

FABIAN & CLENDENIN

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

P. O. BOX 510210
TWELFTH FLOOR
215 SOUTH STATE STREET
SALT LAKE CITY, UTAH 84151
TELEPHONE (801) 531-8900
TELECOPIER (801) 596-2814

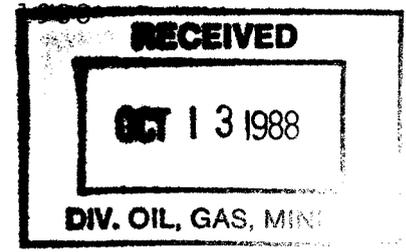
HAROLD P. FABIAN
1885-1975
BEVERLY S. CLENDENIN
1889-1971
SANFORD M. STODDARD
1909-1974

KEVIN N. ANDERSON
JATHAN W. JANOVE

NORMAN J. YOUNKER
MICHELE MITCHELL
JOHN E. S. ROBSON
DOUGLAS B. CANNON
RANDY K. JOHNSON
ROBERT PALMER REES
JODI KNOBEL FEUERHELM
KENLEY W. BRUNSDALE
DOUGLAS J. PAYNE
PATRICK L. ANDERSON
SHELDON A. SMITH
DIANE H. BANKS
P. BRUCE BADGER
BRYON J. BENEVENTO
JOHN (JACK) D. RAY
MICHAEL L. CHIDESTER

PETER W. BILLINGS
ALBERT J. COLTON
RALPH H. MILLER
BRYCE E. ROE
GEORGE D. MELLING, JR.
WARREN PATTEN
M. BYRON FISHER
STANFORD B. OWEN
WILLIAM H. ADAMS
ANTHONY L. RAMPTON
PETER W. BILLINGS, JR.
THOMAS CHRISTENSEN, JR.
RAND M. ELISON
RANDALL A. MACKEY
DENISE A. DRAGOO
JAY B. BELL
DANIEL W. ANDERSON
GARY E. JUBBER
ROSEMARY J. BELESS
W. CULLEN BATTLE

October 13, 1988



Mr. Louis Kuchinic, Jr.
York Canyon Mine
P.O. Box 1107
Raton, New Mexico 87740

RE: Account at First Interstate Bank, Price, Utah

Dear Lou:

Dianne Nielson contacted me concerning the agreement between the State of Utah (the "State"), the Secured Lenders and Kaiser Coal Corporation ("Kaiser") for the sale of excess materials and equipment located at Kaiser's Utah properties. Pursuant to that agreement, Kaiser established an account at First Interstate Bank, Price, Utah, for the deposit of all proceeds from the sale of the equipment. In addition, Kaiser agreed to provide a monthly accounting to the Secured Lenders and the State concerning the sale of equipment and expenditure of the proceeds. Dr. Nielson is seeking an accounting for the month of September, 1988 if that accounting is available at this point. Please review this matter with Bob Vogel and provide Dr. Nielson a copy of the accounting as soon as it is available.

In addition, Dr. Nielson indicated that the State seeks to exercise some control over that account. Due to the fact that review and approval of expenditures from the account by the State of Utah could prove extremely cumbersome, we need to review this matter further with the State of Utah. Dr. Nielson suggested that we discuss this matter when Barbara Roberts returns from her vacation.

Very truly yours,

Denise A. Dragoo

DAD:jmc
cc: William Balaz
Bob Vogel
Harrie F. Lewis, Esq.
✓Dianne Nielson

FABIAN & CLENDENIN

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

P. O. BOX 510210
TWELFTH FLOOR
215 SOUTH STATE STREET
SALT LAKE CITY, UTAH 84151
TELEPHONE (801) 531-8900
TELECOPIER (801) 596-2814

HAROLD P. FABIAN
1885-1975
BEVERLY S. CLENDENIN
1889-1971
SANFORD M. STODDARD
1909-1974

KEVIN N. ANDERSON
JATHAN W. JANOVE

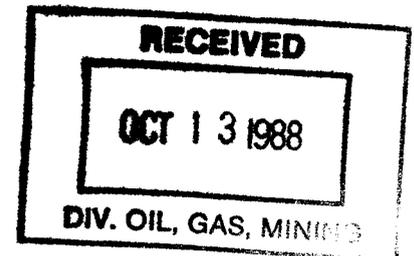
NORMAN J. YOUNKER
MICHELE MITCHELL
JOHN E. S. ROBSON
DOUGLAS B. CANNON
RANDY K. JOHNSON
ROBERT PALMER REES
JODI KNOBEL FEUERHELM
KENLEY W. BRUNSDALE
DOUGLAS J. PAYNE
PATRICK L. ANDERSON
SHELDON A. SMITH
DIANE H. BANKS
P. BRUCE BADGER
BRYON J. BENEVENTO
JOHN (JACK) D. RAY
MICHAEL L. CHIDESTER

PETER W. BILLINGS
ALBERT J. COLTON
RALPH H. MILLER
BRYCE E. ROE
GEORGE D. MELLING, JR.
WARREN PATTEN
M. BYRON FISHER
STANFORD B. OWEN
WILLIAM H. ADAMS
ANTHONY L. RAMPTON
PETER W. BILLINGS, JR.
THOMAS CHRISTENSEN, JR.
RAND M. ELISON
RANDALL A. MACKEY
DENISE A. DRAGOO
JAY B. BELL
DANIEL W. ANDERSON
GARY E. JUBBER
ROSEMARY J. BELESS
W. CULLEN BATTLE

VIA FEDERAL EXPRESS

October 13, 1988

Mr. David Russett
RUSSETT INDUSTRIES
65 Marlin Place
Colorado Springs, Colorado 80906



RE: Reclamation of Sunnyside Mine No. 2,
Sunnyside, Utah

Dear Dave:

Enclosed is a draft Operating Agreement which incorporates the terms of your proposal to Kaiser Coal Corporation ("Kaiser") to reclaim the Sunnyside No. 2 Mine, Sunnyside, Utah. Also enclosed is Reclamation Permit No. ACT/007/007 issued by the Utah Division of Oil, Gas & Mining (the "Division") for the Sunnyside Mine Nos. 1, 2 and 3. Appended to the permit is the Division's technical analysis and permit stipulations. Finally, enclosed is Chapter 3 of Kaiser's permit application which constitutes the reclamation plan applicable to Sunnyside Mines Nos. 1, 2 and 3.

