



IN REPLY REFER TO:

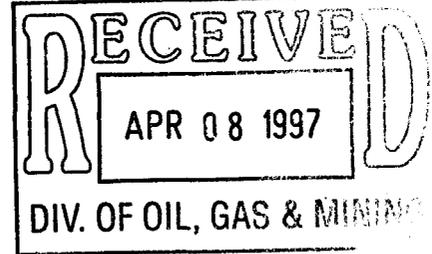
United States Department of the Interior

OFFICE OF SURFACE MINING
Reclamation and Enforcement
1999 Broadway, Suite 3320
Denver, Colorado 80202-5733

Pam file
File OSM incoming

April 3, 1997

James W. Carter, Director
Utah Division of Oil, Gas and Mining
3 Triad Center Suite 350
355 West North Temple
Salt Lake City, Utah 84180-1230



Dear Mr. Carter:

I am writing to provide you with information on OSM's Title V (Regulatory) Awards Program for 1997. As you know, OSM has utilized the awards program to recognize those coal mine operators who demonstrate a dedication to environmentally sound mining and reclamation practices by surpassing the basic legal reclamation requirements. Unfortunately, the awards program was canceled in 1996 due to budget problems.

As announced by Acting OSM Director Kathrine Henry on March 19, 1997, OSM is taking advantage of this year's 20th anniversary of SMCRA to renew the awards program. One of this year's awards, the "Best of the Best," will recognize specific individuals (including State program staff) responsible for the outstanding reclamation.

I am attaching a copy of Ms. Henry's public announcement, and also instructions for nominating operations. Nominations may be submitted by coal companies, State or federal program staff, industry associations, public interest groups, and landowners.

The deadline for submitting nominations is April 15, 1997. We realize that this is very short notice; we can probably obtain short extensions for the preparation of nomination packages, if someone wishes to nominate a particular operation.

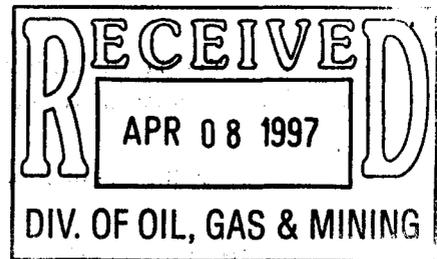
I and my staff are available to answer any questions and to assist in the preparation of nomination packages. If you have any questions, or require any assistance, please contact Randy Pair at (303) 844-1446.

Sincerely,

James F. Fulton

James F. Fulton, Chief
Denver Field Division

Enclosure



**OFFICE OF SURFACE MINING
RECLAMATION & ENFORCEMENT**

For Release **March 19, 1997**

Jerry Childress (202) 208-2719
jchildre@osmre.gov

**OSM ANNOUNCES 20th ANNIVERSARY
SURFACE COAL MINING RECLAMATION AWARDS PROGRAM**

Kathrine L. Henry, Acting Director of the Interior Department's Office of Surface Mining Reclamation and Enforcement (OSM), today announced a call for nominations for the 20th Anniversary Excellence in Surface Coal Mining and Reclamation Awards program.

"I am extremely pleased to announce that OSM is once again sponsoring a reclamation awards program, especially this year as we prepare to celebrate the 20th anniversary of the Surface Mining Control and Reclamation Act on August 3, 1997." Henry noted that OSM is resuming the awards, which were initiated in 1986, after being forced by budget constraints to forgo the program in 1996.

"Since passage of the surface mining law, land reclamation in the United States has become a built-in component of surface coal mining," Henry said. "In fact, successfully reclaimed land quickly begins to resemble its natural surroundings, with little about its finished appearance to suggest that it was even mined. The better a coal mine is reclaimed, the less there is to see."

"OSM started the annual program to give well-earned public recognition to those responsible for the nation's most outstanding achievements in environmentally sound surface mining and land reclamation," Henry said. "The awards also encourage more operators to strive for positive recognition by going above and beyond basic reclamation requirements. In addition, the awards program highlights what works best in various reclamation scenarios, so that more mine operators can adapt the most successful reclamation technology into their land restoration plans."

According to Henry, the awards program is designed so that state and federal regulators can publicly recognize the coal mine operators who follow the surface mining in the most exemplary manner. "Winners are mine operators who have developed

MORE

innovative reclamation techniques, or who have completed mining and reclamation operations that resulted in the most outstanding on-the-ground results," she added.

OSM will present four types of awards this year:

- **National Awards:** presented to coal mining companies for achieving the most exemplary mining and reclamation in the country. The award recognizes top-quality on-the-ground achievement of the goals of the surface mining law.
- **Director's Award:** a special award to one coal mining company from the OSM Director for outstanding achievement in a specific area of reclamation. This year the award will recognize a mine operator's special dedication and commitment that results in reclamation and post-mining land use benefitting the local community.
- **Best-of-the-Best Award:** One operation will be selected from this year's National Award winners to recognize the specific individuals (mine manager, reclamation specialist, state inspector, etc.) who were directly responsible for the outstanding reclamation accomplishment.
- **Reclamation Hall of Fame Award:** A 20th anniversary award will be presented to one or more mining operations who have won a national award in previous years. The one-time award will recognize the most outstanding past winners after the stand-out reclamation has passed the test of time.

Nominations are due to the state regulatory authorities, or the OSM field office in non-primacy states, by April 15, 1997. Winners will be announced and awards presented on August 3, 1997.

Detailed information about eligibility requirements, nomination procedures, rules, required information, and judging criteria for each award type are provided in the attachment to this press release.

March 19, 1997

20th Anniversary

Excellence in Surface Coal Mining and Reclamation Awards

History and objectives of the program

Since passage of the Surface Mining Control and Reclamation Act (SMCRA) in 1977, land reclamation in the United States has become a built-in component of surface coal mining. In fact, successfully reclaimed land quickly begins to resemble its natural surroundings, with little about its finished appearance to suggest that it was ever mined. The better a coal mine is reclaimed, the less there is to see.

To give well-earned public recognition to those responsible for the nation's most out-standing achievements in environmentally sound surface mining and land reclamation, the Interior Department's Office of Surface Mining Reclamation and Enforcement (OSM) initiated its annual Excellence in Surface Coal Mining Reclamation awards in 1986.

The awards program is designed so that state and federal regulators can publicly recognize the coal mine operators who implement SMCRA in the most exemplary manner. The winners are the coal mine operators who have developed innovative reclamation techniques or who have completed mining and reclamation operations that resulted in outstanding on-the-ground performance.

This year four types of awards will be presented: 1. National awards, 2. A Director's Award, 3. A Best-of-the-Best Award, and 4. A special Reclamation Hall of Fame Award.

