

FILED

BEFORE THE BOARD OF OIL, GAS & MINING

JUN 16 1992

DEPARTMENT OF NATURAL RESOURCES

SECRETARY, BOARD OF OIL, GAS & MINING

STATE OF UTAH

IN THE MATTER OF NOTICE OF	)	HIDDEN VALLEY COAL COMPANY'S
VIOLATION N91-26-8-2, HIDDEN	)	SUPPLEMENTAL MEMORANDUM OF
VALLEY MINE, EMERY COUNTY,	)	POINTS AND AUTHORITIES IN
UTAH	)	SUPPORT OF VACATING
	)	N91-26-8-2 AND HIDDEN VALLEY
	)	COAL COMPANY'S REPLY TO THE
	)	DIVISION'S MEMORANDUM IN
	)	OPPOSITION
	)	CAUSE NO. ACT/015/007

Hidden Valley Coal Company ("HVCC"), by and through its counsel of record, hereby supplements its memorandum of points and authorities in support of vacating N91-26-8-2, dated March 6, 1992 and replies to the Division of Oil, Gas & Mining's ("Division's") memorandum in opposition to HVCC's application for review of citation.

SUPPLEMENTAL FACTS

1. The Hidden Valley Mine ("Mine") has never been operated as a commercial venture. Exploratory operations at the Mine were conducted prior to 1977; however, not a single ton of coal has been removed from the Mine since enactment of the federal Surface Mining Control & Reclamation Act ("SMCRA") on August 3, 1977. Affidavit of Lee Edmonson dated February 24, 1992, filed March 5, 1992, attached as Exhibit "A."

what happened in 1980.

2. Soldier Creek Coal Company ("Soldier Creek"), predecessor operator to HVCC, initially contacted the Division regarding the Division's requirements for the opening of a new

mine by letter dated October 6, 1978, attached as Exhibit "B."^①
The Division responded to Soldier Creek by letter dated October 16, 1978, attached as Exhibit "C,"^② forwarding the Interim Program Rules, adopted by the Board on May 25, 1978 ("Interim Rules"), attached as Exhibit "D."

3. By letter dated May 24, 1979 from Soldier Creek to the Division, attached as Exhibit "E,"^③ approval to construct an access road to the Mine site was sought. By July 25, 1979 "Memo to Coal File," attached as Exhibit "F," the Division determined that road plans and construction would be reviewed under the Interim Rules. *(finalized 9/79 → perm.)*

4. Soldier Creek, HVCC's predecessor in interest, submitted a notice of intent to mine to the Division proposing to begin production on the Mine in June, 1981. On April 10, 1980, the Board and Soldier Creek executed a Mined Land Reclamation Contract concerning the Mine. On April 14, 1980, the Division found that Soldier Creek had met the requirements of the Utah Mined Land Reclamation Act, Utah Code Ann. § 40-8-1, et seq., and the Interim Program Regulations for Coal Mining & Reclamation Operations. Letter dated April 14, 1980 from the Division to Soldier Creek, attached as Exhibit "F." *development*

5. By letter dated April 16, 1980, attached as Exhibit "G," Soldier Creek notified the Division of the commencement of construction ^{development} activities at the Mine pursuant to Section 40-8-15 of the Mined Land Reclamation Act. This letter noted that "immediate activity will be limited to the construction of the access *What about approved plan*

road." Letter dated April 16, 1980 from Soldier Creek to the Division, attached as Exhibit "H."

6. By August of 1980, it became evident to Soldier Creek that the Mine was not economically feasible and further development at the Mine ceased. The minutes of the September 9, 1980 meeting of the Soldier Creek Management Committee, attached as Exhibit "I," reflect that the Company voted to temporarily suspend further development of the Mine. No further development activities have occurred at the Mine since 1980. Affidavit of Lee Edmonson attached at Exhibit "A."

Yes, but no development

= inactive status

7. By letter dated January 28, 1981, attached as Exhibit "J," the Division informed Soldier Creek that Utah's Permanent Program was approved by the Secretary of the Interior on January 21, 1981 and Soldier Creek was requested to file a permanent program permit application by March 23, 1981.

8. By letter dated March 23, 1981, attached as Exhibit "K," Soldier Creek informed the Division that due to the continuing slow development of the coal market, a permanent program permit would not be filed by March 23, 1981.

9. By letter dated May 24, 1985, the Division informed Soldier Creek that it had 30 days to decide whether to reclaim the Mine or submit a Permanent Program permit. By letter dated June 27, 1985, attached as Exhibit "L," Soldier Creek requested an extension of time pending closing of a sale of the Mine. By letter dated July 12, 1985, attached as Exhibit "M," the Division granted the extension until September 15, 1985 and reconfirmed

Soldier Creek's obligations under the Mine Land Reclamation Contract of April 4, 1980. By letter dated September 16, 1985, attached as Exhibit "N," the Division renewed its request that the Mine be reclaimed or permitted.

10. By letter dated October 2, 1985, attached as Exhibit "O," HVCC informed the Division of the sale of Soldier Creek, ownership of the Mine by HVCC, a wholly-owned subsidiary of California Portland Cement Company, and of the continuing responsibility of California Portland Cement Company for reclamation pursuant to the Mined Land Reclamation Contract of April 4, 1980. By letter dated October 7, 1985, attached as Exhibit "P," HVCC advised the Division of its intent to reclaim the Mine.

11. A Division Memorandum dated February 11, 1985, attached as Exhibit "Q," confirms that Interim Rules were applied to inspection and enforcement at the Mine noting:

The interim performance standards were enforced under the direction of Ron Daniels since the Hidden Valley Mine was permitted under the Interim Program and operations ceased during the Interim Program. In the mine cessation notification letter, dated March 23, 1981, Soldier Creek Coal Company informed DOGM of their intentions not to submit a Permanent Program Mining Permit Application until they intended to reactivate the mine.

12. A Division memorandum dated December 11, 1985 confirms the Division's understanding that the Mine was to be reclaimed under the interim program regulations because the Mine "was not active following August of 1981 as determined in a decision by the Attorney General's Office." This memorandum,

attached as Exhibit "R," sets forth the Interim Rules applicable to the Mine.

13. A Division memorandum dated January 16, 1986, attached as Exhibit "S," indicates that the Division unilaterally decided at a meeting on January 14, 1986 that permanent program standards should apply to the Mine. By letter dated January 23, 1986, attached as Exhibit "T," the Division informed HVCC of this change in policy and requested submission of a new reclamation plan under the Permanent Program standards.

14. By letter dated May 28, 1986, attached as Exhibit "U," HVCC submitted a new reclamation plan under the Permanent Program for review by the Division. On December 8, 1986, the Division issued a findings documents, attached as Exhibit "V." On December 12, 1986, the Division issued a final permit approval for the Mine to California Portland Cement.

15. A Division memorandum dated June 1, 1988, attached as Exhibit "W," indicates that a bond release inspection was conducted on May 24, 1988 and specifically states that "the access road, from the end of the paved county road to the mine site, was ripped, water bars constructed, and seeded and mulched." Effective June 1, 1988, the Division approved a Phase I bond release for the Mine, reducing the reclamation bond by approximately 60% from \$171,515.00 to \$68,606.00 based upon completion of backfilling, grading, topsoil placement and reseeding in accordance with the approved reclamation plan. By letter dated July 16, 1980 from the Division to HVCC, attached as Exhibit "X," the

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first time.*

Division states: "As a result of this inspection, the backfilling, grading, topsoil placement and drainage controls were determined complete." By letter dated June 16, 1988 from the Division to Emery County, attached as Exhibit "Y," the Division states: "The reclamation bond will be reduced from \$171,515 to \$68,606 because backfilling, grading, installations of drainage controls and revegetation have all been done at the site." By letter dated July 17, 1988 from the Division to St. Paul Fire Insurance Company, attached as Exhibit "Z," the Division states that HVCC's bond at the Mine may be reduced to \$68,606, due to the Phase I bond release.

16. On November 22, 1991, Notice of Violation No. N91-26-8-2 ("NOV") was issued by the Division to HVCC relating to the Mine access road. Part 1 of 2 alleges failure to maintain the stability of diversions and failure to minimize erosion to the extent possible under Utah Admin. R. 614-301-742.312.1 and 614-301-742.113 as to the road outslope and upslope. Part 2 of 2 was written for failure to clearly mark with perimeter markers all disturbed areas and failure to seed and revegetate all disturbed areas, under Utah Admin. R. 614-301-521.251 and 614-301-354 with respect to the road and stream disturbed outslopes and road upslopes. HVCC was assessed 44 points and a penalty of \$760.00 for Part 1 of the NOV. HVCC was assessed an additional 33 points and a penalty of \$460.00 for Part 2 of the NOV.

ARGUMENT

I. FACT OF THE VIOLATION.

A. HVCC Contests the Fact of the Violation and the Penalty Assessment.

Contrary to the allegations of the Division, HVCC contests the fact of the violation in this proceeding and contested the fact of the violation in informal proceedings before the Division. (HVCC's Memorandum of Points and Authorities filed herein on February 10, 1992, March 6, 1992; HVCC's Memorandum of Points and Authorities filed with the Division on December 30, 1991.) HVCC also contests the penalty assessment for the NOV.

During the informal hearing contesting the NOV held on Friday, December 20, 1991, HVCC challenged the fact of the violation on several grounds. HVCC asserted that the Mine had been reclaimed and revegetated in accordance with the reclamation plan approved by the Division. Furthermore, HVCC contested the Division's abatement action requiring that new areas not identified in the reclamation plan be reseeded and revegetated. In addition, HVCC objected to this abatement action due to HVCC's concern that the reseeded and revegetation would disturb the hand-seeding reclaimed area and cause erosion. Finally, HVCC was concerned that the reseeded and revegetation required by the NOV would extend the period of liability under HVCC's reclamation bond. HVCC also objected to the abatement action required under Part 1 of the NOV concerning submission of an erosion control plan. See Petition for Temporary Relief, dated December 12, 1991. HVCC

reasserts these defenses to the fact of the NOV and will present testimony at the hearing scheduled in this matter in support of its defense.

In addition, by Supplemental Memorandum dated March 6, 1992, HVCC supplemented its February 10, 1992 Memorandum by contesting the penalty assessment and providing inspection reports dated March 7, 1989, May 11, 1989, September 2, 1984 and January 5, 1990. HVCC has also listed all inspection reports at the Mine on its proposed list of exhibits filed June 16, 1992. These reports also show that up to November 19, 1992, the date of the inspection preceding the NOV, the Division had found HVCC in compliance with respect to stability of diversions and minimizing Boundary erosion (NOV Part 1 of 2) and found that HVCC had properly seeded and marked all disturbed areas (NOV Part 2 of 2). These inspection reports will be presented at the hearing to demonstrate the operator's compliance.

B. The Division Must Establish a Prima Facie Case.

The Division has obfuscated the fact that it bears the burden of proof and must prove a prima facie case establishing the fact of the NOV and regarding its jurisdiction to issue the NOV. The Division admits at footnote 2, page 7 of its memorandum, that it has this burden. Only after the State has made a prima facie showing does the focus of the proceeding shift to HVCC to carry the burden of persuasion regarding its defense. Rith Energy, Inc. v. OSMRE, 119 IBLA 83 (1991). Similarly, the Division has the burden of establishing a prima facie case in

support of its penalty assessment. Intersouth Mineral v. OSM, IBLA 89-248 (Feb. 19, 1991).

The Division asserts no prima facie case in its responsive memorandum either as to the fact of the NOV or as to the penalty assessed. Rather, the Division improperly relies on the findings, conclusions and order regarding the informal hearing issued on January 17, 1992. The Division's reliance on the informal conference is misplaced in the context of these formal review proceedings and is contrary to R645-401-260:

At formal review proceedings before the Board, no evidence as to statements made or evidence produced by one party at an assessment conference will be introduced as evidence by another party or to impeach a witness.

Clearly, since no evidence produced at the informal conference may be introduced into the formal hearing, the Division must establish its prima facie case before the Board of Oil, Gas & Mining ("Board"). In addition, HVCC will re-establish its defense for the record at the formal hearing.

II. THE DIVISION HAS NO JURISDICTION OVER HVCC BECAUSE HVCC HAS NOT MINED 250 TONS OF COAL.

As stated in the affidavit attached hereto as Exhibit "A," the Mine has never been operated as a commercial venture. Exploratory operations at the Mine were conducted prior to 1977; however, not a single ton of coal has been removed from the Mine since enactment of SMCRA on August 3, 1977 (Supplemental Fact ¶1). Section 701(13) of SMCRA defines "operator" as one who removes or intends to remove more than 250 tons of coal in any

*Def. of Mining
Related,
Activities*

Intend

twelve-month period in any one location. See § 40-10-3(7), Utah Coal Mining & Reclamation Act ("UCMRA"). Because HVCC has not mined or removed 250 tons from the Mine, it is not an "operator" subject to regulation under SMCRA or UCMRA.

Despite the fact that 250 tons of coal were never mined nor removed from the Mine, the Division has focused upon initial permitting activities by HVCC's predecessor as demonstrating an intent to mine. As evidenced by the minutes of the September 9, 1980 meeting of the Soldier Creek Management Committee, attached as Exhibit "I," permitting and access road activity were undertaken before the company had completed its economic feasibility assessment. Although an Interim Program Mined Land Reclamation Contract was executed between the Board and Soldier Creek on April 10, 1980, and the Division approved a Notice of Intent to Mine by letter dated April 14, 1980, the Mine was never developed as a commercial operation. Therefore, although Soldier Creek proposed to mine and made substantial expenditures towards permitting and accessing the Mine, it never extracted one ton, much less 250 tons of coal from the Mine.

Soldier Creek had approval from the Division and Mine management to proceed with limited construction activities only from April 16, 1980 through September 9, 1980. By letter dated April 16, 1980, attached as Exhibit "G," Soldier Creek notified the Division of commencement of construction activities, noting that "immediate activity will be limited to the construction of the access road" (Supplemental Fact ¶5). By August of 1980, it

became evident to Soldier Creek that the Mine was economically infeasible and further development at the Mine ceased. The management of Soldier Creek voted to suspend further development of the Mine in a meeting on September 9, 1980. No further development activities have occurred at the Mine since 1980.

Further evidence of Soldier Creek's intention to halt further development of the Mine is provided by Soldier Creek's response to Utah's permanent program. By letter dated January 28, 1981, attached as Exhibit "J," the Division informed Soldier Creek that Utah's permanent program was approved by the Secretary of the Interior on January 21, 1981 and requested Soldier Creek to file a permanent program permit application by March 23, 1981. Soldier Creek informed the Division by letter dated March 23, 1981, attached as Exhibit "K," that due to the continued slow development of the coal market, a permanent program permit would not be filed by the March 23rd deadline (Supplemental Facts ¶7 and 8).

By operation of law, Soldier Creek's failure to file a permanent program permit application by March 23, 1981, precluded Soldier Creek from conducting any further mining activities. Pursuant to § 40-10-9(3): "A permit shall terminate if the permittee has not commenced the surface coal mining operations covered by the permit within three years after the issuance of the permit." To retain permit rights, the operator must make an affirmative showing to the Division that an extension of the permit term is necessary "by reason of litigation, threatened

economic loss, or conditions beyond the control of the permittee." The fact that Soldier Creek took no affirmative action to obtain an extension of the permit term within the three-year period following suspension of operations, provides further evidence of the operator's lack of intent to mine. *Waiting for market*

Finally, it should be noted that, although HVCC disputes the jurisdiction of the Division to require reclamation, HVCC has backfilled, graded and reseeded the construction area. The Division had found these activities adequate to allow a Phase I bond release, returning 60% of the reclamation bond to HVCC (Supplemental Fact ¶16). Therefore, contrary to the implication of the Division's memorandum, HVCC has not abandoned the site, which is currently enjoying successful revegetation. In the event that the NOV is vacated for lack of jurisdiction, this site will have been reclaimed.

III. DOGM'S ISSUANCE OF THE NOV IS BARRED BY THE TWO-YEAR STATUTE OF LIMITATIONS SET FORTH AT UTAH CODE ANN. § 40-8-9(2).