Kaiser met with the Division concerning your proposal on Monday, October 3, 1988. The Division confirmed that Russett Industries could proceed with reclamation pursuant to the terms of Kaiser's Permit No. ACT/007/007, although this permit has been suspended by the Division due to bonding inadequacies. The Division's position in this matter is consistent with that of the federal Office of Surface Mining which is amending its rules to allow reclamation to proceed although a mining permit is in suspension. 53 Federal Register 36404, Monday, September 19, 1988, enclosed.

Due to the complexity of the Utah Coal Mining & Reclamation Act requirements governing implementation of the Reclamation Plan for Sunnyside No. 2, I would suggest that

LAW OFFICES OF
FABIAN & CLENDENIN
A PROFESSIONAL CORPORATION

Mr. David Russett
October 13, 1988
Page Two

Russett Industries meet with the Division and Kaiser to devise a reclamation schedule prior to commencing activities. In addition, the Division has indicated that it would consider modifications to the Reclamation Plan of Russett Industries' request.

Please give me a call concerning your comments on this proposed agreement. Once we have reached accord on the terms of your proposal, Kaiser we will need to submit the agreement to the Bankruptcy Court for review and approval.

Very truly yours,



Denise A. Dragoo

DAD:jmc:101388b

Enclosures

cc: Louis Kuchinic
William Balaz
Harrie F. Lewis, Esq.
✓ Dr. Dianne R. Nielson (hand delivered, with enclosures)

DRAFT

OPERATING AGREEMENT

THIS OPERATING AGREEMENT ("Agreement") is made and entered into as of the ___ day of _____, 1988, by and between KAISER COAL CORPORATION, KAISER COAL CORPORATION OF SUNNYSIDE, KAISER COAL CORPORATION OF UTAH, (jointly referred to herein as "Owner"), THE CHASE MANHATTAN BANK (NATIONAL ASSOCIATION), individually and as agent (the "Agent") for itself, MELLON BANK, N.A., THE ROYAL BANK OF CANADA and BANQUE PARIBAS (collectively, the "Secured Lenders"); the STATE OF UTAH, DEPARTMENT OF NATURAL RESOURCES, DIVISION OF OIL, GAS & MINING (the "State") and RUSSETT INDUSTRIES, a _____ corporation, whose address is 65 Marland Place, Colorado Springs, Colorado 80906 (referred to herein as "Operator").

RECITALS:

Owner is the owner of the Sunnyside Mine Nos. 1, 2, and 3 in Carbon County, Utah, Reclamation Permit No. ACT/007/007;

Owner is a debtor in possession in bankruptcy proceedings designed as Case No. 87-B-01552E, pending before the United States District Court for the District of Colorado in Bankruptcy (the "Bankruptcy Court");

Owner has mined-out the Sunnyside Mine No. 2 and is currently financially incapable of commencing reclamation activities therein;

Operator seeks to undertake and complete reclamation activities at the Sunnyside Mine No. 2 in return for salvageable

materials described at Exhibit "A", some of which may be located underground in the Sunnyside No. 2 Mine, and payment of \$7,077.00 to Owner;

The Secured Lenders have secured interests in Owner's personal property, materials and equipment located at the Sunnyside Mine No. 2, including but not limited to those items described at Exhibit "A";

The Secured Lenders have entered into negotiations with the State which would allow the State to utilize the Secured Lenders' interest in Kaiser equipment to generate funds in an amount necessary to secure environmental maintenance costs and reclamation costs at Owner's Sunnyside Mines, the Wellington Preparation Plant and the Horse Canyon Mine (herein collectively referred to as the "Mines");

Kaiser has entered into an agreement (the "Materials Agreement") with the Secured Lenders and the State, approved by the Bankruptcy Court, to sell the personal property, materials and equipment, including materials to be salvaged by Operator, to provide funds necessary to meet the costs of environmental maintenance and reclamation. Said Materials Agreement is attached hereto as Exhibit "B"; and

The parties hereto seek to enter into an agreement to allow Operator to reclaim the Sunnyside Mine No. 2 in accordance with the reclamation plan for ACT/007/007, attached hereto as Exhibit "C", or other reclamation plan acceptable to the State and the Owner (the "Reclamation Plan").

NOW, THEREFORE, in consideration of the mutual obligations and undertakings contained herein, the parties hereto agree as follows:

ARTICLE I

SCOPE OF WORK

1.1 Conduct of Operator. Operator agrees to perform the following reclamation services (hereinafter "Work") pursuant to the Reclamation Plan:

(a) All concrete buildings, slabs and retaining walls shall be demolished and materials shall be used as backfill or removed from site.

(b) All entrance tunnels shall be either filled at least 25 feet inward from entrance with non-combustible materials, or sealed as per specifications approved by the State and the Mine Safety & Health Administration ("MSHA").

(c) The mine ventilation fan in Fan Canyon will be removed from Fan Canyon to a site designated by Owner and said ventilation fan will remain the property of Owner. The substation and concrete pads supporting the substation and ventilation fan in Fan Canyon shall be used as backfill or removed from the site.

(d) Access roads from the mouth of the canyon to each portal facility shall be reclaimed.

(e) All disturbances will be reclaimed and revegetated as provided in the Reclamation Plan attached at Exhibit "C".

(f) All power lines from the metering station to the substation located in Fan Canyon shall be demolished and used as backfill or removed from the site.