1. National Awards. These annual awards are presented to coal mining companies for achieving the most exemplary mining and reclamation in the country. The awards recognize on-the-ground achievement of the Surface Mining Law.

2. Director's Award. Each year, one coal mining operation in the country is selected to receive the Director's Award for outstanding achievement in a specific area of reclamation. This year the award will recognize a mine operator whose dedication and commitment has resulted in reclamation (and post-mining land use) that benefits the local community.

3. Best-of-the-Best Award. One operation will be selected from this year's National Award winners. This special award will recognize the specific individuals (mine manager, reclamation specialist, state inspector) who were directly responsible for the outstanding accomplishment.

4. Reclamation Hall of Fame Award. This 20th anniversary award will be presented to one or more mining operations who have won a national award in the past. This one-time award will recognize the most outstanding past winner(s) after the reclamation has passed the test of time.

OSM initiates the annual award process by requesting nominations from mine operators and others knowledgeable about the coal mining industry. Each state regulatory authority selects the best nominations for judging at the national level for the Office of Surface Mining's annual awards.

Who is eligible for an award?

National, Director's, and Best-of-the-Best Awards:

✓ Surface coal mining and reclamation operations that have been conducted under a SMCRA Title V permit (either interim or permanent program) may be nominated for an award. The operation's exemplary performance under a SMCRA permit may be achieved during active mining, during reclamation, following bond release, or throughout the entire process.

Although Title IV Abandoned Mine Land reclamation projects are not included in this program, this aspect of reclamation is eligible for an award if it is integrated with Title V permitted operations.

Special Hall of Fame Award(s):

Only past National and Director's Award winners are eligible for this award.

How to nominate a surface coal mining operation for an award

Nominating a surface coal mining operation for an Office of Surface Mining award is the first step in the award selection process. Nominations may be submitted by coal companies, state or federal inspectors, coal associations, public interest groups, or landowners. Company officials and employees may nominate their own operations.

National Mining and Reclamation Awards.

A surface coal mining operation may be nominated for outstanding achievement in a specific portion of the reclamation (e.g., design and implementation of innovative sedimentation control practices) or for outstanding overall performance in meeting goals of SMCRA. Beginning this year there are two broad award categories for the National Awards.

1. Ongoing mining or reclamation that has achieved excellent results but is unproven because not enough time has passed to verify the long-term effectiveness of the results. This category allows active mining and reclamation methods that show great promise to be eligible for recognition. Nominations in this category should include on-the-ground results for however long the results have been in place.

2. Reclamation that has achieved bond release, or where enough time has passed to verify the long-term success of the work. Nominations submitted in this category **must** contain information and/or data that verifies the results. For example, a nomination for increased soil productivity on a reclaimed site would be verified with several years of crop yield data.

Director's Award.

The Director's Award for 1997 will be presented for exemplary reclamation that has had a direct benefit to the local community. The nomination should include a description of the reclamation and specific activities or community involvement that resulted. This may be for community benefits of the entire operation or one part of the reclamation.

Special Hall of Fame Award(s).

The description and photos in the nomination should describe the present on-the-ground conditions and land use at the award winning site. A resubmittal of the original nomination package is not necessary.

Rules and required information

Nominations should be submitted to the state regulatory authority, or in non-primacy states (Tennessee and Washington) to the local Office of Surface Mining field office. Nomination packages must be developed using the following format:

A. Cover sheet containing:

1. Company name.
2. Name and location of the nominated mining operation (nearest town).
3. Permit number(s) of site being nominated.
4. Award category. Nominations may be submitted in both the Director's Award and one of the two National Award categories.
5. Name, address, phone number, (and E-mail address if available) of person submitting nomination (and/or a company contact person).
6. Names and titles of individuals directly responsible for on-the-ground reclamation at the nominated site.

B. Narrative description of the specific reclamation or environmental control techniques that resulted in exemplary performance under SMCRA. The narrative should be comprehensive; but, not exceed six single-spaced typewritten pages and should describe the mining operation and the specific activity nominated for an award using the following outline:

- 1. Brief history/background of the mining and reclamation.**
- 2. Description of the nominated activity or reclamation practice, including specific problems, solutions, and unusual circumstances.**
- 3. On-site effectiveness of the work. This should be documented and quantified with data. For example, successful handling of acid materials could be shown with water quality sampling data.**
- 4. Transferability or value of the accomplishment(s) to other mining and reclamation operations.**
- 5. Long-term benefits to the landowner and local or regional community.**

C. Color photographs (not slides) should accompany the narrative description. The photos should show both the specific activity and the surrounding reclamation. When examined with the narrative description, the photographs should provide a clear understanding of the exemplary accomplishments. Photographs should be 8"x 10" or smaller, and labeled to explain what the photo shows. "Before and after" photos are desirable, but not required. There is no limit to the number of photographs that may be submitted.

Each nomination package must contain the required information (described above) in a three-ring, loose-leaf binder, plus five high-quality, stapled machine copies (e.g., Xerox) for use by the judges. Additional supporting information may be submitted with the nomination; however, it must be separate from the required information described above. Materials for nominations judged at the national level will not be returned.

Selection of the 20th anniversary award-winning operations

Nominations are due to the state regulatory authorities, or the Office of Surface Mining field office in non-primacy states, by April 15, 1997. Nominations will be screened by the regulatory authority, and the best entries (a maximum of four National Awards and one Director's Award candidate from each state) forwarded to the appropriate Office of Surface Mining field offices by May 1, 1997. Field offices will evaluate and forward the nominations to the Office of Surface Mining Washington, D.C., Headquarters for judging on May 15, 1997.

Selection of winners consists of several steps. A site visit by a field office representative is made to ensure that (1) on-the-ground performance conforms with the permit; (2) information in the nomination accurately reflects current site conditions; and (3) other mining and reclamation activities at the site do not detract from the award-winning activity.

Each nominee's SMCRA compliance record is examined to ensure that there are no outstanding

violations and to determine that there is no past record of poor cooperation in abating violations.

A panel of judges, composed of representatives of the Office of Surface Mining and other Interior Department bureaus, evaluates the nominations and selects the winners. Scoring is based on the following criteria:

Criteria	Maximum points
Clarity and completeness of nomination package	5
Difficulty of achieving reclamation under existing conditions	20
On-site effectiveness	30
Transferability of the technique or practice	12
Increased public awareness of SMCRA	8
Long-term benefits to the community	15
Exceeds the spirit and intent of SMCRA	10

Judges' scores are totaled, and winning nominations selected. Based upon the judges' decision, the number of National Awards may vary from year to year. Awards are not limited to one per state. Announcement of the 20th anniversary winners and presentation of awards will be made on August 3, 1997.

