAU MINING CORPORATION

Notice is hereby given that Cyprus Plateau Mining Corporation, P. O. Drawer 700 Price Utah 84501, a wholly owned subsidiary of Cyprus Western Coal Company, 9100 Mineral Circle, P. O. Box 3299, Englewood, Colorado 80112, has submitted an application to the State of Utah, Department of Natural Resources, Division of Oil, Gas and Mining, for renewal of its five year permit, number ACT/007/006. The application was submitted in accordance with the Utah Mining and Reclamation Code Annotated 40-10-1 et seq, and the Utah Coal Program Rules R645. The permit area is located in Carbon and Emery Counties, Utah, as follows:

Township 14 South, Range 7 East, SLBM
Section 04, portion

Township 15 South, Range 7 East, SLBM
Section 1, portion; Section 2, portion; Section 3, portion; Section 10, portion; Section 11, portion; Section 12, all; Section 13, portion; Section 14, all; Section 15, portion; Section 22, portion; Section 23, all; Section 25, portion; Section 26, portion

Township 15 South, Range 8 East, SLBM
Section 5, portion; Section 6, portion; Section 7, all; Section 8, portion; Section 9, portion; Section 10, portion; Section 15, portion; Section 16, all; Section 17, portion; Section 18, portion; Section 20, portion; Section 21, portion

The project area is shown on the following U.S. Geological Survey 7.5 minute Quadangle Maps: Wamsutter, Utah/Idaho. Copies of the permit application are available for public inspection at the following locations:

Carbon County Recorder's Office Carbon County Court House Price, Utah	Department of Natural Resources Division of Oil, Gas and Mining 1594 West North Temple, Ste. 210 Box 145801 Salt Lake City, Utah 84114-5801
Emery County Recorder's Office Emery County Court House Castle Dale, Utah	

Permit comments are solicited from all those affected by this permit application. Comments should be filed by December 26, 1996.

Mr. James W. Carrier
Department of Natural Resources
Division of Oil, Gas and Mining
1594 West North Temple, Ste. 210
Box 145801
Salt Lake City, Utah 84114-5801

Published in the Sun Advocate November 12, 19 and 26, 1996



State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

Michael O. Leavitt
Governor
Ted Stewart
Executive Director
James W. Carter
Division Director

355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203
801-538-5340
801-359-3940 (Fax)
801-538-5319 (TDD)

January 27, 1997

TO: File

FROM: Pamela Grubaugh-Littig, Permit Coordinator 

RE: AVS Recommendation, Star Point Mine, Cyprus Plateau Mining Corporation, ACT/007/006, Folder #3, Carbon County, Utah

A "conditional issue" recommendation has been determined by the Applicant Violator System for the Star Point Mines. This recommendation is based on the condition of continual compliance with the Pittston's settlement agreements. As of the writing of this memo, there are no outstanding violations or cessation orders for the Star Point Mines nor delinquent civil penalties or bond forfeitures. Neither the applicant, nor any person who owns or controls the applicant, nor any person owned or controlled by the applicant is currently in violation of any laws, rules or regulations referred to in R645-300-132.



Reason: 0 AML, 2 AUD, 7 CMIS, 11 FORF, 12 STATE, 0 NRSP VIOLATION(S)

OSMRE : C (COND ISSUE) Date : 23-Jan-1997 Mode : VIEW
Reason: Condition is based on continual compliance with the Pittston's settlement agreements. aw

SRA :
Reason: Date : 27-Jan-1997 Mode : UPDATE

SAVE (F5) DELETE (F8)
PRV_SCR (F3) QUIT (F4) CHOICES (F10)
■ avsdg

08 04

AVS Recom Maint Applicant Violator System 27-Jan-1997 08:02:56

State : UT Permit No : ACT007006 Appl No : ACT007006
Permittee : 060102(CYPRUS PLATEAU MINING CORP)
Applicant : 060102(CYPRUS PLATEAU MINING CORP) Seqno : 2