1.2 Equipment, Materials and Personnel. Except as otherwise provided herein, the Operator agrees to furnish at its own risk, cost and expense all labor, materials, fuel, electricity and equipment to complete the Work as described above and in the Reclamation Plan attached hereto as Exhibit "C". Operator will endeavor to use United Mine Workers Association ("UMWA") employees and pay prevailing wages and benefits under the terms of Kaiser's Collective Bargaining Agreement with UMWA. To the extent that Kaiser owns and has equipment available at the the Sunnyside No. 2 Mine, Operator may use any of Owner's equipment located at the Sunnyside No. 2 Mine for work undertaken pursuant to this Agreement. Operator agrees to maintain such equipment according to industry standards and to return the equipment to Owner.

1.3 Compliance With State Reclamation Requirements. It is understood and agreed by the parties hereto that all Work shall be performed as required in the Reclamation Plan attached hereto as Exhibit "C" and shall be subject to inspection and approval by the Owner and by the State. The Reclamation Plan may be modified by Operator with prior written approval of the State and the Owner. It is hereby agreed by the State that the Work undertaken herein is reclamation activity which does not constitute mining within the scope of the Utah Coal Mining &

Reclamation Act and that the Work may proceed under the terms of suspended permit No. ACT/007/007.

1.4 Compliance with MSHA Regulations. Operator agrees to obtain an identification number from MSHA for activities undertaken pursuant to the terms of this Agreement. Owner agrees to cooperate with Operator to temporarily transfer to Operator all MSHA-approved plans for Sunnyside No. 2 Mine, including ventilation plans and roof-control plans, for the term of this Agreement. Operator agrees to undertake all MSHA record-keeping requirements and comply with all other MSHA requirements during the term of this Agreement.

1.5 Governmental Compliance. During the term of this Agreement, Operator shall be responsible for obtaining all governmental authority necessary to perform the Work described herein. Operator agrees to conduct all Work in compliance with all applicable governmental requirements, including but not limited to environmental, health and safety requirements.

ARTICLE II

TIME OF COMPLETION

The Work under this Agreement shall be commenced by Operator upon written notice to proceed from Owner and shall be completed within 120 calendar days after date marked on registered receipt of said Notice to Proceed and no later than February 1, 1989. This Agreement may be renewed or extended upon written agreement of all parties hereto.

Delays caused by weather shall extend the completion date at the discretion of the Owner.

ARTICLE III

CONTRACT SUM/PURCHASE PRICE

3.1 Contract Sum. The Owner agrees to pay and the Operator agrees to accept in full performance of this Agreement the salvageable materials listed at Exhibit "A" (the "Salvaged Materials") to the extent such Salvaged Materials and equipment have been removed from the Sunnyside No. 2 Mine and salvaged by Operator.

3.2 Purchase Price. In addition, in consideration of said Salvaged Materials, Operator agrees to pay Owner the sum of \$7,077.00, which is due and payable within ten (10) days of the execution of this Agreement by Operator.

3.3 Proceeds From Purchase. The Secured Lenders and the State, to the extent approved by the Secured Lenders, agree to allow Kaiser to use the cash collateral from sale of the Salvaged Materials as provided in the Agreement attached hereto as Exhibit "B".

ARTICLE IV

INDEBTEDNESS

4.1 Indebtedness. Before the Salvaged Materials and Performance Bond are released by Owner to Operator, the Operator must submit evidence including lien waivers, satisfactory to the Owner that all payrolls, material bills, subcontracts and outstanding indebtedness in connection with the Work have been

paid or that arrangements have been made for their payment. Release of Salvaged Materials will be made without unnecessary delay after receipt of such evidence as mentioned above.

ARTICLE V

ACCESS

5.1 Easement. Subject to ¶4.1, Owner grants Operator all rights necessary to reclaim the Sunnyside No. 2 Mine under ACT/007/007 and to salvage and remove Salvaged Materials from the Sunnyside No. 2 Mine during the term of this Agreement.

ARTICLE VI

ADDITIONAL WORK

6.1 Additional Work. It is understood and agreed by the parties hereto that no money will be paid to the Operator for any additional work, labor or materials, furnished by Operator unless a new contract in the form of a change order or a modification hereof for such additional materials or labor has been executed by Owner and Operator. The Owner specifically reserves the right to modify or amend this Agreement and the total sum due hereunder either by enlarging or restricting the Work through a change order.

ARTICLE VII

ACCEPTANCE

7.1 Inspection. Owner has the right to inspect Work in progress for compliance with the terms of this Agreement. William Balaz or other authorized representatives of Owner will monitor Operator's Work.

7.2 Acceptance. The Work shall be inspected for acceptance by the Owner and the State promptly upon receipt of notice from the Operator that the Work is complete and ready for inspection.

Operator warrants that it will perform all services in accordance with the standards of care and diligence normally practiced in performing services of a similar nature. If, during the ten (10) year revegetation period following completion or termination of services, whichever is earlier, it is shown that there is an error in services as a result of those standards not having been met and Owner has promptly notified Operator in writing of such failure, Operator shall perform, without fee, corrective services to remedy such error.

7.3 Performance Bond. Operator shall post a bond with Owner guaranteed by an insurance company authorized to do business in the State of Utah substantially in the form attached hereto as Exhibit "D" in the amount of TEN THOUSAND DOLLARS (\$10,000.00) to secure performance of the terms of this Agreement. In lieu of posting said bond, Operator may secure performance by cash, letter of credit or certificate of deposit in the amount of \$10,000.00 through a bank authorized to do business in the State of Utah. Said performance bond or surety shall remain in effect during the period set forth at ¶7.2 until such time as the State and Operator agree to acceptance of Owner's Work under this Article VII.

ARTICLE VIII

FORCE MAJEURE

8.1 Force Majeure. Neither party shall be liable to the other for failure to perform its obligations hereunder if and to the extent that such failure to perform due to causes beyond its reasonable control, all of which causes herein are called "force majeure", including, but without being limited to, strikes, lockouts or other industrial disturbances, civil disturbances, fire, unusual climatic conditions, acts of God, acts of a public enemy or inability to obtain necessary materials in the open market.