Address questions regarding nominations or the award program to the Office of Surface Mining field offices or to OSM Headquarters in Washington, D.C. Telephone, (202) 208-2719; E-mail, [getinfo @ osmre.gov](mailto:getinfo@osmre.gov)

Distribution List
Denver Field Division: 1997 Reclamation Awards

Robert Loeffler
Surface Mining Manager
Division of Mining and Water Management
3601 C Street, Suite 800
Anchorage, Alaska 99503-5935

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Department of Natural Resources
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Doug Larson, Executive Director
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Mr. Stewart Sanderson, President
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1600 Broadway, Suite 1340
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Ms. Carolyn Johnson
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1705 S. Pearl, Suite 5
Denver, CO 80210

Powder River Coal Company
Caller Box 3034
Gillette, WY 82717-3034

Alex Joran, President
Utah Mining Association
825 Kearns Bldg.
Salt Lake City, UT 84101



State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

John

Michael O. Leavitt
Governor
Ted Stewart
Executive Director
James W. Carter
Division Director

1594 West North Temple, Suite 1210
Box 145801
Salt Lake City, Utah 84114-5801
801-538-5340
801-359-3940 (Fax)
801-538-7223 (TDD)

March 26, 1997

James Fulton, Chief
Denver Field Division
Office of Surface Mining
1999 Broadway, Suite 3320
Denver, Colorado 80202-5733

Re: Semiannual Report
GR693493 Regulatory Grant

Sur
Dear Mr. Fulton:

Enclosed are three copies of the semiannual report for the above-cited grant. The report consists of the necessary forms OSM-51, OSM 51C, and SF269 financial report, and has been completed in a manner consistent with previous reports and from information derived from our monthly reports.

Should you or your staff have any questions, please have them contact Carl Jacobs, Federal Grants Coordinator, or Mary Ann Wright, Associate Director of Mining.

Very truly yours,

James W. Carter

James W. Carter
Director

vb

Enclosures

cc: M. Wright
C. Roberts
C. Jacobs

P:\GROUPS\MINES\WP\GRANT\GRANINFO.

U.S. DEPARTMENT OF THE INTERIOR
Office of Surface Mining
Washington, DC 20240

Performance Report

Program Narrative Statement

1. Type of Program (Check Appropriate Box)			
<input type="checkbox"/> Abandoned Mine Land Program		<input checked="" type="checkbox"/> State and Federal Program	
2. Grant Recipient	Type of Report	Reporting Period	Control Number(s)
Utah Division of Oil, Gas & Mining 1594 West North Temple, Suite 1210 Box 145801 Salt Lake City, Utah 84114-5801	Semiannual	7-1-96 to 12-31-96	GR693493
3. Project Title/Program			
Regulatory Grant			
4. Performing Organization			
Utah Division of Oil, Gas & Mining 1594 West North Temple, Suite 1210 Box 145801 Salt Lake City, Utah 84114-5801			
5. Program Narrative			
<p>Permitting activities for the semiannual reporting period included review of new permits, (including new leases), mid-term reviews and permit renewals. A comparison of semiannual performance with budgeted activity is attached.</p> <p>All Utah coal production is from underground mines, except one SMCRA-permitted coal refuse disposal area presently permitted as a surface mine producing fuel for a cogeneration facility.</p> <p>Inspection activities met the mandated frequency for partial and complete inspections.</p> <p>The Division is participating in the NEPA process with BLM, OSM and NPS on one major permitting activity.</p>			

U.S. DEPARTMENT OF THE INTERIOR
Office of Surface Mining

QUANTITATIVE PROGRAM MANAGEMENT INFORMATION

TO SUPPORT

THE INTERIM REGULATORY AND ADMINISTRATION AND ENFORCEMENT GRANT FOR STATE REGULATORY ASSISTANCE

1. Name of Grantee Utah Division of Oil, Gas & Mining 2. Grant Number Coal Regulatory Program - GR693493 3. Period Covered by This Report
From 7-1-96 to 12-31-96

4. DESCRIPTION OF ACTIVITY (Enter numbers for Budgeted Activity in Column (A) & Actual Activity in Columns (B) & (C))	5. PROGRAM NARRATIVE STATEMENT (Budgeted Activity) (A)	6. PERFORMANCE REPORT (ACTUAL ACTIVITY)		7. PERCENTAGE % (A) ÷ (C) = (D) (D)
		semi-annual (B)	yr. to date (C)	
A. Permitting Activity:				
1. Applications received (6 permit renewals, 2 mid-terms, 2 exploration, 0 new)	22	10		
2. Permits issued (1 renewal, 1 new)	9	2		
3. Amendments received	100	46		
4. Permit Amendments issued	100	56		
5. Regulated facilities:				
(a) Active mines (current mining activity)	16	17		
(b) Mines under reclamation only	11	11		
(c) Tipples	0	0		
(d) Processing facilities	4	4		
(e) Other	0	0		
6. Acreage disturbed (if available)	N/A	N/A		
7. Acreage reclaimed (if available)	N/A	N/A		
B. Inspection Actions:				
1. Complete Inspections:	120	62		
2. Partial Inspections:	200	108		
C. Complaints:				
1. Received	2	0		
2. Resolved	2	0		

U.S. DEPARTMENT OF THE INTERIOR
Office of Surface Mining

**QUANTITATIVE PROGRAM MANAGEMENT INFORMATION
TO SUPPORT**

THE INTERIM REGULATORY AND ADMINISTRATION AND ENFORCEMENT GRANT FOR STATE REGULATORY ASSISTANCE

1. Name of Grantee Utah Division of Oil, Gas & Mining 2. Grant Number Coal Regulatory Program - GR693493 3. Period Covered by This Report
From 7-1-96 to 12-31-96

4. DESCRIPTION OF ACTIVITY (Enter numbers for Budgeted Activity in Column (A) & Actual Activity in Columns (B) & (C))	5. PROGRAM NARRATIVE STATEMENT (Budgeted Activity) (A)	6. PERFORMANCE REPORT (ACTUAL ACTIVITY)		7. PERCENTAGE % (A) ÷ (C) = (D) (D)
		semi-annual (B)	yr. to date (C)	
D. Enforcement Actions:				
1. Notice of Violations issued	30	22		
2. Cessation orders issued	6	2		
3. Enforcement actions undergoing:				
(a) Administrative Adjudication	4	0		
(b) Court Adjudication:				
(1) Civil cases	1	0		
(2) Criminal cases	0	0		
4. Number of injunctions	0	0		
5. Number of bonds forfeited (Sunnyside on 11/22/96)	1	1		
6. Number of bonded areas released	4	0		
E. Lands Unsuitable Activity:				
1. Petitions received:				
(a) Number of petitions	1	0		
(b) Acreage involved	N/A	N/A		
2. Number of Acres designated unsuitable for Surface Mining	N/A	N/A		
F. Administrative Activity:				
1. Authorized State positions	24.1			
2. State position vacancies	1			

