



### MODIFICATION OF NOTICE OF VIOLATION/CESSATION ORDER

To the following Permittee or Operator:

Name Sunnyside Coal Company

Mailing Address P.O. Box 99, Highway 123, Sunnyside, UT. 84539

State Permit No. ACT/007/007

Utah Coal Mining & Reclamation Act, Section 40-10-1 et seq., Utah Code Annotated (1953):

Notice of Violation No. N \_\_\_\_\_ dated \_\_\_\_\_, 19 \_\_\_\_.

Cessation Order No. C 93-20-1-1 dated \_\_\_\_\_, 19 \_\_\_\_.

Part 1 of 1 is modified as follows: This Cessation Order is vacated

Reason for modification is See attached findings

Part \_\_\_\_ of \_\_\_\_ is modified as follows: \_\_\_\_\_

Reason for modification is \_\_\_\_\_

Part \_\_\_\_ of \_\_\_\_ is modified as follows: \_\_\_\_\_

Date of service/mailling 5/21/93 Time of service/mailling 5:00  a.m.  p.m.

Date of inspection \_\_\_\_\_

Permittee/Operator representative \_\_\_\_\_

Title \_\_\_\_\_

Signature \_\_\_\_\_

Title Director

[Signature]  
Signature  
WHITE - DOGM YELLOW - OSM PINK - PERMITTEE/OPERATOR GOLDENROD - NOV FILE  
DOGM/MVC-1

BEFORE THE BOARD OF OIL, GAS AND MINING  
DEPARTMENT OF NATURAL RESOURCES  
STATE OF UTAH

---oo0oo---

IN THE MATTER OF BOND	:	CORRECTED FINDINGS IN RE:
INADEQUACY, SUNNYSIDE	:	SUNNYSIDE COAL COMPANY
COAL COMPANY, SUNNYSIDE	:	SUNNYSIDE MINE, CARBON
MINE, CARBON COUNTY,	:	COUNTY, UTAH
UTAH	:	ACT/007/007
	:	CAUSE NO. ACT/007/007

---oo0oo---

In the above entitled matter, the Division makes the following Written Findings and Conclusions of Law concerning the adequacy of the reclamation bond posted by Sunnyside Coal Company, (the "Permittee"). This Finding replaces and supersedes the Finding of Inadequate Bond issued by the Division on April 19, 1993. These findings are based on documents contained in the Division's files. These documents may be reviewed and copied at the offices of the Division located at 3 Triad, Suite 350, 355 West North Temple, Salt Lake City, Utah.

FINDINGS OF FACT

1. Permit ACT/007/007 (the "permit") to conduct coal mining and reclamation operations pursuant to Utah Code Ann. § 40-10-1 et seq. (1953, as amended) was issued to Sunnyside Reclamation and Salvage Inc., (now known as Sunnyside Coal Company), on May 26, 1989.

2. Pursuant to Utah Admin. R. 645-301-820, the Permittee as a condition of approval of its mining permit, is required to post a bond or collateral sufficient to insure complete

reclamation.

3. Pursuant to Utah Admin. R. 645-301-830.200, the amount of the bond or collateral must be sufficient to assure the completion of the reclamation plan if the work has to be performed by the Division in the event the permittee fails to complete reclamation in accordance with the plan and forfeits the bond.

4. On March 12, 1989, Sunnyside Reclamation and Salvage executed a Deed of Trust and Security Agreement (the "Security Agreement") in favor of the State to secure the estimated reclamation cost of \$3,583,836. The estimated reclamation cost was divided into two components: (1) \$2,297,349 for the cost of reclaiming the general mine area; and (2) \$1,286,487 for the cost of reclaiming the refuse pile. The Trust Deed granted the Division a security interest in real and personal property and water rights owned by Sunnyside Salvage and Reclamation and located in Carbon County, Utah.

5. The Trust Deed was recorded on March 10, 1989, in Book 287, Page 96, in the County Recorder's Office of Carbon County, Utah. The Trustor is Sunnyside Reclamation and Salvage, a Colorado Corporation, the Trustee is Southeastern Utah Title Company, and the Beneficiary is the State of Utah, Department of Natural Resources, Division of Oil, Gas and Mining.

6. On March 3, 1989, Sunnyside Reclamation and Salvage submitted a proposed amendment to its mining plan to reduce the reclamation cost estimate. On November 8, 1989, the Division

approved the amendment and reduced the reclamation cost estimate to the amount of \$2,813,562. This sum was divided into two components: (1) \$1,850,183.08 for the cost of reclaiming the general mine area; and (2) \$963,378.92 for the cost of reclaiming the refuse pile.

7. On January 20, 1991, the Division renewed Sunnyside Coal Company's permit. Sunnyside's 1991 permit erroneously stated that the estimated reclamation cost for the mine was \$2,639,088, where in fact the reclamation cost was that approved by the Division on November 8, 1989, in the amount \$2,813,562.

8. On January 19, 1993, the Division received an appraisal report dated September 17, 1992, by George Y. Fujii, MAI, President of Reval, Incorporated. The appraisal supplied on this date reviewed all real properties subject to the Trust Deed with the exception of approximately 1,500 acres of land located near Sunnyside City. The appraisal, including the appurtenant water, valued the subject property at \$920,000. The appraisal concluded that the water user claim numbers appurtenant to the land had no independent value from the land.