Owner or Operator, as the case may be, (1) shall notify the other party promptly in writing of the occurrence of any such cause which may hamper Operator's ability to perform its responsibilities under this Agreement.

No suspension or reduction for reason of force majeure shall invalidate the remainder of this Agreement; but, on removal of the cause, performance shall resume as provided herein.

ARTICLE IX

TERMINATION OF CONTRACT

9.1 Termination. If the Operator shall be adjudged bankrupt or if the Operator should make a general assignment for the benefit of Operator's creditors or if a receiver should be appointed on account of Operator's insolvency, or if Operator or any of his/her subcontractors should violate any of the provisions of this Contract, the Owner may serve written notice

upon Operator of its intention to terminate said Contract; and unless within ten (10) days after the serving of such notice, such violation shall cease, the Owner then may take over the Work and prosecute same to completion by hiring another contractor or by any other method it may deem advisable. In such event, the Owner may, without liability for so doing, take possession of and utilize in completing the work, such materials, fuel, seed and any other property belonging to the Operator as may be on the site of the Work and necessary therefore.

9.2 Compensation. Owner may terminate this Agreement upon ten (10) days' written notice to Operator as provided in ¶9.1 and in such event, Operator shall be entitled to receive just and equitable compensation for any satisfactory Work completed up to the term of termination; however, such compensation will be in the form of Salvaged Materials.

ARTICLE X

INDEPENDENT CONTRACTOR

10.1 Independent Contractor. The Operator shall be an independent contractor, and, as such, shall have no authorization, expressed or implied, to bind the Owner, the State or Secured Lenders to any agreement, settlement, liability or understanding whatsoever, nor to perform any acts as agent for the Owner, the State or Secured Lenders, except as herein expressly set forth. The compensation provided for herein shall be the total compensation payable hereunder by Owner.

ARTICLE XI

INSURANCE

At all times when Operator is on the Sunnyside No. 2 Mine premises, Operator shall have in force suitable policies of insurance having coverage of a nature and amount generally acceptable within Operator's industry, including but not limited to:

Automobile Bodily Injury Liability,
Automobile Property Damage Liability,
Bodily Injury Liability (other than
automobile) and Property Damage
Liability (other than automobile).

Operator shall forward to Company certificates of insurance evidencing the above coverage before commencing Work. Said certificates shall be mailed to the address set forth below and shall include the following statement:

Thirty (30) days' written notice will be given to Kaiser Coal Corporation, Sunnyside Coal Mine, P.O. Box 10, Sunnyside, Utah 84539, before a cancellation of or material change in this policy shall become effective.

ARTICLE XII

INDEMNIFICATION

Operator hereby agrees to indemnify and hold Owner harmless from and against any and all claims, suits, liabilities, damages, violations, fines, penalties, losses, costs or expenses whatsoever (including attorneys' fees and court costs) that

result directly from Operator's activities at the Sunnyside No. 2 Mine.

ARTICLE XIII

MISCELLANEOUS

13.1 Notices to the Parties. All notices, payments, reports, consents and other communications between the parties shall be in writing and shall be sufficient when delivered in person or when mailed via certified United States mail, postage prepaid, to the parties at their respective addresses, which shall prevail unless notice of change is given in writing.

Unless otherwise provided herein, any notice given by mailing as aforesaid shall be deemed given seventy-two (72) hours after the same is deposited in the mail with sufficient postage attached. Unless otherwise provided, ten (10) days shall be deemed sufficient notice.

13.2 Governing Law. The validity, interpretation and performance of this Agreement shall be governed by the laws of the State of Utah.

13.3 Entire Contract. This Agreement sets forth the entire agreement between the Owner and Operator with respect to the subject matter hereof and supersedes all prior negotiations and dealings. No change in, addition to or modification of any of the provisions of this Agreement shall be binding upon either party unless in writing, signed by an authorized representative of each party.

13.4 No Waiver. No waiver by either party of any breach of the other party of any of the provisions of this Agreement shall be construed as a waiver of any subsequent breach, whether of the same or of a different provision in this Agreement.

13.5 Subcontractor. No part of this Agreement shall be sublet by the Operator without the prior written approval of the Owner. The Operator and the Owner for themselves, their heirs, successors, executors and administrators hereby agree to the full performance of the covenants herein contained.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed effective as of the day and year first set forth above.

KAISER COAL CORPORATION

BY _____
ITS _____

KAISER COAL CORPORATION OF
SUNNYSIDE

BY _____
ITS _____

KAISER COAL CORPORATION OF UTAH

BY _____
ITS _____

THE CHASE MANHATTAN BANK
(NATIONAL ASSOCIATION),
Individually

BY _____
ITS _____

THE CHASE MANHATTAN BANK
(NATIONAL ASSOCIATION), AS AGENT
FOR MELLON BANK, N.A., THE ROYAL
BANK OF CANADA AND BANQUE PARIBAS

BY _____
ITS _____

THE STATE OF UTAH, DEPARTMENT OF
NATURAL RESOURCES, DIVISION OF OIL,
GAS & MINING

BY _____
ITS _____

RUSSETT INDUSTRIES

BY _____
ITS _____

DAD:101188A

EXHIBIT "A"

PARTIAL LIST OF POTENTIALLY SALVAGEABLE ITEMS IN SUNNYSIDE #2 MINE

Track - 14,350 Linear Feet
Trolley Line - 4,000 Feet
High-Voltage Cable - 10,700 Feet
Medium-Voltage Cable - 11,600 Feet
4" and 6" Pipe - 7,600 feet
125 HP Pump - 1
75 HP Pump - 1
150 HP Pump - 1
36" Belt Drive - 1
42" Belt Drive - 2
Section Transformers - 6
Substation - Surface - (1) 1,000 KVA 4100/4160
(3) 200 KVA 4400/2300
(1) 30 Amp Circuit Breaker

An inventory of the mine should be made to confirm the above quantities, locate the assets, and identify additional salvageable material.