A. The Memorandum Fails to Address State Regulations Adopting the Statute of Limitations.

The Division has incorrectly concluded that the two-year statute of limitations set forth at Utah Code Ann. § 40-8-9(2) does not bar issuance of the NOV. The two-year statute of limitations is applicable to the facts in this matter and requires that the NOV be vacated in its entirety. The Division fails to address the fact that the two-year statute of limitations at Utah Code Ann. § 40-8-9(2) has been specifically applied to the Utah Coal Mining & Reclamation Act ("UCMRA") pursuant to

Utah Code Ann. § 40-10-4 and implementing regulations at UMC R614-1Q-900 (1991). Pursuant to Utah Code Ann. § 40-10-4:

The Utah Mined Land Reclamation Act (Chapter 8 of Title 40), and the rules and regulations adopted under it, where appropriate, and not in conflict with the provisions of this chapter or the rules and regulations adopted under it, shall be applicable to coal mining operations and reclamation operations.

The Board promulgated regulations under Section 40-10-4 of UCMRA, specifically applying the two-year statute of limitations to the Utah Coal Program. UMC R614-1Q-900(a) (1991) provides:

The following provisions of 40-8 U. C. A. (1953, as amended), (the Utah Mined Land Reclamation Act of 1975) and its implementing regulations are deemed consistent with Chapter 10 of Title 40, U. C. A. (1953, as amended) and are, therefore, made part of that Act pursuant to 40-10-4, U. C. A. Provisions not specifically adopted by this rule are determined to be inconsistent with this rule and shall not apply to coal mining reclamation activities

. . . .

(IX) Section 40-8-9(1) and (2): Adopted.

A copy of UMC R614-1Q-900 (1991) is attached as Addendum 1.

The Division's memorandum creates the mistaken impression that no statute of limitations applies to state or federal enforcement actions under the Surface Mining Control & Reclamation Act of 1977 ("SMCRA"). This is simply not the case. The Division's memorandum fails to address well established precedent applying statutes of limitations to enforcement penalties arising under SMCRA. For instance, in United States v. Lueking, 125 B.R. 513, 515 (E.D. Tenn. 1990), a five-year statute of limitations

was applied to collection of civil penalties assessed under SMCRA. In addition, the Court cited two unpublished district court cases which also applied statutes of limitations to SMCRA. United States v. McCune, No. C-2-87-1387 (S.D. Ohio, Dec. 13, 1989) and United States v. Graham, No. 87-1843, 1989 WL 248111 (W.D. Penn., July 20, 1989). The State is bound by the two-year statute of limitations and issuance of the NOV is time-barred.

IV. IN THE ALTERNATIVE, IN THE EVENT THAT HVCC IS SUBJECT TO JURISDICTION OF THE DIVISION, THE MINE IS SUBJECT TO THE INTERIM PROGRAM, NOT THE PERMANENT PROGRAM.

If the road construction and development activities undertaken at the Mine are held to be coal mining operations under the State and federal Act, these activities occurred during the Interim Program and Interim Program standards must be applied to the Mine. Therefore, the NOV must be vacated because it has been improperly issued under Permanent Program Standards.

As indicated above, pursuant to the minutes of the September 9, 1980 meeting of the Soldier Creek Management Committee, the Company suspended operations at the Mine. No further development activities have occurred at the Mine since 1980. Affidavit of Lee Edmonson, attached as Exhibit "A" (Supplemental Fact ¶6). Utah's permanent program was approved by the Secretary of the Interior on January 21, 1981 (Supplemental Fact ¶7). At the time Soldier Creek initially contacted the Division regarding the Division's requirements for opening a new mine, the Division provided Soldier Creek a copy of the interim program rules adopted by the Board on May 25, 1978. Letter dated October 6, 1978,

attached as Exhibit "B," letter dated October 16, 1978, attached as Exhibit "C"; Interim Rules attached as Exhibit "D" (Supplemental Fact ¶2).

Internal Division memorandum dating from January 25, 1979 through December 11, 1985, indicate that the Division regulated the Mine under the interim rules. By July 25, 1979 memo to the coal file, attached as Exhibit "F," the Division determined that road plans and construction would be reviewed under the interim rules (Supplemental Fact ¶3). By letter dated April 14, 1980, the Division approved Soldier Creek's notice of intent to mine under the interim program (Supplemental Fact ¶4).

Pursuant to Utah Code Ann. § 40-10-9, no operator was allowed to continue operations without submission of a permanent program permit. When the Division contacted the Soldier Creek and requested submission of a permanent program permit, Soldier Creek informed the Division that it would not be submitting a permanent program permit. Letter dated March 23, 1981, attached as Exhibit "K" (Supplemental Fact ¶8). Pursuant to Interim Program Rule UMC 771.21(a)(i), any operator who "conducts or expects to conduct operations . . . after expiration of 8 months from . . . [approval of the State's permanent program]" was required to file a permanent program application by March 23, 1981. Under UMC 771.21(b)(i), the penalty for failure to so file was to require the interim operator to submit a "new" permanent program permit and to prohibit ongoing mining activities during permit review.

Despite this fact, a Division memorandum dated February 11, 1985, attached as Exhibit "Q," confirms that interim program rules were applied to inspection and enforcement at the Mine well after 1981:

The interim program standards were enforced under the direction of Ron Daniels since the Hidden Valley Mine was permitted under the interim program and operations ceased during the interim program. In the mine cessation notification letter, dated March 23, 1981, Soldier Creek informed the Division of their intentions not to submit a permanent program mining permit application until they intended to reactivate the Mine.

A Division memorandum dated December 11, 1985 confirms the Division's understanding that the Mine was to be reclaimed under the interim program regulations because the Mine was "not active following August, 1981, as determined in a decision by the Attorney General's office" (Supplemental Facts ¶11 and 12). Therefore, although the Mine had lost its status as an interim operation under the Interim Rules, the Division continued to apply interim regulations for reclamation-only purposes. *stuff*

It is well established that an operator who has ceased all coal mining operations prior to the approval of a state's permanent program is not required to obtain a permanent program permit to conduct reclamation only activities. Citizens for the Preservation of Knox County, 81 IBLA 209 (1989). Lone Star Steel Company v. OSM, 98 IBLA 56, 59, note 2 (1987). In addition, it is clear that a regulatory authority retains jurisdiction to issue violations of interim program permits once its permanent

program is approved. Harman Mining Corp. v. OSM, Docket No. NX5-103-R (April 27, 1987), Slip Op. at page 2.

Furthermore, the fact that the Division inappropriately required HVCC to submit a permanent program permit does not vest the Division with jurisdiction under the permanent program where none exists. Plaquesmine Port, Harbor & Terminal Dist. v. Federal Maritime Com'n, 838 F.2d 536, 5642 n. 3 (D.C. Cir. 1988); see also A/S Ivarins Redev. v. U.S., 891 F.2d 1441, 1445 (D.C. Cir. 1990). Therefore, because the operator's mining activities, if any mining occurred, ceased during the interim program, HVCC is subject to the interim program standards for reclamation-only activities. The permanent program permit is not applicable.

The NOV is incorrectly cited under the permanent program and must be vacated. Notices of violation which contain miscitations or are otherwise contradictory and ambiguous are routinely vacated on review. OSM v. Ewell L. Sprachlin Coal Co., 93 IBLA 386 (1986); Turner Bros., Inc. v. OSM, 366 ALJ 2517, Surface Min. L. Summ. (Nov. 1985); King Knob Coal Co. v. OSM, 5 ALJ 6 Surface Min. Law Sum. (Aug. 1981); Consolidation Coal Co., 18 B.D. 59, Surface Min. L. Summ. (July, 1981); Renfro Const. Co., Inc. v. OSM, 87 I.D. 584 (1980).

Therefore, the NOV must be vacated in its entirety.

V. ESTOPPEL.

Contrary to the arguments asserted by the Division, the State of Utah may be estopped from enforcement activity which is unjust when such estoppel would have no substantial adverse

effect on public policy. Plateau Min. v. Utah Div. of State Lands, 802 P.2d 720; 728 (Utah 1990); Utah State Univ. v. Sutro & Co., 646 P.2d 715, 718 (Utah 1982). Under such circumstances, the state may be estopped when it acts in its governmental capacity. Plateau Mining, 802 P.2d 720, 728 (Utah, 1990); Celebrity Club, Inc. v. Utah Liquor Control Com'n, 602 P.2d 689, 694 (Utah, 1979). The Utah Supreme Court recently identified the following as the elements of estoppel:

(1) an admission, statement or act inconsistent with the claim afterwards asserted, (2) action by the other party on the faith of such admission, statement or act, and (3) injury to such other party resulting from allowing the first party to contradict or repudiate such admission, statement or act.

Plateau Mining, 802 P.2d 720, 729.

The Division's activities in this matter meet each of these elements. First, the Division has issued several statements in writing regarding the operator's compliance regarding the very actions which are cited by the NOV. The Division inspected the Mine on May 24, 1988 and issued a memorandum specifically finding that "the access road, from the end of the paved county road to the mine site, was ripped, water bars constructed, and seeded and mulched" (Supplemental Fact ¶15). Based upon this inspection memorandum, the State released 60% of HVCC's reclamation bond at the site (Supplemental Fact ¶15). In addition, numerous inspection reports issued by the Division find this area to be in compliance. (Inspection Reports dated May 7,

1989, May 11, 1989, September 2, 1989 and January 5, 1990). Therefore, the NOV constitutes a claim "afterwards asserted which is inconsistent with release of the bond and the Division's inspection reports.

The second element of estoppel requires action by HVCC on the faith of the Division's statements. The reliance which HVCC placed on these inspection reports resulted in release of 60% of the reclamation bond to HVCC and the operator's belief that it was in compliance (Supplemental Fact ¶15).

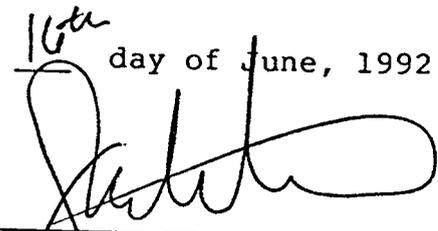
The third element of estoppel requires injury to HVCC resulting from the Division's repudiation of its inspection reports and bond release. In this case, injury resulted to HVCC in the form of issuance of a notice of violation and a resulting penalty. The NOV also creates a potential for a pattern of violation and more serious enforcement sanctions.

Finally, under Plateau, "the state may not be estopped unless injustice would result and there would be no substantial adverse effect on public policy." Plateau Mining, 802 P.2d 720, 728. In this case, issuance of the NOV after release of the bond and repeated inspection reports reflecting compliance is bad faith on the Division's part and the resulting NOV was unjust. Vacating the NOV would result in no substantial adverse effect to public policy when the Division has specifically found the operator to be in compliance on numerous occasions. Indeed, public policy will be enhanced by vacating the NOV and applying the Division's regulations in a manner consistent with earlier

findings of compliance. In addition, the Mine is the only remaining mine which ceased operations during the interim program and prior to approval of the permanent program. Therefore, the impact on public policy of applying estoppel in this case is minimal.

Therefore, the Division is estopped from issuing the NOV and the violation and any penalty resulting therefrom should be vacated.

RESPECTFULLY SUBMITTED this 16th day of June, 1992.


Peter Stirba
STIRBA & HATHAWAY
Attorneys for Hidden Valley
Coal Company

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of June, 1992, I caused a true and correct copy of the foregoing HIDDEN VALLEY COAL COMPANY'S SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF VACATING N91-26-8-2 AND HIDDEN VALLEY COAL COMPANY'S REPLY TO THE DIVISION'S MEMORANDUM IN OPPOSITION to be ~~mailed, postage prepaid,~~ *hand delivered* to:

William R. Richards
Assistant Attorney General
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Salt Lake City, Utah 84151

Shannon Pegan

EXHIBIT B

Denise A. Dragoo, A0908
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Salt Lake City, Utah 84151
Telephone: (801) 531-8900

THE BOARD OF OIL, GAS & MINING

DEPARTMENT OF NATURAL RESOURCES AND ENERGY

HIDDEN VALLEY COAL COMPANY,	)	AFFIDAVIT OF LEE EDMONSON
)	
Petitioner,)	
)	
v.	)	IN THE MATTER OF REVIEW
	)	OF FACT OF VIOLATION AND
DIVISION OF OIL, GAS &	)	CIVIL PENALTY ASSESSMENTS
MINING,)	
)	
Respondent.	)	HIDDEN VALLEY MINE
	)	CAUSE NO. ACT/015/007
_____)	

STATE OF ARIZONA)	
	:	ss.
COUNTY OF MARICOPA)	

LEE EDMONSON, being first duly sworn deposes and states as follows:

1. I have personal knowledge of each fact stated herein.
2. Hidden Valley Coal Company owns the Hidden Valley Mine ("Mine") in Emery County, Utah.
3. Since September 1990, I have acted as the Manager, Planning and Regulatory Affairs, and since July 1991 as Assistant Secretary, for Hidden Valley Coal Company. My duties and responsibilities in these positions include managing all aspects of the reclamation taking place at the Mine, maintaining current and historic records of all activities taking place on the Mine property, determining the marketability of the Mine property and

the feasibility of operating it as an economically viable business venture.

4. This Mine has never been operated as a commercial venture.

5. Exploration activities were conducted at the Mine prior to 1977; however, not a single ton of coal has been removed from the Mine since enactment of the Surface Mining Control & Reclamation Act ("SMCRA") on August 3, 1977.

6. The intent and activities of Hidden Valley Coal Company with respect to the Mine have been to conduct sufficient exploration and analysis to determine the feasibility of developing an economically viable coal mine.

7. The Mine property is not now, nor since 1975 has it been, an economically viable commercial source of coal.

8. It is Hidden Valley Coal Company's intent not to develop an economically unsound coal mine or to remove any coal whatsoever from the Mine.

DATED this 24th day of February, 1992.


LEE EDMONSON

On this 24th day of February 1992, personally appeared before me Lee Edmonson, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Lisa Anne

Notary Public 6711 W. Osborn #46
Residing at Phoenix, AZ 85033

My Commission Expires: My Commission Expires Sept. 23, 1993

a:\92-018



PRO/015/02
7 4

Soldier Creek Coal Co. HIDDEN VALLEY MINE

Telephone 801 - 637-4429 / 637-5203

P. O. Box AS *
Price, Utah 84501

October 6, 1978

Mr. Cleon B. Feight
Director
Division of Oil, Gas, and Mining
1588 West North Temple
Salt Lake City, Utah 84116



Re: Opening of New Mine
Soldier Creek Coal Co.
Hidden Valley Mine

Dear Mr. Feight:

Soldier Creek Coal Company is presently in the process of opening a new underground mine. The mine will be located in Township 23 South, Range 6 East, Sections 17 and 18. This property is approximately 3 miles south of Consolidation Coal Company, Emery Mine.

The mine is presently scheduled to be in operation by June 1981. It is our intention to comply fully with all Department of Natural Resources regulations. All necessary forms, including "Notice of Intention to Commence Mining Operations," will be submitted for approval as soon as the mining plans are completed.

It would be greatly appreciated if your department would keep this office informed of other requirements needed by the Division of Oil, Gas, and Mining as they develop. This would help us very much in the orderly development of the mine.

Thank you for your assistance in this matter.

Sincerely,
HIDDEN VALLEY MINE

Tom Paluso

J. T. Paluso
Project Engineer

SCOTT M. MATHESON
Governor



OIL, GAS, AND MINING BOARD

I. DANIEL STEWART
Chairman

CHARLES R. HENDERSON
JOHN L. BELL
THADIS W. BOX
C. RAY JUVELIN

GORDON E. HARMSTON
Executive Director,
NATURAL RESOURCES

STATE OF UTAH
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS, AND MINING
1588 West North Temple
Salt Lake City, Utah 84116
(801) 533-5771

CLEON B. FEIGHT
Director

October 16, 1978

Mr. J. T. Paluso, Project Engineer
Soldier Creek Coal Company
P.O. Box AS
Price, Utah 84501

*Start a new file.
Hidden Valley Mine*

Dear Tom:

This is to acknowledge the receipt of your letter of October 6, 1978, which sets forth the outline of plans for a new underground mine in Township 23 South, Range 6 East, Sections 17 and 18, Emery County, Utah.

Enclosed you will find a book which sets forth the State's existing rules and regulations on coal mining and reclamation. These regulations were adopted following a notice and subsequent hearing before the Division on May 25, 1978. The rules and regulations are parallel to those regulations by the Office of Surface Mining for the initial regulatory program. The sections which specifically set forth underground mining standards are MC-717.11 thru MC-717.20. These sections may be found on pages 69 thru 87. These regulations will remain in effect until a permanent regulatory program is established for the State of Utah. For your information, the State Regulatory Program will be comparable to the program set forth in the Office of Surface Mining's regulations as published in the Federal Register dated September 18, 1978.