9. On January 19, 1993, the Division received an appraisal dated December 8, 1992, prepared by Jeffery C. Anderson, MIA. The appraisal supplied on this date reviewed all real property subject to the Trust Deed with the exception of approximately 1,500 acres of land located near the city of Sunnyside. The appraisal, including the appurtenant water rights, valued the subject property at \$575,000. The appraisal concluded that the

twenty-two water user claim numbers appurtenant to the land had no independent value from the land.

10. The approximately 1,500 acres subject to the Trust Deed and Security Agreement which were not included in the Fujii and the Anderson appraisals were appraised by George Y. Fujii, MAI, in February 1989 (non-mountain property). This appraisal was obtained by the Permittee and shows the following values for the balance of the secured real property:

- a. Township 15 South, Range 13 East, Sections 1, 2, 3, 10 and 11 of approximately 1,120 acres valued at \$150 an acre, for a total value of \$168,000.
- b. Township 15 South, Range 14 East, Sections 6 and 7 of approximately 440 acres are valued at \$120,000. This description appears to cover the subdivisions in Sunnyside City consisting of vacant lots and lots with dwellings. The figure of \$120,000 was arrived at prior to the time of the Division's subsequent release of residences and lots located within this property description.
- c. Because the land located in Township 15 South, Range 14 East, Sections 6 and 7 consist of either land which has been released by the Division, or which includes the town of East Carbon's landfill, the Division does not attribute any value to Sections 6 and 7 for purposes of collateral.

11. The Division finds that the non-mountain property

appraised in February of 1989 has a value for purposes of collateral of \$168,000.

12. As stated in paragraphs 8 and 9 above, a substantial portion of the water rights which the Division holds as security under the Trust Deed were appraised in the 1992 Fujii and Anderson appraisals. Both appraisers determined that the water rights had no value independent from the appurtenant land. Certain water rights conveyed under the Trust Deed which were not included in the Fujii and Anderson appraisals are the subject of an April 1993 MAI appraisal prepared by Jeffery C. Anderson, MAI. This water appraisal ascribes a value in excess of \$1.9 million to the remaining water rights which the Division holds under the Trust Deed.

13. On April 4, 1989, Bill Balaz, Mine Manager for Sunnyside Reclamation and Salvage, notified the Mayor of Sunnyside, Utah, of its intention to grant water rights to the city in the amount of 415-acre-feet.

14. On February 14, 1992, Rick Knuth, attorney for the city of Sunnyside, wrote Kenneth Oldham, Esq., attorney for the Permittee, and reiterated the position that the city of Sunnyside, was entitled to an assignment of the water rights referenced in the April 4, 1989, letter from the Permittee's mine manager.

15. The Division has not released its interest in the water rights promised to the city of Sunnyside by the Permittee. The promise by the Permittee to convey the property subject to the

Trust Deed to the city of Sunnyside is inconsistent with the intent and purpose of the Trust Deed.

16. By correspondence dated May 13, 1993, the Mayor of the City of Sunnyside has informed the Division of Oil, Gas and Mining that it has no interest in the water rights to which the Permittee holds record title and which are pledged under the Trust Deed. In addition, the Mayor represented to the Division in this same correspondence that the city was in great need of this water and understood that it would be required to pay fair market value. The Mayor further acknowledged that he was aware of the 1993 Anderson appraisal, attributing a value of \$1.3 million to the water which the city of Sunnyside presently relies on.

17. As a condition of the Trust Deed, the Permittee as Trustor is required to keep the trust property free and clear of all liens and encumbrances including taxes. As of the date of these Findings, the Permittee is delinquent in its property tax obligation to Carbon County in an amount in excess of \$406,108. Further, the Permittee and Carbon County have entered into an agreement for the purpose of abating the taxes owed to Carbon County on a payment. In consideration of this, Permittee has reduced the amount of back taxes, penalties, and interest in the amount of \$176,760.22. The county has bound itself to not foreclose on the land subject to the Trust Deed so long as the permittee is current in its payment schedule obligations.

18. The Division finds that the Permittee is in violation

of the terms of the Trust Deed, and therefore in technical breach. However, the Division finds that it is not insecure at this time and will remain secure so long as the bond obligation of the Permittee does not cause Permittee to be under-collateralized in its obligation and the Permittee is not in breach of its agreement with the county for the payment of taxes.

19. On August 28, 1989, the Division and the Permittee entered into a Subordination Agreement, such that the personal property subject to the Trust Deed was subordinated to a lien securing Zions First National Bank for a loan to the Permittee's parent company, Sunnyside Mines, Inc. This "Subordination Agreement" subordinates the Division's interest up to the amount of Zion's loan which is shown as \$2.8 million. Under Section Two of the Subordination Agreement, the Division gave up all of its rights in the personal property under Article II, Section 2.2 of the Trust Deed by granting the Permittee the unfettered right to dispose of the personal property subject to the Trust Deed free and clear of the Division's lien.