FINANCIAL STATUS RL RT
(Long Form)

(Follow instructions on the back)

1. Federal Agency and Organizational Element to Which Report is Submitted Department of Interior Office of Surface Mining		2. Federal Grant or Other Identifying Number Assigned By Federal Agency GR693493		OMB Approval No. 0348-0039	Page of 1 1 pages
3. Recipient Organization (Name and complete address, including ZIP code) Utah Division of Oil, Gas & Mining 1594 W. No. Temple St., Ste 1210, P.O. Box 145801 Salt Lake City, UT 84114-5801					
4. Employer Identification Number 87-6000545		5. Recipient Account Number or Identifying Number 97-0151		6. Final Report <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
7. Basis <input checked="" type="checkbox"/> Cash <input type="checkbox"/> Accrual					
8. Funding/Grant Period (See Instructions) From: (Month, Day, Year) 7-1-96		To: (Month, Day, Year) 6-30-97		9. Period Covered by this Report From: (Month, Day, Year) 7-1-96	
To: (Month, Day, Year) 12-31-96					
10. Transactions:					
Regulatory Grant					
		i	ii	iii	
		Previously Reported	This Period	Cumulative	
a. Total outlays		-0-	757,032	757,032	
b. Refunds, rebates, etc.		-0-	-0-	-0-	
c. Program income used in accordance with the deduction alternative		-0-	-0-	-0-	
d. Net outlays (Line a, less the sum of lines b and c)		-0-	757,032	757,032	
Recipient's share of net outlays, consisting of:					
e. Third party (in-kind) contributions		-0-	-0-	-0-	
f. Other Federal awards authorized to be used to match this award		-0-	-0-	-0-	
g. Program income used in accordance with the matching or cost sharing alternative		-0-	-0-	-0-	
h. All other recipient outlays not shown on lines e, f or g		-0-	115,069	115,069	
i. Total recipient share of net outlays (Sum of lines e, f, g and h)		-0-	115,069	115,069	
j. Federal share of net outlays (line d less line i)		-0-	641,963	641,963	
k. Total unliquidated obligations				-0-	
l. Recipient's share of unliquidated obligations				-0-	
m. Federal share of unliquidated obligations				-0-	
n. Total federal share (sum of lines j and m)				641,963	
o. Total federal funds authorized for this funding period				1,288,982	
p. Unobligated balance of federal funds (Line o minus line n)				647,019	
Program income, consisting of:					
q. Disbursed program income shown on lines c and/or g above				-0-	
r. Disbursed program income using the addition alternative				-0-	
s. Undisbursed program income				-0-	
t. Total program income realized (Sum of lines q, r and s)				-0-	
11. Indirect Expense					
a. Type of Rate (Place "X" in appropriate box)					
<input type="checkbox"/> Provisional <input type="checkbox"/> Predetermined <input checked="" type="checkbox"/> Final <input checked="" type="checkbox"/> Fixed					
b. Rate 35.0%		c. Base 1,194,621		d. Total Amount 418,117	
				e. Federal Share 354,563	
12. Remarks: Attach any explanations deemed necessary or information required by Federal sponsoring agency in compliance with governing legislation.					
13. Certification: I certify to the best of my knowledge and belief that this report is correct and complete and that all outlays and unliquidated obligations are for the purposes set forth in the award documents.					
Typed or Printed Name and Title James W. Carter, Director				Telephone (Area code, number and extension) (801) 538-5326	
Signature of Authorized Certifying Official <i>James W. Carter for JWC</i>				Date Report Submitted 3-27-97	



IN REPLY REFER TO:

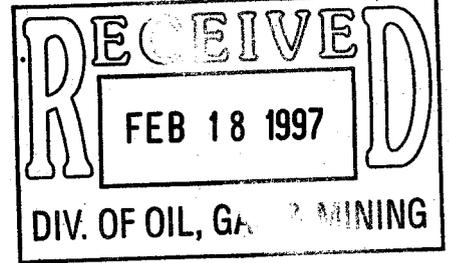
United States Department of the Interior

OFFICE OF SURFACE MINING

Reclamation and Enforcement
1999 Broadway, Suite 3320
Denver, Colorado 80202-5733

February 13, 1997

*Please file orig
in OSM Incoming
cc -> LDB
MAW
RWD*



*AGL
Done
3/4/97
dr*

Mr. James W. Carter, Director
Division of Oil, Gas & Mining
1594 West North Temple, Suite 1210
P.O. Box 145801
Salt Lake City, UT

Dear Mr. Carter:

Thank you for your January 29, 1997, letter regarding proposed water replacement legislation applicable to underground coal mines. The Office of Surface Mining Reclamation and Enforcement (OSM) has completed review of the letter's clarifying information for Utah's December 12, 1996, informally-proposed amendment (State Program Amendment Tracking System No. UT-035-INF). OSM agrees that the proposed amendment, as supplemented by the clarifying information, is no less stringent than the Surface Mining Control and Reclamation Act of 1977.

If you have any questions, please call me at (303) 844-1424 or Dennis Winterringer, Senior Environmental Protection Specialist, at (303) 844-1440.

Sincerely,

James F. Fulton, Chief
Denver Field Division

Enclosure

cc: Regional Solicitor,
Rocky Mountain Region



State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

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Executive Director

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801-538-7223 (TDD)

February 12, 1997

Kathryn Henry
Acting Director
Office of Surface Mining
Reclamation & Enforcement
1951 Constitution Avenue, NW
Washington, DC 20240

Dear Kay:

First, congratulations on your not-so-recent appointment as Acting Director of OSM. I am delighted and am looking forward to working with you during your tenure which, I hope, is extended.

I am also writing to reinforce whatever positive reports you have been getting about the new oversight program, and to attempt to put into perspective some of the concerns I have heard expressed.

OSM oversight of the Utah coal regulatory program for oversight year 1996 was nothing short of a complete success. I am attaching to this letter a copy of the oversight final report, as well as final reports for each of the oversight elements. You can tell by looking at the list of elements; citizen involvement, erosional stability, protection of surface and groundwater, alternate sediment controls, revegetation success and elimination of highwalls; that the oversight team did not shy away from the tough issues. This year the oversight elements will include a continuation of work on highwall elimination, approximate original contour, citizen involvement, and protection of surface and groundwater quality, and will add my old favorite, mine access roads.