In submitting the Notice of Intent to Commence Mining Operations and the Reclamation Plan, Soldier Creek Coal would best fulfill their obligation with the law by addressing either the underground mining standards as set forth in the enclosed book or addressing those sections of the September 18, 1978 draft permanent program of the Office of Surface Mining. The use of division forms MR 1 and MR 2 at this point will not supply adequate information.

I realize that your work is mainly on the Hidden Valley Mine. However, please find enclosed a letter written to Mr. Pollastro on May 27, 1978 to which a reply was never received by the Division. Therefore, a state

Mr. J. T. Paluso
October 16, 1978
Page Two

permit for this mine is not in effect. Would you please remind
Mr. Pollastro of this letter.

Sincerely,

Ronald W. Daniels
RONALD W. DANIELS
COORDINATOR OF MINED
LAND DEVELOPMENT

RWD/sp

enc: Surface Mining Reclamation
and Enforcement Provisions
for Coal - Adopted 5-25-78
Letter dated May 27, 1978

BEFORE THE DIVISION OF OIL, GAS & MINING
OF THE STATE OF UTAH

In the matter of Rules and Regulations for the purpose of controlling surface and underground coal mining operations and reclamation operations pursuant to Public Law 95-87.

REPORT OF THE DIVISION

This cause came on for hearing on May 25, 1978, at 9:00 o'clock a.m. in the Executive Conference Room, Holiday Inn, 1659 West North Temple, Salt Lake City, Utah, at which time many operators and others interested in coal mining in the State of Utah appeared; whereupon testimony was presented.

The Division, upon consideration of the testimony and record made at the hearing, and being well and sufficiently advised in the premises, finds as follows, to-wit:

FINDINGS

1. That notice by publication of the time and place of the hearing and the purpose of said hearing, has been regularly given in all respects as required by law, and the Division has jurisdiction of the subject matter and of the parties interested therein, and jurisdiction to issue and promulgate the hereinafter prescribed order.

2. That in the preparation for the hearing in this cause and the order promulgated herein, careful study had been given the subject matter of this cause; that views and opinions of cross sections of the coal industry in the State of Utah have been explored; that the Division finds that the matter has been thoroughly considered by those affected and interested in the mining of coal.

3. That under Public Law 95-87 and the Utah Mined Land Reclamation Act (Sec. 40-8 UCA 1953) it is the duty of the Division to adopt specific rules and regulations under which the coal mining industry shall operate, and the following rules and regulations meet the requirement of said statutes.

4. That if the State of Utah wishes to assume exclusive jurisdiction over the regulation of coal mining and reclamation operations within the state it is necessary that the rules and regulations hereinafter set out be adopted.

5. That representatives of various operators in the State testified at the hearing in favor of the state assuming exclusive jurisdiction over said operations.

ORDER

IT IS THEREFORE ORDERED by the Division of Oil, Gas and Mining that the following rules and regulations be and the same are hereby adopted.

SURFACE MINING RECLAMATION AND ENFORCEMENT
PROVISIONS FOR COAL

Rules adopted by the Division on
May 25, 1978
Effective June 20, 1978

Preamble

Notwithstanding any other rules adopted by the Board and Division of Oil, Gas, and Mining the following rules are adopted for the purpose of controlling both surface and underground coal mining and reclamation pursuant to Public Law 95-87.

MC-700.5 Definitions

As used throughout the regulations of this chapter, except where otherwise indicated.

1. Act means the Utah Mined Land Reclamation Act.
2. Auger mining means a method of mining coal at a cliff or highwall by drilling holes laterally into any exposed coal seam from the highwall and transporting the coal along an auger bit to the surface.
3. Coal means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by A.S.T.M. designation 0-388-66.
4. Director means the Director, Division of Oil, Gas, and Mining.
5. Federal lands means any land, including mineral interests, owned by the United States without regard to how the United States acquired ownership of the lands and without regard to the agency having responsibility for management thereof, except Indian lands.
6. Imminent danger to the health and safety to the public means the existence of any condition; or practice, or any violation of a permit or other requirement of the Act in a surface coal mining and reclamation operation, which condition, practice, or violation could reasonably be expected to cause substantial physical harm to persons outside the permit area before such condition, practice or violation can be abated.

A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would not expose himself or herself to the danger during the time necessary for abatement.

7. Board means the Board of Oil, Gas, and Mining.
8. Division means the Division of Oil, Gas, and Mining.
9. Operator means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other organization or representative of any kind, either public or private, owning, controlling, or managing a mining operation or proposed mining operation, including exploring for or developing of a mineral deposit.
10. Permit means the same as an approved notice of intention as defined in 40-8-4 (11).
11. Permittee means any individual, partnership, association, society, joint stock company, firm, company, corporation, or other business, organization holding an approved notice of intention to conduct surface or underground coal mining and reclamation operations.
12. Person means an individual, partnership, association, society, joint stock company, firm, company, corporation, or other business organization.
13. Regulatory authority means the Board and Division of Oil, Gas, and Mining.
14. Significant, imminent environmental harm to land, air or water resources is determined as follows:
 - (a) An environmental harm is any adverse impact on land, air, or water resources, including but not limited to plant and animal life.
 - (b) An environmental harm is imminent if a condition, practice, or violation exists which (a) is causing such harm or (b) may reasonably be expected to cause such harm at any time before the end of the reasonable abatement time.
 - (c) An environmental harm is significant if that harm is appreciable and not immediately repairable.

15. Surface Coal Mining Operations means: (a) activities conducted on the surface of lands in connection with a surface coal mine or subject to the requirements of Section 516 of the Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87). Surface operations and surface impacts incident to any underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include excavation for the purpose of obtaining coal including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the uses of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal for interstate commerce at or near the mine site: provided, however, that such activities do not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16 2/3 per centum of the tonnage of minerals removed for purposes of commercial use of sale or coal exploration subject to Rule M-3(5) and (b) the areas upon which such activities occur or where such activities disturb the natural land surface. Such areas shall also include any adjacent land, the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage and excavation, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or material on the surface, resulting from or incident to such activities.
16. Surface coal mining and reclamation operations mean surface coal mining operations and all activities necessary and incidental to the reclamation of such operations. This term includes the term "surface coal mining operations".
17. Ton means 2000 pounds avoirdupois (.90718 metric ton).

18. Acid drainage means water with a pH of less than 6.0 discharged from active or abandoned mines and from areas affected by coal mining operations.
19. Acid-forming materials means earth materials that contain sulfide mineral or other materials which, if exposed to air, water, or weathering processes, will cause acids that may create acid drainage.
20. Alluvial valley floors means unconsolidated stream-laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities but does not include upland areas which are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation and windblown deposits.
21. Approximate original contour means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated; water impoundments may be permitted where the regulatory authority determines that they are in compliance with MC-715.17.
22. Aquifer means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for a specific use.
23. Combustible material means organic material that is capable of burning either by fire or through a chemical process (oxidation) accompanied by the evolution of heat and a significant temperature rise.
24. Compaction means the reduction of pore spaces among the particles of soil or rock generally done by running heavy equipment over the earth materials.
25. Disturbed area means those lands that have been affected by surface coal mining and reclamation operations.
26. Diversion means a channel, embankment, or other manmade structure constructed for the purpose of diverting water from one area to another.
27. Downslope means the land surface between a valley floor and the projected outcrop of the lowest coalbed being mined along each highwall.

28. Embankment means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or other similar purposes.
29. Essential hydrologic functions means, with respect to alluvial valley floors, the role of the valley floor in collecting, storing, and regulating the natural flow of surface water and ground water, and in providing a place for irrigated and subirrigated farming, by reason of its position in the landscape and the characteristics of its underlying material.
30. Flood irrigation means irrigation through natural overflow or the temporary diversion of high flows in which the entire surface of the soil is covered by a sheet of water.
31. Ground water means subsurface water that fills available openings in rock or soil materials such that they may be considered water-saturated.
32. Highwall means the face of exposed overburden and coal in an open cut of a surface or for entry to an underground coal mine.
33. Hydrologic balance means the relationship between the quality and quantity of inflow to, outflow from, and storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the quantity and quality relationships between precipitation, runoff, evaporation, and the change in ground and surface water storage.
34. Hydrologic regime means the entire state of water movement in a given area. It is a function of the climate, and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form and falls as precipitation, moves thence along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.
35. Impoundment means a closed basin formed naturally or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.
36. Intermittent or perennial stream means a stream or part of a stream that flows continuously during all (perennial) or for at least one month (intermittent) of the calendar year as a result of ground-water discharge or surface runoff. The term does not include an ephemeral stream which is one that flows for less than one month of a calendar year and only in direct response to precipitation in the

immediate watershed and whose channel bottom is always above the local water table.

37. Leachate means a liquid that has percolated through soil, rock or waste and has extracted dissolved or suspended materials.
38. Noxious plants means species that have been included on official State lists of noxious plants for the State in which the operation occurs.
39. Overburden means material of any nature, consolidated or unconsolidated that overlies a coal deposit, excluding topsoil.
40. Outslope means the exposed area sloping away from a bench or terrace being constructed as a part of a surface coal mining and reclamation operation.
41. Productivity means the vegetative yield produced by a unit area for a unit of time.
42. Recharge capacity means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.
43. Roads means access and haul roads constructed, used, reconstructed, improved, or maintained for use in surface coal mining and reclamation operations, including use by coal-hauling vehicles leading to transfer, processing, or storage areas. The term includes any such road used not graded to approximate original contour within 45 days of construction other than temporary roads used for topsoil removal and coal haulage roads within the pit area. Roads maintained with public funds such as all Federal, State, county, or local roads are excluded.
44. Recurrence interval means the precipitation event expected to occur, on the average, once in a specified interval. For example, the 10-year, 24-hour precipitation event would be that 24-hour precipitation event expected to occur on the average once in 10 years. Magnitude of such events are as defined by the National Weather Service Technical Paper No. 40. "Rainfall Frequency Atlas of the U.S.," May 1961, and subsequent amendments or equivalent regional or rainfall probability information developed therefrom.

45. Runoff means precipitation that flows overland before entering a defined stream channel and becoming streamflow.
46. Safety factor means the ratio of the available shear strength to the developed shear stress on a potential surface of sliding determined by accepted engineering practice.
47. Sediment means undissolved organic and inorganic material transported or deposited by water.
48. Sedimentation pond means any natural or artificial structure or depression used to remove sediment from water and store sediment or other debris.
49. Slope means average inclination of a surface, measured from the horizontal. Normally expressed as a unit of vertical distance to a given number of units of horizontal distance (e.g., 1v to 5h = 20 percent = 11.3 degrees).
50. Soil horizons mean contrasting layers of soil lying one below the other, parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The three major soil horizons are:
- (a) A horizon. The uppermost layer in the soil profile often called the surface soil. It is the part of the soil in which organic matter is most abundant, and where leaching of soluble or suspended particles is the greatest.
 - (b) B horizon. The layer immediately beneath the A horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A or C horizons.
 - (c) C horizon. The deepest layer of the soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.
51. Spoil mean overburden that has been removed during surface mining.
52. Stabilize means any method used to control movement of soil, spoil piles, or areas of disturbed earth and includes increasing bearing capacity, increasing shear strength, draining, compacting, or re-vegetating.

53. Subirrigation means irrigation of plants with water delivered to the roots from underneath.
54. Surface water means water, either flowing or standing, on the surface of the earth.
55. Suspended solids means organic or inorganic materials carried or held in suspension in water that will remain on a 0.45 micron filter.
56. Toxic-forming materials means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.
57. Toxic-mine drainage means water that is discharged from active or abandoned mines and other areas affected by coal mining operations and which through chemical action or physical effects is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.
58. Valley fill and head-of-hollow fill means a structure consisting of any materials other than waste placed so as to encroach upon or obstruct to any degree any natural stream channel other than those minor channels located on highland areas where overland flow in natural rills and gullies is the predominant form of runoff. Such fills are normally constructed in the uppermost portion of a V-shaped valley in order to reduce the upstream drainage area (head-of-hollow fills). Fills located farther downstream (valley fills) must have larger diversion structures to minimize infiltration. Both fills are characterized by rock underdrains and are constructed in compacted lifts from the toe to the upper surface in a manner to promote stability.
59. Waste means earth materials, which are combustible, physically unstable, or acid-forming or toxic-forming, wasted or otherwise separated from product coal and are slurried or otherwise transported from coal processing facilities or preparation plants after physical or chemical processing, cleaning, or concentrating of coal.
60. Water table means upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

MC-700.11 Applicability

These regulations apply to all surface coal mining and reclamation operations except:

- (a) The extraction of coal by a landowner for his own noncommercial use from land owned or leased by him;
- (b) The extraction of coal for commercial purposes where the surface mining and reclamation operation affects two acres or less;
- (c) The extraction of coal as an incidental and non-commercial part of Federal, State or local government financed highway or other construction;
- (d) The extraction of coal incidental to the extraction of other minerals where coal does not exceed 16 2/3 percent of the mineral tonnage removed for commercial use or sale;
- (e) The extraction of coal on Indian lands; and
- (f) Any small operator as defined and granted by any subsequent rule of the State or Federal government.

MC-710.11 Applicability

Operations on all lands.

- 
- (a) The requirements of this chapter apply to operations conducted after the effective date of these regulations on lands from which the coal has not yet been removed and to any other land used, disturbed, or redisturbed in connection with or to facilitate mining or to comply with the requirements of the Act or these regulations.
 - (b) Any pre-existing, non-conforming structure or facility which is used in connection with or to facilitate mining after the effective date of these regulations shall comply with the requirements of the regulations, unless:
 - (1) The permittee submits to the regulatory authority by March 1, 1978, a statement in writing demonstrating that it is physically impossible to bring the structure or facility into compliance by May 4, 1978. The statement shall include the steps to be taken to reconstruct the structure or facility in conformance with applicable performance standards and a schedule for reconstruction including the estimated date of completion;

- (2) The regulatory authority finds in writing that it is physically impossible to bring the structure or facility into compliance by May 4, 1978.
- (3) The construction work is to be performed in accordance with plans designed by a professional engineer; and
- (4) The construction work is to be started and completed as soon as possible and in no event is to be started later than May 4, 1978 and completed later than November 4, 1978.

(c) Notwithstanding paragraph (b) of this section, any sedimentation pond, or related pre-existing, non-conforming structure or facility which is used in connection with or to facilitate mining after the effective date of these regulations shall comply with the requirements of the regulations unless:

- (1) The permittee submits to the regulatory authority and to the Director by May 3, 1978, a statement in writing demonstrating that it is physically impossible to bring the structure or facility into compliance by May 3, 1978. The statements shall include the steps to be taken to reconstruct the structure or facility in conformance with applicable performance standards and a schedule for reconstruction including the estimated date of completion;
- (2) The regulatory authority finds in writing that it is physically impossible to bring the structure or facility into compliance by May 3, 1978.
- (3) The construction work is to be performed in accordance with plans designed by a professional engineer;
- (4) The construction work is to be started and completed as soon as possible and in no event is to be started later than June 3, 1978 and completed later than November 4, 1978; and
- (5) The Director approves of any schedules which contain an estimated date of completion beyond October 3, 1978.
 - (a) The Director shall be deemed to have approved such schedules referred to in paragraph (c) (5) of this section, unless written disapproval is received by the operator on or before June 3, 1978.

GENERAL PERFORMANCE STANDARDS

MC-715.11 General Obligations

- (a) Compliance. All surface coal mining and reclamation operations conducted on lands where any element of the operations is regulated by the State shall comply with these performance standards. Part 717 of these rules establishes performance standards for surface effects of underground coal mines. The rules under Part 716 of these rules for:
- (1) Surface coal mining operations on steep slopes;
 - (2) Surface coal mining operations involving mountaintop removal;
 - (3) Surface coal mining operations on prime farmlands.
- (b) Authorizations to operate. A copy of all current permits, licenses, approved plans, or other authorizations to operate the mine shall be available for inspection at or near the mine site.
- (c) Mine maps. Any person conducting surface coal mining and reclamation operations shall submit two copies of an accurate map of the mine and permit area at a scale of 1:6000 or larger. The map shall show as of May 3, 1978, the lands from which coal has not yet been removed and the lands and structures which have been used or disturbed to facilitate mining. One copy of the mine map shall be submitted to the State regulatory authority and one copy shall be submitted to the Regional Director, OSM, before July 3, 1978.