20. On August 28, 1989, the Division and the Permittee entered into an Agreement And Release of Reclamation Contract. In consideration for foregoing the provisions under Article II, Section 2.2 of the Trust Deed, the Division agreed to accept the sum of \$75,000 to defray environmental control and maintenance costs incurred by the Division following a default by the Permittee.

21. The personal property secured to the Division by the

Trust Deed is required to be kept in the custody of the Division. None of the property pledged to the Division has been delivered to the Division and so is not held in the custody of the Division as required by Utah Admin. R. 645-301-860.210 and 301-860.210 and .211. Therefore, none of the personal property presently qualifies for the purpose of calculating the value of the collateral, and may therefore not be valued for the purpose of determining bond adequacy.

22. On March 30, 1990, the Permittee, and the Division entered into an agreement with Zions First National Bank entitled Assignment of Certificate of Deposit and Deposited Money as Collateral Security. Under this document Zions holds \$78,051.37 as collateral in a money market account for the benefit of the Division.

23. On December 11, 1989, the Division, the Permittee and the Office of Surface Mining and Reclamation entered into a Memorandum of Understanding which retroactively grants to the Office of Surface Mining and Reclamation the rights conferred upon the Division in the Trust Deed and Trust Deed as well as the Agreement and Release and the Subordination Agreement. In this document OSM expressly disclaims any interest in the personal property and tangible equipment described in the Subordination Agreement.

24. On May 3, 1993, the Division, based upon its earlier Findings, signed a release in any interest it may have had in the personal and tangible property of the Permittee, pursuant to the

Security Agreement.

25. The Division finds that the value of the collateral it holds for the security of the Permittee's Reclamation Agreement is a total of \$2,913,551.37. This amount is broken down as follows:

- (a) Real Property. The Division holds as collateral real property in the amount of \$915,500. This amount includes \$747,500 as the average appraised value of the lands from the Anderson and Fujii 1993 appraisals, and \$168,000 for the 1,500 acres in the 1989 Fujii appraisal as modified by the release of Sunnyside City property and the East Carbon Landfill.
- (b) Money Market. The Division holds as collateral a money market account in the sum of \$98,051.37.
- (c) Water. The Division holds as collateral, water rights with an appraised value of \$1.9 million.

26. The Division finds that, for purposes of determining adequacy of the collateral, the sum of \$915,500 which represents the real property must be reduced by the sum of \$406,108, which represents the amount of Sunnyside's delinquent property tax obligation to Carbon County. Therefore, the value of the real property collateral, minus Sunnyside's property tax obligation, is \$509,392.

27. The permittee's permit as presently approved requires that the amount of the bond be no less than \$2,813,562. Therefore, under the approved permit, the Permittee's collateral

bond is deficient in the amount of \$306,118.63. Under the permit, the coal refuse area carries a reclamation obligation of \$963,378.92. This area, however, is presently bonded under the permit of another operator in an amount in excess of that required of the Permittee. Therefore, the Division has deducted the liability for the coal refuse area from the estimated reclamation cost.

28. Therefore, the Division finds that the amount of Sunnyside's permit reclamation liability pursuant to the Permit Amendment of November 8, 1989, is \$1,850,184.

29. Since the value of the Division's collateral is \$2,507,443.37, the Division finds that there is no deficiency for meeting the reclamation obligation of the general mine area. However, the Permittee has filed for a Permit Amendment to remove the coal refuse area from its permit area. This has triggered a programmatic bond calculation review by the Division, which is presently ongoing. The reclamation obligation of the Permittee as a result of this review may increase or decrease. Therefore, the Division's finding of sufficiency of collateral is directed to the reclamation obligation of \$1,850,184 and to no other bond reclamation obligation as may be determined by the Division at a later date in the general course of the Division's obligations.

#### CONCLUSIONS OF LAW

1. Pursuant to Utah Admin. R. 645-301-820.310, performance bond liability will be for the duration of the coal mining and reclamation operations, for a period which is coincident with the

operator's period of extended responsibility for successful revegetation as provided in Utah Admin. R. 645-301-356, or until achievement of the reclamation requirement of the state program and permit, whichever is later.

2. Pursuant to Utah Admin. R. 645-301-830, the amount of the bond must be sufficient to assure the completion of the reclamation plan, if work has to be performed by the Division in the event of forfeiture.

3. The information before the Division concerning the status of the collateral securing the bond obligation of the Permittee is adequate to determine that the amount of collateral is sufficient in the amount set forth in the Findings.

4. Pursuant to Utah Admin. R. 645-301-840.520, upon incapacity of a bank or surety company by reason of bankruptcy, insolvency, or suspension or revocation of a charter license, the Permittee will be deemed to be without bond coverage and will promptly notify the Division. The Division upon notification received through procedures of Utah Admin. R. 645-301-840.510, or from the Permittee, will notify in writing the operator who is without bond coverage and specify a reasonable time not to exceed 90 days to replace bond coverage.