If you will compare that list with the subject matter of the ten-day notices and direct federal enforcement actions taken in Utah since April 1993 when I assumed my position, you'll find an almost perfect match. These days oversight, rather than enforcement, is the way that program issues are raised and resolved. In my view, this is exactly as it should be, and I welcome the opportunity to address and resolve all issues relating to the actual performance of the Utah regulatory program.

I have heard that there has been pressure from some quarters to re-institute random sample inspections by OSM as part of the oversight process. I believe this would be a serious mistake and a step backward, rather than forward, in ensuring state program implementation is meeting the necessary performance standards. In the past, the purpose of random sample inspections was primarily to determine whether or not state inspectors were writing violations. I would respectfully suggest that whether or not state inspectors are

Page 2
Kathryn Henry
February 12, 1997

writing the kinds of violations that OSM inspectors would write is only tangentially related to the overall successful performance of state programs. The entire thrust of the new oversight is to directly measure the degree of success of the states efforts, rather than scrutinize the efforts themselves.

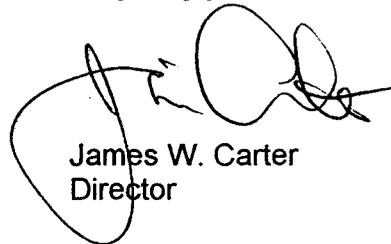
There are those who believe that oversight is federal implementation of the regulatory program. I strongly disagree, and instead believe that implementation of the program should be left to the states and that oversight by OSM should be measurement of the success of the state's efforts and development of plans of corrective action when the needed results are not achieved. I do not want to see the significant progress that has been made turning the federal-state relationship into a productive one undermined by a return to the "gotcha" tactics of a few years ago.

To those who suggest random sample inspections, I would ask, "What are you afraid we might find and where might we find it?" I would then suggest that instead of beating the brush in hopes of flushing out some wrongdoing, we send the cops to where the crime is directly, identify the issue if one exists and resolve it. The focused inspections that the new oversight contemplates give ample opportunities for interaction between OSM inspectors and state inspectors concerning enforcement policy and technique.

While I'm warmed up, there is one other matter I'd like to point out, and it does relate to our 1997 oversight plan. With the Court of Appeals' recent conclusion that SMCRA means what it says, my attention is drawn to the term "lands affected by the construction of new roads or the use of existing roads, to gain access to the site of activities and for haulage...etc". I don't see an exception in there for Interstate highways. I doubt this court would affirm exclusion of any public roads from the definition of lands affected on any basis. Unless we are all prepared to begin permitting Interstate highways with coal trucks on them (like I-70, for example) I think we should consider a well-crafted SMCRA amendment to clarify things. Just a thought.

Again, congratulations on your appointment and I hope to see you sometime in the not too distant future.

Very truly yours,



James W. Carter
Director

dr
Attachment
osm.l
cc: Doug Larson
Greg Conrad
Dan Schrumm



State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

Michael O. Leavitt
Governor

Ted Stewart
Executive Director

James W. Carter
Division Director

355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203
801-538-5340
801-359-3940 (Fax)
801-538-5319 (TDD)

January 29, 1997

Mr. James F. Fulton
Chief, Denver Field Division
Office of Surface Mining Reclamation & Enforcement
U.S. Department of the Interior
1999 Broadway, Suite 3320
Denver, CO 80202-5733

Re: Proposed Water Replacement Legislation Applicable to Underground Coal Mines
in Utah (Utah Senate Bill 12)

Dear Jim:

With regard to the above matter, thank you for your letter of January 2, 1997. In an effort to incorporate the Energy Policy Act of 1992 water replacement requirements applicable to underground coal mines into the Utah Coal Program, the Division of Oil, Gas & Mining ("DOGM") and the Board of Oil, Gas Mining ("BOGM") have both received extensive input from interested members of the public, including Utah water users and Utah coal operators, over the course of the past eighteen months. As a result of that process, the water users, the operators and DOGM have collectively agreed on the following proposed water replacement legislation:

"(c) Subject to the provisions of Section 40-10-29, the permittee shall promptly replace any state-appropriated water in existence prior to the application for a surface coal mining and reclamation permit, which has been affected by contamination, diminution, or interruption resulting from underground coal mining operations."

The above proposal, which is part of a pending Utah Senate Bill 12, will, if adopted, become Utah Code Section 40-10-18(15)(c).

Your letter indicates that the Office of Surface Mining ("OSM") feels, based on its preliminary review of the proposed bill, that the above-quoted water replacement language would be less stringent than the Surface Mining Control & Reclamation Act of 1977, as amended. However, you have also graciously invited further dialogue with DOGM on the proposal. In that spirit, I am sending this letter to provide further



Mr. James F. Fulton
January 29, 1997
Page 2

clarification and background information. After OSM has an opportunity to review the information set forth below, I would hope that OSM will be willing to reverse its review finding. Indeed, I think OSM should find instead that the proposed Utah water replacement language is more stringent, not less stringent, than the water replacement provisions made part of SMCRA through the Energy Policy Act of 1992.

Based on the analysis set forth in the staff document enclosed with your letter, it appears that your staff has identified only two issues of concern with regard to the Utah water replacement proposal set forth above. I will address each issue in turn.

The OSM staff's first issue concerns the first clause of the Utah proposal, which reads: "Subject to the provisions of Section 40-10-29,...." The clause in question is in the Utah proposal expressly at the request of Utah water users, so DOGM would like to keep that clause. Significantly, your staff really has no strong objection to the quoted clause. The staff document enclosed with your letter states: "The referencing of U.C.A. 40-10-29 does not make the proposed 40-10-18(15)(c) less stringent than section 720(a) of SMCRA; however, for the benefit of those persons who may not be familiar with court decision and that may be confused by the proposed statutory provision, Utah may wish to delete the reference to U.C.A. 40-10-29." *Id.* at 1 (emphasis added).

Your staff suggests that the "subject to" clause in question is an apparent cross-reference to subsection 2 of Utah Code Section 40-10-29 (i.e., the Utah statute which requires water replacement at surface coal mines). However, it appears to DOGM that the "subject to" clause in the proposed bill more logically should be read as a deliberate cross-reference to subsection 1 of Utah Code 40-10-29, which subsection states:

"(1) Nothing in this chapter shall be construed as affecting in any way the right of any person to enforce or protect, under applicable law, his interest in water resources affected by a surface coal mining operation."