SYSTEM : C (COND ISSUE) Date : 27-Jan-1997 Mode : VIEW
Reason: 0 AML, 2 AUD, 7 CMIS, 11 FORF, 12 STATE, 0 NRSP VIOLATION(S)

OSMRE : C (COND ISSUE) Date : 23-Jan-1997 Mode : VIEW
Reason: Condition is based on continual compliance with the Pittston's settlement agreements. aw

SRA :
Reason: Date : 27-Jan-1997 Mode : UPDATE

SAVE (F5) DELETE (F8)
PRV_SCR (F3) QUIT (F4) CHOICES (F10)
■ avsdg

08 04

AVS Recom Maint Applicant Violator System 27-Jan-1997 08:02:56

State : UT Permit No : ACT007006 Appl No : ACT007006
Permittee : 060102(CYPRUS PLATEAU MINING CORP)
Applicant : 060102(CYPRUS PLATEAU MINING CORP) Seqno : 2

SYSTEM : C (COND ISSUE) Date : 27-Jan-1997 Mode : VIEW
Reason: 0 AML, 2 AUD, 7 CMIS, 11 FORF, 12 STATE, 0 NRSP VIOLATION(S)

OSMRE : C (COND ISSUE) Date : 23-Jan-1997 Mode : VIEW
Reason: Condition is based on continual compliance with the Pittston's settlement agreements. aw

SETTLEMENT AGREEMENT

The United States Department of the Interior, Office of Surface Mining Reclamation and Enforcement ("OSM") and Pittston Coal Company, its successor entities, subsidiaries, and its affiliates (hereinafter referred to as "Pittston") have agreed to resolve the disputes described below. The parties therefore enter into the following stipulations and agreements. Except as expressly provided in this Settlement Agreement, the representations and undertakings set forth below pertain and apply only to Pittston and OSM.

1. Pursuant to Section 510(c) of the Surface Mining Control and Reclamation Act of 1977, as amended, ("SMCRA" or "the Act"), 30 U.S.C. § 1260(c), and pursuant to 30 C.F.R. § 773.5, *et seq.*, no permit to mine coal shall be issued to an applicant if the applicant, or a party in certain ownership or control relationships with the applicant, has outstanding violations of the Act. In addition, pursuant to 30 C.F.R. §§ 773.20 and 773.21, existing permits may be subject to rescission if unabated violations existed at the time the permit was issued.

2. Pittston has been affected by 30 C.F.R. § 773.5 due to its alleged status as the owner or controller of a number of business entities,

although Pittston has claimed those entities are independent contractors and has denied any ownership or control of those entities. Pittston and OSM are entering into this Settlement Agreement as a means of resolving the dispute between them regarding the propriety of Pittston being listed as a presumed owner/controller of purported contract miners on OSM's Applicant/Violator System through § 773.5, and as a means of resolving the lawsuit instituted by Pittston and a subsidiary, Clinchfield Coal Co., in the United States District Court for the Western District of Virginia, which was recently transferred to the district court for the District of Columbia. OSM was enjoined from permit blocking Pittston or its affiliates through the AVS as a result of that federal lawsuit. Upon the execution of this Agreement, as part of the consideration for this Agreement, the parties will submit a joint motion and an agreed order dismissing that lawsuit styled Pittston Coal Company v. Babbitt, No. 96-1431, (Dist. Ct. D.C.). The parties will also contemporaneously move the Hearings Division of the Office of Hearings and Appeals to dismiss the pending applications for review, styled Holston Mining, Inc. v. OSM, No. NX 93-34-R; and Eastern Coal Corp. v. OSMRE, involving two Pittston subsidiaries and an entity (Glory Coal Company) on the attached list of

contractors. The dismissal of the lawsuit and the applications for review shall be with prejudice as to all contractor violations being settled by this Agreement, but without prejudice as to all contractor violations outside this Agreement. Furthermore, Pittston hereby waives its right to file constitutional challenges to the AVS and the ownership and control regulations, 30 C.F.R, §§ 773.5 and 773.15, as to all contractors on **Exhibit A** and all contractor violations on **Exhibits B - G** being settled by this Agreement, but Pittston reserves its rights as to all contractors and contractor violations outside this Agreement.