EXHIBIT "D"

KNOW ALL MEN BY THESE PRESENTS:

THAT Russett Industries, hereinafter referred to as the "Principal" and _____, a corporation organized and existing under the laws of the State of _____, with its principal place of business in _____, hereinafter referred to as the "Surety", are held and firmly bound unto Kaiser Coal Corporation, hereinafter referred to as the "Obligee", in the amount of TEN THOUSAND DOLLARS (\$10,000.00) for the payment whereof, the said Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into an Agreement with the Obligee, dated the ___ day of _____, 1988, which Agreement is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, the condition of this obligation is such that if the said Principal shall faithfully perform the Contract in accordance with the plans, specifications and conditions thereof, then this obligation shall be void; otherwise, it shall remain in full force and effect.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this ___ day of _____, 1988.

PRINCIPAL:

RUSSETT INDUSTRIES

BY _____
ITS _____

SURETY:

BY _____
ITS _____

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 740, 750, 773, and 843

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Federal Lands Program; Indian Lands Program; Requirements for Permits and Permit Processing; Federal Enforcement

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) in the Department of the Interior (DOI) proposes to amend its rules to provide for specific situations where a coal mine operator may not be required to obtain a permit to conduct reclamation activities on a location where no coal extraction is taking place. The proposed rule would remove requirements to obtain or renew a permit when only reclamation activities must be performed.

DATES: *Written comments:* OSMRE will accept written comments on the proposed rule until 4:00 p.m. Eastern time on November 3, 1988.

Public hearings: Upon request, OSMRE will hold a public hearing on the proposed rule in Washington, DC on October 27, 1988, at 9:30 a.m. local time. OSMRE will accept requests for public hearings until 4:00 p.m. Eastern time on October 11, 1988. Individuals wishing to attend but not testify at the hearing should contact the person identified under "FOR FURTHER INFORMATION CONTACT" beforehand to verify that the hearing will be held.

ADDRESSES: Written comments: *Hand-deliver* to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131, 1100 L Street NW., Washington, DC; or *mail* to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131-L, 1951 Constitution Avenue NW., Washington, DC 20240.

Public Hearing: Department of the Interior Auditorium, 18th and C Streets NW., Washington, DC.

Request for public hearings: Submit requests orally or in writing to the person and address specified under "FOR FURTHER INFORMATION CONTACT."

FOR FURTHER INFORMATION CONTACT: Dr. Fred Block, Branch of Federal and Indian Programs, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW.,

Washington, DC 20240; Telephone (202) 343-1864.

SUPPLEMENTARY INFORMATION:

- I. Public Comment Procedures
- II. Background
- III. Discussion of Proposed Rule
- IV. Procedural Matters

I. Public Comment Procedures

Written Comments

Written comments submitted on the proposed rules should be specific, should be confined to issues pertinent to the proposed rules, and should explain the reason for any recommended change. Where possible, commenters should submit three copies of their comments (see "ADDRESSES"). Comments received after the close of the comment period (see "DATES") or delivered to addresses other than those listed above may not necessarily be considered or included in the Administrative Record for the final rule.

Public Hearings

OSMRE will hold public hearings on the proposed rule on request only. The time, date and address scheduled for the hearing in Washington, DC has been specified previously in this notice (see "DATES" and "ADDRESSES"). Any person interested in participating at the hearing should inform Dr. Block (see "FOR FURTHER INFORMATION CONTACT") either orally or in writing by 4:00 p.m. Eastern time October 11, 1988. If no one has contacted Dr. Block to express an interest in participating in a hearing by that date, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons in attendance wishing to testify have been heard. The hearing will be transcribed. To assist the transcriber and ensure an accurate record, OSMRE requests that persons who testify at a hearing give the transcriber a copy of their testimony. To assist OSMRE in preparing appropriate questions, OSMRE also requests that persons who plan to testify submit an advance copy of their testimony to OSMRE, at least two working days prior to any hearing. The testimony should be submitted at the address previously specified for the submission of written comments (see "ADDRESSES").

Persons interested in attending the hearing, but not testifying, should contact the individual listed under "FOR FURTHER INFORMATION CONTACT" prior to the scheduled hearing date to verify that the hearing will be held.

II. Background

The Surface Mining Control and Reclamation Act of 1977 (SMCRA), establishes a regulatory framework under which persons may obtain the right to surface mine coal. However, the right to mine carries with it the obligation to restore the land after mining has ceased. The tie between mining and reclamation is one of the basic underlying themes of SMCRA. In section 101, Congress finds that regulation of surface coal mining operations in accordance with the requirements of SMCRA is an appropriate and necessary measure to minimize the adverse effects of mining. SMCRA made it clear that mining must be followed by efforts to ameliorate the disturbances it causes. Section 102, which sets forth the basic purposes of SMCRA, again ties mining and reclamation together. Paragraph (c) provides that SMCRA will assure that mining will not take place where reclamation is not possible. Paragraph (e) indicates that SMCRA will assure that procedures to reclaim will be undertaken as contemporaneously as possible with mining operations.

Section 502, which establishes the initial regulatory program, repeats the concept that surface coal mining operations can only take place when accompanied by reclamation. Paragraph (c) provides that all surface coal mining operations regulated by a State under the initial regulatory program conform to certain performance standards in section 515 of SMCRA, including the requirement for restoring the land affected to a condition capable of supporting premining or higher or better uses. Similarly, section 506, which establishes the permitting requirements for the permanent regulatory program, provides that no one may engage in surface coal mining operations in a State without first obtaining a permit issued pursuant to an approved State program or a Federal program. The State program requirements of sections 503 and 515(a) of SMCRA provide that the State must have a law that regulates mining in accordance with the requirements of SMCRA, one of which is, as noted above, the requirement to restore the land to a condition capable of supporting premining or higher or better uses. Thus, it is evident that SMCRA requires reclamation to accompany mining and that the regulatory framework can only allow mining if the obligation to reclaim is also assumed.