Id. In other words, the water users want the "subject to" clause because they want make absolutely clear that the new water replacement provisions in the Utah Coal Program supplement, rather than replace, any other common law or statutory remedies otherwise available to them. Stated otherwise, the water users are happy to get a new SMCRA-inspired statutory remedy for water replacement, but they do not want to give up other water resource protection remedies, if any, which they may already have under applicable

Mr. James F. Fulton
January 29, 1997
Page 3

water law. DOGM does not think Congress intended to deprive water users of other existing remedies. Therefore, the "subject to" clause clearly does not make the Utah proposal less stringent than Section 720(a) of SMCRA.

The second issue identified by OSM's staff concerns the phrase in the Utah proposal which reads "the permittee shall promptly replace any state-appropriated water..." *Id.* Your staff observes: "The proposed provision is the same as the counterpart provision at Section 720(a)(2) of SMCRA except that the SMCRA provision protects 'any drinking, domestic, or residential water supply from a well or spring' instead of 'any state-appropriated water.'" *Id.* at 1. The reason the Utah proposal is more stringent than SMCRA, not less stringent, is the Utah phrase "any state-appropriated water" provides broader water replacement protection than does the narrower federal phrase "any drinking, domestic, or residential water supply from a well or spring." For example, state-appropriated agricultural irrigation water and state-appropriated industrial water must be replaced under the Utah proposal, whereas SMCRA only protects drinking, domestic and residential water supplies.

Your staff writes: "If users of water that has not been appropriated by the State can be legitimate water users under State water law, it would appear that proposed U.C.A. 40-10-18-15(c) is less stringent than section 720(a)(2) of SMCRA." *Id.* (emphasis in original). Under Utah water law, a person or entity cannot be a "legitimate" water user if he/she/it is using water that has not been appropriated by the State. The deliberately broad phrase "any state-appropriated water" covers the universe of legal Utah water uses by the universe of legal water users.

Utah Code Section 73-1-1 states: "All waters in this state, whether above or under the ground, are hereby declared to be the property of the public, subject to all existing rights to the use thereof." Similarly, making clear that appropriation is the sole and exclusive method of acquiring the right to use water in Utah, Utah Code Section 73-3-1, entitled "Appropriation - Manner of Acquiring Water Rights," states:

"Rights to the use of the unappropriated public waters in this state may be acquired only as provided in this title. No appropriation of water may be made and no rights to the use thereof initiated and no notice of intent to appropriate shall be recognized except application for such appropriation first be made to the state engineer in the manner hereinafter provided.

and not otherwise. The appropriation must be for some useful and beneficial purpose, and, as between appropriators, the one first in time shall be first in rights; provided, that when a use designated by an application to appropriate any of the unappropriated waters of the state would materially interfere with a more beneficial use of such water, the application shall be dealt with as provided in Section 73-3-8. No right to the use of water either appropriated or unappropriated can be acquired by adverse use or adverse possession."

Id. (emphasis added).

There are many reported decisions by the Utah Supreme Court affirming the comprehensive scope of the water appropriation process in Utah. For example, in J.J.N.P. Co. v. State of Utah ex rel. Division of Wildlife Resources, 655 P.2d 1133 (Utah 1982), the Utah Supreme Court, citing Utah Code Section 73-1-1 and other Utah water statutes, explained that state-appropriated water is all the water, as follows:

"....Thus, individuals have no ownership interest as such in natural waters, only the right to put the water to certain uses. "Beneficial use shall be the basis, the measure and the limit of all rights to the use of water in this state," § 73-1-3, and the right to beneficial use may be acquired only by compliance with the legal procedures for appropriation of a given right. But appropriation does not confer an ownership interest in the water itself. Daniels Irrigation Co. v. Daniel Summit Co., Utah, 571 P.2d 1323 (1977); Salt Lake City v. Salt Lake City Water & Elec. Power Co., 24 Utah 249, 67 P. 672 (1902).

The State regulates the use of the water, in effect, as trustee for the benefit of the people. Tanner v. Bacon, 103 Utah 494, 516, 136 P.2d 957, 966-967 (1943) (Larson, J., concurring). Accord Day v. Armstrong, Wyo., 362 P.2d 137 (1961); see also Ne-Bo-Shone Association v. Hogarth, 7 F. Supp. 885 (W.D. Mich. 1934), aff'd, 81 F.2d 70 (6th Cir. 1936). Public ownership is founded on the principle that water, a scarce and essential resource in this area of the country, is indispensable

to the welfare of all the people; and the State must therefore assume the responsibility of allocating the use of water for the benefit and welfare of the people of the State as a whole. . . .

Id. (emphasis added).

Under Utah water law, the State Engineer is the official who has plenary authority over comprehensive water appropriation process described above. Utah Code Section 73-2-1, entitled, "State Engineer - Term - Powers and Duties - Qualification for Duties," makes clear that the State Engineer is empowered to bring litigation to enjoin the unlawful appropriation, diversion and use of non-appropriated water, as follows:

- (1) There shall be a state engineer.
- (2) The state engineer shall:
 - (a) be appointed by the governor with the consent of the Senate;
 - (b) hold his office for the term of four years and until his successor is appointed; and
 - (c) have five years experience as a practical engineer or the theoretical knowledge, practical experience, and skill necessary for the position.
- (3) (a) The state engineer shall be responsible for the general administrative supervision of the waters of the state and the measurement, appropriation, apportionment, and distribution of those waters.
 - (b) The state engineer shall have the power to:
 - (i) make and publish rules necessary to carry out the duties of his office;
 - (ii) secure the equitable apportionment and distribution of the water according to the respective rights of appropriators; and
 - (iii) bring suit in courts of competent jurisdiction to:
 - (A) enjoin the unlawful appropriation, diversion, and use of surface and underground water;
 - (B) prevent waste, loss, or pollution of those waters; and
 - (C) enable him to carry out the duties of his office.
- (4) (a) The state engineer may establish water districts and define their boundaries.

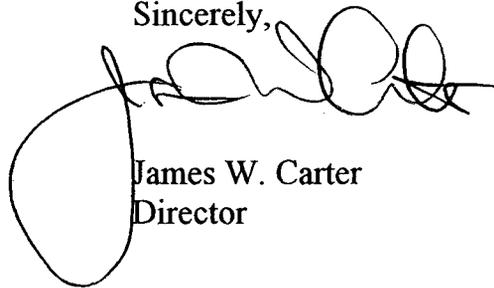
Mr. James F. Fulton
January 29, 1997
Page 6

- (b) The water districts shall be formed in a manner that:
(i) secures the best protection to the water claimants; and
(ii) is the most economical for the state to supervise.