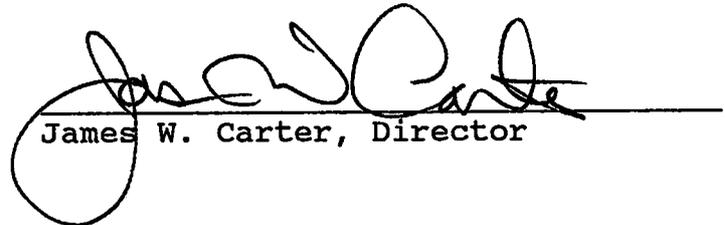
5. On February 18, 1993, the Division notified the Permittee by certified mail that based upon the Anderson and Fujii appraisals of the trust property, the Permittee was under-collateralized and therefore underbonded. Sunnyside was granted from the date of that notice until April 18, 1993, to replace

bond coverage. The Permittee is therefore on notice as required by rule.

6. On April 20, 1993, the Division issued a Cessation Order directed to the Permittee for failure to have provided sufficient collateral for replacement bond coverage to meet the requirements of law. After the Cessation Order was issued, the Permittee tendered partial performance and requested an additional extension to May 21, 1993, to either replace bond coverage and/or have adequate collateral or provide sufficient information for the Division to make a finding of adequate collateral. By the entry of this Finding and these Conclusions, the Division finds that the Permittee has met its obligations, such that the Cessation Order which was modified on April 21, 1993, is hereby vacated.

ISSUED AND SIGNED this 24th day of May, 1993.

DIVISION OF OIL, GAS AND MINING

  
James W. Carter, Director

CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the foregoing CORRECTED FINDINGS for Cause No. ACT/007/007 to be mailed by certified mail, return receipt requested on the 26 day of May 1993, to the following:

Denise A. Dragoo, Esq.  
Fabian & Clendenin  
215 South State  
P.O. Box 510210  
Salt Lake City, Utah 84151

David B. Corman, Chairman  
Sunnyside Mines Inc. and  
Bob Burnham, President  
Sunnyside Coal Company  
The Registry  
1113 Spruce Street, Suite 301  
Boulder, Colorado 80302

Joe Fielder  
General Manager  
Sunnyside Coal Company  
P.O. Box 99  
Sunnyside, Utah 84539

Ken Oldham, Esq.  
1050 Walnut Street  
Suite 212  
Boulder, Colorado 80302

Robert H. Hagen, Director  
Office of Surface Mining, AFO  
Suite 1200  
505 Marquette S.W.  
Albuquerque, New Mexico 87102

Janean Burns



UTAH  
NATURAL RESOURCES  
Oil, Gas & Mining

3 Triad Center • Suite 350 • Salt Lake City, UT 84180-1203 • 801-538-5340

*Final Verdict & Sign*

## MODIFICATION OF NOTICE OF VIOLATION/CESSATION ORDER

To the following Permittee or Operator:

Name Sunnyside Coal Company

Mailing Address P O Box 99, Highway 123, Sunnyside, UT 84539

State Permit No. ACT/007/007

Utah Coal Mining & Reclamation Act, Section 40-10-1 et seq., *Utah Code Annotated* (1953):

Notice of Violation No. N \_\_\_\_\_ dated \_\_\_\_\_, 19 \_\_\_\_.

Cessation Order No. C 93-20-1-1 dated 4/20, 19 93.

Part 1 of 1 is modified as follows: Resumption of mining operations is allowed for  
LPS  
30 days based upon compliance with the terms of the attached Stipulation  
and Agreement.

Reason for modification is See attached Stipulation and Agreement

Part \_\_\_\_ of \_\_\_\_ is modified as follows: \_\_\_\_\_

Reason for modification is \_\_\_\_\_

Part \_\_\_\_ of \_\_\_\_ is modified as follows: \_\_\_\_\_

*fax to sunnyside mine 4-21-93*

Date of service (mailing) 4-22-93

Time of service (mailing) 11:00  a.m.  p.m.

Date of inspection N/A

Joe Fielder  
Permittee/Operator representative

Gen. Mine Manager  
Title

Signature

Lowell P Braxton  
Division of Oil, Gas & Mining

Associate Director/Mining  
Title

Signature

BEFORE THE BOARD OF OIL, GAS AND MINING  
DEPARTMENT OF NATURAL RESOURCES  
STATE OF UTAH

---oo0oo---

IN THE MATTER OF CESSATION : STIPULATION AND AGREEMENT  
ORDER NO. 93-20-1-1 :  
SUNNYSIDE COAL MINE : CAUSE NO. ACT/007/007

---oo0oo---

On April 19, 1993, the Director of the Division of Oil, Gas and Mining issued Findings and Conclusions that Sunnyside Coal Company's ("SCC") collateral bond was inadequate to secure its reclamation obligations pursuant to Utah Code Ann. § 40-10-1 et seq. Based on these Findings, the Director issued a Cessation Order No. 93-20-1-1 on April 20, 1993 requiring SCC to cease all mining operations and begin reclamation.

The Division of Oil, Gas and Mining ("DOGM") agrees to modify Cessation Order No. 93-20-1-1 ("CO") to allow mining operations at the Sunnyside Mine for a thirty day period based on the following commitments of SCC to provide DOGM adequate collateral to secure SCC's reclamation obligations:

1. DOGM agrees to examine all information provided by SCC within 30 days of this Agreement which is relevant to the value of the water rights and real property ("collateral") securing the Deed of Trust and Surety Agreement dated March 9, 1989.