MC-715.12 Signs and Markers

- (a) Specifications. All signs required to be posted shall be of a standard design that can be seen and read easily and shall be made of durable material. The signs and other markers shall be maintained during all operations to which they pertain and shall conform to local ordinances and codes.
- (b) Mine and permit identification signs. Signs identifying the mine area shall be displayed at all points of access to the permit area from public roads and highways. Signs shall show the name, business address, and telephone number of the permittee and identification numbers of current mining and reclamation permits or other authorizations to operate. Such signs shall not be removed until after release of all bonds.

(c) Land-use categories. Land use is categorized in the following groups. Change from one to another land use category in premining to postmining constitutes an alternate land use and the permittee shall meet the requirements of paragraph (d) of this section and all other applicable environmental protection performance standards of this chapter.

- (1) Heavy industry. Manufacturing facilities, powerplants, airports or similar facilities.
- (2) Light industry and commercial services. Office buildings, stores, parking facilities, apartment houses, motels, hotels, or similar facilities.
- (3) Public services. Schools, hospitals, churches, libraries, water-treatment facilities, solid-waste disposal facilities, public parks and recreation facilities, major transmission lines, major pipelines, highways, underground and surface utilities, and other servicing structures and appurtenances.
- (4) Residential. Single and multiple family housing (other than apartment houses) with necessary support facilities. Support facilities may include commercial services incorporated in and comprising less than 5 percent of the total land area of housing capacity, associated open space, and minor vehicle parking and recreation facilities supporting the housing.
- (5) Cropland. Land used primarily for the production of cultivated and close growing crops for harvest alone or in association with sod crops. Land used for facilities in support of farming operations are included.
- (6) Rangeland. Includes rangelands and forest lands which support a cover of herbaceous or scrubby vegetation suitable for grazing or browsing use.
- (7) Hayland or pasture. Land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or cut and cured for livestock feed.
- (8) Forest land. Land with at least a 25 percent tree canopy or land at least 10 percent stocked by forest trees of any size, including land formerly having had such tree cover and that will be naturally or artificially reforested.

- (c) Perimeter markers. The perimeter of the permit area shall be clearly marked by durable and easily recognized markers, or by other means approved by the regulatory authority.
- (d) Buffer zone markers. Buffer zones as defined in MC-715.17 shall be marked in a manner consistent with the perimeter markers along the interior boundary of the buffer zone.
- (e) Blasting signs. If blasting is necessary to conduct surface coal mining operations, signs reading "Blasting Area" shall be displayed conspicuously at the edge of blasting areas along access and haul roads within the mine property. Signs reading "Blasting Area" and explaining the blasting warning and all-clear signals shall be posted at all entrances to the permit area.
- (f) Topsoil markers. Where topsoil or other vegetation-supporting material is segregated and stockpiled according to MC-715.16 (c), the stockpiled material shall be marked. Markers shall remain in place until the material is removed.

MC-715.13 Postmining Use of Land

- (a) General. All disturbed areas shall be restored in a timely manner (1) to conditions that are capable of supporting the uses which they were capable of supporting before any mining, or (2) to higher or better uses achievable under criteria and procedures of paragraph (d) of this section.
- (b) Determining premining use of land. The premining uses of land to which the postmining land use is compared shall be those uses which the land previously supported if the land had not been previously mined and had been properly managed.
 - (1) The postmining land use for land that has been previously mined and not reclaimed shall be judged on the basis of the highest and best use that can be achieved and is compatible with surrounding areas.
 - (2) The postmining land use for land that has received improper management shall be judged on the basis of the pre-mining use of surrounding lands that have received proper management.
 - (3) If the premining use of the land was changed within 5 years of the beginning of mining, the comparison of postmining use to premining use shall include a comparison with the historic use of the land as well as its use immediately preceding mining.

- (9) Impoundments of water. Land used for storing water for beneficial uses such as stock ponds, irrigation, fire protection, recreation, or water supply.
- (10) Fish and wildlife habitat and recreation lands. Wetlands, fish and wildlife habitat, and areas managed primarily for fish and wildlife or recreation.
- (11) Combined uses. Any appropriate combination of land uses where one land use is designated as the primary land use and one or more other land uses are designated as secondary land uses.

(d) Criteria for approving alternative postmining use of land. An alternative postmining land use shall be approved by the regulatory authority, after consultation with the landowner or the land management agency having jurisdiction over State or Federal lands, if the following criteria are met. Proposals to remove an entire coal seam running through the upper part of a mountain, ridge, or hill must also meet these criteria in addition to the requirement of MC-716.3 of this chapter.

- (1) The proposed land use is compatible with adjacent land use and, where applicable, with existing local, State or Federal land use policies and plans. A written statement of the views of the authorities with statutory responsibilities for land use policies and plans shall accompany the request for approval. The permittee shall obtain any required approval of local, State or Federal land management agencies, including any necessary zoning or other changes necessarily required for the final land use.
- (2) Specific plans have been prepared which show the feasibility of the proposed land use as related to needs, projected land use trends, and markets and that include a schedule showing how the proposed use will be developed and achieved within a reasonable time after mining and be sustained. The regulatory authority may require appropriate demonstrations to show that the planned procedures are feasible, reasonable, and integrated with mining and reclamation, and that the plans will result in successful reclamation.

- (3) Provision of any necessary public facilities is assured as evidenced by letters of commitment from parties other than the permittee, as appropriate, to provide them in a manner compatible with the permittee's plans.
- (4) Specific and feasible plans for financing attainment and maintenance of the postmining land use including letters of commitment from parties other than the permittee as appropriate, if the postmining land use is to be developed by such parties.
- (5) The plans are designed under the general supervision of a registered professional engineer, or other appropriate professional, who will ensure that the plans conform to applicable accepted standards for adequate land stability, drainage, and vegetative cover, and aesthetic design appropriate for the postmining use of the site.
- (6) The proposed use or uses will neither present actual or probable hazard to public health or safety nor will they pose any actual or probable threat of water flow diminution or pollution.
- (7) The use of uses will not involve unreasonable delays in reclamation.
- (8) Necessary approval of measures to prevent or mitigate adverse effects on fish and wildlife has been obtained from the regulatory authority and appropriate State and Federal fish and wildlife management agencies.
- (9) Proposals to change premining land uses of range, fish and wildlife habitat, forest land, hayland, or pasture to a postmining cropland use, where the cropland would require continuous maintenance such as seeding, plowing, cultivation, fertilization, or other similar practices to be practicable or to comply with applicable Federal, State and local laws shall be reviewed by the regulatory authority to assure that--
 - (i) There is a firm written commitment by the permittee or by the landowner or land manager to provide sufficient crop management after release of applicable performance bonds to assure that the proposed postmining cropland use remains practical and reasonable;

- (ii) There is sufficient water available and committed to maintain crop production; and
 - (iii) Topsoil quality and depth are shown to be sufficient to support the proposed use.
- (10) The regulatory authority has provided by public notice not less than 30 days nor more than 60 days for interested citizens and local, State and Federal agencies to review and comment on the proposed land use.

MC-715.14 Backfilling and grading

In order to achieve the appropriate original contour, the permittee shall, except as provided in this section, transport, backfill, compact (where advisable to ensure stability or to prevent leaching of toxic materials), and grade all spoil material to eliminate all highwalls, spoil piles, and depressions. Cut-and-fill terraces may be used only in those situations expressly identified in this section. The postmining graded slopes must approximate the premining natural slopes in the area as defined in paragraph (a).

(a) Slope measurements

- (1) To determine the natural slopes of the area before mining sufficient slopes to adequately represent the land surface configuration, and as approved by the regulatory authority in accordance with site conditions, must be accurately measured and recorded. Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed; or, where this is impractical, at locations specified by the regulatory authority. Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances as determined by the regulatory authority to be representative of the premining configuration of the land. Slope measurements shall take into account natural variations in slope so as to provide accurate representation of the range of natural slopes and shall reflect geomorphic differences of the area to be disturbed. Slope measurements may be made from topographic

maps showing contour lines, having sufficient detail and accuracy consistent with the submitted mining and reclamation plan.

- (2) After the disturbed area has been graded, the final graded slopes shall be measured at the beginning and end of lines established on the prevailing slopes at locations representative of premining slope conditions and approved by the regulatory authority. These measurements must not be made so as to allow unacceptable steep slopes to be constructed.

(b) Final graded slopes

- (1) The final graded slopes shall not exceed either the approximate premining slopes as determined according to paragraph (a) (1) and approved by the regulatory authority or any lesser slope specified by the regulatory authority based on consideration of soil, climate, or other characteristics of the surrounding area. Postmining final graded slopes need not be uniform. The requirements of this paragraph may be modified by the regulatory authority where the mining is re-affecting previously mined lands that have not been restored to the standards of this section and sufficient spoil is not available to return to the slope determined according to paragraph (a) (1). Where such modifications are approved, the permittee shall, as a minimum, be required to:
 - (i) Retain all overburden and spoil on the solid portion of existing or new benches; and
 - (ii) Backfill and grade to the most moderate slope possible to eliminate the highwall which does not exceed the angle of repose or such lesser slopes as is necessary to assure stability.
- (2) On approval by the regulatory authority and in order to conserve soil moisture, ensure stability, and control erosion on final graded slopes, cut-and-fill terraces may be allowed if the terraces are compatible with the post-mining land use approved under MC-715.13, and are appropriate substitutes for construction of lower grades on the reclaimed lands. The terraces shall meet the following requirements.

- (i) The width of the individual terrace bench shall not exceed 20 feet unless specifically approved by the regulatory authority as necessary for stability, erosion control, or roads included in the approved postmining land use plan.
 - (ii) The vertical distance between terraces shall be as specified by the regulatory authority to prevent excessive erosion and to provide long-term stability.
 - (iii) The slope of the terrace outslope shall not exceed 1v:2h (50 percent). Outslopes which exceed 1v:2h (50 percent) may be approved if they have a minimum static safety factor of more than 1.5 and provide adequate control over erosion and closely resemble the surface configuration of the land prior to mining. In no case may highwalls be left as part of terraces.
 - (iv) Culverts and underground rock drains shall be used on the terrace only when approved by the regulatory authority.
- (3) All operators on steep slopes of 20 degrees or more or on such lesser slopes as the regulatory authority defines as a steep slope shall meet the provisions of MC-716.2 of this chapter.
- (c) Mountaintop removal. The requirements of this paragraph and of MC-716.3 shall apply to surface mining operations which remove entire coal seams in the upper part of a mountain, ridge, or hill be removing all of the overburden, and where the requirements for achieving the approximate original contour of this section cannot be met. Final graded top plateau slopes on the mined area shall be less than 1v:5h so as to create a level plateau or gently rolling configuration and the outslopes of the plateau shall not exceed 1v:2h, except where engineering data substantiates and the regulatory

authority finds that a minimum static safety factor of 1.5 (or higher factors specified by the regulatory authority) will be attained. Although the area need not be restored to approximate original contour, all highwalls, spoil piles, and depressions except as provided in paragraphs (d) and (e) of this section shall be eliminated. All mountaintop removal operations shall in addition meet the provisions of MC-716.3 of this chapter.

- (d) Small depressions. The requirement of this section to achieve approximate original contour does not prohibit construction of small depressions if they are approved by the regulatory authority to minimize erosion, conserve soil moisture or promote revegetation. These depressions shall be compatible with the approved postmining land use and shall not be inappropriate substitutes for construction of lower grades on the reclaimed lands. Depressions approved under this section shall have a holding capacity of less than 1 cubic yard of water or, if it is necessary that they be larger, shall not restrict normal access throughout the area or constitute a hazard. Large, permanent impoundments shall be governed by paragraph (e) of this section and by MC-715.17.
- (e) Permanent impoundments. Permanent impoundments may be retained in mined and reclaimed areas provided all highwalls are eliminated by grading to appropriate contour and the provisions for postmining land use MC-715.13) and protection of the hydrologic balance MC-715.17) are met. No impoundments shall be constructed on top of areas in which excess materials are deposited pursuant to MC-715.15 of this part. Impoundments shall not be used to meet the requirements of paragraph (j) of this section.
- (f) Definition of thin and thick restored overburden. The thin overburden provisions of paragraph (g) of this section may apply only where the final thickness is less than 0.8 of the initial thickness. The thick overburden provisions of paragraph (h) of this section may apply only where the final

thickness is greater than 1.2 of the initial thickness. Initial thickness is the sum of the overburden thickness and coal thickness. Final thickness is the product of the factor to be determined for each mine area. The provisions of paragraph (g) and (h) apply only when operations cannot be carried out to comply with the requirements of paragraph (a) of this section to achieve the approximate original contour.

(g) Thin overburden. In surface coal mining operations carried out continuously in the same limited pit area for more than 1 year from the day coal-removal operations begin and where the volume of all available spoil and suitable waste materials is demonstrated to be insufficient to achieve approximate original contour, surface coal mining operations shall be conducted to meet, at a minimum, the following standards:

- (1) Transport, backfill, and grade, using all available spoil and suitable waste materials from the entire mine area, to attain the lowest practicable stable grade, which may not exceed the angle of repose, and to provide adequate drainage and long-term stability of the regraded areas.
- (2) Eliminate highwalls by grading or backfilling to stable slopes not exceeding 1v:2h (50 percent), or such lesser slopes as the regulatory authority may specify to reduce erosion, maintain the hydrologic balance, or allow the approved postmining land use.
- (3) Transport, backfill, grade, and revegetate to achieve an ecologically sound land use compatible with the prevailing land use in unmined areas surrounding the permit area.
- (4) Transport, backfill, and grade to ensure the impoundments are constructed only where it has been demonstrated to the regulatory authority's satisfaction that all requirements of MC-715.17 have been met and that the impoundments have been approved by the regulatory authority as meeting the requirements of this part and all other applicable Federal and State regulations.

(h) Thick overburden. In surface coal mining operations where the volume of spoil is demonstrated to be more than sufficient to achieve the approximate original contour surface coal mining operations shall be conducted to meet at a minimum the following standards:

- (1) Transport, backfill, and grade all spoil and wastes not required to achieve approximate original contour in the surface mining area to the lowest practicable grade.
- (2) Deposit, backfill, and grade excess spoil and wastes only within the permit area and dispose of such materials in conformance with this part.
- (3) Transport, backfill, and grade excess spoil and wastes to maintain the hydrologic balance in accordance with this part and to provide long-term stability.
- (4) Transport, backfill, grade, and revegetate wastes and excess spoil to achieve an ecologically sound land use compatible with the prevailing land uses in unmined areas surrounding the permit area.
- (5) Eliminate all highwalls and depressions except as stated in paragraph (e) of this section by backfilling with spoil and suitable waste materials.

(i) Regrading or stabilizing rills and gullies. When rills or gullies deeper than 9 inches form in areas that have been regarded and the topsoil replaced but vegetation has not yet been established the permittee shall fill, grade, or otherwise stabilize the rills and gullies and reseed or replant the areas according to MC-715.20. The regulatory authority shall specify that rills or gullies of lesser size be stabilized if the rills or gullies will be disruptive to the approved postmining land use or may result in additional erosion and sedimentation.

(j) Covering coal and acid-forming toxic-forming, combustible, and other waste materials; stabilizing backfilled materials; and using waste material for fill.

- (1) Cover All exposed coal seams remaining after mining and any acid-forming, toxic-forming, combustible materials, or any other waste materials identified by the regulatory authority that are exposed, used, or produced during mining shall be covered with a minimum of 4 feet of non-toxic and noncombustible material; or, if necessary, treated to neutralize toxicity in order to prevent water pollution and sustained combustion, and to minimize adverse effects on plant growth and land uses. Where necessary to protect against upward migration of salts, exposure by plant growth, or to otherwise meet local conditions, the regulatory authority shall specify thicker amounts of cover using nontoxic material. Acid-forming or toxic-forming material shall not be buried or stored in proximity to a drainage course so as to cause or pose a threat of water pollution or otherwise violate the provisions of MC-715.17 of this part.
- (2) Stabilization. Backfilled materials shall be selectively placed and compacted wherever necessary to prevent leaching of toxic-forming materials into surface or subsurface waters in accordance with MC-715.17 and wherever necessary to ensure the stability of the backfilled materials. The method of compacting material and the design specification shall be approved by the regulatory authority before the toxic materials are covered.
- (3) Use of waste materials as fill. Before waste materials from a coal preparation or conversion facility or from other activities conducted outside the permit area such as municipal wastes are used for fill material, it must be demonstrated to the regulatory authority by hydro-geological means and chemical and physical analyses that use of these materials will not adversely affect water quality, water flow, and vegetation; will not present hazards to public health and safety; and will not cause instability in the backfilled area.