3. Pittston and OSM have researched their records and have exchanged information as to Pittston's contract miners. In order to resolve the dispute between them, Pittston hereby agrees that, as to the entities at the sites listed on **Exhibit A**, the factors exist which give rise to the presumption of ownership and control as defined at 30 C.F.R. § 773.5. Pittston also agrees that those presumptions may be applied to the entities identified on **Exhibit A** on a permit specific basis. **Exhibit A** includes, to the extent available, the contractor name, AVS Entity Identification Number, Mine Safety and Health Administration Identification Number, and permit numbers. Upon execution of this

Agreement, OSM shall enter the permit specific relationships on *Exhibit A* into the AVS. Pittston agrees that in any future proceeding with OSM it will not contest that the contractors at the sites listed on *Exhibit A* fall within the presumption defined at 30 C.F.R. § 773.5. Further, Pittston agrees to waive its right to attempt to rebut the presumption defined at 30 C.F.R. § 773.5 as to those entities at the sites listed on *Exhibit A*. As to all violations listed on *Exhibits B - G*, Pittston hereby specifically waives its right to contest its link to those violations. Pittston specifically reserves the right in regard to violations discovered in the future at the sites listed on *Exhibit A* to contest its responsibility for such violations but shall not attempt to rebut its ownership and control of the contractor at the site. Pittston's right to contest responsibility for violations shall include the right to contest ownership or control of the site at the time of the violation. OSM does not admit the relevancy of this defense in all cases.

4. It is the intent of the parties to include in this Agreement all contractors and their applicable violations which are currently identified on *Exhibits A - G*. Additionally, violations on sites listed on *Exhibit A* which are discovered in the future, or violations which occur in the future

due to past mining activities are included in this Agreement except as provided in Paragraph 3 above. For purposes of this Agreement, the term "violations" includes federal notices of violations, federal cessation orders, bond forfeitures, unpaid federal civil penalties, unpaid AML fees, interest or administrative expenses or late payment penalties which accrue on unpaid AML fees and unpaid federal civil penalties, unabated violations, and other obligations arising under SMCRA. Entities, sites, and violations are to be added to or deleted from this Agreement as described below.

a. The parties acknowledge that there may be other sites or entities which should be added to *Exhibit A* and entered into the AVS pursuant to 30 C.F.R. § 773.5 et seq. Such additions to *Exhibit A* may be done through mutual consent of both parties. Any such modifications shall be in writing and signed by both parties and attached and made a part of this Agreement. If an entity or site is added to *Exhibit A*, the parties agree that the related *Exhibits B - G* shall likewise be modified, as appropriate, pursuant to this Agreement.

b. Likewise, the parties acknowledge that there may be some entities or sites which should be deleted from *Exhibit A* and removed from

the AVS. If, following the execution of this Agreement, Pittston can show that it did not own or control an entity or site on *Exhibit A*, such site or entity may be removed from *Exhibit A* through the mutual consent of both parties. However, any deletions of entities or sites listed on *Exhibit A* shall not alter or affect the current reclamation obligations or the current AML fee debt payment provisions under *Exhibits B* and *D - G* of this Agreement. No department, agency, officer or employee of the United States government shall be liable, and Pittston agrees that it will not make any claim, for any refunds of monies paid hereunder, or the cost of reclamation performed under this Agreement, by virtue of any deletions from *Exhibits A - G*, nor by virtue of amendment, deletion or nullification of the regulations implementing the Surface Mining Control and Reclamation Act of 1977, nor by virtue of any amendment, deletion, or nullification of Act or any of its state counterparts.^{1/}

5. In making this Agreement, Pittston does not admit any liability for the entities listed on *Exhibit A*, does not assume any contractual

^{1/} Removal of sites, contractors, or violations from *Exhibits A - G* of this Agreement requires OSM's consent. Pursuant to Paragraph 3 of this Agreement, Pittston has waived its right to attempt to rebut links to contractors or contractor violations settled by this Agreement. Accordingly, if OSM and Pittston cannot agree that a contractor or contractor violation should be removed from an exhibit, Pittston has no recourse to administratively challenge OSM's decision through 30 C.F.R. §§ 773.5, 773.15, 43 C.F.R. §§ 4.1280, 4.1380, or any other procedure.

knowledge, after reasonable investigation, *Exhibits A - G* list all contractors and contractor violations that are or should be linked to Pittston.

