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Lieutenant Governor

State of Utah

DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
Executive Director

Division of Oil, Gas and Mining

JOHN R. BAZA
Division Director

Outgoing
C0070011
K

January 13, 2009

CERTIFIED RETURN RECEIPT
7004 2510 0004 1824 9610

Elliot Finley, Resident Agent
Hiawatha Coal Company
P.O. Box 1240
Huntington, Utah 84528

Subject: Approval with Stipulation of Phase I Bond Release, Hiawatha Mine, C/007/0011,
Task ID #3104, Outgoing file

Dear Mr. Finley:

The Division has processed your application for Phase I bond release at the Hiawatha mine and bond release is hereby approved in the amount of \$564,536.00. This phase I bond release applies to 95.9 acres of reclaimed disturbance and carries with it the following stipulation. Within 30 days of receipt of this letter, Hiawatha Coal Company must provide to the Division:

- a. Five clean copies of the bond release application package which encompasses the narrative, tables, maps and information provided in the six submittals dated January 11, July 9, July 21, August 13, August 19, 2008 and January 5, 2009.
- b. A revision to Exhibit V-13 Final Surface Configuration and associated cross sections, showing accurate existing topography of slurry pond 5A and Borrow Area A in accordance with R645-301-521.150 and accurate final configuration of Borrow areas A and F in accordance with R645-301-542.300.

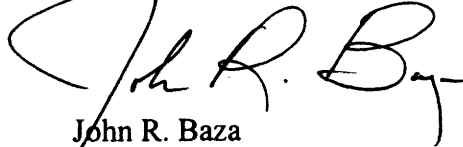
A copy of the Division's Decision Document and Technical Analysis (TA) is enclosed which discusses the findings that support the bond release. The TA also describes why we are releasing \$564,536.00 rather than the \$785,000 that was applied for. Once we receive the clean copies, a stamped incorporated copy of the approved plans will be returned to you, for insertion into your copy of the Mining and Reclamation Plan.



Page 2
Mr. Elliot Finley
January 13, 2009

Thank you for your help during this process. If you have any questions, please call Daron Haddock at (801) 538-5325 or Jim Smith at (801) 538-5262.

Sincerely,

A handwritten signature in black ink, appearing to read "John R. Baza". The signature is fluid and cursive, with a large initial "J" and "B".

John R. Baza
Director

DRH/sqs
Enclosure (Decision Document/TA)
cc: JP Morgan Chase Bank
OSM
Price Field Office
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DECISION DOCUMENT

Phase I Bond Release
Hiawatha Mine Complex
C/007/011
Carbon County, Utah

TABLE OF CONTENTS

Decision Document

 Action

 Chronology

 Summary of Findings

 Recommendation for Phase I Bond Release

Technical Analysis

Affidavit of Publication

Phase I Bond Release Inspection Report

OSM Concurrence Letter

Hiawatha Coal Company
Phase I Bond Release
Carbon County, Utah

ACTION

Grant approval of Phase I bond release in the amount of \$564,536.00 for reclamation activities at the Hiawatha Mine Complex. Hiawatha Coal Company submitted an application for Phase I bond release on January 11, 2008 and requested release on 95.9 acres of land. The application was subsequently amended on July 9th, July 21st, August 13th, August 19th, 2008 and January 5, 2009. Hiawatha has posted bonds in the amount of \$3,005,000 for reclamation of the entire site, but the amount of bond covering the Phase I area is \$1,043,369.00. The company has requested release in the amount of \$785,000.00. However, the Division determined that the maximum amount that can be released at this time is \$564,536.00, because \$478,833.00 must be retained to insure vegetation. The Division conducted a Phase I bond release inspection of the above referenced mine site on the 8th of October, 2008. An invitation letter was sent to parties of interest on September 15, 2008. One attendee from the U.S. Bureau of Land Management (BLM) accompanied three Division personnel and the designated representative from Hiawatha Mine on the inspection.

