

9/23/94

STATE OF UTAH  
DIVISION OF OIL, GAS AND MINING

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PERMITTEE

Robert M. Burnham, President  
Sunnyside Coal Company  
Debtor in Possession  
113 Spruce Street  
Boulder, Colorado 80302

FINDINGS  
of  
PERMIT DEFICIENCY  
and ORDER

PERMIT NUMBER ACT/007/007  
DIVISION ORDER # 94B

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On January 20, 1986, the Division approved the mining and reclamation plan (Plan) and under the Utah Coal Regulatory Program, issued a permit (Permit) to Sunnyside Coal Company (the Permittee). The Plan, as amended or revised in conjunction with the Act and the Rules, and the subsequently renewed Permit, issued on January 20, 1991, constitute the currently approved Plan for reclamation of the surface disturbance of the Permit area.

The provisions of the Act and the Rules are incorporated by reference herein and hereby made a part of this Division Order. Provisions of the Act or Rules shall supersede conflicting provisions of this Division Order or the approved Plan. The Permittee has agreed to comply with all terms and provisions of the Plan, the Act and the Rules, including the reclamation of all areas disturbed by surface coal mining and reclamation operations, despite the eventuality that the cost of actual reclamation may exceed the bond amount.

Pursuant to R645-303-212, the Division orders the Permittee, Sunnyside Coal Company, to make the permit changes enumerated in these Findings of Permit Deficiency in order to be in compliance with the State Coal Program. The deficiencies are to be remedied in accordance with R645-303-220.

FINDINGS OF PERMIT DEFICIENCY

The information contained in the text of the Plan has been determined to be inadequate to meet the requirements of the Act and the Rules. Excerpts of the information found in the currently approved mining and reclamation plan are attached for reference as "Attachment A".

In general, the maps and text within the plan regarding reclamation have been found inadequate by the Division to demonstrate compliance with the design and performance standards for reclamation mandated in the coal rules.

R645-301-100. Permit Area.

Plates 3-20 through 3-24 are provided in the plan to delineate pre and post law disturbed areas. These maps indicate those areas which were considered pre law disturbance, and, those areas considered to be post law disturbance (area disturbed or redisturbed after 1977 & under bond).

The delineation of these areas as provided by the permittee is inadequate. The areas delineated by the Permittee as post-law disturbance do not incorporate all areas affected by surface mining operations subsequent to 1977 within the permit area. In delineating the disturbed and bonded areas within the permit area, the Permittee has failed to incorporate portal highwalls and face-up areas associated with active mine openings. The Permittee has failed to include cut and fill areas associated with pads and roads currently used by mining operations. Such cut and fill structures are integral parts of the roads, pads and other facilities used during mining operations. Drainages and diversions which have been affected by post-law mining operations are incorrectly shown as lying outside of the disturbed and bonded areas. Without incorporation of these area into the bonded and disturbed area boundaries, the Permittee cannot effectively reclaim the area to meet post-mining land use or approximate original contour requirements.

R645-301-410. Land Use.

Section 3.5.3.2 of the plan describes the removal of surface structures. The permittee states that, at the conclusion of mining, all surface structures, with the exception of those permanent structures marked on Plate III-1 and noted on Table III-1, will be dismantled, removed and the land graded to blend with the surrounding areas. Outlying surface facilities including portals, ventilation shafts, substations, upper bathhouse, equipment and material storage areas, preparation plant, power transmission lines, mine water lines, methane borehole pad and pipeline, and unit train loadout, will be dismantled and eliminated.

The Permittee further states that, "most roads will be left to provide access for grazing and recreational activities. Those roads not left for future uses will be ripped, contoured and revegetated. The roads which will not be reclaimed are illustrated on Plate III-1. Water supply facilities will remain after completion of mining to supply culinary water to residents of the towns. Since new mines are being planned in nearby areas, it is believed the towns will remain occupied beyond the projected life of the existing mine."

The Permittee has failed to demonstrate that the proposed post-mining land uses meet the regulatory requirements. All permanent structures and facilities, including permanent diversions and impoundments, must be located and identified by

the Permittee and submitted to the Division for approval. Each structure proposed for retention must adequately demonstrate, by design and supporting calculations, compliance with the performance standards of the Rules as they apply. All structures and facilities to be left as part of the approved post-mining land use shall adequately demonstrate that the retention, modification or use of the structure constitutes a higher or better land use.