7. In consideration of this Agreement, Pittston agrees to pay all the principal amount of AML debt due from its purported contractors listed on *Exhibits B* and *D*, with the total AML debt Pittston agrees to pay for its contractors on those two exhibits under the terms of this Settlement Agreement being \$312,817.26. Pittston further expressly agrees to pay \$117,528.87 in AML fees listed in *Exhibit G* plus any such additional penalties and interest which may accrue on *Exhibit G* under the applicable regulations.

8. The total amount of AML fees due from Pittston under this Agreement is \$430,346.13 plus the additional penalties and interest which have accrued and will accrue on the fees listed on *Exhibit G*. Fifty percent of the AML contractor debt, \$156,408.63, shall be paid simultaneously with the execution of this Agreement, with the balance due and payable one year from the date of execution of this Agreement. Interest at the rate of 5.89 per cent per annum shall accrue on the unpaid balance from the date of execution to the date of payment. Interest shall

be compounded annually.^{2/} Additionally, the AML debt attributable to the subsidiaries listed in *Exhibit G*, amounting to \$117,528.87, shall be paid in full upon execution of this Agreement.

9. The parties recognize, understand and agree that OSM has computed abandoned mine land reclamation fees due from Pittston, its affiliates and the contractors shown on *Exhibits B, D, and G* based upon clean coal production tonnages when, under OSM's regulations, the fees could have been computed on the basis of raw coal production. The parties recognize, however, that OSM's regulations on computing AML fees on clean coal or raw coal production are undergoing review. As stated in the audit reports routinely issued by OSM, neither interest nor penalties will accrue on the principal amounts attributable to raw coal tonnages until this regulatory review is completed. Upon completion of the review, Pittston will be notified if OSM elects to initiate future collection actions for the difference between raw coal assessments and the clean coal reported. In the event that payment of fees on raw coal

^{2/} The interest rate is equal to the rate charged on judgments entered in federal courts in favor of the United States. The interest rate for this Settlement Agreement was determined by the parties by calling the United States District Court for the Western District of Virginia. If Pittston pays 50% of the AML fees due hereunder on the date of execution, and the remaining 50% exactly one year later, \$ _____ will accrue in interest on the unpaid balance, making the amount due to OSM on _____, 1997, be \$ _____ exclusive of any additional sums due for raw coal tonnages.

tonnages is sought, a bill for the additional unpaid fees will be issued by OSM. Additional interest and penalties on such raw coal tonnages will also accrue from the billing date. If presented with a bill for additional fees as a result of a raw coal computation, Pittston shall have the right to contest any AML fee assessment in excess of the clean coal computation and OSM shall have the right to pursue collection of the additional assessment, as in the case of other operators.

10. Based upon the unique circumstances now existing between the parties and in consideration of this Agreement, OSM agrees that Pittston will not be linked to any interest, late payment penalties or administrative costs attributable to the contractors listed on *Exhibits B* and *D* as long as Pittston timely pays all sums due hereunder. Upon execution of this Agreement and the promise to pay the sums described in Paragraphs 7 and 8, Pittston will be considered by OSM to be in the process of correcting the AML deficiency "to the satisfaction of the regulatory authority, department, or agency which has jurisdiction over such violation," pursuant to § 510(c) of SMCRA, 30 U.S.C. § 1260(c). Accordingly, OSM will cause such information to be entered into the AVS as to prevent Pittston from being permit blocked on the basis of the

unpaid AML fees attributable to the contractors on *Exhibits B* and *D*, and the other linked entities on *Exhibit G*. Further, as long as Pittston timely pays all sums due hereunder, Pittston shall have no further liability for interest, penalties and administrative costs on AML fees of contractors and sites listed on *Exhibit A*.