CHRONOLOGY FOR PHASE I BOND RELEASE

- December 18, 2007 Hiawatha Coal Company sends letters to local governments, and property owners of proposed bond release: Mr. David Kingston, The Bureau of Land Management, the Carbon County Commission, the Price River Water Improvements District and the Carbon County Planning and Zoning.
- January 8, 2008 Division receives Phase I bond release application from Hiawatha Coal Company, encompassing 95.9 acres of surface facilities area
- December 27, &
Jan. 3, 8, 10, 2008 Phase I bond release published in the Sun Advocate
- February 10, 2008 End of public comment period. No comments received.
- March 14, 2008 Division returns application to Hiawatha Coal Company as deficient
- July 21, 2008 Hiawatha reapplies for phase I bond release.
- August 5, 2008 Division returns application to Hiawatha Coal Company as deficient a second time.
- August 19, 2008 Hiawatha reapplies for phase I bond release.
- September 8, 2008 Division determines the application to be complete.
- September 15, 2008 Division sends letters of invitation to attend the bond release inspection on October 8, 2008.
- October 8th, 2008 Phase I bond release inspection.
- January 7, 2009 OSM issues concurrence on phase I bond release

SUMMARY OF FINDINGS:

The Phase I bond release was advertised for four consecutive weeks. No comments were received during the public comment period. A bond release inspection was conducted in October 8, 2008. Some minor issues were identified in the inspection report that Hiawatha Coal Company will observe through the remaining bond life to ensure those sites meet reclamation standards. OSM's concurrence was issued on January 7, 2009.

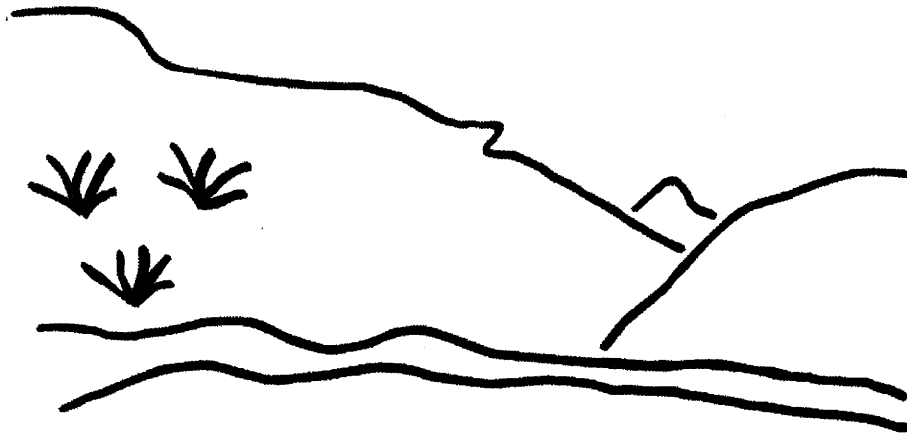
The Division has processed the application for Phase I bond release at the Hiawatha mine and bond release is recommended in the amount of \$564,536.00. This phase I bond release applies to 95.9 acres of reclaimed disturbance and should carry with it the following stipulation. Within 30 days of receipt of this letter, Hiawatha Coal Company must provide to the Division:

- a. Five clean copies of the bond release application package which encompasses the narrative, tables, maps and information provided in the six submittals dated January 11, July 9, July 21, August 13, August 19, 2008 and January 5, 2009.
- b. a revision to Exhibit V-13 Final Surface Configuration and associated cross sections, showing accurate existing topography of slurry pond 5A and Borrow Area A in accordance with R645-301-521.150 and accurate final configuration of Borrow areas A and F in accordance with R645-301-542.300.

PHASE I BOND RELEASE RECOMMENDATION

The Division of Oil, Gas and Mining finds that Hiawatha Coal Company has completed Phase I reclamation of the 95.9 acre site as required by the regulations. It is recommended that bond release in the amount of \$564,536.00 be granted on this area. The Division received a letter from the OSM concurring with the Phase I bond release dated January 7, 2009.