In its previous public positions, OSMRE has required that the permit remain active during reclamation

activities. The September 28, 1983, preamble to OSMRE's final rule at 30 CFR 773.19(d) addressed rights of renewal under an approved permit application (48 FR 44374). In discussing the relationship between the area covered by the permit and the area comprising the life-of-mine operation, a commenter expressed the belief that a permit cannot properly contain within its boundaries more area than can be mined and reclaimed during the permit term. Implicit in this statement is the belief that reclamation must be completed before the permit expires. OSMRE disagreed with the commenter, but affirmed the implied assumption that a permit is necessary for reclamation by stating, "A permit is required for reclamation activities until final bond release" (48 FR 44374). The preamble did not contain an explanation of the requirement nor did it provide any references or citations where an explanation could be found.

OSMRE has also argued before the Interior Board of Land Appeals that permanent program reclamation activities must be permitted. In a case concerning whether a permanent program permit is required for the reclamation of an operation that extracted coal only during the initial regulatory program (81 IBLA 209, June 5, 1984), OSMRE argued that "when surface coal mining occurs, it triggers the requirement of reclamation" and "reclamation activities which follow coal extraction which occurs during the permanent program must be permitted until they are completed and the bond release occurs."

However, at the same time that OSMRE argued that a permit was required for solely reclamation activity, OSMRE recognized specific circumstances where reclamation may be ordered in the absence of a permit. Both the initial program regulations and the permanent program regulations provide for the suspension or revocation of a permit without affecting the obligation to reclaim (30 CFR 722.16(d) and 843.13(c) respectively). During the revision of the permanent program regulations in 1982, OSMRE re-emphasized that the obligation to reclaim continues in cases where the permit has been suspended or revoked. In the preamble to the final Federal enforcement rules OSMRE stated, "The permit issued under the Act is a permit to mine coal under specified conditions. Suspension of the right to mine does not suspend the obligation to reclaim under the Act." (47 FR 35631, August 16, 1982)

The coal exploration rules provide an example where the obligation to reclaim

exists independent of any permit. Under 30 CFR Part 772, persons who intend to conduct coal exploration outside a permit area must file with the regulatory authority a notice of intent to explore. The notice requires "a description of the * * * practices that will be followed to protect the environment and reclaim the area from adverse impacts of the exploration activities * * *" (30 CFR 772.11(b)(5)). In these cases, it is again clear that reclamation is required even if no exploration permit exists.

OSMRE recognizes that it is inconsistent to argue on one hand that reclamation activities must be permitted and on the other that reclamation may be required in the absence of a permit. Therefore, OSMRE has initiated this rulemaking action to eliminate this inconsistency.

III. Discussion of Proposed Rule

OSMRE is proposing to amend its rules at 30 CFR 701.11, 740.13, 750.11, 773.11 and 843.11 to implement a consistent policy with respect to permit requirements when reclamation activities would be conducted where no coal extraction would be taking place.

In accordance with OSMRE's determination that there are circumstances under which a permit is not required to conduct reclamation, 30 CFR 701.11 (a), (b), (c) and (d), 740.13 (a) and (c), 750.11 (a) and (c), 773.11(a) and 843.11(a)(2) would be revised by replacing the term "surface coal mining and reclamation operations" with the term "surface coal mining operations." OSMRE is also proposing to add language to 30 CFR 773.11(a) to clarify that obligations under a permit continue even if the permit has expired or has been terminated, revoked or rescinded.

Section 701.11—Applicability

Section 701.11 describes the applicability of the permanent regulatory program. Paragraphs (a), (b), and (c) require that persons conducting surface coal mining and reclamation operations on or after 8 months from approval of a State program or implementation of a Federal program shall have a permit issued pursuant to the applicable program. The proposed rule would substitute "surface coal mining operations" where "surface coal mining and reclamation operations" appears in these paragraphs. Paragraph (d) would be revised to apply the requirements of Subchapter K to "each surface coal mining operation which is required to obtain a permit under the Act," rather than to "each surface coal mining and reclamation operation which is required to obtain a permit under the Act."

Section 740.13—Permits

Section 740.13(a) contains the general requirements for permits on Federal lands. Paragraph (a)(1) provides that no person shall conduct surface coal mining and reclamation operations on lands subject to Part 740 unless that person has first obtained a permit issued pursuant to the regulatory program and Part 740. Paragraph (a)(3) provides that surface coal mining and reclamation operations authorized under the initial regulatory program or 43 CFR Parts 3480-3487 may be conducted beyond the eight-month period prescribed in the applicable regulatory program under certain conditions. These paragraphs would be amended to delete the words "and reclamation."

Section 750.11—Permits

Section 750.11 contains permit requirements under the Federal program for Indian lands. Paragraph 750.11(a) provides that no person shall conduct surface coal mining and reclamation operations on Indian lands after eight months following the effective date of Subchapter E (Indian Lands Program) unless that person has first obtained a permit pursuant to Part 750. Paragraph 750.11(c) provides that surface coal mining and reclamation operations authorized prior to the effective date of Subchapter E may be conducted beyond the specified eight month period under certain conditions. These paragraphs would be amended to delete the words "and reclamation."

Section 773.11—Requirements to obtain permits

Existing § 773.11(a) states that " * * * no person shall engage in or carry out any surface coal mining and reclamation operations, unless such person has first obtained a permit * * * ." Proposed § 773.11(a) would state that " * * * no person shall engage in or carry out any surface coal mining operations, unless such person has first obtained a permit * * * "

Language is also proposed in paragraph (a) to clarify that obligations established under a permit continue until satisfied, regardless of whether the permit has expired or has been terminated, revoked, or rescinded. The rule would state that any person conducting reclamation activities pursuant to the requirements of a permit, even if the permit is no longer extant, must comply with all applicable provisions as a permittee.