11. Payments required to be made under this Agreement shall be deemed to be made upon receipt of the proper amount by certified check, cashier's check, or money order payable to the "Office of Surface Mining," mailed to:

Office of the Field Solicitor
U.S. Department of the Interior
530 S. Gay Street, Room 308
Knoxville, Tennessee 37902
Attn: John Austin

12. OSM has reviewed *Exhibit A* and has developed a list of sites (*Exhibits E* and *F*) upon which additional reclamation measures need to be taken in order to bring those sites into compliance with the provisions of SMCRA. Under the terms of this Settlement, Pittston will abate any and all outstanding performance standard violations to bring such sites into compliance with the Act.

13. Additionally, Pittston shall participate in OSM's Appalachian Clean Streams Initiative by addressing acid mine drainage at a Virginia site(s) eligible for funding under Title IV of SMCRA. The total cost of Pittston's participation in the Appalachian Clean Streams Initiative shall be \$100,000.00, exclusive of Pittston's planning and engineering costs. While Pittston agrees to participate in the Appalachian Clean Streams Initiative, it does not guarantee the results of its work, only the dollar amount of its participation. OSM and Pittston agree to meet with the Commonwealth of Virginia, after the signing of this Agreement, to discuss the Appalachian Clean Streams Initiative and to mutually agree with the Commonwealth of Virginia upon a site, reclamation plans, and cost estimates. OSM shall receive appropriate documentation showing the cost of Pittston's participation in the Appalachian Clean Streams Initiative. Pittston agrees to perform the stream reclamation project in a workmanlike manner.

14. All reclamation performed by Pittston under this Settlement Agreement, except for the work performed under the Appalachian Clean Streams Initiative, shall be in accordance with applicable federal interim or approved permanent program standards. OSM shall conduct follow-up

inspections on all sites on *Exhibits E and F* to determine compliance with items such as, but not limited to, revegetation, sediment pond removal, tree plantings and to determine site conditions after Pittston's initial remedial actions. OSM shall notify Pittston of its findings and any additional work OSM believes is required under this Agreement.

a. If environmental deficiencies are created by the abatement of the performance standard violations included in this Agreement, OSM shall notify Pittston of the deficiencies and Pittston shall take steps to remedy the situation within a reasonable timeframe specified by OSM.

b. In regard to any permanent program site covered by this Agreement, after achievement of the permanent program standards, Pittston may request that the appropriate state regulatory authority terminate jurisdiction pursuant to the provisions of its approved permanent regulatory program.

c. Upon receipt of written requests from Pittston regarding completion of reclamation on interim program sites, OSM and/or the state regulatory authority may notify Pittston of its determination as to whether or not the interim regulatory program provisions have been met as to each interim site covered by this Agreement. Receipt of these notices by

Pittston from both OSM and the state will terminate the regulatory jurisdiction of the Secretary of the Interior, consistent with the provisions of 30 C.F.R. § 715.20.

15. Time is of the essence in regard to this Agreement. OSM and Pittston shall mutually agree upon a reclamation schedule for the completion of all reclamation work. Pittston shall exercise its best efforts to complete all initial site work by December 31, 1998. Pittston shall notify OSM upon the completion of the initial site work, in accordance with applicable standards, of each reclamation site to allow for inspection prior to equipment removal. OSM and Pittston recognize, however, that Pittston's performance of such work may be delayed from time to time due to factors beyond Pittston's control. Pittston shall diligently attempt to minimize such delays to the extent feasible, and shall inform OSM if the reclamation schedule will be delayed.