State of Utah



Utah Oil Gas and Mining

Coal Regulatory Program

Hiawatha Mine Complex
Hiawatha Coal Company
Technical Analysis for Phase I Bond Release
January 12, 2009

TABLE OF CONTENTS

TECHNICAL ANALYSIS DESCRIPTION	1
SUMMARY OF DEFICIENCIES.....	3
GENERAL CONTENTS.....	4
IDENTIFICATION OF INTERESTS	4
POSTMINING LAND USES.....	4
SPOIL AND WASTE MATERIALS	5
Coal Mine Waste and Refuse Piles.....	5
RECLAMATION PLAN	6
GENERAL REQUIREMENTS	6
APPROXIMATE ORIGINAL CONTOUR RESTORATION	7
BACKFILLING AND GRADING.....	7
General.....	7
TOPSOIL AND SUBSOIL.....	8
Redistribution	8
HYDROLOGIC INFORMATION.....	11
Hydrologic Reclamation Plan.....	11
STABILIZATION OF SURFACE AREAS.....	13
BONDING AND INSURANCE REQUIREMENTS	13
General.....	13
Determination of Bond Amount	14
CUMULATIVE HYDROLOGIC IMPACT ASSESSMENT (CHIA).....	16

TECHNICAL ANALYSIS DESCRIPTION

TECHNICAL ANALYSIS DESCRIPTION

The Division ensures that coal mining and reclamation operations in the State of Utah are consistent with the Coal Mining Reclamation Act of 1979 (Utah Code Annotated 40-10) and the Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87). The Utah R645 Coal Mining Rules are the procedures to implement the Act. The Division reviews each permit or application for permit change, renewal, transfer, assignment, or sale of permit right for conformance to the R645-Coal Mining Rules. The Applicant/Permittee must comply with all the minimum regulatory requirements as established by the R645 Coal Mining Rules.

The regulatory requirements for obtaining a Utah Coal Mining Permit are included in the section headings of the Technical Analysis (TA) for reference. A complete and current copy of the coal rules can be found at <http://ogm.utah.gov>

The Division writes a TA as part of the review process. The TA is organized into section headings following the organization of the R645-Coal Mining Rules. The Division analyzes each section and writes findings to indicate whether or not the application is in compliance with the requirements of that section of the R645-Coal Mining Rules.

When review of an application results in findings of noncompliance with the R645-Coal Mining Rules, the Division discusses the deficiencies in the analysis sections and cites regulatory references for the deficiencies in the findings sections of the Draft TA. The regulatory references cited describe the minimum requirements for meeting the R645-Coal Mining Rules and obtaining a permit.

The Draft TA includes a summary list of deficiencies at the beginning of the document. The Applicant/Permittee will receive the summary list of deficiencies and a redline/strikeout version of the Draft TA at the completion of the review. As the Applicant/Permittee resolves the listed deficiencies, the Division modifies the Draft TA, until a Final TA with no deficiencies is written. Approval is based upon the Final TA. The Permittee will receive an electronic version of the Final TA.

The Final TA is the starting point for review of subsequent applications for permit change, renewal, transfer, assignment, or sale of permit right. The Division modifies the analysis and findings in the Final TA to reflect the changes in the application.

GENERAL CONTENTS

SUMMARY OF DEFICIENCIES

This document presents the Division's technical review of the mining and reclamation plan (MRP), including all amendments currently under review for permit [REDACTED]. The following summary lists all outstanding deficiencies identified by the Division.

Accordingly, the Division finds that the applicant has met all the requirements and approval of this Phase I bond release application, Task ID # 3104, is recommended with the following stipulations;

- a. The Permittee must provide clean copies of the bond release application package which encompasses the narrative, tables, maps and information provided in the six submittals dated January 11, July 9, July 21, August 13, August 19, 2008 and January 5, 2009.
- b. The Permittee must provide a revision to Exhibit V-13 Final Surface Configuration and associated cross sections, showing accurate existing topography of slurry pond 5A and Borrow Area A in accordance with R645-301-521.150 and accurate final configuration of Borrow areas A and F in accordance with R645-301-542.300.