Higher or better uses may be approved by the Division as alternative post-mining land uses, with permanent structures or facilities to remain as part of the approved post-mining land use, after consultation with the landowner or the land management agency having jurisdiction over the lands, if; 1) there is a reasonable likelihood for achievement of the use; 2) the use does not present any actual or probable hazard to public health or safety or threat of water diminution or pollution and; 3) the use will not be impractical, unreasonable or inconsistent with applicable land-use policies or plans, involve unreasonable delay in implementation, or cause or contribute to violation of federal, Utah, or local law. Such a demonstration has not been presented in the Plan. Currently, information in the Plan fails to describe how such facilities and structures will be used in conjunction with the post-mining land uses, or how the implementation or use of such structures and facilities will constitute a higher or better land use.

Section 3.5.3.2 of the plan describes the removal of surface structures. This section refers to Plate III-1 and Table III-1 as the exhibits identifying the structures to remain as permanent. In referring to Plate III-1, structures including, but not limited to, the mine office, shops, warehouse facilities, pump houses, impoundments, and other numerous facilities are marked as "permanent". No justification or criteria is presented in the Plan to demonstrate that the retention of these structures constitutes a higher or better land use, or that these structures are retained in support of an alternate post-mining land use. Accordingly, the Division cannot substantiate that the reclamation plan regarding retention of such structures meets the minimum regulatory requirements. The reclamation plan must be revised to meet the regulatory requirements regarding post-mining land use and the retention of structures in support of that use.

Section 3.5.3.2 of the Plan provides that most roads will be left to provide access for grazing and recreational activities. No justification or information is provided in the Plan to demonstrate that the retention of the roads indicated on Plate III-1 is appropriate for the post-mining land use, nor is there a demonstration that the retention of these roads constitutes a higher and better use in comparison to pre-mining land use conditions.

Roads, structures and transportation facilities within the permit area which are to remain as part of the post-mining land use must have an adequate justification for

their retention. Any roads to remain must be shown to be suitable for an appropriate post-mining land use. In the event that roads are to be left or retained as public roads, documentation must be provided to demonstrate that suitable agreements have been reached for rights-of-way and maintenance. Similarly for the railroad facilities, rights-of way, leases or other documentation must be provided to demonstrate responsibility for the retained trackage.

Section 3.5.3.3 of the plan discusses the disposition of the Grassy Trail dam and reservoir. This facility was constructed in 1952 and is jointly owned by Sunnyside Reclamation and Salvage, Inc., and BP Coal America, Inc., who holds the majority of the interest. The reservoir provides culinary water to the towns of Sunnyside and East Carbon as well as to the mine facilities of the two companies. The Plan indicates that the Permittee will maintain ownership of and liability for the reservoir after expiration of the Permit if ownership is not transferred to the towns. If ownership of Grassy Trail reservoir is transferred to another party, public or private, prior to bond release, Kaiser Coal Corporation is to renovate the dam to design specifications previously approved by the Dam Safety Division of the State of Utah prior to transfer.

No affirmative demonstration of the rights and responsibilities for retention of this impoundment is provided in the plan. No information demonstrating that the retention of the reservoir constitutes a higher and better use as an alternate post-mining land use has been provided in the Plan. The requirements for the renovation of the dam structure have not been included in the Plan. Although the impoundment was exempted from the inspection requirements under MSHA regulations, the structure was constructed and used for mining operations. Accordingly, the Plan must demonstrate that the structure will meet all applicable federal, state and local laws regarding retention of the impoundment as part of the post-mining land use. If ownership of the structure is transferred prior to bond release, provision must be made to clearly show the acceptance of liability for the retention of structures for alternate post-mining land uses.

R645-301-500 Engineering.

Backfilling and grading plans for reclamation of the surface facilities and operations are inadequate. In section 3.5.4 of the plan, the Permittee states that, "each site to be disturbed will be contoured to blend with adjacent undisturbed areas. They may not be returned to original contours, as those are unknown in several instances." The permittee further states that, "the post-mine contours will remain approximately the same as the current contours. Final leveling and regrading changes will typically be so small, they will no[t] appear on the map. The final contours will approximate those shown on Plate III-1."