2. Based on the information provided by SCC and all other relevant information available to DOGM, DOGM will determine the amount of deficit, if any, in the collateral securing the Deed of Trust and Security Agreement. DOGM no later than 30 days from the date of this Agreement will prepare Amended Findings

concerning the adequacy of SCC's collateral securing SCC's reclamation obligation. If, SCC fully funds the amount of any deficiency set forth in the Findings, or there is no deficiency, the CO shall terminate.

3. SCC agrees to make monthly deposits in the existing money market account at Zion's Bank, Salt Lake City, Utah as established by that certain Assignment of Certificate of Deposit dated May 25, 1990 ("Zion's Account") for the benefit of DOGM and the Office of Surface Mining ("OSM") in the amount \$.25 per ton of coal produced and sold at the Sunnyside Mine, or \$20,000 per month, whichever ever is greater during months in which more than 10 days of production occurs at the mine. Each production payment shall be made on the tenth day of each month following production so long as a deficiency in the collateral exists and this Agreement is in effect. Any amounts funded in excess of the deficit, as defined in paragraph 2 shall be released to SCC.

4. Within 5 days of this Agreement, SCC will deposit \$20,000.00 in the Zion's Account. This payment will constitute a prepayment of SCC's production payments for the month of May, 1993.

5. SCC agrees to provide DOGM with monthly production and sales reports and the calculations it used in reaching the amount deposited in accordance with paragraph (3) above. SCC also agrees to provide DOGM with evidence of each deposit in the Zion's Account. This information will be provided on the tenth day of each month following production.

6. If production ceases at the Sunnyside Mine for any period in excess of 180 days, or DOGM determines that SCC intends to permanently cease operations, or is unable to continue production, the entire amount of deficiency set forth in the Amended Findings will become immediately due and payable upon written notice from DOGM.

7. If DOGM determines in its Amended Findings that the amount of deficiency is \$200,000 or less, SCC agrees to immediately fund the Zion's Account or post an irrevocable letter of credit in the amount of the deficiency.

8. DOGM agrees to release any interest it may have in the personal property and equipment secured by the Deed of Trust and Security Agreement dated March 9, 1989. Upon presentation of a release by SCC, DOGM will execute the same.

9. This Agreement and all documents prepared pursuant to this Agreement will not be effective beyond thirty days until approval is obtained from OSM as evidenced by a revision of the Memorandum of Understanding between OSM, DOGM and SCC dated December 11, 1989, reflecting the terms of this Agreement.

10. All documentation necessary to effectuate the terms of this Agreement will be drafted and ready for signature by the parties and OSM no later than 15 days from the date of the Agreement.

11. Full compliance with this agreement on SCC's part will constitute rapid compliance for purposes of assessing good faith points, if applicable. This agreement may be extended beyond 30

days with the written agreement of the parties.

SO AGREED this 21<sup>st</sup> day of April, 1993.

Lawell P. Breafter  
Division of Oil, Gas  
and Mining

David B. Connor  
Sunnyside Coal Company

**NO. C** 93-20-1-1

**cessation order**

To the following Permittee or Operator:

Name Sunnyside Coal Company

Mine Sunnyside Mine  Surface  Underground  Other

County Carbon State Utah Telephone (801) 888-4421

Mailing Address P. O. Box 99, Highway 123, Sunnyside, Utah 84539

State Permit No. ACT/007/007

Ownership Category  State  Federal  Fee  Mixed

Date of Inspection 20 April, 1993, 19    

Time of Inspection 10:00  a.m.  p.m. to       a.m.  p.m.

Operator Name (other than Permittee)     

Mailing Address     

Under authority of the Utah Coal Mining & Reclamation Act, Section 40-10-1 et seq., *Utah Code Annotated*, 1953, the undersigned authorized representative of the Division of Oil, Gas & Mining has conducted an inspection of above mine on above date and has found that a Cessation Order must be issued with respect to each of the conditions, practices or violations listed in the attachment(s). This order constitutes a separate Cessation Order for each condition, practice or violation listed.

In accordance with Section 40-10-22, *Utah Code Annotated*, you are ordered to **cease immediately** the operations described in the attachment(s) and to perform the affirmative obligations described in the attachment(s) within the designated time for abatement. Reclamation operations not directly the subject of this order shall continue while this order is in effect. You are responsible for doing all work in a safe and workmanlike manner.

The undersigned representative finds that **this order does**  **does not**  **require cessation of mining** expressly or in practical effect. For this purpose, "mining" means extracting coal from the earth or a waste pile, and transporting it within or from the mine site.

This order shall remain in effect until it expires as provided on reverse side of this form, or is modified, terminated or vacated by written notice of an authorized representative of the Division of Oil, Gas & Mining.

HAND DELIVERED  
 Date of service/mailing 4/20/93

Time of service/mailing 10:00  a.m.  p.m.

Joe Fielder  
 Permittee/Operator representative

General Manager  
 Title

Signature Mr. Joe Fielder refused receiving of this notice.