GENERAL CONTENTS

IDENTIFICATION OF INTERESTS

Regulatory Reference: 30 CFR 773.22; 30 CFR 778.13; R645-301-112

Analysis:

The Mining and Reclamation Plan (MRP) Chapter I contains information on corporate ownership for the Hiawatha Mine. (Section R645-301-112). Hiawatha Coal Company, Inc. (HCCI) is the Permittee and operator of the site. Elliot Finley is the Resident Agent and President of HCCI.

The area under review for Phase I bond release, is located in Sec. 34 and 35 of T. 15 S., R. 8 E. In this Phase I bond release location, the surface lands and leases are owned by ANR Company. From 1997 to 2008, CW Mining subleased the coal from ANR Co. Information under review as Task 3084 indicates that this lease was transferred to HCCI in 2008.

Findings:

The information provided meets the minimum requirements of the Regulations.

POSTMINING LAND USES

Regulatory Reference: 30 CFR Sec. 784.15, 784.200, 785.16, 817.133; R645-301-412, -301-413, -301-414, -302-270, -302-271, -302-272, -302-273, -302-274, -302-275.

Analysis:

The premining land use is residential/industrial (Exhibit IV-4). The post mining land use will be the same, with vegetation seeded for wildlife and range (Sec. 333). Reclamation was designed to leave the historic portals associated with the Hiawatha #1 and #2 mines and the two Consolidated Fuel Co. mines (Sec. 412.140). The Hiawatha cemetery will not be affected by the reclamation (Section 411.141.2). An alternate historical district for the railroad corridor is discussed on page 5-41.

GENERAL CONTENTS

Findings:

The information provided meets the minimum requirements of the Regulations.

SPOIL AND WASTE MATERIALS

Regulatory Reference: 30 CFR Sec. 701.5, 784.19, 784.25, 817.71, 817.72, 817.73, 817.74, 817.81, 817.83, 817.84, 817.87, 817.89; R645-100-200, -301-210, -301-211, -301-212, -301-412, -301-512, -301-513, -301-514, -301-521, -301-526, -301-528, -301-535, -301-536, -301-542, -301-553, -301-745, -301-746, -301-747.

Analysis:

Coal Mine Waste and Refuse Piles

The reclamation topography is shown on Exhibit V-13 (dated 1998), and associated cross-sections for Slurry Pond 4 and borrow area F on V-13C and for Slurry pond 5 on V-13D. Neither Exhibit V-13 (dated 1999), nor exhibits recently provided with the bond release application clearly indicate existing contours of Slurry Pond 5A.

Slurry ponds/refuse cut and fill balance is stated on p.2-39 and in App. VIII-1, Tables 1-4. Remaining cut/fill work is estimated at 120,444 yd³ cut, with approximately the equivalent 125,259 yd³ fill for Slurry Pond 5A (see Table 1, App V-15) and 94,259 yd³ cut (to be spread out as topsoil over preparation plant area) with 9,326 yd³ fill at the upper railroad yard (see Table 4, App. V-15).

The proposed reclamation of Slurry Ponds 1 and 5A is described on pages 2-39 through 2-42. Sampling commitments for acid/toxic forming materials are included in this description. The northern portion of slurry pond 5, which is referred to as pond 5A was authorized in 2001* to receive coal mine waste from the Bear Canyon Mine. Slurry pond 5A is also being remined (pg 5-29, dated 2007). Slurry pond 5A is also used for run-off control (pg. 5-64) and will be the last structure to be reclaimed (pg. 5-78). An as built drawing and cross-sections of slurry pond 5A and borrow area A will be required at final reclamation.