Plate III-1 is found by the Division to be inadequate to show the final configuration of the surface mining operations to be reclaimed. First, the map is an enlarged version of USDOI 7.5 minute series topographic maps. At their original scale, the scale of these maps is 1 inch = 2000 feet and show only 40 foot contour intervals. The Permittee has photographically enlarged these maps to 1 inch = 500 feet, which does not increase the accuracy or the detail of the drawings. Utilization of Plate III-1 as the final configuration of the mined areas to be reclaimed is wholly inadequate.

Contour information as provided on these drawings not only fails to clearly show the location and the extent of the current mining operations, but provides no detail with regard to the design detail for reclamation. No cross-sections have been provided to show that slopes will be regraded to approximate the original pre-mining surface configuration. No maps or cross-sections for reclamation backfilling and grading have been provided to demonstrate that the site will achieve approximate original contour. No detailed design information such as maps, cross sections or mass balance calculations have been provided to show that suitable reclamation of the surface operations can be accomplished. No design information or justification has been provided to indicate that all reasonably available spoil materials will be utilized during reclamation to achieve approximate original contour, as required by the Coal Program. No cross-sections or design details have been provided to demonstrate that highwalls will be eliminated.

In essence, no backfilling and grading plan has been presented in the permittee's reclamation plan. Accordingly, the Division finds that the Plan lacks design and performance criteria requisite to backfilling and grading, and lacks a demonstration that reclamation of the site will achieve approximate original contour.

#### R645-301-700 Hydrology

Section 3.5.3.3 of the plan indicates that, "no diversion structures are currently planned, but if they are constructed, permits will be obtained prior to construction and reclamation will be in conjunction with adjacent disturbed areas." In section 3.5.4.1, the permittee indicates that specific postmining drainage designs and measures that will be used during the final reclamation phase is contained in Appendix III-12, Post Mining Hydrologic Design.

Appendix III-12, Post Mining Hydrologic Design, could not be found within the text of the currently approved plan. Further, no plans or other requirements to re-establish the drainages affected by surface operations could be found within the text of the Plan.

Grassy Trail Creek has been channelized throughout most of the area affected by mining. Numerous operational disturbed and undisturbed diversions exist within the permit area which have altered drainage patterns. The permittee must provide a comprehensive reclamation plan with sufficient designs and maps to show that drainage areas and permanent diversions will be re-established to comply with the design and performance standards of the rules.

## Requirements

In order to comply with this Division Order, the Permittee must comply with the following requirements:

### **Reclamation Plan.**

In accordance with the requirements of R645-301 and R645-302, the Permittee must provide a plan for the reclamation of the lands within the permit area, showing how the Permittee will comply with the regulatory program and the environmental protection performance standards. The plan shall, at a minimum, contain the following information for the permit area: 1) a detailed timetable for the completion of each major step in the reclamation plan; 2) a detailed estimate of the cost of the proposed reclamation operations required to be covered by a performance bond, with supporting calculations for the estimates; 3) a plan for backfilling, soil stabilization, compacting, and grading, with contour maps or cross-sections which show the anticipated final surface configuration of the proposed permit area; 4) a plan for redistribution of topsoil, subsoil, and other material, along with a demonstration of the suitability of topsoil substitutes or supplements; 5) a plan for revegetation including, but not limited to, descriptions of the schedule of revegetation, species and amounts per acre of seeds and seedlings to be used, methods to be used for planting and seeding, mulching techniques, irrigation, if appropriate, pest and disease control measures, if any, measures proposed to be used to determine the success of revegetation, and a soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation; 6) a description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of appropriately, and a description of the contingency plans which have been developed to preclude sustained combustion of such materials; 7) a description, including appropriate cross-sections and maps, of the measures to be used to seal or manage mine openings, and to plug, case, or manage exploration holes, other bore holes, wells, and other openings within the proposed permit area and; 8) a description of steps to be taken to comply with the requirements of the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act and other applicable air, water and waste management laws and regulations, and health and safety standards.