Id. (emphasis added). As for the hypothetical illegal water user, certainly Congress did not intend to stand Western water law on its head so as to require coal companies to "replace" non-appropriated water being used illegally.

For the above reasons, DOGM respectfully requests that OSM update its review finding so as to make the finding that the Utah water replacement proposal set forth above is more stringent than the corresponding water replacement language in Section 720(a) of SMCRA.

Sincerely,

A handwritten signature in black ink, appearing to read 'James W. Carter', written over a large, stylized, circular flourish.

James W. Carter
Director

ca
p:m-jff1.197



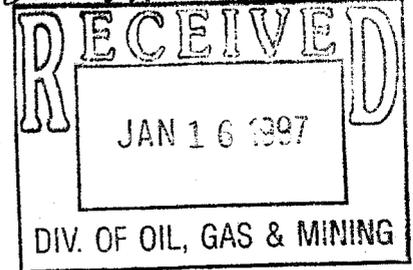
IN REPLY REFER TO:

United States Department of the Interior

OFFICE OF SURFACE MINING
Reclamation and Enforcement
1999 Broadway, Suite 3320
Denver, Colorado 80202-5733

JAN 13 1997

*Toni - This is an orig -
Please file. No action
was taken on this due
to a court decision*



*that made it partially a
most question. OSM will
follow up.*

*EMD
8/7/97*

Mr. James W. Carter, Director
Division of Oil, Gas and Mining
1594 West North Temple, Suite 1210
P.O. Box 145801
Salt Lake City, UT 84114-5801

Dear Mr. Carter:

On October 28, 1994, the Office of Surface Mining Reclamation and Enforcement (OSM) promulgated changes and additions to the existing ownership and control rules at 30 CFR 701, 773, 778, 840 and 843. These rules became effective November 28, 1994. The regulations require regulatory authorities to use OSM's Applicant Violator System (AVS) and other information sources to identify ownership and control links between permit applicants and violators. They establish the procedures, standards and type of proof required to challenge ownership and control links and to disprove violations. They amend several regulations affecting blocking of permits, abatement of violations, improvidently issued permits and permit application information.

Under 30 CFR 732.17(d), OSM must notify States of all changes in the Surface Mining Control and Reclamation Act (Act) and the Federal regulations that may require a State to modify its regulatory program to remain consistent with all Federal requirements. Pursuant to 30 CFR 732.17(c), OSM also must notify States whenever it determines that such amendments are in fact required.

In compliance with these regulations, OSM has determined that States must amend their programs as necessary to be no less effective than the changes and additions which resulted from promulgation of the Federal regulations. The enclosed list of changes provides only an abbreviated description of the potentially required amendments; the full Federal Register text and preamble (enclosed) should be consulted when developing the precise language of the State amendments. Following your review of the enclosed list, we will be glad to discuss how these changes relate to your program.

In accordance with 30 CFR 732.17(f)(1), I am requesting that, within 60 days of this letter, you submit either proposed written amendments or a description of amendments to be proposed in response to the revised Federal regulations, and a timetable for enactment. The timetable should include the dates by which you intend to submit the amendments and a schedule for the State

legislative and rule making procedures. As always, if you believe no amendment is necessary in a specific instance, please so advise and OSM will consider any rationale you wish to submit.

Please address all submittals to James F. Fulton, Chief, Denver Field Division. Any questions or requests for assistance also should be directed to Mr. Fulton at 303-844-1424.

We look forward to working with you on this issue.

Sincerely,

Russell F. Pisci, acting
for Richard J. Seibel, Regional Director
Western Regional Coordinating Center

Enclosures

cc: Regional Solicitor,
Rocky Mountain Region

**PROGRAM CHANGES THAT MAY BE NEEDED AS A RESULT OF
THE OCTOBER 28, 1994, FEDERAL REGULATIONS AT
30 CFR PARTS 701, 773, 778, 840 AND 843
(59 FR 54306)**

A. DEFINITIONS

30 CFR 773.5

The new regulation adds definitions for "Applicant Violator System," "Federal violation notice," "Ownership and control link," "State violation notice," and "Violation notice."

"Applicant Violator System (AVS)" means the computer system maintained by OSM to identify ownership and control links involving permit applicants, permittees, and persons cited in violation notices.

"Federal violation notice" means a violation notice issued by OSM or by another agency or instrumentality of the United States.

"Ownership and control link" means any relationship included in the definition of "owned or controlled" or "owns or controls" in § 773.5 or in the violations review provisions of § 773.15(b). It includes any relationship presumed to constitute ownership and control under § 773.5(b) unless such presumption has been successfully rebutted under §§ 773.24 and 773.25 of this rule or under provisions of part 775 and § 773.25 of this rule.

"State violation notice" means a violation notice issued by the State regulatory authority or by another agency or instrumentality of State government.

"Violation notice" means any written notification from any governmental agency advising of violations of the Act or any other laws which would form the basis for a regulatory authority to deny issuance of a permit in accordance with the criteria contained in § 773.15(b) of the regulations.

B. REVIEW OF PERMIT APPLICATIONS

1. 30 CFR 773.15(b)(1)

Requires the regulatory authority to review all reasonably available information concerning violation notices and ownership and control links involving the applicant. Such information would include that obtained pursuant to § 773.22 (verification of ownership and control application information); § 773.23 (review of ownership or control and violation information); § 778.13 (identification of interest); and § 778.14 (violation information).

2. 30 CFR 773.15(b) (1)

Provides that in the absence of a failure-to-abate cessation order, a regulatory authority may presume that a notice of violation for which the abatement period has not expired is being corrected to the satisfaction of the issuing agency with jurisdiction. This section further provides that applicants must certify in the permit application that the violation is in the process of being abated.

3. 30 CFR 773.15(b) (2)

Provides that any permits issued pursuant to a presumption and certification under § 773.15(b) (1) must be "conditionally issued" based upon successful completion of the necessary abatement.

C. IMPROVIDENTLY ISSUED PERMITS

1. 30 CFR 773.20(b) (2)

Makes the provisions of § 773.25 (standards for challenging ownership and control links and status of violation) applicable when the regulatory authority determines whether a violation, penalty or fee existed at the time that it was cited, remains unabated or delinquent, has been corrected, is in the process of being corrected, or is the subject of a good faith appeal, and whether any ownership and control link between the permittee and the person responsible for the violation, penalty or fee existed, still exists or has been severed.

2. 30 CFR 773.20(c) (2)

Requires that a regulatory authority which decides to suspend a permit provides at least 30 days prior written notice to the permittee. If the regulatory authority decides to rescind a permit, it must provide notice under § 773.21. Also, the regulatory authority must give the permittee the opportunity to request an administrative review under the State program equivalent to 43 CFR 4.1370 - 4.1377.