16. OSM and Pittston recognize that from time to time disputes may arise between the parties concerning the entitlement to or the length of any schedule extensions requested by Pittston, or concerning a determination by OSM that reclamation work at a given mine site has not been properly performed or completed. Because the parties wish to

minimize the effect and duration of such disputes, the following procedures shall be utilized in such instances:

a. OSM and Pittston will first make a good faith attempt to resolve any dispute between themselves on the local level. If informal methods fail to produce an agreement, Pittston shall state its position briefly in writing and deliver it to the appropriate OSM Regional Director with a copy to the appropriate Field Office Director. The parties shall then have two weeks within which to negotiate a resolution of the dispute. If an agreement is reached, the parties will sign a brief written statement to that effect, and the statement will be attached to and become a part of this Agreement. If the parties fail to agree, OSM shall provide to Pittston a written decision, explaining the basis for its disagreement with Pittston's position.

b. Upon receipt of a written decision from OSM rejecting Pittston's position on some or all of the issues in dispute, Pittston will have five (5) working days within which it may accept OSM's decision and initiate action to comply with the decision.

c. If Pittston does not accept OSM's written decision within five (5) working days, OSM may initiate any appropriate enforcement action for that site including the issuance of ten day notices, notices of violations, cessation orders or suit in the appropriate U.S. District Court. Moreover, any monetary penalties assessed by OSM after taking an appropriate enforcement action issued as a result of a disagreement about reclamation governed by this Agreement, shall not be included in this Agreement or attached to this Agreement. Pending resolution of the dispute under the procedures set forth above, the parties shall continue to comply with the terms of this Agreement with respect to all matters not in dispute.

Agreement, Pittston has reclaimed, at no cost to the surface mining regulatory authority for the Commonwealth of Virginia, thirteen bond forfeiture sites at an estimated cost of \$567,000.00; has reclaimed two other sites with pending state enforcement actions with an estimated value of \$600,000.00; and has executed an agreement with the Commonwealth of Virginia to resolve state violations, including bond forfeitures, state civil penalties, bond pool expenditures and other expenditures by the Commonwealth of Virginia pertaining to bond forfeiture sites. OSM further recognizes that the additional remedial reclamation measures Pittston will undertake under its Settlement Agreement with OSM will have an estimated cost of \$1.1 million. In addition to the consideration for this Agreement mentioned above and at paragraph 10, the parties agree that the performance of the remedial reclamation measures set forth in this Agreement and Pittston's participation in Appalachian Clean Streams Initiative shall be consideration. Upon the full performance by Pittston of the terms of this Agreement, OSM shall compromise and offset the federal civil penalty debt in *Exhibit C*. Upon the execution of this Agreement and upon the timely payment of the sums due hereunder, OSM agrees not to permit

block Pittston on the basis of federal civil penalties attributable to the purported contractors on *Exhibit C*. Accordingly, unless Pittston fails to perform as agreed in this Settlement Agreement, no federal civil penalty and no interest, penalties, administrative cost or post-judgment interest arising from those federal civil penalties listed on *Exhibit C* shall be the basis of a permit block for Pittston, its owners or controllers, or any entity owned or controlled by Pittston. Further, in consideration and recognition of the reclamation measures ~~to be performed~~ under this Agreement and the agreements with the state regulatory authorities, and the participation in the Appalachian Clean Streams Initiative, Pittston shall have no further liability for federal civil penalties for contractors and sites listed on *Exhibit A*, ~~as long as Pittston timely pays all sums due hereunder.~~

18. As to the Glory site known as Flag Run, special circumstances exist which the parties hereby acknowledge. There ~~has been acidic water~~ discharging through the Flag Run portals. However, Flag Run has been over-permitted by an entity which has, to the best of the parties' knowledge, information and belief, no known ownership and control relationship to Pittston, as the term ownership and control is defined at 30 C.F.R. § 773.5. It appears to QSM that the mountain-top removal

currently being conducted at the Flag Run site is likely to abate the acid mine drainage from the Glory portals. If, at some future date, OSM determines that the acid-mine drainage problem on the Flag Run site is attributable to Pittston, OSM shall be free to address that problem through any provision available to OSM by statute, regulation or applicable case law.