(k) Grading along the contour. All final grading, preparation of overburden before replacement of topsoil, and placement of topsoil, in accordance with MC-715.16, shall be done along the contour to minimize subsequent erosion and instability. If such grading, preparation or placement along the contour would be hazardous to equipment operators then grading, preparation or placement in a direction other than generally parallel to the contour may be used. In all cases, grading, preparation, or placement shall be conducted in a manner which minimizes erosion and provides a surface for replacement of topsoil which will minimize slippage.

MC-715.15 Disposal of spoil and waste materials in areas other than the mine workings or excavations.

(a) Disposal of spoil in other than valley or head-of-hollow fills.

Spoil not required to achieve the approximate original contour shall be transported to and placed in a controlled (engineered) manner in disposal areas other than the mine workings or excavations only if all the following conditions, in addition to the other requirements of this part, are met:

- 1 (1) The disposal areas shall be within the permit area, and they must be approved by the regulatory authority as suitable for construction of fills in accordance with the requirements of this paragraph.
- 2 (2) The disposal areas shall be located on the most moderate sloping and naturally stable areas available as approved by the regulatory authority. Where possible, fill materials suitable for disposal shall be placed upon or above a natural terrace, bench, or berm if such placement provides additional stability and prevents mass movement.
- 3 (3) The fill shall be designed using recognized professional standards, certified by a registered professional engineer, and approved by the regulatory authority.
- 4 (4) Where the slope in the disposal area exceeds 1v:2.8h (36 percent), or such lesser slope designated by the regulatory authority based on local conditions, measures such as keyway cuts (excavations to stable bedrock) or rock toe buttresses shall be constructed to stabilize the fill.

- (5) The disposal area does not contain springs, natural water courses, or wet weather seeps unless lateral drains are constructed from the wet areas to the under-drains in such a manner that infiltration of the water into the spoil pile will be prevented.
- (6) All organic material shall be removed from the disposal area and the topsoil must be removed and segregated pursuant to MC-715.16 before the material is placed in disposal area. However, if approved by the regulatory authority, organic material may be used as mulch or may be included in the topsoil.
- (7) The spoil shall be transported and placed in a controlled manner, concurrently compacted as necessary to ensure mass stability and prevent mass movement, covered, and graded to allow surface and subsurface drainage to be compatible with the natural surroundings, and to ensure long-term stability. The final configuration of the fill must be suitable for postmining land uses approved in accordance with MC-715.13. Terraces shall not be constructed unless approved by the regulatory authority.
- (8) If any portion of the fill interrupts, obstructs, or encroaches upon any natural drainage channel, the entire fill is classified as a valley or head-or-hollow fill and must be designed and constructed in accordance with the requirements of paragraph (b) of this section.
- (9) The fill shall be inspected for stability by a registered engineer or other qualified professional specialist during critical construction periods to assure removal of all organic material and topsoil, placement of under-drainage systems, and proper construction of terraces according to the approved plan. The registered engineer or other qualified professional specialist shall provide a certified report after each inspection that the fill has been constructed as specified in the design approved by the regulatory authority.

- (b) Disposal of spoil in valley or head-of-hollow fills. Waste material must not be disposed of in valley or head-of-hollow fills. Spoil to be disposed of in natural valleys must be placed in accordance with the following requirements:
- (1) The disposal areas shall be within the permit area, and they must be approved by the regulatory authority as suitable for construction of fills in accordance with the requirements of paragraph (b).
 - (2) The disposal site shall be near the ridge top of a valley selected to increase the stability of the fill and to reduce the drainage area above the fill. Where possible, spoil shall be placed above a natural terrace bench, or berm if such placement provides additional stability and prevents mass movement.
 - (3) The fill shall be designed using recognized professional standards, certified by a registered professional engineer and approved by the regulatory authority.
 - (4) All organic material shall be removed from the disposal area and the topsoil must be removed and segregated pursuant to MC-715.16 of this part before the material is placed in the disposal area. However, if approved by the regulatory authority, organic material may be used as mulch or may be included in the topsoil.
 - (5) Where the slope in the disposal area exceeds 1v:28h (36 percent), or such lesser slope designated by the regulatory authority based on local conditions, measures such as keyway cuts (excavations to stable bedrock) or rock toe buttresses shall be constructed to stabilize the fill.
 - (6) A system of underdrains constructed of durable rock shall be installed along the natural drainage system, shall extend from the toe to the head of the fill and contain lateral drains to each area of potential drainage or seepage. In constructing the underdrains, no more than 10 percent of the rock may be less than 12 inches in

size and no single rock may be larger than 25 percent of the width of the drain. No rock shall be used in underdrains if it tends to easily disintegrate and thereby clog the drain or if it is acid-forming or toxic-forming. The minimum size of the main underdrain shall be:

Total amount of fill material	Predominant type of fill material	Minimum size of drain in feet	
		Width	Height
Less than 1 million yd ³ .	Sandstone.....	10	4
Do.....	Shale	16	8
More than 1 million yd ³ .	Sandstone.....	16	8
Do.....	Shale	16	8

- (7) Spoil shall be transported and placed in a controlled manner and concurrently compacted as specified by the regulatory authority in lifts that are less than 4 feet thick in order to achieve the densities designed to ensure mass stability, to prevent mass movement, to avoid contamination of the rock underdrain and to prevent formation of voids. The final configuration of the fill must be suitable for postmining land uses approved in accordance with MC-715.13.
- (8) Terraces shall be constructed to stabilize the face of the fill. The outslope of each terrace shall not exceed 50 feet in length and the width of the terrace shall not be less than 20 feet.
- (9) The tops of the fill and each terrace shall be graded no steeper than 1v:20h (5 percent) and shall be constructed to drain surface water to the sides of the fill where stabilized surface channels shall be established off the fill to carry drainage away from the fill. Drainage shall not be directed over the outslope of the fill unless approved by the regulatory authority.

- (10) All surface drainage from the undisturbed area above the fill shall be diverted away from the fill by approved structures leading into water courses.
- (11) The outslope of the fill shall not exceed 1v:2h (50 percent). The regulatory authority may require a flatter slope.
- (12) The fill shall be inspected for stability by a registered engineer or other qualified professional specialist during critical construction periods and at least quarterly throughout construction to assure removal of all organic material and topsoil, placement of underdrainage systems, and proper construction of terraces according to the approved plan. The registered engineer or other qualified professional specialist shall provide a certified report after each inspection that the fill has been constructed as specified in the design approved by the regulatory authority.
- (13) Head-of-hollow and valley fills which are constructed in conjunction with permanent diversions and which totally divert the watershed runoff that would have gone into the head-of-hollow or valley fill may be allowed for waste materials as determined by the regulatory authority.

MC-715.16 Topsoil handling

To prevent topsoil from being contaminated by spoil or waste materials the permittee shall remove the topsoil as a separate operation from areas to be disturbed. Topsoil shall be immediately redistributed according to the requirements of paragraph (b) of this section on areas graded to the approved postmining configuration. The topsoil shall be segregated, stockpiled, and protected from wind and water erosion and from contaminants which lessen its capability to support vegetation if sufficient graded areas are not immediately available for redistribution.

- (a) Topsoil removal. All topsoil to be salvaged shall be removed before any drilling for blasting, mining, or other surface disturbance.
 - (1) All topsoil shall be removed unless use of alternative materials is approved by the regulatory authority in accordance with subparagraph (4). Where the removal of topsoil results in erosion that may cause air or water pollution, the regulatory authority shall limit the size of the area from which topsoil

may be removed at any one time and specify methods of treatment to control erosion of exposed overburden.

- (2) All of the A horizon of the topsoil as identified by soil surveys shall be removed according to paragraph (a) and then replaced on disturbed areas as the surface soil layers. Where the A horizon is less than 6 inches, a 6-inch layer that includes the A horizon and the unconsolidated material immediately below the A horizon (or all unconsolidated material if the total available is less than 6 inches) shall be removed and the mixture segregated and replaced as the surface soil layer.
- (3) Where necessary to obtain soil productivity consistent with postmining land use, the regulatory authority may require that the B horizon or portions of the C horizon or other underlying layers demonstrated to have comparable quality for root development be segregated and replaced as subsoil.
- (4) Selected overburden materials may be used instead of, or as a supplement to, topsoil where the resulting soil medium is equal to or more suitable for vegetation, and if all the following requirements are met:
 - (i) The permittee demonstrates that the selected overburden materials or an overburden-topsoil mixture is more suitable for restoring land capability and productivity by the results of chemical and physical analyses. These analyses shall include determinations of pH, percent organic material, nitrogen, phosphorus, potassium, texture class, and water-holding capacity, and such other analyses as required by the regulatory authority. The regulatory authority also may require that results of field-site trials or greenhouse tests be used to demonstrate the feasibility of using such overburden materials.
 - (ii) The chemical and physical analyses and the results of field-site trials and greenhouse tests are accompanied by a certification from a qualified soil scientist or agronomist.
 - (iii) The alternative material is removed, segregated, and replaced in conformance with this section.

(b) Topsoil redistribution.

(1) After final grading and before the topsoil is replaced, regraded land shall be scarified or otherwise treated to eliminate slippage surfaces and to promote root penetration.

(2) Topsoil shall be redistributed in a manner that:

(i) Achieves an approximate uniform thickness consistent with the postmining land uses;

(ii) Prevents excess compaction of the spoil and topsoil; and

(iii) Protects the topsoil from wind and water erosion before it is seeded and planted.

(c) Topsoil storage. If the permit allows storage of topsoil, the stockpiled topsoil shall be placed on a stable area within the permit area where it will not be disturbed or be exposed to excessive water, wind erosion, or contaminants which lessen its capability to support vegetation before it can be redistributed on terrain graded to final contour. Stockpiles shall be selectively placed and protected from wind and water erosion, unnecessary compaction, and contamination by undesirable materials either by a vegetative cover as defined in MC-715.20 (g) or by other methods demonstrated to provide equal protection such as snow fences, chemical binders, and mulching. Unless approved by the regulatory authority, stockpiled topsoil shall not be moved until required for redistribution on a disturbed area.

(d) Nutrients and soil amendments. Nutrients and soil amendments in the amounts and analyses as determined by soil tests shall be applied to the surface soil layer so that it will support the postmining requirements of MC-715.13 and the revegetation requirements of MC-715.20.

MC-715.17 Protection of the hydrologic system

The permittee shall plan and conduct coal mining and reclamation operations to minimize disturbance to the prevailing hydrologic balance in order to prevent long-term adverse changes in the hydrologic balance that could result from surface coal mining and reclamation operations, both on- and off-site. Changes in water quality and quantity, in the depth to ground water, and in the location of surface water drainage channels shall be minimized such that

the postmining land use of the disturbed land is not adversely affected and applicable Federal and State statutes and regulations are not violated. The permittee shall conduct operations so as to minimize water pollution and shall, where necessary, use treatment methods to control water pollution. The permittee shall emphasize surface coal mining and reclamation practices that will prevent or minimize water pollution and changes in flows in preference to the use of water treatment facilities. Practices to control and minimize pollution include, but are not limited to, stabilizing disturbed areas through grading, diverting runoff, achieving quick growing stands of temporary vegetation, lining drainage channels with rock or vegetation, mulching, sealing acid-forming and toxic-forming materials, and selectively placing waste materials in backfill areas. If pollution can be controlled only by treatment, the permittee shall operate and maintain the necessary water-treatment facilities for as long as treatment is required.

MC-715.17(a) Water quality standards and effluent limitations.

All surface drainage from the disturbed area, including disturbed areas that have been graded, seeded, or planted, shall be passed through a sedimentation pond or a series of sedimentation ponds before leaving the permit area. Sedimentation ponds shall be retained until drainage from the disturbed area has met the water quality requirements of this section and the revegetation requirements of MC-715.20 have been met. The regulatory authority may grant exemptions from this requirement only when the disturbed drainage area within the total disturbed area is small and if the permittee shows that sedimentation ponds are not necessary to meet the effluent limitations of this paragraph and to maintain water quality in downstream receiving waters. For purpose of this section only, disturbed area shall not include those areas in which only diversion ditches, sedimentation ponds, or roads are installed in accordance with this section and the upstream area is not otherwise disturbed by the permittee. Sedimentation ponds required by this paragraph shall be constructed in accordance with paragraph (e) of this section in appropriate locations prior to any mining in the affected drainage area in order to control sedimentation or otherwise treat water in accordance with this paragraph. Discharges from areas disturbed by surface coal mining and reclamation operations must meet all applicable Federal and State laws and regulations and at a minimum the following numerical effluent limitations:

Effluent limitations, in Milligrams per Liter, mg/l, except for pH

Effluent characteristics	Maximum allowable ¹	Average of daily values for 30 consecutive discharge days ¹
Iron, total.....	7.0	3.5
Manganese, Total...	4.0	2.0
Total suspended solids ² .	70.0	25.0
pH ³	Within the range 6.5 to 9.0.	

¹Based on representative sampling.

²In Utah, total suspended solids limitations will be determined on a case-by-case basis, but they must not be greater than 45 mg/l (maximum allowable) and 25 mg/l (average of daily value for 30 consecutive discharge days) based on a representative sampling.

³Where the application of neutralization and sedimentation treatment technology results in inability to comply with the manganese limitations set forth, the regulatory authority may allow the pH level in the discharge to exceed to a small extent the upper limit of 9.0 in order that the manganese limitations will be achieved.

- (1) Any overflow or other discharge or surface water from the disturbed area within the permit area demonstrated by the permittee to result from a precipitation event larger than a 10-year, 24-hour frequency event will not be subject to the effluent limitations of paragraph (a).
- (2) The permittee shall install, operate, and maintain adequate facilities to treat any water discharged from the disturbed area that violates applicable Federal or State laws or regulations or the limitations of paragraph (a). If the pH of waters to be discharged from the disturbed area is normally less than 6.0, an automatic lime feeder or other neutralization process approved by the regulatory authority shall be installed, operated, and maintained. If the regulatory authority finds (1) that small and infrequent treatment requirements to meet applicable standards do not necessitate use of an automatic

neutralization process, and (2) that the mine normally produces less than 500 tons of coal per day, then the regulatory authority may approve the use of a manual system if the permittee ensures consistent and timely treatment.

- (b) Surface-water monitoring. (1) The permittee shall submit for approval by the regulatory authority a surface water monitoring program which meets the following requirements:
- (i) Provides adequate monitoring of all discharge from the disturbed area.
 - (ii) Provides adequate data to describe the likely daily and seasonal variation in discharges from the disturbed area in terms of water flow, pH, total iron, total manganese, and total suspended solids and, if requested by the regulatory authority, any other parameter characteristic of the discharge.
 - (iii) Provides monitoring at appropriate frequencies to measure normal and abnormal variations in concentrations.
 - (iv) Provides an analytical quality control system including standard methods of analysis such as those specified in 40 CFR 136.
 - (v) Provides a regular report of all measurements to the regulatory authority within 60 days of sample collection unless violations of permit conditions occur in which case the regulatory authority shall be notified immediately after receipt of analytical results by the permittee. If the discharge is subject to regulation by a Federal or State permit issued in compliance with the Federal Water Pollution Control Act Amendment of 1972 (33 U.S.C. Sec. 1251-1378), a copy of the completed reporting form supplied to meet the permit requirements may be submitted to the regulatory authority to satisfy the reporting requirements if the data meet the sampling frequency and other requirements of this paragraph.
- (2) After disturbed areas have been regraded and stabilized in accordance with this part, the permittee shall monitor surface water flow and quality. Data from this monitoring shall be used to demonstrate that the quality and quantity of runoff without treatment will be consistent with the requirement of this section to minimize disturbance to the prevailing hydrologic balance and with the requirements of this part to

attain the approved postmining land use. These data shall provide a basis for approval by the regulatory authority for removal of water quality or flow control systems and for determining when the requirements of this section are met. The regulatory authority shall determine the nature of data, frequency of collection, and reporting requirements.

- (3) Equipment, structures, and other measures necessary to accurately measure and sample the quality and quantity of surface water discharges from the disturbed area of the permit area shall be properly installed, maintained, and operated and shall be removed when no longer required.

(c) Diversion and conveyance of overland flow away from disturbed areas.