Signature Henry Bauer 4/20/93

Lowell P. Braxton  
 Division of Oil, Gas & Mining representative

Associate Director / Mining  
 Title

Signature Lowell P. Braxton  
Henry Bauer

Identification Number #32 4/20/93

SEE REVERSE SIDE  
 WHITE-DOGGM YELLOW-OPERATOR PINK-OSM GOLDENROD-NOV FILE



**CESSATION ORDER NO. C 93-20-1-1**

Violation No. 1 of 1

Nature of condition, practice or violation

Failing to have adequate bond coverage in effect at all times, which is a condition of the permit.

Provisions of act, regulations or permit violated

R. 645-301-812.700

R. 645-400-312.

U.C.A. 40-10-15

Check appropriate box

- Condition, practice or violation is creating an imminent danger to health or safety of the public.
- Permittee/Operator is/has been conducting mining activities without a permit.
- Condition, practice or violation is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.
- Permittee or Operator has failed to abate Violation(s) No. \_\_\_\_\_ Included in Notice of Violation No. N \_\_\_\_\_ within time for abatement originally fixed or subsequently extended.

Operation(s) to be ceased immediately

Entire permitted area.

Affirmative obligation(s) and abatement time (if applicable)

Post adequate bond as referenced in the attached findings, or immediately begin reclamation based on the approved reclamation plan.

WHITE-DOG M YELLOW-OS M PINK-PERMITTEE/OPERATOR GOLDENROD-NOV FILE

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

-----oo0oo-----  
IN THE MATTER OF BOND : FINDING OF INADEQUATE  
INADEQUACY, SUNNYSIDE : BOND IN RE: SUNNYSIDE  
COAL COMPANY, SUNNYSIDE : COAL COMPANY,  
MINE, CARBON COUNTY, : SUNNYSIDE MINE, CARBON  
UTAH : COUNTY, UTAH  
: ACT/007/007  
: CAUSE NO. ACT/007/007

-----oo0oo-----

In the above entitled matter, the Division makes the following Written Findings and Conclusions of Law concerning the adequacy of the reclamation bond posted by Sunnyside Coal Company, (the "Permittee"). These findings are based on documents contained in the Division's files. These documents may be reviewed and copied at the offices of the Division located at 3 Triad, Suite 350, 355 West North Temple, Salt Lake City, Utah.

FINDINGS OF FACT

1. Permit ACT/007/007 (the "permit") to conduct coal mining and reclamation operations pursuant to Utah Code Ann. § 40-10-1 et seq. (1953, as amended) was issued to Sunnyside Reclamation and Salvage Inc., (now known as Sunnyside Coal Company), on May 26, 1989.

2. Pursuant to Utah Admin. R. 645-301-820, the Permittee as a condition of approval of its mining permit is required to post a bond or collateral sufficient to insure complete reclamation.

3. Pursuant to Utah Admin. R. 645-301-830.200, the amount of the bond or collateral must be sufficient to assure the completion of the reclamation plan if the work has to be performed by the Division in the event the permittee fails to complete reclamation in accordance with the plan and forfeits the bond.

4. On March 12, 1989, Sunnyside Reclamation and Salvage executed a Deed of Trust and Security Agreement (the "Security Agreement") in favor of the State to secure the estimated reclamation cost of \$3,583,836. The estimated reclamation cost was divided into two components: (1) \$2,297,349 for the cost of reclaiming the general mine area; and (2) \$1,286,487 for the cost of reclaiming the refuse pile. The Security Agreement granted the Division a security interest in real and personal property and water rights owned by Sunnyside Salvage and Reclamation and located in Carbon County, Utah.

5. The Security Agreement was recorded on March 10, 1989, in Book 287, page 96 in the County Recorder's Office of Carbon County, Utah. The Trustor is Sunnyside Reclamation and Salvage, a Colorado Corporation, the Trustee is Southeastern Utah Title Company, and the Beneficiary is the State of Utah, Department of Natural Resources, Division of Oil, Gas and Mining.

6. On August 24, 1989, in a memo to the Director of the Division of Oil, Gas and Mining, Pamela Grubaugh-Littig, Reclamation Engineer, opined to the Director that the land subject to the Security Agreement, exclusive of water rights, was

worth \$1,777,100 and attributed a value to the associated water rights of \$3,665,580 for a total collateral value of \$5,442,680.

7. On March 3, 1989, Sunnyside Reclamation and Salvage submitted a proposed amendment to its mining plan to reduce the reclamation cost estimate. On November 8, 1989, the Division approved the amendment and reduced the reclamation cost estimate to the amount of \$2,813,562. This sum was divided into two components: (1) \$1,850,183.08 for the cost of reclaiming the general mine area; and (2) \$963,378.92 for the cost of reclaiming the refuse pile.

8. On January 20, 1991, the Division renewed Sunnyside Coal Company's permit. Sunnyside's 1991 permit erroneously stated that the estimated reclamation cost for the mine was \$2,639,088, where in fact the reclamation cost was that approved by the Division on November 8, 1989, in the amount \$2,813,562.

