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United States Department of the Interior

OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

NOV 20 1985

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MAY 11 1987
DIV. OIL, GAS, MINING

Memorandum

To: George Stone, Chief
Branch of Compliance
Office of Surface Mining

From: Harold P. Quinn, Jr., Assistant Solicitor HPQ.
Branch of Government Relations
Division of Surface Mining

Subject: United States Fuel Federal Permit Application, Hiawatha Mines Complex

I have attached a copy of the Reclamation Fee Installment Agreement entered into on November 15, 1985 by United States Fuel Company (U.S. Fuel) and the Office of Surface Mining (OSM). This agreement resolves OSM's abandoned mine reclamation fee dispute with U.S. Fuel Company. U.S. Fuel has been in violation of section 402 of SMCRA for failure to pay reclamation fees for coal slurry mined at its Hiawatha Mine complex in Hiawatha, Utah. The execution of this agreement and timely payments pursuant to its terms will remove the fee violation as an impediment to OSM's issuance of a federal permit for U.S. Fuel's operations at the Hiawatha site.

If you have any questions or require any further assistance, please contact Dianne Shawley at 343-4591.

cc: Allen Klein, WTC
Mary Josie Smith
Fred Block
Joseph Oglander

RECLAMATION FEE INSTALLMENT AGREEMENT

THIS AGREEMENT is made and entered into on this 15th day of November, 1985, by and between United States Fuel Company (hereinafter referred to as "U. S. Fuel") and the Office of Surface Mining, United States Department of the Interior (hereinafter referred to as "OSM"):

WHEREAS, U. S. Fuel has applied to the Utah Division of Oil, Gas and Mining (hereinafter referred to as "UDOGM") and to OSM for issuance of mining permits for its underground mines, but said permits cannot be issued until U. S. Fuel has resolved to OSM's satisfaction the issue of disputed abandoned mine reclamation fees assessed under 30 U.S.C. §1232 on coal slurry produced and sold in connection with U. S. Fuel's underground mining operation, specifically the amount of back reclamation fees found to be owing at a rate of 15¢ per ton on coal slurry produced and sold prior to the date of execution of this Agreement but for which no reclamation fee has been paid to date by U. S. Fuel, and the difference between the 15¢ per ton underground coal reclamation fee paid by U. S. Fuel and the 35¢ per ton surface coal reclamation fee sought by OSM as it pertains to coal slurry produced and sold by U. S. Fuel prior to the date of execution of this Agreement (hereinafter referred to as the 20¢ per ton differential); and

WHEREAS, the principal amount of said reclamation fee in dispute, based on tonnages of coal slurry reported to OSM

by U. S. Fuel, is One Hundred Twenty-Two Thousand Three Hundred Twenty-Three Dollars and Twenty-Two Cents ($122,323.22), consisting of One Hundred Eleven Thousand Four Hundred Six Dollars and Thirty-Six Cents ($111,406.36), representing the 20¢ per ton differential covered by the installment portion of this Agreement, and Ten Thousand Nine Hundred Sixteen Dollars and Eighty-Six Cents ($10,916.86), representing the amount of back reclamation fees at 15¢ per ton owing on coal slurry produced and sold for which no reclamation fee has been paid at all; and

WHEREAS, the parties have agreed to a schedule for payment of said disputed reclamation fees in monthly installments, without interest, with payments deliverable to OSM and held in a segregated account to the credit of U. S. Fuel pending resolution of U. S. Fuel's Petition for Interpretive Rulemaking pursuant to Section 201(g) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. §1201-1328, in order to allow issuance of the mining permit sought by U. S. Fuel; provided, however, that U. S. Fuel's responsibilities for payment under the terms of this Agreement exist separate and apart from issuance of the mining permit by OSM or UDOGM; and

WHEREAS, the parties agree that in the event the Director of OSM rules that a reclamation fee of 15¢ per ton is payable on all coal slurry produced and sold by U. S. Fuel's underground mining operations, the installment portion of this Agreement shall automatically terminate and payments of all reclamation fees theretofore paid into the segregated account

pursuant to this Agreement shall be transferred by OSM to the account of U. S. Fuel and treated as advance reclamation fee payments. But in the event the Director rules that the reclamation fee payable on all coal slurry produced and sold by U. S. Fuel's underground mining operations shall be 35¢ per ton, then all reclamation fees paid into the segregated account pursuant to this Agreement shall be disbursed to OSM's Abandoned Mine Reclamation Fund as reclamation fee payments on coal slurry sold prior to the execution of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. OSM shall designate a separate account on the books of the U. S. Treasury to the credit of U. S. Fuel, to receive funds payable pursuant to this Agreement, and said fund shall be managed pursuant to instructions consistent with the intent and terms of this Agreement.