In order to minimize erosion and to prevent or remove water from contacting toxic-producing deposits, overland flow from undisturbed areas, may, if required or approved by the regulatory authority, be diverted away from disturbed areas by means of temporary or permanent diversion structures. The following requirements shall be met:

- (1) Temporary diversion structures shall be constructed to safely pass the peak runoff from a precipitation event with a one year recurrence interval, or a larger event as specified by the regulatory authority. The design criteria must assure adequate protection of the environment and public during the existence of the temporary diversion structure.
- (2) Permanent diversion structures are those remaining after mining and reclamation and approved for retention by the regulatory authority and other appropriate State and Federal agencies. To protect fills and property and to avoid danger to public health and safety, permanent diversion structures shall be constructed to safely pass the peak runoff from a precipitation event with a 100-year recurrence interval, or a larger event as specified by the regulatory authority. Permanent diversion structures shall be constructed with gently sloping banks that are stabilized by vegetation. Asphalt, concrete, or other similar linings shall not be used unless specifically required to prevent seepage or to provide stability and are approved by the regulatory authority.

(3) Diversions shall be designed, constructed, and maintained in a manner to prevent additional contributions of suspended solids to streamflow or to runoff outside the permit area to the extent possible, using the best technology currently available. In no event shall such contributions be in excess of requirements set by applicable State or Federal law. Appropriate sediment control measures for these diversions shall include, but not be limited to, maintenances of appropriate gradients, channel lining, revegetation, roughness structures, and detention basins.

(d) Stream flow diversions.

(1) Flow from perennial and intermittent streams within the permit area may be diverted only when the diversions are approved by the regulatory authority and they are in compliance with local, State, and Federal statutes and regulations. When streamflow is allowed to be diverted, the new stream channel shall be designed and constructed to meet the following requirements.

(i) The average stream gradient shall be maintained and the channel designed, constructed, and maintained to remain stable and to prevent additional contributions of suspended solids to streamflow, or to runoff outside the permit area to the extent possible, using the best technology currently available. In no event shall such contributions be in excess of requirements set by applicable State or Federal law. Erosion control structures such as channel lining structures, retention basins, and artificial channel roughness structures shall be used only when approved by the regulatory agency for temporary diversions where necessary or for permanent diversions where necessary or for permanent diversions where they are stable and will require only infrequent maintenance.

(ii) Channel, bank, and flood-plain configurations shall be adequate to safely pass the peak runoff of a precipitation event with a 10-year recurrence interval for temporary diversions and a 100-year recurrence interval for permanent diversions, or larger events as specified by the regulatory authority.

- (iii) Fish and wildlife habitat and water and vegetation of significant value for wildlife shall be protected in consultation with appropriate State and Federal fish and wildlife management agencies.
 - (2) All temporary diversion structures shall be removed and the affected land regraded and revegetated consistent with the requirements of MC-715.14 and MC-715.20. At the time such diversions are removed, the permittee shall ensure that downstream water treatment facilities previously protected by the diversion are modified or removed to prevent overtopping or failure of the facilities.
 - (3) Buffer zone. No land within 100 feet of an intermittent or perennial stream shall be disturbed by surface coal mining and reclamation operations unless the regulatory authority specifically authorizes surface coal mining and reclamation operations through such a stream. The area not to be disturbed shall be designated a buffer zone and marked as specified in MC-715.12.
- (e) Sediment control measures. Appropriate sediment control measures shall be designed, constructed, and maintained to prevent additional contributions of sediment to streamflow or to runoff outside the permit area to the extent possible, using the best technology currently available.
- (1) Sediment control measures include practices carried out within and adjacent to the disturbed area. The scale of downstream practices shall reflect the degree to which successful techniques are applied at the sources of the sediment. Sediment control measures consist of the utilization of proper mining, reclamation methods, and sediment control practices (singly or in combination) including but not limited to:
 - (i) Disturbing the smallest practicable area at any one time during the mining operation through progressive backfilling, grading and timely revegetation;
 - (ii) Consistent with the requirements of MC-715.14 and MC-715.15 shaping the backfill material to promote a reduction of the rate and volume of runoff;

- (iii) Retention of sediment within the pit and disturbed area;
 - (iv) Diversion of overland and channelized flow from undisturbed areas around or in protected crossings through the disturbed area;
 - (v) Utilization of straw dikes, riprap, check dams, mulches, vegetative sediment filters, dugout ponds, and other measures that reduce overland flow velocity, reduce runoff volume or entrap sediment;
 - (vi) Sedimentation ponds.
- (2) Sedimentation ponds may be used individually or in series, should be located as near as possible to the disturbed area and where possible out of major stream courses, and shall (either individually or in series) meet the following criteria:
- (i) Sedimentation ponds must provide 24-hour theoretical detention time for the inflow or runoff entering the ponds from a 10-year, 24-hour precipitation event. Runoff diverted, in accordance with paragraphs (c) and (d) of this section, away from the disturbed drainage areas need not be considered in sedimentation pond design. In determining the runoff volume the characteristics of the mine site, reclamation procedures, and on-site sediment control practices shall be considered.
 - (ii) Upon approval of the regulatory authority theoretical detention time may be reduced to not less than 10-hours, as demonstrated by the permittee, equal to the improvement in sedimentation removal efficiency as a result of pond design including but not limited to configuration, inflow-outflow facilities and their relative location, baffles to decrease inflow velocity and short circuiting, a surface area sufficient to achieve the sediment trap efficiency necessary to meet effluent limitations (MC-715.17) (a), and sediment control measures provided in MC-715.17 (e) (1).
 - (iii) The regulatory authority may approve a detention time less than the time required by paragraph (e) (2) (i) or (ii) of this section, when the permittee has demonstrated that the size distribution or the specific gravity of the suspended matter or the utilization of chemical treatment or flocculation are such that the effluent

limitations can be met. The detention time shall be stipulated.

- (3) An additional sediment storage volume must be provided equal to 0.2 acre-feet for each acre of disturbed area within the upstream drainage area. Upon approval of the regulatory authority, the sediment storage volume may be reduced in an amount, as demonstrated by the permittee, equal to the sediment removed by other appropriate sediment control measures such as those identified in paragraph (e)(1) of this section, or by lesser sediment yields as evidenced by empirical data for runoff characteristics.
- (4) Ponds may be of the permanent pool or self-dewatering type. Dewatering type ponds shall use siphon or other dewatering methods approved by the regulatory authority to prevent discharges of pollutants within the design flow.
- (5) Spillway systems shall be properly located to maximize the distances from the point of inflow into the pond to maximize detention times. Spillway systems shall be provided to safely discharge the peak runoff from a precipitation event with a 25-year recurrence interval, or larger event as specified by the regulatory authority.
- (6) Sediment shall be removed from sedimentation ponds so as to assure maximum sediment removal efficiency and attainment and maintenance of effluent limitations. Sediment removal shall be done in a manner that minimizes adverse effects on surface waters due to its chemical and physical characteristics, on infiltration, on vegetation, and on surface and ground water quality. Sediment that has been removed from sedimentation ponds and that meets the requirements for topsoil may be redistributed over graded areas in accordance with MC-715.16.
- (7) If a sedimentation pond has an embankment that is more than 20 feet in height, as measured from the upstream toe of the embankment to the crest of the emergency spillway, or has a storage volume of 20 acre feet or more, the following additional requirements shall be met:

- (i) An appropriate combination of principal and emergency spillways shall be provided to safely discharge the runoff resulting from a 100-year, 6-hour precipitation event, or larger event as specified by the regulatory authority.
 - (ii) Ponds shall be designed and constructed with an acceptable static safety factor of at least 1.5 of maximum design flood elevation of the pool to ensure embankment slope stability.
 - (iii) The minimum top width of the embankment shall not be less than the quotient of $H+35/5$ where H is the height of the embankment as measured from the upstream toe of the top of the embankment.
 - (iv) Ponds shall have appropriate barriers to control seepage along conduits that extend through the embankment.
- (8) All ponds shall be designed and inspected under the supervision of, and certified after construction by a registered professional engineer.
- (9) All ponds, including those not meeting the size or other criteria of 30 CFR-77.216(a) shall be examined for structural weakness, erosion, and other hazardous conditions in accordance with the inspection requirements contained in 30 CFR-77.216-3.
- (10) All ponds shall be removed and the affected land regraded and revegetated consistent with the requirements of MC-715.14 & MC-715.20, unless the regulatory authority approves retention of the ponds pursuant to paragraph (k) of this section.
- (f) Discharge structures. Discharges from sedimentation ponds and diversions shall be controlled, where necessary, using energy dissipators, surge ponds, and other devices to reduce erosion and prevent deepening or enlargement of stream channels and to minimize disturbances to the hydrologic balance.
- (g) Acid and toxic materials. Drainage from acid-forming and toxic-forming mine waste materials and soils into ground and surface water shall be avoided by:
- (1) Identifying, burying, and treating where necessary, spoil or other materials that, in the judgement of the regulatory authority, will be toxic to vegetation or that will adversely affect water quality if not treated or buried. Such material shall be disposed of in accordance with the provision of MC-715.14(j);
 - (2) Preventing or removing water from contact with toxic-producing deposits;
 - (3) Burying or otherwise treating all toxic or harmful materials within

30 days, if such materials are subject to wind and water erosion, or within a lesser period designated by the regulatory authority. If storage of such materials is approved, the materials shall be placed on impermeable material and protected from erosion and contact with surface water. Coal waste ponds and other coal waste materials shall be maintained according to MC-715.17(g)(4), and MC-715.18 shall apply;

(4) Burying or otherwise treating waste materials from coal preparation plants no later than 90 days after the cessation of the filing of the disposal area. Burial or treatment shall be in accordance with MC-715.14(j);

(5) Casing, sealing or otherwise managing boreholes, shafts, wells, and auger holes or other more or less horizontal holes to prevent pollution of surface or ground water and to prevent mixing of ground waters of significantly different quality. All boreholes that are within the permit area but are outside the surface coal mining area or which extend beneath the coal to be mined and into water bearing strata shall be plugged permanently in a manner approved by the regulatory authority, unless the boreholes have been approved for use in monitoring.

(6) Taking such other actions as required by the regulatory authority.

(h) Ground water.

(1) Recharge capacity of reclaimed lands. The disturbed area shall be reclaimed to restore approximate premining recharge capacity through restoration of the capability of the reclaimed areas as a whole to transmit water to the ground water system. The recharge capacity should be restored to support the approved postmining land use and to minimize disturbances to the prevailing hydrologic balance at the mined area and in associated offsite areas. The permittee shall be responsible for monitoring according to paragraph (h)(3) of this section to ensure operations conform to this requirement.

(2) Ground water systems. Backfilled materials shall be placed to minimize adverse effects on ground water flow and quality, to minimize offsite effects, and to support the approved postmining land use. The permittee shall be responsible for performing monitoring according to paragraph (h)(3) of this

section to ensure operations conform to this requirement.

- (3) Monitoring. Ground water levels, infiltration rates, subsurface flow and storage characteristics, and the quality of ground water shall be monitored in a manner approved by the regulatory authority to determine the effects of surface coal mining and reclamation operations on the recharge capacity of reclaimed lands and on the quantity and quality of water in ground watersystems at the mine area and in associated off-site areas. When operations are conducted in such a manner that may affect the ground water system, ground water levels and ground water quality shall be periodically monitored using wells that can adequately reflect changes to ground water quantity and quality resulting from such operations. Sufficient water wells must be used by the permittee. The regulatory authority may require drilling and development of additional wells if needed to adequately monitor the ground water system. As specified and approved by the regulatory authority, additional hydrologic tests, such as infiltration test and aquifer tests, must be undertaken by the permittee to demonstrate compliance with subparagraphs (1) and (2) of this paragraph.
- (i) Water rights and replacement. The permittee shall replace the water supply of an owner of interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source where such supply has been affected by contamination, diminution or interruption proximately resulting from surface coal mine operation by the permittee.
- (j) Alluvial valley floors.
- (1) Surface coal mining operations conducted in or adjacent to alluvial floors shall be planned and conducted so as to preserve the essential hydrologic functions of these alluvial valley floors throughout the mining and reclamation process. These functions shall be preserved by maintaining or reestablishing those hydrologic and biologic characteristics of the alluvial valley floor that are necessary to support the functions. The permittee shall provide information to the regulatory authority as required in paragraph (j)(3) of this section to allow identification of essential

hydrologic functions and demonstrate that the functions will be preserved. The characteristics of an alluvial valley floor to be considered include, but are not limited to:

- (i) The longitudinal profile (gradient), cross-sectional shape, and other channel characteristics of streams that have formed within the alluvial valley floor and that provide for maintenance of the prevailing conditions of surface flow;
 - (ii) Aquifers (including capillary zones and perched water zones) and confining beds within the mined area which provide for storage, transmission, and regulation of natural ground water and surface water that supply the alluvial valley floors;
 - (iii) Quantity and quality of surface and ground water that supply alluvial valley floors;
 - (iv) Depth to and seasonal fluctuations of ground water beneath alluvial valley floors;
 - (v) Configuration and stability of the land surface in the flood plain and adjacent low terraces in alluvial valley floors as they allow or facilitate irrigation with flood waters or subirrigation and maintain erosional equilibrium; and
 - (vi) Moisture-holding capacity of soils (or plant growth medium) within the alluvial valley floors, and physical and chemical characteristics of the subsoil which provide for sustained vegetation growth or cover through dry months.
- (2) Surface coal mining operations located west of the 100th meridian west longitude shall not interrupt, discontinue, or preclude farming on alluvial valley floors and shall not materially damage the quantity or quality of surface or ground water that supplies these valley floors unless the premining land use has been undeveloped rangeland which is not significant to farming on the alluvial valley floor is small and provides negligible support for the production from one or more farms. This subparagraph (2) does not apply to those surface coal mining operations that:

- (i) Were in production in the year preceding August 3, 1977, were located in or adjacent to an alluvial valley floor, and produced coal in commercial quantities during the year preceding August 3, 1977; or
 - (ii) Had specific permit approval by the State regulatory authority before August 3, 1977, to conduct surface coal mining operations for an area within an alluvial valley floor.
- (3) (i) Before surface mining and reclamation operations authorized under paragraph (j)(2) of this section may be issued a new, revised or amended permit, the permittee shall submit, for regulatory authority approval, detailed surveys and base-line data to establish standards against which the requirements of paragraph (j)(1) of this section may be measured and from which the degree of material damage to the quantity and quality of surface and ground water that supply the alluvial valley floors may be assessed. The surveys and data shall include:
- (a) A map, at a scale determined by the regulatory authority, showing the location and configuration of the alluvial valley floor;
 - (b) Baseline data covering a full water year for each of the hydrologic functions identified in paragraph (j)(1) of this section;
 - (c) Plans showing how the operation will avoid, during mining and reclamation, interruption, discontinuance, or preclusion of farming on the alluvial valley floors and will not materially damage the quantity or quality of water in surface and ground water systems that supply such valley floors;
 - (d) Historic land use data for the proposed permit area and for farms to be affected; and
 - (e) Such other data as the regulatory authority may require.
- (ii) Surface mining operations which qualify for the exceptions in paragraph (j)(2) of this section are not required to submit the plans prescribed in (i)(c) of this subparagraph.

(k) Permanent impoundments. The permittee may construct, if authorized by the regulatory agency pursuant to this paragraph and MC-715.13, permanent water impoundments on mining sites as a part of reclamation activities only when they are adequately demonstrated to be in compliance with MC-715.13 and MC-715.14 in addition to the following requirements:

- (1) The size of the impoundment is adequate for its intended purposes.
- (2) The impoundment dam construction is designed to achieve necessary stability with an adequate margin of safety compatible with that of structures constructed under Pub. L. 83-566 (16 U.S.C. 1006).
- (3) The quality of the impounded water will be suitable on a permanent basis for its intended use and discharges from the impoundment will not degrade the quality of receiving waters below the water quality standards established pursuant to applicable Federal and State law.
- (4) The level of water will be reasonably stable.
- (5) Final grading will comply with the provisions of MC-715.14 and will provide adequate safety and access for proposed water users.
- (6) Water impoundments will not result in the diminution of the quality or quantity of water used by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

(1) Hydrologic impact of roads.