Section 843.11—Cessation orders

Existing § 843.11(a)(2) states that "surface coal mining and reclamation

operations conducted by any person without a valid surface coal mining permit constitute a * * * significant imminent environmental harm * * *

Proposed § 843.11(a)(2) would state that "surface coal mining operations conducted by any person without a valid surface coal mining permit constitute a * * * significant imminent environmental harm * * *

No new substantive requirements would be proposed under this rulemaking action. Rather, this proposed rule language would clarify and make consistent OSMRE's interpretation of its requirements concerning a permit to conduct reclamation operations where no coal extraction is taking place, and would remove the requirement to renew or obtain a permit solely to conduct reclamation activities.

Effects of Proposed Rules

In keeping with OSMRE's determination that the obligation to reclaim continues in the absence of a valid or unexpired permit, under the proposed rule it would not be necessary for an operator to obtain a permit where only reclamation activity is required. The proposed changes would provide that a permit is required for surface coal mining operations for the extraction of coal, an activity of benefit to the operator, but the reclamation obligations associated with that mining are and continue to be imposed upon the operator or permittee irrespective of whether a permit was issued or the permit is extant. Thus, the permit, including any conditions, defines the nature of the reclamation obligation that will be assumed by the operator should he conduct any mining activities under the permit. Those obligations are unaffected by suspension, revocation or expiration of the authorization for further coal extraction under the permit. For the purposes of enforcing the requirements of SMCRA and its implementing regulations, the person conducting solely reclamation activities will still be deemed a "permittee".

The proposed rule would also provide an economic benefit insofar as operators and regulatory authorities would realize reductions in time and cost expenditures on permit renewals no longer necessary.

Permit Renewal.—In cases where coal extraction, processing and handling have been completed under a valid permit, the proposed rule would provide that the permit need not be renewed simply for the completion of reclamation since there is no longer any right the permittee wishes to exercise and the only remaining activities are those associated with reclamation obligations assumed with the mining activities. The

operator assumed the obligation to complete reclamation when mining occurred. The ongoing obligation to reclaim in accordance with the permit and any permit conditions exists whether or not the permit is renewed. Regardless of whether a permit is in existence or has been renewed, section 509(b) of SMCRA provides that liability under the performance bond posted to guarantee faithful performance of all requirements of SMCRA and the permit, shall extend for the duration of the surface coal mining and reclamation operation and for a period coincident with the operator's responsibility for the revegetation requirements of section 515 of SMCRA, a period that is independent of the permit term. In addition, section 506(d) of SMCRA does not mandate permit renewal. It provides that permit holders may apply for renewal.

Reclamation must be achieved according to the approved reclamation plan, and that obligation is unaffected by expiration of the permit. The reclamation obligations under the applicable State or Federal program, the permit, and the performance bond would remain in effect and be enforceable regardless of whether the permit term has expired. In cases where mining has been completed under a valid permit that has expired and reclamation work remains to be completed or the period of extended liability has not expired, permit renewal would not be a prerequisite for completion of the reclamation phase of the operation according to the approved permit. The operator holding an expired permit and solely conducting reclamation activities according to an expired permit which references SMCRA "permittee" requirements must conduct the reclamation activities as if the operator were still a "permittee." Any revisions to the reclamation plan following expiration of the permit still would have to comply with the requirements of 30 CFR 774.11 and 774.13 or the State or Federal program counterparts thereof.

Surface Disturbance Off the Permit Area.—Surface disturbances off the permit can occur either from mining activities conducted within the permit or from extension of mining operations beyond the permitted boundaries. In the first case, off-permit disturbances such as those caused by flyrock, landslides, subsidence, or sedimentation typically result from a violation of a performance standard and are confined to small areas. Under this proposed rule, it is not necessary to require a permit for corrective action on these disturbances because the operator would be required to return the land to its previous

condition through abatement measures ordered in an enforcement action issued by the regulatory authority.

In the latter case, the permittee would be ordered to cease mining on the unauthorized areas and be given the option of either immediately reclaiming the area or submitting and diligently pursuing approval of a new permit or permit revision if he wished to continue such operations.

Unauthorized (Illegal) Mining.—When mining is conducted without the required permit (wildcat operations), the operator nevertheless incurs the obligation to reclaim. However, there are difficulties with requiring these operators to obtain a permit for reclamation only. These operators are often reluctant to cooperate, unable to obtain the financing necessary to conduct the required studies or unable to obtain a performance bond or liability insurance. Also, environmental harm may result during the time (six to nine months) required to prepare and process a permit application.

Therefore, in lieu of requiring a permit and a site-specific reclamation plan in cases of mining without a permit, OSMRE's policy is to order the immediate cessation of mining and direct the person to backfill, grade and revegetate in accordance with applicable regulations. This proposed rule would continue that policy by requiring immediate reclamation pursuant to the applicable standards of the State or Federal program, in the absence of a site-specific reclamation plan, in accordance with any enforcement action citing performance standard violations. A notice of violation or cessation order written for each such occurrence would specify the standards necessary to assure proper reclamation.

Applicable Regulatory Programs

In accordance with the interpretation of the requirements for permits for surface coal mining operations provided in this notice and the obligations associated with such permits, this proposed rule would be primarily applicable to mining operations conducted pursuant to a Federal program for a State (30 CFR Part 736), the Federal lands program (30 CFR Part 740), and the Indian lands program (30 CFR Part 750). The proposed rule if finalized, would mean that a State could amend its program not to require renewal of a permit on which coal extraction, processing, and handling have been completed but where the period of extended liability has not expired. In such circumstances, the

State program would be considered no less effective than Federal requirements if the reclamation plan, permit conditions and related permit provisions remain in effect until the operation has met all applicable performance standards and the appropriate operator liability period has expired. Any revisions to the reclamation plan following expiration of the permit term would have to comply with the requirements of the State program counterparts to 30 CFR 774.11 and 774.13. With respect to the other situations discussed in the proposed rule, State performance would be evaluated in terms of the policy set forth herein unless the approved State program contains specific differing requirements.