The Permittee shall submit a schedule indicating the sequence and timing of the required reclamation activities for each sub-area within the Permit area. This schedule shall show the logical progression of the reclamation activities, clearly indicating which activities must be completed prior to initiation of other reclamation treatments, and/or which activities can occur concurrently. The reclamation activities should include, but not be limited to; demolition, installation of surface drainage control structures, installation of sediment control structures, non-coal waste disposal, closure of mine openings, backfilling and grading of disturbed areas, resoiling, soil amendments, revegetation, and modification or reconstruction of facilities or structures to be left as part of the approved post-mining land use.

Field changes or alterations of the final surface configuration due to site constraints or conditions which were not considered in the reclamation design work will be allowed by the Division only when such changes do not significantly affect or diminish the approved design or function of the intended reclamation treatments. Such field changes shall be presented to the Division as part of the as-built reports and other information required in the bond release application prior to consideration for phased bond release.

## **Land Use.**

In accordance with the requirements of R645-301-400, the Permittee must provide a detailed description of the proposed use, following reclamation, of the land to be affected within the proposed permit area by surface operations or facilities, including a discussion of the utility and capacity of the reclaimed land to support alternative uses, and the relationship of the proposed uses to existing land-use policies and plans. This description must explain: 1) how the proposed post-mining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use; 2) where a land use different from the pre-mining land use is proposed, all materials needed for approval of the alternative use and; 3) the consideration given to making all of the proposed post-mining activities consistent with surface owner plans and applicable State and local land-use plans and programs.

The description must be accompanied by a copy of comments concerning the proposed use from the legal or equitable owner of record of the surface of the permit area and the State and local government agencies which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation. Alternative post-mining land uses may be approved. However, before approval, the Permittee must first demonstrate that the land can be returned to its pre-mining land use capability.

Other facilities, including utilities corridors and right-of-ways into and through the permit area, shall be adequately described and characterized in the Plan. Where necessary, the description shall explain any constraints or restrictions regarding the facilities which would limit or restrict reclamation activities within the surface disturbed areas, especially with regard to any effect on AOC requirements. The description will be accompanied by a copy of such documents concerning the existing or proposed use by the legal or equitable owner of record of the surface or surface use of the permit area, and Utah and local government agencies which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

### **Conduct of Reclamation Operations**

In accordance with the requirements of R645-301-515, the Permittee shall provide a statement of the exact number of surface acres disturbed, a map(s) showing those surface disturbed areas, and a map showing the horizontal and vertical extent of subsurface strata (mine workings) in the permit area immediately prior to cessation of operations. The Permittee will close or backfill or otherwise permanently reclaim all affected areas, in accordance with the R645 Rules. The Permittee shall assure that final fills containing spoil or other waste materials are suitable for reclamation and revegetation and are compatible with the natural surroundings and the approved post-mining land uses. All surface equipment, structures, or other facilities not required for continued mining and reclamation activities and monitoring, unless approved by the Division as suitable for the post-mining land use or environmental monitoring, will be removed and the affected lands reclaimed.

Prior to conducting backfilling and grading operations, the Permittee shall complete the demolition and removal of structures and facilities within the area to be backfilled. All non-coal waste materials, PCB or oil-contaminated materials or soils, or other materials subject to specialized treatment or disposal shall be removed and disposed of in a state-approved waste disposal facility and in accordance with any other federal, state or local regulations as they apply. Inert materials, such as concrete, may be disposed of on-site where the location and method of disposal has been identified by the Permittee and approved by the Division.

For any reclamation activities which may alter or adversely affect surface disturbed or undisturbed drainages or sediment controls within the surface disturbed areas, the Permittee shall notify the Division in writing within 15 days prior to commencement of such reclamation activity. Prior to commencement of any reclamation activities, adequate drainage and sediment control measures must be established and operational.

ORDER

Sunnyside Coal Company is ordered to make the required permit changes in accordance with R645-303-220 and to submit a complete application for permit change to address these Findings of Permit Deficiency, or to provide an acceptable schedule for providing such permit changes, within 30 days of date of the Order. Approval by the Division must be obtained within 60 days of date of this Order. If approval is not obtained within 60 days, a hindrance violation may be issued.

Ordered this \_\_\_\_ day of \_\_\_\_\_, 1994, by the Division of Oil, Gas, and Mining.

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James W. Carter, Director  
Division of Oil, Gas and Mining

**Attachment A**