- (1) General. Access and haul roads and associated bridges, culverts, ditches, and road rights-of-way shall be constructed, maintained, and reclaimed to prevent additional contributions of suspended solids to streamflow, or to runoff outside the permit area to the extent possible, using the best technology currently available. In no event shall the contributions be in excess of requirements set by applicable State or Federal law. All access and haul roads shall be removed and the land affected regraded and revegetated consistent with the requirements of MC-715.14 and MC-715.20, unless retention of a road is approved as part of a postmining land use under MC-715.13

as being necessary to support the postmining land use or necessary to adequately control erosion and the necessary maintenance is assured.

(2) Construction.

- (i) All roads, insofar as possible, shall be located on ridges or on the available flatter and more stable slopes to minimize erosion. Stream fords are prohibited unless they are specifically approved by the regulatory authority as temporary routes across dry streams that will not adversely affect sedimentation and that will not be used for coal haulage. Other stream crossings shall be made using bridges, culverts or other structures designed and constructed to meet the requirements of this paragraph. Roads shall not be located in active stream channels nor shall they be constructed or maintained in a manner that increases erosion or causes significant sedimentation or flooding. However, nothing in this paragraph will be construed to prohibit relocation of stream channels in accordance with paragraph (d) of this section.
- (ii) In order to minimize erosion and subsequent disturbances of the hydrologic balance, roads shall be constructed in compliance with the following grade restriction or other grades determined by the regulatory authority to be necessary to control erosion.
 - (a) The overall sustained grade shall not exceed 1v:10h (10 percent).
 - (b) The maximum grade greater than 10 percent shall not exceed 1v:6.5h (15 percent) for more than 300 feet.
 - (c) There shall not be more than 300 feet of grade exceeding 10 percent within each 1,000 feet.
- (iii) All access and haul roads shall be adequately drained using structures such as, but not limited to, ditches, water barriers, cross drains, and ditch relief drains. For access and haul roads that are to be maintained for more than 1-year, water-control structures shall be designed with a discharge capacity capable of passing the peak runoff from a 10-year, 24-hour precipitation event. Drainage pipes and culverts shall be constructed to avoid plugging or collapse and erosion at inlets and outlets.

Drainage ditches shall be provided at the toe of all cut slopes formed by construction of roads. Trash racks and debris basins shall be installed in the drainage ditches wherever debris from the drainage area could impair the functions of drainage and sediment control structures. Ditch relief and cross drains shall be spaced according to grade. Effluent limitations of paragraph (a) of this section shall not apply to drainage from access and haul roads located outside the disturbed area as defined in this section unless otherwise specified by the regulatory authority.

(iv) Access and haul roads shall be surfaced with durable material. Toxic or acid forming substances shall not be used. Vegetation may be cleared only for the essential width necessary for road and associated ditch construction and to serve traffic needs.

(3) Maintenance

(i) Access and haul roads shall be routinely maintained by means such as, but not limited to, wetting, scraping or surfacing.

(ii) Ditches, culverts, drains, trash racks, debris basins and other structures serving to drain access and haul roads shall not be restricted or blocked in any manner that impedes drainage or adversely affects the intended purpose of the structure.

(m) Hydrologic impacts of other transport facilities.

Railroad loops, spurs, sidings and other transport facilities shall be constructed, maintained and reclaimed to control diminution or degradation of water quality and quantity and to prevent additional contributions of suspended solids to streamflow, or to runoff outside the permit area to the extent possible, using the best technology currently available. In no event shall contributions be in excess of requirements set by applicable State or Federal law.

(n) Discharge of waters into underground mines. Surface and ground waters shall not be discharged or diverted into underground mine workings.

MC-715.18 Dams constructed of or impounding waste material

- (a) General. No waste material shall be used in or impounded by existing or new dams without the approval of the regulatory authority. The permittee shall design, locate, construct, operate, maintain, modify, and abandon or remove all dams (used either temporarily or permanently) constructed of waste materials, in accordance with the requirements of this section.
- (b) Construction of dams
- (1) Waste shall not be used in the construction of dams unless demonstrated thorough appropriate engineering analysis, to have no adverse effect on stability.
 - (2) Plans for dams subject to this section, and also including those dams that do not meet the size or other criteria of 30 CFR 77.216(a) shall be approved by the regulatory authority before construction and shall contain the minimum plan requirements established by the Mine Safety and Health Administration pursuant to 30 CFR 77.216-2.
 - (3) Construction requirements are as follows:
 - (i) Design shall be based on the flood from the probable maximum precipitation event unless the permittee shows that the failure of the impounding structure would not cause loss of life or severely damage property or the environment, in which case, depending on site conditions, a design based on a precipitation event of no less than 100-year frequency may be approved by the regulatory authority.
 - (ii) The design freeboard distance between the lowest point on the embankment crest and the maximum water elevation shall be at least 3 feet to avoid overtopping by wind and wave action.
 - (iii) Dams shall have minimum safety factors as follows:

<i>Case</i>	<i>Loading condition</i>	<i>minimum safety factor</i>
I.....	<i>End of construction.....</i>	1.3
II....	<i>Partial pool with steady seepage saturation.</i>	1.5
III...	<i>Steady seepage from spillway or decant crest.</i>	1.5
IV....	<i>Earthquake (cases II and III with seismic loading.)</i>	1.0

- (iv) The dam, foundation, and abutments shall be stable under all conditions of construction and operation of the impoundment. Sufficient foundation investigations and laboratory testing shall be performed to determine the factors of safety of the dam for all loading conditions in paragraph (b) (3) (iii) of this section and for all increments of construction.
- (v) Seepage through the dam, foundation, and abutments shall be controlled to prevent excessive uplift pressures, internal erosion, sloughing, removal of material by solution, or erosion of material by loss into cracks, joints, and cavities. This may require the use of impervious blankets, pervious drainage zones or blankets, toe drains, relief wells, or dental concreting of jointed rock surface in contact with embankment materials.
- (vi) Allowances shall be made for settlement of the dams and the foundation so that the freeboard will be maintained.
- (vii) Impoundments created by dams of waste materials shall be subject to a minimum drawdown criteria that allows the facility to be evacuated by spillways or decants of 90 percent of the volume of water stored during the design precipitation event within 10 days.

- (viii) During construction of dams subject to this section, the structures shall be periodically inspected by a registered professional engineer to ensure construction according to the approved design. On completion of construction, the structure shall be certified by a registered professional engineer experienced in the field of dam construction as having been constructed in accordance with accepted professional practice and the approved design.
- (ix) A permanent identification marker, at least 6 feet high that shows the dam number assigned pursuant to 30 CFR 77.216-1 of this title and the name of the person operating or controlling the dam, shall be located on or immediately adjacent to each dam within 30 days of certification of design pursuant to this section.
- (4) All dams, including those not meeting the size or other criteria of (a) 30 CFR 77.216, of this title shall be routinely inspected by a registered professional engineer, or someone under the supervision of a registered professional engineer, in accordance with Mine Safety and Health Administration pursuant to 30 CFR 77.216-3 of this title.
- (5) All dams shall be routinely maintained. Vegetative growth shall be cut where necessary to facilitate inspection and repairs. Ditches and spillways shall be cleaned. Any combustible materials present on the surface, other than that used for surface stability such as mulch or dry vegetation, shall be removed and any other appropriate maintenance procedures followed.
- (6) All dams subject to this section shall be certified annually as having been constructed and modified in accordance with current prudent engineering practices to minimize the possibility of failures. Any changes in the geometry of the impounding structure shall be highlighted and included in the annual certification report. These certifications shall include a report on existing and required monitoring procedures and instrumentation, the average and maximum depths and elevations of any impounded waters over the past year, existing storage

DRAFT

October 2, 1985

CERTIFIED RETURN RECEIPT REQUESTED

Mr. Robert Hagen
Director
Office of Surface Mining
Albuquerque Field Office
Albuquerque, New Mexico 87102

Dear Mr. Hagen:

Pursuant to the interim final rule of Federal Register Volume 50, Number 132, published Wednesday, July 10, 1985, regarding the immediate applicability of certain performance standards to coal preparation plants and other surface coal mining operations, the Division of Oil, Gas & Mining proposes the implementation of the following interim performance standards.

MC-717.11 General Obligations

(a) Compliance.

MC-717.12 Signs and Markers

(a) Specifications.

(b) Mine and permit identification signs.

MC-717.14 Backfilling and Grading of Road Cuts, Mine Entry Area Cuts, and Other Surface Work Areas

(a)

(b)

(1)

(3)

(d) Regrading or stabilizing rills and gullies.

(e)

MC-717.17 Protection of the Hydrologic System

- (a) Water quality standards and effluent limitations.
 - (1)
 - (2)
- (c) Diversion and conveyance of overland flow away from disturbed areas.
 - (3)
- (e) Sediment control measures.
 - (6)
 - (7)
 - (8)
 - (9)
 - (10)
- (f) Discharge structures.
- (g) Acid and toxic materials.
 - (1)
 - (2)
 - (3)
 - (4)
 - (5)
- (h) Ground water systems.
 - (1)
 - (2)
- (i) Water rights and replacement.

(j) Hydrologic impact of roads.

(1) General.

(2) Construction.

(i)

(ii)

(a)

(b)

(c)

(iii)

(iv)

(3) Maintenance

(i)

(ii)

(4)

(k) Hydrologic impacts of other transport facilities.

(1)

MC-717.18 Dams Constructed of or Impounding Waste Material

(a) General.

(b) Construction of Dams.

(1)

(3)

(i)

(ii)

(iii)

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- (iv)
- (v)
- (vi)
- (vii)
- (viii)
- (ix)

- (4)
- (5)
- (6)
- (8)

MC-717.20 Topsoil Handling and Revegetation

- (a)
- (b)

Utah's underground mining performance standards MC-717 et seq. are provided to give a more detailed description of the above *referenced* regulations. If you have any questions, please call.

Best regards,

Dianne R. Nielson
Director

dd

cc: Ken May
Lowell Braxton
Joe Helfrich

0250Q-32-35

capacity of impounding structures, any fires occurring in the material over the past year and any other aspects of the structures affecting their stability.

- (7) Any enlargements, reductions in size, reconstruction or other modification of the dams shall be approved by the regulatory authority before construction begins.
- (8) All dams shall be removed and the disturbed areas regraded, revegetated, and stabilized before the release of bond unless the regulatory authority approves retention of such dams as being compatible with an approval postmining land use MC-715.13.

MC-715.19 Use of explosives

(a) General

- (1) The permittee shall comply with all applicable local, State and Federal laws and regulations and the requirements of this section in the storage, handling, preparation, and use of explosives.
- (2) Blasting operations that use more than the equivalent of 5 pounds of TNT shall be conducted according to a time schedule approved by the regulatory authority.
- (3) All blasting operations shall be conducted by experienced, trained, and competent persons who understand the hazards involved. Persons working with explosives materials shall:
 - (i) Have demonstrated a knowledge of, and a willingness to comply with, safety and security requirements;
 - (ii) Be capable of using mature judgement in all situations;
 - (iii) Be in good physical condition and not addicted to intoxicants, narcotics, or other similar types of drugs;
 - (iv) Possess current knowledge of the local, State and Federal laws and regulations applicable to his work; and
 - (v) Have obtained a certificate of completion of training and qualification as required by State law or the regulatory authority.

(b) Preblasting survey

- (1) On the request to the regulatory authority of a resident or owner of a manmade dwelling or structure that is located within one-half mile of any part of the permit area, the

permittee shall conduct a preblasting survey of the dwelling or structure and submit a report of the survey to the regulatory authority.

(2) Personnel approved by the regulatory authority shall conduct the survey to determine the condition of the dwelling or structure and to document any preblasting damage and other physical factors that could reasonably be affected by the blasting. Assessments of structures such as pipes, cables, transmission lines, and wells and other water systems shall be limited to surface condition and other readily available data. Special attention shall be given to the preblasting condition of wells and other water systems used for human, animal, or agricultural purposes and to the quantity and quality of the water.

(3) A written report of the survey shall be prepared and signed by the person or persons who conducted the survey and prepared the written report. The report shall include recommendations of any special conditions or proposed adjustments to the blasting procedures outlined in paragraph (e) of this section which should be incorporated into the blasting plan to prevent damage. Copies of the report shall be provided to the person requesting the survey and to the regulatory authority.

(c) Public notice of blasting schedule. At least 10 days, but not more than 20 days before beginning a blasting program in which explosives that use more than the equivalent of 5 pounds of TNT are detonated, the permittee shall publish a blasting schedule in a newspaper of general circulation in the locality of the proposed site. Copies of the schedule shall be distributed by mail to local governments and public utilities and to each residence within one-half mile of the blasting sites described in the schedule. The permittee shall republish and redistribute the schedule by mail at least every 3 months. Blasting schedules shall not be so general as to cover all working hours but shall identify as accurately as possible the location of the blasting sites and the time periods when blasting will occur. The blasting schedule shall contain at a minimum--

(1) Identification of the specific areas in which blasting will

take place. The specific blasting areas described shall not be larger than 300 acres with a generally contiguous border;

- (2) Dates and times when explosives are to be detonated expressed in not more than 4-hour increments;
 - (3) Methods to be used to control access to the blasting area;
 - (4) Types of audible warnings and all-clear signals to be used before and after blasting; and
 - (5) A description of possible emergency situations (defined in paragraph (e) (1) (ii) of this section), which have been approved by the regulatory authority, when it may be necessary to blast at times other than those described in the schedule.
- (d) Public Notice of changes to blasting schedules. Before blasting in areas not covered by a previous schedule or whenever the proposed frequency of individual detonations are materially changed, the permittee shall prepare a revised blasting schedule in accordance with the procedures in paragraph (c) of this section. If the change involves only a temporary adjustment of the frequency of blasts, the permittee may use alternate methods to notify the governmental bodies and individuals to whom the original schedule was sent.
- (e) Blasting procedures.
- (1) General.
 - (i) All blasting shall be conducted only during the day time hours, defined as sunrise until sunset. Based on public requests or other considerations, including the proximity to residential areas, the regulatory authority may specify more restrictive time periods.
 - (ii) Blasting may not be conducted at times different from those announced in the blasting schedule except in emergency situations where rain, lightning, other atmospheric conditions, or operator or public safety requires unscheduled detonation.
 - (iii) Warning and all-clear signals of different character that are audible within a range of one-half mile from the point of the blast shall be given. All persons within the permit area shall be notified of the meaning

of the signals through appropriate instructions and signs posted as required by MC-715.12.

- (iv) Access to the blasting area shall be regulated to protect the public and livestock from the effects of blasting. Access to the blasting area shall be controlled to prevent unauthorized entry at least 10 minutes before each blast and until the permittee's authorized representative has determined that no unusual circumstances such as imminent slides or undetonated charges exist and access to and travel in or through the area can safely resume.
 - (v) Areas in which charged holes are awaiting firing shall be guarded, barricaded and posted, or flagged against unauthorized entry.
 - (vi) Airblast shall be controlled such that it does not exceed 128 decibel linear peak at any manmade dwelling or structure located within one-half mile of the permit area.
 - (vii) Except where lesser distances are approved by the regulatory authority (based on preblasting survey or other appropriate investigations) blasting shall not be conducted within:
 - (a) 1,000 feet of any building used as a dwelling, school, church, hospital, or nursing facility;
 - (b) 500 feet of facilities including, but not limited to, disposal wells, petroleum or gas-storage facilities, municipal water-storage facilities, fluid-transmission pipelines, gas or oil-collection lines, or water and sewage lines; and
 - (c) 500 feet of an underground mine not totally abandoned except with the concurrence of the Mine Safety and Health Administration.
- (2) Blasting standards.
- (i) Blasting shall be conducted to prevent injury to persons, damage to public or private property outside the permit area, adverse impacts on any underground mine, and change in course, channel, or availability of ground or surface waters outside the permit area.
 - (ii) In all blasting operations, except as otherwise stated, the maximum peak particle velocity of the ground motion in any direction shall not exceed 1 inch per second at

the immediate location of any dwelling, public building, school, church, or commercial or institutional building. The regulatory authority may reduce the maximum peak particle velocity allowed if it determines that a lower standard is required because of density of population or land use, age or type of structure, geology or hydrology of the area, frequency of blasts or other factors.