19. In consideration of the execution of this Agreement and Pittston's continued compliance with such, Pittston will be considered by OSM to be in the process of correcting the unabated federal citations "to the satisfaction of the regulatory authority, department, or agency which has jurisdiction over such violation," pursuant to § 510(c) of SMCRA, 30 U.S.C. § 1260(c). OSM will cause such information to be entered into the AVS so as to prevent Pittston from being permit blocked on the basis of the violations identified in the Agreement.

a. Subsequent to the execution of this Agreement, any permits or any significant permit revisions to be issued to Pittston, or to any person or entity related by ownership or control to Pittston, however, shall be conditional on Pittston's compliance with the terms of this Agreement regarding payments of AML fees, performance of reclamation

and completion of the agreed upon participation in the Appalachian Clean Streams Initiative.

b. Although OSM has agreed that, upon full performance by Pittston of the terms of this Agreement, OSM will not block Pittston for the federal civil penalty debts of these purported contractors, and will not require Pittston to pay interest and penalties on the AML fees attributable to the purported contractors, OSM specifically reserves the right to pursue the contractors for the AML fees and federal civil penalties which are not paid by Pittston. The individual contractors shall continue to be linked on the AVS to the unpaid AML fees and federal civil penalties, and shall remain liable for those debts according to law.

20. Pittston will use its best efforts to gain access to all of the mine sites included on *Exhibits E* and *F*. At present, Pittston and OSM expect that the surface owners will allow access to perform the remedial reclamation measures necessary to abate apparent SMCRA violations. If Pittston's best efforts fail, OSM will assist Pittston in gaining site access. In the event that OSM and Pittston fail in their efforts to gain site access, OSM and Pittston will search for an eligible abandoned mine land site under section 404 of SMCRA which requires the same approximate dollar

amount of remedial reclamation measures, and Pittston will reclaim that alternate site in lieu of reclamation of the site for which access has been denied. If forced by circumstances beyond its control to reclaim an alternate site instead of a site listed on *Exhibits E* and *F*, Pittston will be considered by OSM to have resolved the problem specified on *Exhibits E* and *F* "to the satisfaction of the regulatory authority, department, or agency which has jurisdiction over such violation," pursuant to § 510(c) of SMCRA, 30 U.S.C. § 1260(c).

21. Any reclamation required under this Agreement may be performed under or as a part of a plan to mine or re-mine the property where the work is to be performed, but Pittston shall obtain all necessary permits before it conducts any such mining operations.

22. Pittston and any person or entity related by ownership or control to Pittston shall, as required by law or regulation, include the permits and purported contractors on *Exhibit A* on any state or federal surface mining permit applied for in the future, or now pending before a permitting authority.

23. The failure of OSM at any time to demand performance of any requirement herein shall not affect OSM's right to compel full

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PITTSBURGH

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IN WITNESS OF THE ABOVE, the parties have executed this Agreement as of the dates set forth below.

PITTSBURGH COAL COMPANY

7-19-96
Date

By: [Signature]
Its President

OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

7/19/96
Date

By: [Signature]
Its

CERTIFICATION OF APPROVAL

I certify that I received approval from the Department of Justice on the _____ day of _____ 1996, to allow my client agency, the Office of Surface Mining, to enter into this Settlement Agreement. Executed this the _____ day of _____ 1996, in my capacity as Special Assistant U.S. Attorney in The Pittston Company v. Babbitt, No. 92-1606 (4th Cir.), No. 91-0006-A (W.D. Va.), and as counsel for OSM in Hohmann Mining, Inc. v. OSM, No. NX 93-34-R, and Eastern Coal Corp. v. OSMRE.

Counsel for OSM and Special Assistant U.S. Attorney

OPTIONAL FORM NO. 10 (7-87)

FAX TRANSMITTAL

TO: <u>Debra Auster-C. She</u>		FROM: <u>C. Ward</u>	
TO: <u>502-Knoxville</u>		PHONE: _____	
FAX: <u>523-545-4314</u>		FAX: _____	
GENERAL SERVICES ADMINISTRATION			