2. U. S. Fuel agrees to pay OSM on the execution of this Agreement the sum of Ten Thousand Nine Hundred Sixteen Dollars and Eighty-Six Cents ($10,916.86) as payment for back reclamation fees. U. S. Fuel also agrees to pay OSM Five Thousand Dollars ($5,000.00) on January 1, 1986, and beginning on April 1, 1986, Five Thousand Dollars ($5,000.00) per quarter for six months, payable on the first day of each third calendar month following the prior payment; and beginning on October 1, 1986, Ten Thousand Dollars ($10,000.00) per quarter for one year, payable on the first day of the third

calendar month following the prior payment; and beginning October 1, 1987, Fifteen Thousand Dollars ($15,000.00) per quarter for nine months, payable on the first day of the third calendar month following the previous payment, and on July 1, 1988 the final payment of $11,406.36 to complete payment of the entire amount of One Hundred Eleven Thousand Four Hundred Six Dollars and Thirty-Six Cents ($111,406.36), the amount of the 20¢ per ton differential. The amounts and dates for each of the foregoing payments are specified in the payment schedule attached hereto as Exhibit "A".

3. Upon the signing of this Agreement by both parties, OSM agrees to notify UDOGM that U. S. Fuel's reclamation fee indebtedness has been resolved to OSM's satisfaction and that said indebtedness is no longer an impediment to UDOGM's issuance of a mining permit to U. S. Fuel. OSM further agrees to take no action to have U. S. Fuel's permit suspended or revoked on account of U. S. Fuel's reclamation fee dispute (limited to the amounts provided for herein) so long as U. S. Fuel is in compliance with the terms of this Agreement.

4. U. S. Fuel agrees to submit all future reclamation fee reports to OSM and pay all future reclamation fees in full at a rate of 35¢ per ton of coal, as such reports and fees shall be due, unless the Director rules that 15¢ per ton of coal is the applicable rate.

5. OSM has conducted a complete audit of U. S. Fuel's coal sales, which audit U. S. Fuel has had an opportunity to review, and both parties hereby stipulate to the accuracy

of said audit. Compliance with this Agreement shall not relieve U. S. Fuel of liability for any reclamation fees owed by U. S. Fuel but not reported to OSM, should any such reclamation fee obligation exist.

6. Upon U. S. Fuel's failure to comply with any of the terms of this Agreement and upon OSM's giving written notice of such default to U. S. Fuel, U. S. Fuel shall have twenty-one (21) days to cure such default. Notice of default shall be given by mailing written notice, postage prepaid, to U. S. Fuel Company, Attention: Errol Gardiner, Box A, Hiawatha, Utah, 84527. Thereafter, if U. S. Fuel does not cure said default, the entire balance of reclamation fees owed by U. S. Fuel shall become immediately due and payable. OSM may thereupon exercise any and all legal remedies available to it, including, but not limited to, actions to collect the remaining indebtedness, including any applicable statutory penalties and administrative costs of collection after default, and to immediately suspend or revoke U. S. Fuel's mining permit or right to mine. U. S. Fuel agrees to limit any and all rights of appeal or review of a permit suspension resulting from default of this Agreement to the fact of the failure to comply.

7. Failure of OSM at any time to require performance of any provision herein shall not affect OSM's right to require full performance thereof at any time thereafter. The waiver by OSM of any default shall not constitute a waiver of any subsequent default, and the exercise or non-exercise of any

remedy by OSM shall not bar exercise of any other remedy or remedies which may be available to OSM.

8. By executing this Agreement, U. S. Fuel does not waive the right to pursue remedies available at law or at equity, if any, to challenge the rate of the abandoned mine land reclamation fee to coal slurry produced in its operations. Any such legal challenge shall not affect the parties' performance under the terms of this Agreement until such performance is suspended by a court of competent jurisdiction.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

UNITED STATES FUEL COMPANY

By _____
Errol Gardiner
Vice President and
General Manager

OFFICE OF SURFACE MINING
UNITED STATES DEPARTMENT OF
THE INTERIOR

By: _____
Robert E. Boldt
Deputy Director
Administration and Finance

STATE OF UTAH)
: ss.
COUNTY OF CARBON)

On the 15th day of October, 1985, personally appeared before me Errol Gardiner, who, being by me duly sworn, did say, that he is the vice president and general manager of United States Fuel Company, and that said instrument was signed in behalf of said corporation by authority of its by-laws, and also acknowledged to me that said corporation executed the same.

Notary Public
Residing In: Carbon County

My Commission Expires:
5-21-88

District of Columbia: ss.

On the 15 day of November, 1985, personally appeared before me Robert Boldt, who, being by me duly sworn, did say, that he is the Deputy Director for Administration and Finance, Office of Surface Mining, United States Department of the Interior, and that said instrument was signed in behalf of said governmental agency, and also acknowledged to me that said governmental agency executed the same.

Notary Public
Residing In:

My Commission Expires:
My Commission Expires November 14, 1990

EXHIBIT "A"

Payment Schedule

The following payments listed below are those to be made by U. S. Fuel pursuant to that Reclamation Fee Installment Agreement between U. S. Fuel Company and the Office of Surface Mining, United States Department of the Interior.

Payment Date	Payment Amount
1-01-86	$ 5,000.00
4-01-86	5,000.00
7-01-86	5,000.00
10-01-86	10,000.00
1-01-87	10,000.00
4-01-87	10,000.00
7-01-87	10,000.00
10-01-87	15,000.00
1-01-88	15,000.00
4-01-88	15,000.00
7-01-88	11,406.36
Total	$111,406.36