IV. Procedural Matters

Federal Paperwork Reduction Act

This proposed rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3507.

Executive Order 12291 and Regulatory Flexibility Act

The DOI has determined that this document is not a major rule under the criteria of Executive Order 12291 (February 17, 1981) and certifies that it would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The proposed rule does not distinguish between small and large entities. The economic effects of the proposed rule are estimated to be minor and no incremental economic effects are anticipated as a result of the rule.

National Environmental Policy Act

The DOI has also determined that the proposed rule would not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C).

Author

The principal author of this rule is Dr. Fred Block, Branch of Federal and Indian Programs, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: (202) 343-4560.

List of Subjects

30 CFR Part 701

Law enforcement, Surface mining, Underground mining.

30 CFR Part 740

Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds, Surface mining, Underground mining.

30 CFR Part 750

Indians-lands, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 773

Report and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 843

Administrative practice and procedure, Law enforcement, Reporting and recordkeeping requirements, Surface mining, Underground mining.

Accordingly, it is proposed to amend Title 30, Chapter VII, Parts 701, 740, 750, 773 and 843 as set forth below.

Dated: July 20, 1988.

James E. Cason,

Acting Assistant Secretary—Land and Minerals Management.

PART 701—PERMANENT REGULATORY PROGRAM

1. The authority citation for Part 701 is revised to read as follows:

Authority: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*, as amended and Pub. L. 100-34.

2. In § 710.11 the first sentence of paragraphs (a) and (b), paragraphs (c) introductory text and (d) are revised to read as follows:

§ 701.11 Applicability.

(a) Any person who conducts surface coal mining operations on non-Indian or non-Federal lands on or after 8 months from the date of approval of a State program or implementation of a Federal program shall have a permit issued pursuant to the applicable State or Federal program. * * *

(b) Any person who conducts surface coal mining operations on Federal lands on or after 8 months from the date of approval of a State program or implementation of a Federal program for the State in which the Federal lands are located shall have a permit issued pursuant to Part 740 of this chapter. * * *

(c) Any person who conducts surface coal mining operations on Indian lands on or after eight months from the effective date of the Federal program for

Indian lands shall have a permit issued pursuant to Part 750 of this chapter. However, a person who is authorized to conduct surface coal mining operations may continue to conduct those operations beyond eight months from the effective date of the Federal program for Indian lands if the following conditions are met:

(d) The requirements of Subchapter K of this chapter shall be effective and shall apply to each surface coal mining operation which is required to obtain a permit under the Act, on the earliest date upon which the Act and this chapter require a permit to be obtained, except as provided in paragraph (e) of this section.

PART 740—GENERAL REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS ON FEDERAL LANDS

3. The authority citation for Part 740 is revised to read as follows:

Authority: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*, 30 U.S.C. 181 *et seq.* and Pub. L. 100-34.

4. In § 740.13, paragraphs (a)(1) and (a)(3) introductory text are revised to read as follows:

§ 740.13 Permits.

(a) *General requirements.* (1) No person shall conduct surface coal mining operations on lands subject to this part unless that person has first obtained a permit issued pursuant to the regulatory program and this part.

(3) Surface coal mining operations authorized under the initial regulatory program or 43 CFR Parts 3480-3487, as applicable, may be conducted beyond the eight-month period prescribed in the applicable regulatory program if all of the following conditions are present: * * *

PART 750—REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS ON INDIAN LANDS

5. The authority citation for Part 750 is revised to read as follows:

Authority: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*, as amended; and Pub. L. 100-34.

6. In § 750.11, paragraphs (a) and (c) introductory text are revised to read as follows:

§ 750.11 Permits.

(a) No person shall conduct surface coal mining operations on Indian lands after eight months following the effective date of this subchapter unless that person has first obtained a permit pursuant to this part.
* * * *

(c) Surface coal mining operations authorized prior to the effective date of this subchapter may be conducted beyond the eight-month period specified in paragraph (a) of this section if the following conditions are present: * * *
* * * *

PART 773—REQUIREMENTS FOR PERMITS AND PERMIT PROCESSING

7. The authority citation for Part 773 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; 16 U.S.C. 470 *et seq.*; 16 U.S.C. 1531 *et seq.*; 16 U.S.C. 661 *et seq.*; 16 U.S.C. 703 *et seq.*; 16 U.S.C. 668a; 16 U.S.C. 469 *et seq.*; 16 U.S.C. 470aa *et seq.*, and Pub. L. 100-34.

8. In § 773.11, paragraph (a) is revised to read as follows:

§ 773.11 Requirements to obtain permits.

(a) *All operations.* On and after 8 months from the effective date of a permanent regulatory program within a State, no person shall engage in or carry out any surface coal mining operations, unless such person has first obtained a permit issued by the regulatory authority except as provided for in paragraph (b) of this section. Obligations established under a permit continue until satisfied, regardless of whether the permit has expired or has been terminated, revoked, or rescinded. Any person conducting reclamation activities pursuant to the requirements of a permit which is no longer extant must comply with all applicable provisions as a permittee.
* * * *

PART 843—FEDERAL ENFORCEMENT

9. The authority citation for Part 843 continues to read as follows:

Authority: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*, and Pub. L. 100-34.

10. In § 843.11, Paragraph (a)(2) introductory text is revised to read as follows:

§ 843.11 Cessation orders.

(a) * * *
(2) Surface coal mining operations conducted by any person without a valid surface coal mining permit constitute a condition or practice which causes or can reasonably be expected to cause significant imminent environmental harm to land, air, or water resources unless such operations:
* * * *

[FR Doc. 88-21137 Filed 9-16-88; 8:45 am]
BILLING CODE 4310-05-M