D. IMPROVIDENTLY ISSUED PERMITS:
RESCISSION PROCEDURES

30 CFR 773.21(a)

Makes the provisions of § 773.25, standards for challenging ownership or control links and the status of violation, applicable when a regulatory authority invokes the automatic suspension and rescission procedures.

E. VERIFICATION OF OWNERSHIP AND CONTROL
APPLICATION INFORMATION

30 CFR 773.22

Adds new procedural requirements to ensure that the regulatory authority develops complete and accurate information as to the identification of the applicant, and all owners or controllers of the applicant prior to making a determination on a permit application and enters such information promptly into the AVS.

F. REVIEW OF OWNERSHIP OR CONTROL AND
VIOLATION INFORMATION

30 CFR 773.23

Delineates the regulatory authority's review obligations with respect to a permit application after the regulatory authority has completed the process of verifying ownership and control under § 773.22.

G. PROCEDURES FOR CHALLENGING OWNERSHIP
OR CONTROL LINKS SHOWN IN AVS

30 CFR 773.24

New § 773.24 establishes the procedures to be followed if a person wishes to challenge an ownership or control link shown in the AVS. Paragraph (a)(3) requires challenges to the status of State violations to be in accordance with the State program equivalents to paragraphs (b) through (d) and § 773.25. Thus, to be no less effective, States need to include provisions consistent with § 773.24(a) and add procedures similar to those of paragraphs (b) through (d) with adaptations necessary to conform to State agency and administrative review requirements and practices.

H. STANDARDS FOR CHALLENGING OWNERSHIP OR CONTROL
LINKS AND THE STATUS OF VIOLATIONS

30 CFR 773.25

New § 773.25 establishes standards for challenges to ownership or control links or the status of violations. The section allocates responsibilities between OSM and State regulatory authorities for resolving issues related to ownership and control and provides the standards for evidence to resolve such issues. States need to amend their programs to include counterparts to provisions that apply to them.

I. PERMIT APPLICATION - MINIMUM REQUIREMENTS FOR
LEGAL, FINANCIAL, COMPLIANCE AND RELATED INFORMATION

30 CFR 778.14(c)

Paragraph (c) of § 778.14 is amended to require a permit applicant to disclose "all violation notices" received by the applicant within the preceding 3 years. In addition, the introductory language of the provision is amended to require the disclosure of all outstanding violation notices for any surface coal mining operation that is deemed or presumed to be owned or controlled by either the applicant or by any person who is deemed or presumed to own or control the applicant under definitions of "owned or controlled" or "owns or controls" under § 773.5.

In addition, OSM has amended § 778.14(c) to provide that for each notice of violation issued pursuant to § 843.12 or under a Federal or State program for which the abatement period has not expired, the applicant must certify that such notice of violation is in the process of being abated to the satisfaction of the agency with jurisdiction over the violation.

*Copy Lowell, Mary Anne,
Hernandez, Joe
Leading
File*

Applicant Violator System Office System Advisory Memorandum

SAM # 29 DATE: May 14, 1997



Subject: Applicant Violator System Recommendations

File OSM INCOMING

On January 31, 1997, in National Mining Ass'n v. Department of Interior, Nos. 95-5434, etc. (D.C. Cir.) (consolidated), the U.S. Court of Appeals invalidated OSM's 1988 ownership and control regulations, as well as OSM's 1989 permit information and permit rescission rules. The Court held that section 510(c) of SMCRA only allows permit blocking when the applicant owns or controls an operation with outstanding violations. OSM's rules went further in requiring permit blocks when any person who owns or controls the applicant is currently in violation. The decision took effect April 16, 1997.

The Court struck down the three regulations based on a finding that one provision in one of the regulations exceeded the authority of SMCRA. In doing so, it also struck down provisions of the regulations that were consistent with the Court's interpretation of section 510(c), and created a great deal of uncertainty among state regulatory authorities about how to implement the permit-block sanction. To remove this uncertainty, OSM published interim final rules on April 21, 1997, at 62 FR 19449 -19461. Under these regulations, OSM will review AVS information to ensure that recommendations provided to regulatory authorities are consistent with the court's decision.

Effective immediately, OSM will provide States with "DENY" or "CONDITIONAL ISSUE" recommendations only when the applicant, or any surface coal mining operation owned or controlled by the applicant, is in violation. The court's ruling effectively eliminates OSM's ability to permit block an applicant solely on the basis of unabated violations attributed to individuals and entities that own or control the applicant.

When a regulatory authority requests a recommendation from the AVS, OSM will take the following actions:

1. If the system recommendation is "ISSUE", OSM will conduct an accuracy check and make sure that no additional data are available that might change the system recommendation. OSM will then provide its recommendation to the State as in the past. In those cases where additional information becomes available that would change the system recommendation from "ISSUE" to "DENY" or "CONDITIONAL ISSUE", items 2 and 3 below apply.
2. If the system recommendation is "DENY" or "CONDITIONAL ISSUE", OSM will determine if the applicant, or any surface coal mining operation owned or controlled by the applicant, is in violation. If so, OSM will provide the appropriate recommendation to the State based on a review of all available data, as in the past, even if the recommendation is "DENY" or "CONDITIONAL ISSUE". Since the court's decision does not impact these cases, these violators should continue to be permit blocked.
3. If the "DENY" or "CONDITIONAL ISSUE" system recommendation is based solely on a violation attributed to individuals or companies that own or control the applicant, OSM will check the accuracy of system data and the availability of any additional data. If there is no information that would change the recommendation, OSM will respond to the State with "OTHER", which means that the system data are accurate but that, because of the court

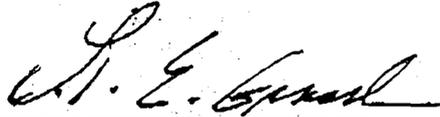
SAM # 29
May 14, 1997
page 2

decision, OSM cannot recommend a permit block. The "OTHER" response is new in the AVS and was added specifically for these purposes.

The collection and maintenance of ownership and control information and violation data is not affected by the court's decision. As in the past, all States are to continue entering this information into the AVS to maintain the accuracy and usefulness of the AVS database. OSM will continue to update the AVS with permit, ownership and control, and violation data where it is the permitting authority. Updating interstate organizational family trees with data provided by the States and companies will continue in the same manner as in the past.

The Lexington AVS Office is here to help you in any way possible. Please feel free to contact us at 1-800-643-9748 if you need any assistance or have any questions about this new process.

Signed;



Lawrence E. Grasm, Chief
AVS Office, Lexington