9. On January 19, 1993, the Division received an appraisal report dated September 17, 1992, by George Y. Fujii, MAI, President of Reval, Incorporated. The appraisal supplied on this date reviewed all real properties subject to the Security Agreement with the exception of approximately 1,500 acres of land located near Sunnyside City. The appraisal, including the appurtenant water, valued the subject property at \$920,000. The appraisal concluded that the water user claim numbers appurtenant to the land had no independent value from the land.

10. On January 19, 1993, the Division received an appraisal dated December 8, 1992, prepared by Jeffery C. Anderson, MIA.

The appraisal supplied on this date reviewed all real property subject to the Security Agreement with the exception of approximately 1,500 acres of land located near the city of Sunnyside. The appraisal, including the appurtenant water rights, valued the subject property at \$575,000. The appraisal concluded that the twenty-two water user claim numbers appurtenant to the land had no independent value from the land.

11. The approximately 1,500 acres subject to the Trust Deed and Security Agreement which were not included in the Fujii and the Anderson appraisals were appraised in a February of 1989 MAI appraisal. This appraisal was obtained by the Permittee and shows the following values for the balance of the secured real property:

- a. Township 15 South, Range 13 East, Sections 1, 2, 3, 10 and 11 of approximately 1,120 acres valued at \$150 an acre, for a total value of \$168,000.
- b. Township 15 South, Range 14 East, Sections 6 and 7 of approximately 440 acres are valued at \$120,000. This description appears to cover the subdivisions in Sunnyside City consisting of vacant lots and lots with dwellings. The figure of \$120,000 was arrived at prior to the time of the Division's subsequent release of residences and lots located within this property description.

12. As stated in paragraph 9 and 10 above, a substantial portion of the water rights which the Division holds as security

under the Security Agreement were appraised in the 1992 Fujii and Anderson appraisals. Both appraisers determined that the water rights had no value independent from the appurtenant land. Certain water rights conveyed under the Security Agreement which were not included in the Fujii and Anderson appraisals have not been quantified or appraised as of the date of these Findings. There is no basis on which the Division can make a finding of value for these water rights.

13. On April 4, 1989, Bill Balaz, Mine Manager for Sunnyside Reclamation and Salvage notified the Mayor of Sunnyside Utah of its intention to grant water rights to the city in the amount of 415 acre feet.

14. On February 14, 1992, Rick Knuth, attorney for the city of Sunnyside, wrote Kenneth Oldham, Esq., attorney for the Permittee, and reiterated the position that the city of Sunnyside, was entitled to an assignment of the water rights referenced in the April 4, 1989 letter from the Permittee's mine manager.

15. The Division has not released its interest in the water rights promised to the city of Sunnyside by the Permittee. The promise by the Permittee to convey the property subject to the Security Agreement to the city of Sunnyside is inconsistent with the intent and purpose of the Security Agreement.

16. As a condition of the Security Agreement, the Permittee as Trustor is required to keep the trust property free and clear of all liens and encumbrances including taxes. As of the date of

these Findings, the Permittee is delinquent in its property tax obligation to Carbon County in an amount in excess of \$576,636.69.

17. On August 28, 1989, the Division and the Permittee entered into a Subordination Agreement, such that the personal property subject to the Security Agreement was subordinated to a lien securing Zions First National Bank for a loan to the Permittee's parent company, Sunnyside Mines, Inc. This "Subordination Agreement" subordinates the Division's interest up to the amount of Zion's loan which is shown as \$2.8 million. Under section two of the Subordination Agreement, the Division gave up all of its rights in the personal property under Article II, Section 2.2 of the Security Agreement by granting the Permittee the unfettered right to dispose of the personal property subject to the Security Agreement free and clear of the Division's lien.

18. On August 28, 1989, the Division and the Permittee entered into an Agreement And Release of Reclamation Contract. In consideration for forgoing the provisions under Article II, Section 2.2 of the Security Agreement, the Division agreed to accept the sum of \$75,000 to defray environmental control and maintenance costs incurred by the Division following a default by the Permittee.

19. The personal property secured to the Division by the Security Agreement is required to be kept in the custody of the Division. None of the property pledged to the Division has been

delivered to the Division and so is not held in the custody of the Division as required by Utah Admin. R. 645-301-860.210 and 301-860.210 and .211. Therefore, none of the personal property presently qualifies for the purpose of calculating the value of the collateral, and may therefore not be valued for the purpose of determining bond adequacy.

20. On March 30, 1990, the Permittee and the Division entered into an agreement with Zions First National Bank entitled Assignment of Certificate of Deposit and Deposited Money as Collateral Security. Under this document Zions holds \$78,051.37 as collateral in a money market account for the benefit of the Division.

21. On December 11, 1989, the Division, the Permittee and the Office of Surface Mining and Reclamation entered into a Memorandum of Understanding which purports to retroactively grant to the Office of Surface Mining and Reclamation the rights conferred upon the Division in the Trust Deed and Security Agreement as well as the Agreement and Release and the Subordination Agreement. This document has never been recorded so as to provide notice to a bonafide purchaser for value. In this document OSM expressly disclaims any interest in the personal property and tangible equipment described in the Subordination Agreement.