Lifts of two feet and compaction to 90% maximum dry density are described in Section 541 (pg. 5-90). The MRP describes sixteen inches of soil cover over the mine waste based on the characteristics of the coal mine waste and on test plots (Sec. 231.200 ,p. 2-12 through 2-21 and App. III-5). Four feet of cover is required by R645-301-553.252 over any acid/toxic forming waste.

GENERAL CONTENTS

Findings:

The information provided does not meet the requirements of Tech Directive 006 "Requirements for Phased Bond Release" or the Rule: R645-301-880.110. Conditional approval of the bond release should be based upon receipt of a revision to Ex. V-13 and associated cross sections, showing accurate existing topography of slurry pond 5A in accordance with R645-301-521.150.

RECLAMATION PLAN

GENERAL REQUIREMENTS

Regulatory Reference: PL 95-87 Sec. 515 and 516; 30 CFR Sec. 784.13, 784.14, 784.15, 784.16, 784.17, 784.18, 784.19, 784.20, 784.21, 784.22, 784.23, 784.24, 784.25, 784.26; R645-301-231, -301-233, -301-322, -301-323, -301-331, -301-333, -301-341, -301-342, -301-411, -301-412, -301-422, -301-512, -301-513, -301-521, -301-522, -301-525, -301-526, -301-527, -301-528, -301-529, -301-531, -301-533, -301-534, -301-536, -301-537, -301-542, -301-623, -301-624, -301-625, -301-626, -301-631, -301-632, -301-731, -301-723, -301-724, -301-725, -301-726, -301-728, -301-729, -301-731, -301-732, -301-733, -301-746, -301-764, -301-830.

Analysis:

The Permittee requested Phase I bond release on January 10, 2008 for portions of the Hiawatha Mine in the vicinity of the preparation plant. The Phase I bond release field inspection was conducted on October 8, 2008. Exhibit II-4A (map) shows the plans for reclamation and Phase 1. The total reclaimed acreage under consideration for Phase I bond release is 106.5 acres as detailed on page 2-37 of the MRP, Section 241.

Slurry pond 4/Refuse Pile 2	26.37 acres
Preparation plant	5.51 acres
Borrow Area F	9.12 acres
Slurry pond 5 main cell	40.39 acres
Affected acres reclaimed	19.83 acres.

Findings:

The Permittee has met the minimum requirements of the Approximate Original Contour Restoration section of the Regulations.

GENERAL CONTENTS

APPROXIMATE ORIGINAL CONTOUR RESTORATION

Regulatory Reference: 30 CFR Sec. 784.15, 785.16, 817.102, 817.107, 817.133; R645-301-234, -301-412, -301-413, -301-512, -301-531, -301-533, -301-553, -301-536, -301-542, -301-731, -301-732, -301-733, -301-764.

Analysis:

The Permittee requested Phase I bond release on January 10, 2008 for portions of the Hiawatha Mine in the vicinity of the preparation plant. The Phase I bond release field inspection was conducted on October 8, 2008. Exhibit II-4A (map) shows the plans for reclamation and Phase 1. The total reclaimed acreage under consideration for Phase I bond release is 106.5 acres as detailed on page 2-37 of the MRP, Section 241.

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Preparation plant	5.51 acres
Borrow Area F	9.12 acres
Slurry pond 5 main cell	40.39 acres
Affected acres reclaimed	19.83 acres.

Findings:

The Permittee has met the minimum requirements of the Approximate Original Contour Restoration section of the Regulations.

BACKFILLING AND GRADING

Regulatory Reference: 30 CFR Sec. 785.15, 817.102, 817.107; R645-301-234, -301-537, -301-552, -301-553, -302-230, -302-231, -302-232, -302-233.

Analysis:

General

The Permittee has continued a program to backfill and grade the areas mentioned above. Table II-13 shows the status of acreages and the topsoil source available once the surface is regraded to AOC.

Findings:

The Permittee meets the minimum requirements of the Backfilling and Grading section of the regulations.

TOPSOIL AND SUBSOIL

Regulatory Reference: 30 CFR Sec. 817.22; R645-301-240.