22. The Division finds that it holds as collateral for the security of the Permittee's Reclamation Agreement a total of \$1,113,551.37. This amount is broken down as follows:

(a). Real Property. The Division holds collateral real property in the amount of \$1,035,500. This amount includes \$747,500 as the average appraised value of the lands from the Anderson and Fujii 1993 appraisals, and \$288,000 for the 1,500 acres appraised in 1989.

(b). Money Market. The Division holds as collateral a money market account in the sum of \$78,051.37.

23. The Division finds that for purposes of determining adequacy of the collateral, the \$1,113,551.37 must be reduced by the sum of \$576,636.69, which represents the amount of Sunnyside's delinquent property tax obligation to Carbon County. Therefore, the value of the collateral, minus Sunnyside's property tax obligation, is \$536,914.68.

24. The permittee's permit as presently approved requires that the amount of the bond be no less than \$2,813,562. Therefore, under the approved permit, the Permittee's collateral bond is deficient in the amount of \$2,276,648. Under the permit, the coal refuse area carries a reclamation obligation of \$963,378.92. This area, however, is presently bonded under the permit of another operator in an amount in excess of that required of the Permittee. Therefore, the Division has deducted the liability for the coal refuse area from the estimated reclamation cost.

25. Therefore, the Division finds that the amount of Sunnyside's reclamation liability pursuant to the Permit Amendment of November 8, 1989, is \$1,850,184.

26. Since the value of the Division's collateral is \$536,914.68, the Division finds that the deficiency to meet the reclamation obligation of the Permittee at the general mine area is \$1,313,269.30.

#### CONCLUSIONS OF LAW

1. Pursuant to Utah Admin. R. 645-301-820.310 performance bond liability will be for the duration of the coal mining and reclamation operations, for a period which is coincident with the operator's period of extended responsibility for successful revegetation as provided in Utah Admin. R. 645-301-356, or until achievement of the reclamation requirement of the state program and permit, whichever is later.

2. Pursuant to Utah Admin. R. 645-301-830 the amount of the bond must be sufficient to assure the completion of the reclamation plan, if work has to be performed by the Division in the event of forfeiture.

3. The information before the Division concerning the status of the collateral securing the bond obligation of the Permittee is adequate to determine that the amount of collateral is deficient in the amount set forth in the Findings.

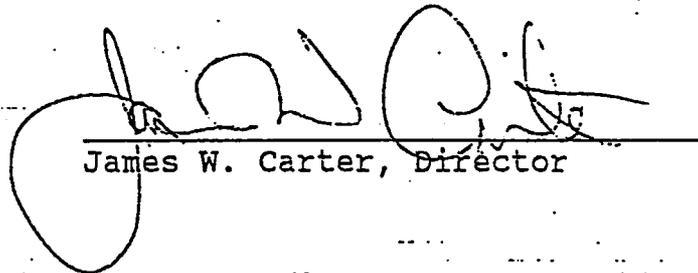
4. Pursuant to Utah Admin. R. 645-301-840.520, upon incapacity of a bank or surety company by reason of bankruptcy, insolvency, or suspension or revocation of a charter license, the Permittee will be deemed to be without bond coverage and will promptly notify the Division. The Division upon notification received through procedures of Utah Admin. R. 645-301-840.510, or

from the Permittee will notify in writing the operator who is without bond coverage and specify a reasonable time not to exceed 90 days to replace bond coverage.

5. On February 18, 1993, the Division notified the Permittee by certified mail that based upon the Anderson and Fujii appraisals of the trust property, the Permittee was under-collateralized and therefore under-bonded. Sunnyside was granted from the date of that notice until April 18, 1993, to replace bond coverage. The Permittee is therefore on notice as required by rule.

6. The necessary amount of replacement bond coverage to meet the requirements of law, and which must be posted as a performance bond, is the sum of \$1,313,269.30.

DIVISION OF OIL, GAS AND MINING



James W. Carter, Director

CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the foregoing FINDING OF INADEQUATE BOND IN RE: SUNNYSIDE COAL COMPANY, SUNNYSIDE MINE, CARBON COUNTY, UTAH, ACT/007/007 for Cause No. ACT/007/007 to be telefaxed on the 19th day of April 1993, to the following:

Denise A. Dragoo, Esq.  
Fabian & Clendenin  
215 South State  
P.O. Box 510210  
Salt Lake City, Utah 84151

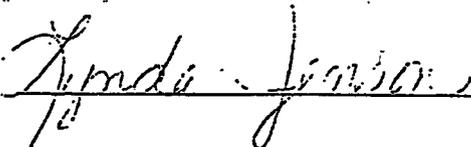
Mailed by certified mail, return receipt requested on April 20, 1993, to the following:

Denise A. Dragoo, Esq.  
Fabian & Clendenin  
215 South State  
P.O. Box 510210  
Salt Lake City, Utah 84151

Bob Burnham  
President  
Sunnyside Coal Company  
The Registry  
1113 Spruce Street, Suite 301  
Boulder, Colorado 80302

Joe Fielder  
General Manager  
Sunnyside Coal Company  
P.O. Box 99  
Sunnyside, Utah 84539

Ken Oldham, Esq.  
1050 Walnut Street  
Suite 212  
Boulder, Colorado 80302

  
\_\_\_\_\_