Analysis:

Redistribution

This bond release application was reviewed under four separate task numbers: Task 2895, Task 3015, Task 3035, and the current submittal. The most recent information was assigned as Task , January 5, 2009. The review of this information was requested ahead of all other assigned tasks.

There are 290 acres in the Hiawatha disturbed area (as listed on the Hiawatha Inspection Report form). However, the MRP reports a total of 360 disturbed acres, of which, 250 acres will be reclaimed to wildlife and range habitat (Sec. 333, p. 36, dated 07/11/08).

Excluding roads, there are 221.36 disturbed acres are in the lower Hiawatha area (Sec. 241, p 37). Page 2-37 reports 106.5 acres have been reclaimed and Table II-13 itemizes the remaining reclamation work to be completed, including those areas not listed on page 2-37, such as Slurry Pond 5A Table III-3 lists approximately 112 acres within the lower Hiawatha area that will not be reclaimed as follows: roads 30.3 acres; railroad yard 15.2 acres; town 66.3 acres. The areas of reclamation in the vicinity of the preparation plant are illustrated on Exhibit II-4. Exhibit II-4A and pg. 2-37 provides the status of reclaimed and affected lands as of 2008 as follows:

- 26.37 acres of the 26.37 acre slurry pond 4/refuse pile 2 reclaimed;
- 5.51 acres of the 23.87 acre preparation plant reclaimed;
- 9.12 acres of Borrow Area F (all) reclaimed;
- 40.39 acres of the 40.39 acre Slurry pond 5 main cell reclaimed (15.51 acres remain active as a sediment basin as reported in Table II-13);
- 19.83 acres of the 29.11 "Affected" acres (in the preparation plant vicinity) reclaimed.

The total reclaimed acreage under consideration for Phase I bond release is 106.5 acres as detailed on page 2-37 of the MRP, Section 241. According to information on page 2-37, that leaves 39.23 acres to be reclaimed in the lower Hiawatha area. Exhibit II-4A provides a reference for the location of the reclaimed and remaining acres identified on page 2-37.

GENERAL CONTENTS

Earthwork (including seeding) at the Slurry pond 4/Refuse Pile 2, Slurry Pond 5 Main Cell, a portion of the Preparation Plant, and Borrow areas A and F was undertaken during the years 1996 – 2001 (according to Division records and the 2005 Annual Report). Refuse pile No 2 was constructed over Slurry Ponds 2 and 3 (pg. 5-78). Coarse refuse from Refuse pile #2 was pushed over the fines in Slurry Pond #4 during reclamation. The outslope was reduced to 4h:1v. The Slurry Pond #4/Refuse 2 site, along with borrow area F was seeded in 1996 (p. 2-39).

Slurry pond 5 (main cell) was re-mined and the embankments were pushed inward to a grade of 5h:1v. (2-39). Refuse in Slurry pond 5 was sampled on September 25, 1996 by the Division and Dan Guy, Blawhawk Engineering (consultant to US Fuel). The results of the refuse analysis are included in Appendix VII-18. As a result of these analyses, the Division found the refuse to be non-toxic/nonacidic (Davidson, Field report and memo dated 11/5/1996). However, after having found these analytical reports in the MRP and seeing them first hand, I am of the opinion that these analytical results indicate that the refuse has the potential to become acid forming over time, based upon its pyritic sulfur content and the reported pyritic AcidBase Potential between 7.6 and -0.19 Tons/1000Tons.

Substitute topsoil from Borrow Area "A" was applied to the regraded surface to a depth of sixteen inches. Seeding of at Slurry Pond #5 (main cell) was completed in the fall 1999 (p. 2-37, 2-39 and Table 5-7) or in the Fall of 2000 (Appendix VIII-5). The work is described in Sections R645-301-241, -242, -243, -244 and R645-301-541 of the MRP. Depth of topsoil application and seeding treatments are shown on Ex. II-4. Seed mix No 1 (Table III-5) was used on the borrow areas and seed mix #2 (Table III-6) was used on the slurry impoundments and refuse areas.

Site visits on April 18 and 23, 2008 documented surface roughening and the 16 inch topsoil cover depth on slurry ponds and refuse piles (shown on Ex II-4). In addition, I noted accumulations of salt on the eastern level surface of slurry pond #5 and marked the location on the PFO copy of Exhibit V-13. These salt accumulations are areas of limited vegetation growth and excessive erosion. Sediment from this area drains into slurry pond 5A.

HCCI committed to sampling and analysis of replaced topsoil (pg. 2-10, and pg. 5-104). Division records dated March 17, 1997 indicate that soil analysis from topsoil on Slurry pond #5 were received. The analyses resulted in a fertilizer recommendation. (These soil analyses of cover material could not be found in the MRP.) A fertilizer recommendation was also made for Slurry Pond #4 (Davidson memo dated October 8, 1996). Due to a fire in the engineering building at the Hiawatha town site in 2006, HCCI cannot confirm methods of fertilization of the reclaimed sites (slurry, refuse, and borrow areas), nor can they provide results of any testing done since 1997, on the east half of slurry pond 5.

Borrow Area A reclamation topography is shown on App. VII-18, Figure VII-18B, with cross-sections on Ex. A-VII-18A. Table II-12 and page 2-10 relates the depth of and volume of

GENERAL CONTENTS

soil cut from Borrow Area A. The MRP describes separate handling of the surface horizons from borrow area A for replacement onto the borrow areas after reclamation (pg.2-41 and pg. 5-108 and App VII-18). However, a Division field report dated December 3, 1996 indicates that this procedure may have been abandoned. Due to a fire in the engineering building at the Hiawatha town site in 2006, HCCI cannot verify whether the lowest excavated horizon at borrow area A was ripped and seeded or whether the lowest horizon excavated was covered with stockpiled surface horizon soil and then seeded. Neither Exhibit V-13 (dated 1999), nor exhibits recently provided with the bond release application reflect final topography of Borrow Area A to reflect the 114,000 yd³ cut and Borrow Area F to reflect the 42,000 yd³ cut (Table II-12).

Almost twenty acres described as "Affected Areas" have been reclaimed and are shown on Ex. II-4A as RA-1. They include sediment ponds and areas of coal fine accumulations. Future accumulations of coal fines will be placed either in slurry pond #1 or in Slurry pond #5A (pp. 5-104 and 5-106 of Sec. 541).

There are 54.74 acres remaining to be reclaimed in the Hiawatha Area (pg. 2-37 and Table II-13). The proposed reclamation of Slurry Ponds 1 and 5A is described on pages 2-39 through 2-42. Sampling commitments for acid/toxic forming materials are included in this description. The northern portion of slurry pond 5, which is referred to as pond 5A was authorized in 2001* to receive coal mine waste from the Bear Canyon Mine. Slurry pond 5A is also being remined (pg 5-29, dated 2007). Slurry pond 5A is also used for run-off control (pg. 5-64) and will be the last structure to be reclaimed (pg. 5-78).

*According to amendment AM01C waste was to be sampled and analyzed. Potentially acid/toxic forming refuse placed in Slurry pond 5A will be covered with four feet of soil. The 2005 and 2006 annual reports indicate that no refuse had been brought to "the north cell" of slurry pond 5 since 2001.

Findings:

In the course of this review, several commitments were noted in the MRP for final reclamation activity and they will be added to the annual report commitment list.

Records kept at the Hiawatha Town site were destroyed in a fire sometime in 2006. Consequently, HCCI can not provide information on soil handling. Limited information the Division files and the 2008 bond release inspections (recounted above) document surface soil cover depth on the slurry ponds as required by Tech Directive 006 "Requirements for Phased Bond Release" and the Rule R645-301-880.110. Conditional approval of the bond release should be based upon receipt of a revision to Ex. V-13 and associated cross sections, showing accurate final configuration of Borrow Areas A and F in accordance with R645-301-542.300.