- (iii) The maximum peak particle velocity of ground motion does not apply to property inside the permit area that is owned or leased by the permittee.
- (iv) An equation of determining the maximum weight of explosives that can be detonated with any 8 millisecond period is given in paragraph (v). If the blasting is conducted in accordance with this equation, the regulatory authority will consider the vibrations to be within the 1 inch per second limit.
- (v) The maximum weight of explosives to be detonated within any 8 millisecond period shall be determined by the formula

$$W = \left(\frac{D}{60}\right)^2$$

where W = the maximum weight of explosives, in pounds, that can be detonated in any 8 millisecond period, and D = the distance, in feet, to the nearest dwelling, school, church, or commercial or institutional building. For distances between 350 and 5,000 feet, solution of the equation results in the following maximum weight:

<u>Distance in feet (D):</u>	<u>Maximum weight, in pounds (W):</u>
350	34
400	44
500	69
600	100
700	136
800	178
900	225
1,000	278
1,100	336
1,200	400
1,300	469

1,400	.....	544
1,500	.....	625
1,600	.....	711
1,700	.....	803
1,800	.....	900
1,900	.....	1,002
2,000	.....	1,111
2,500	.....	1,736
3,000	.....	2,500
3,500	.....	3,402
4,000	.....	4,444
4,500	.....	5,625
5,000	.....	6,944

(vi) If on a particular site the peak particle velocity continuously exceeds one-half inch per second after a period of 1 second following the maximum ground particle velocity, the regulatory authority shall require the blasting procedures to be revised to limit the ground motion.

(3) Seismograph measurements.

- (i) Where a seismograph is used to monitor the velocity of ground motion and the peak particle velocity limit of 1 inch per second is not exceeded, the equation in paragraph (v) need not be used. However, if the equation is not being used, a seismograph record shall be obtained for every shot.
- (ii) The use of a modified equation to determine maximum weight of explosives for blasting operations at a particular site may be approved by the regulatory authority on receipt of a petition accompanied by reports including seismograph records of test blasting on the site. However, in no case shall the regulatory authority approve the use of a modified equation where the peak particle velocity limit of 1 inch per second required in paragraph (e)(2)(ii) of this section would be exceeded.
- (iii) The regulatory authority may require a seismograph recording of any or all blasts.

- (4) Records of blasting operations. A record of each blast, including seismograph reports, shall be retained for at least 3 years and shall be available for inspection by the regulatory authority and the public on request. The record shall contain the following data:
- (i) Name of permittee, operator, or other person conducting the blast;
 - (ii) Location, date, and time of blast;
 - (iii) Name, signature, and license number of blaster-in-charge;
 - (iv) Direction and distance, in feet, to nearest dwelling, school, church, or commercial or institutional building neither owned or leased by the permittee;
 - (v) Weather conditions;
 - (vi) Type of material blasted;
 - (vii) Number of holes, burden, and spacing;
 - (viii) Diameter and depth of holes;
 - (ix) Types of explosives used;
 - (x) Total weight of explosives used.
 - (xi) Maximum weight of explosives detonated within any 8 millisecond period;
 - (xii) Maximum number of holes detonated within any 8 millisecond period.
 - (xiii) Methods of firing and type of circuit;
 - (xiv) Type and length of stemming;
 - (xv) If mats or other protections were used;
 - (xvi) Type of delay detonator used, and delay periods used;
 - (xvii) Seismograph records, where required, including:
 - (a) Seismograph reading, including exact location of seismograph and its distance from the blast.
 - (b) Name of person taking the seismograph reading; and
 - (c) Name of person and firm analyzing the seismograph record.

MC-715.20 Revegetation

(a) General.

- (1) The permittee shall establish on all land that has been disturbed, a diverse, effective, and permanent vegetative cover of species native to the area of disturbed land or species that will support

the planned postmining uses of the land approved according to MC-715.13. For areas designated as prime farmland, the reclamation procedures of MC-716.7 shall apply.

- (2) Revegetation shall be carried out in a manner that encourages a prompt vegetative cover and recovery of productivity levels compatible with approved land uses. The vegetative cover shall be capable of stabilizing the soil surface with respect to erosion. All disturbed lands, except water areas and surface areas of roads that are approved as a part of the postmining land use, shall be seeded or planted to achieve a vegetative cover of the same seasonal variety native to the area of disturbed land. If both the pre- and postmining land use is intensive agriculture, planting of the crops normally grown will meet the requirements. Vegetative cover will be considered of the same seasonal variety when it consists of a mixture of species of equal or superior utility for the intended land use when compared with the utility of naturally occurring vegetation during each season of the year.
 - (3) On Federal lands, the surface management agency shall be consulted for approval prior to revegetation regarding what species are selected, and following revegetation, to determine when the area is ready to be used.
- (b) Use of introduced species. Introduced species may be substituted for native species only if appropriate field trials have demonstrated that the introduced species are of equal or superior utility for the approved postmining land use, or are necessary to achieve a quick, temporary, and stabilizing cover. Such species substitution shall be approved by the regulatory authority. Introduced species shall meet applicable State and Federal seed or introduced species statutes, and shall not include poisonous or potentially toxic species.
- (c) Timing of revegetation. Seeding and planting of disturbed areas shall be conducted during the first normal period for favorable planting conditions after final preparation. The normal period for favorable planting shall be that planting time generally accepted locally for the type of plant materials selected to meet specific

site conditions and climate. Any disturbed areas, except water areas and surface areas of roads that are approved under MC-715.13 as part of the postmining land use, which have been graded shall be seeded with a temporary cover of small grains, grasses, or legumes to control erosion until an adequate permanent cover is established. When rills or gullies, that would preclude the successful establishment of vegetation or the achievement of the postmining land use, form in regraded topsoil and overburden materials as specified in MC-715.14, additional regrading or other stabilization practices will be required before seeding and planting.

- (d) Mulching. Mulch shall be used on all regraded and topsoiled areas to control erosion, to promote germination of seeds, and to increase the moisture retention of the soil. Mulch shall be anchored to the soil surface where appropriate, to ensure effective protection of the soil and vegetation. Mulch means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing micro-climatic conditions suitable for germination and growth, and do not interfere with the postmining use of the land. Annual grains such as oats, rye and wheat may be used instead of mulch when it is shown to the satisfaction of the regulatory authority that the substituted grains will provide adequate stability and that they will later be replaced by species approved for the postmining use.
- (e) Methods of revegetation.
- (1) The permittee shall use technical publications or the results of laboratory and field tests approved by the regulatory authority to determine the varieties, species, seeding rates, and soil amendment practices essential for establishment and self-regeneration of vegetation. The regulatory authority shall approve species selection and planting plans.
 - (2) Where hayland, pasture, or range is to be the postmining land use, the species of grasses, legumes, browse, trees, or forbes for seeding or planting and their pattern of distribution shall be selected by the permittee to provide a diverse, effective, and permanent vegetative cover with the seasonal variety, succession, distribution, and regenerative capabilities native

to the area. Livestock grazing will not be allowed on reclaimed land until the seedlings are established and can sustain managed grazing. The regulatory authority in consultation with the permittee and the landowner or in concurrence with the governmental land-manageing agency having jurisdiction over the surface, shall determine when the revegetated area is ready for livestock grazing.

- (3) Where forest is to be the postmining land use, the permittee shall plant trees adapted for local site conditions and climate. Trees shall be planted in combination with an herbaceous cover of grains, grasses, legumes, forbes, or woody plants to provide a diverse, effective, and permanent vegetation cover with the seasonal variety, succession, and regeneration capabilities native to the area.
 - (4) Where wildlife habitat is to be included in the postmining land use, the permittee shall consult with appropriate State and Federal wildlife and land management agencies and shall select those species that will fulfill the needs of wildlife, including food, water, cover and space. Plant groupings and water resources shall be spaced and distributed to fulfill the requirements of wildlife.
- (f) Standards for measuring success of revegetation.
- (1) Success of revegetation shall be measured on the basis of reference areas approved by the regulatory authority. Reference areas mean land units of varying size and shape identified and maintained under appropriate management for the purpose of measuring ground cover, productivity and species diversity that are produced naturally. The reference areas must be representative of geology, soils, slope, aspect, and vegetation in the permit area. Management of the reference area shall be comparable to that which will be required for the approved postmining land use of the area to be mined. The regulatory aouthority shall approve the estimating techniques that will be used to determine the degree of success in the revegetated area.
 - (2) The ground cover of living plants on the revegetated area shall be equal to the ground cover of living plants of the approved reference area for a minimum of two growing seasons. The

ground cover shall not be considered equal if it is less than 90 percent of the ground cover of the reference area for any significant portion of the mined land. Exceptions may be authorized by the regulatory authority for:

- (i) Previously mined areas that were not reclaimed to the standards required by this chapter prior to the effective date of these regulations. The ground cover of living plants for such areas shall not be less than required to control erosion, and in no case less than that existing before redisturbance;
 - (ii) Areas to be developed immediately for industrial or residential use. The ground cover of living plants shall not be less than required to control erosion, as used in this paragraph, immediately means less than 2 years after regrading has been completed for the area to be used; and
 - (iii) Areas to be used for agricultural cropland purposes. Success in revegetation of cropland shall be determined on the basis of crop production from the mined area compared to the reference area. Crop production from the mined area shall be equal to that of the approved reference area for a minimum of two growing seasons. Production shall not be considered equal if it is less than 90 percent of the production of the reference area for any significant portion of the mined area.
- (3) Species diversity, distribution, seasonal variety, and vigor shall be evaluated on the basis of the results which could reasonably be expected using the methods of revegetation approved under paragraph (e) of this section.
- (g) Seeding of stockpiled topsoil. Topsoil stockpiled in compliance with MC-715.16 must be seeded or planted with an effective cover on nonnoxious, quick growing annual and perennial plants during the first normal period for favorable planting conditions or protected by other approved measures as specified in MC-715.16.

MC-716.1 General Obligations

- (a) This part establishes special initial performance standards that apply in the following special circumstances:
- (1) MC-716.2 applies to surface coal mining operations on steep slopes.
 - (2) MC-716.3 applies to surface coal mining operations involving mountaintop removal.
 - (3) MC-716.4 is reserved.
 - (4) MC-716.5 is reserved.
 - (5) MC-716.6 is reserved.
 - (6) MC-716.7 applies to surface coal mining operations on prime farmlands.
- (b) All surface coal mining and reclamation operations subject to this part shall comply with the applicable special performance standards in this part. Such operations shall also comply with all general performance standards in Part 715 of this chapter unless specifically exempted in this part from the requirements of Part 715.

MC-716.2 Steep Slope Mining

- (a) The permittee conducting surface coal mining and reclamation operations on natural slopes that exceed 20 degrees, on lesser slopes that require measures to protect the area from disturbance, as determined by the regulatory authority after consideration of soils, climate, the method of operations, geology, and other regional characteristics, shall meet the following performance standards. The standards of this section do not apply where mining is done on a flat or gently rolling terrain with an occasional steep slope through which the mining proceeds and leaves a plain or predominantly flat area; or where the mining is governed by MC-716.3.
- (1) Spoil, waste materials or debris, including that from clearing and grubbing, and abandoned or disabled equipment, shall not be placed or allowed to remain on the downslope.
 - (2) The highwall shall be completely covered with spoil and the disturbed area graded to comply with the provisions of MC-715.14 of this chapter. Land above the highwall shall not be disturbed unless the regulatory authority finds that the disturbance will facilitate compliance with the requirements of this section.

- (3) Material in excess of that required to meet the provisions of MC-715.14 of this chapter shall be disposed of in accordance with the requirements of MC-715.15 of this chapter.
- (4) Woody materials may be buried in the backfilled area only when burial does not cause, or add to, instability of the backfill. Woody materials may be chipped and distributed through the backfill when approved by the regulatory authority.

MC-716.3 Mountaintop Removal

- (a) Surface coal mining and reclamation operations that remove entire coal seams running through the upper fraction of a mountain, ridge, or hill by removing all of the overburden creating a level plateau or gently rolling contour with no highwalls remaining are exempt from the requirements of MC-715.14 of this chapter for achieving approximate original contour, if the following requirements are met:
 - (1) An industrial, commercial, agricultural, residential, or public facility (including recreational facilities) use is proposed for the affected land.
 - (2) The alternative land use criteria in MC-715.13 (d) of this chapter are met and the proposal is approved by the regulatory authority.
 - (3) All other applicable requirements of Part 715 of this chapter can be met.
- (b) Surface coal mining and reclamation operations conducted under this section shall comply with the following standards:
 - (1) An outcrop barrier of sufficient width, consisting of the toe of the lowest coal seam, and its associated overburden shall be retained to prevent slides and erosion.
 - (2) The final graded top plateau slopes on the mined area shall be less than 1v:5h so as to create a level plateau or gently rolling configuration and the outslopes of the plateau shall not exceed 1v:2h, except where engineering data substantiates and the regulatory authority finds that a minimum static safety factor of 1.5 will be attained.

- (3) The resulting level or gently rolling contour shall be graded to drain inward from the outslope except at specific points where it drains over the outslope in protected stable channels.
 - (4) Damage to natural watercourses below the area to be mined shall be prevented.
 - (5) Spoil shall be placed on the mountain top bench as is necessary to achieve the postmining land use approved under MC-715.13 of this chapter. All excess spoil material not retained on the mountain top shall be placed in accordance with the standards of MC-715.15 of this chapter.
- (c) (1) All permits giving approval for mountain top removal shall be reviewed not more than 3 years from the date of issuance of the permit, unless the permittee affirmatively demonstrates and the regulatory authority finds that all operations are proceeding in accordance with the terms of the permit and applicable requirements of the Act and the regulations of this part. The terms of the permit shall be in accordance with the requirements of the Act and the regulations of this part.
- (2) The terms of a permit for mountain top removal may be modified by the regulatory authority if it determines that more stringent measures are necessary to prevent or control slides and erosion, prevent damage to natural water courses, avoid water pollution, or to assure successful revegetation.

MC-716.4 is reserved

MC-716.5 is reserved

MC-716.6 is reserved

MC-716.7 Prime Farmland

(a) Applicability

- (1) Permittees of surface coal mining and reclamation operations conducted on prime farmland shall comply with the general performance standards of MC-715 of this chapter in addition to the special requirements of this section. Prime farmlands are those lands

defined in paragraph (b) of this section that have been used for the production of cultivated crops, including nurseries, orchards, and other speciality crops, and small grains for at least 5 years out of the 20 years preceding the date of the permit application.

- (2) The requirements of this section are applicable to any permit issued on or after August 3, 1977. Permits issued before that date and revisions or renewals of those permits need not conform to the provisions of this section regarding actions to be taken before a permit is issued. Permit renewals or revisions shall include only those areas that:
 - (i) Were in the original permit area or in a mining plan approved prior to August 3, 1977; or
 - (ii) Are contiguous and under State regulation or practice would have normally been considered as a renewal or revision of a previously approved plan.
- (b) Definition. Prime farmland means those lands that meet the applicability requirements in paragraph (a) of this section and the specific technical criteria prescribed by the Secretary of Agriculture as published in the Federal Register on August 23, 1977. These criteria are included here for convenience. Terms used in this section are defined in U.S. Department of Agriculture publications: Soil Taxonomy, Agriculture Handbook 436; Soil Survey Manual, Agriculture Handbook 18; Rainfall-Erosion Losses From Cropland, Agriculture Handbook 282; and Saline and Alkali Soils, Agriculture Handbook 60. To be considered prime farmland soils must meet all of the following criteria:
 - (1) The soils have:
 - (i) Aquic, udic, ustic, or xeric moisture regimes and sufficient available water capacity within a depth of 40 inches or in the root zone if the root zone is less than 40 inches deep, to produce the commonly grown crops in 7 or more years out of 10; or
 - (ii) Xeric or ustic moisture regimes in which the available water capacity is limited but the area has a developed irrigation water supply that is dependable and of adequate quality (a dependable water supply is one in which enough water is available for irrigation in 8 out of 10 years for the crops commonly grown); or
 - (iii) Aridic or torric moisture regimes and the area has a developed

irrigation water supply that is dependable and of adequate quality.

- (2) The soils have a temperature regime that is frigid, mesic, thermic, or hyperthermic (pergelic and crylic regimes are excluded). These soils that at a depth of 20 inches have a mean annual temperature higher than 32 degrees F. In addition, the mean summer temperature at this depth in soils with an O horizon is higher than 47 degrees F., in soils that have no O horizon the mean summer temperature is higher than 59 degrees F.
 - (3) The soils have a pH between 4.5 and 8.4 in all horizons within a depth of 40 inches or in the root zone if the root zone is less than 40 inches deep.
 - (4) The soils either have no water table or have a water table that is maintained at a sufficient depth during the cropping season to allow food, feed, fiber, forage, and oilseed crops common to the area to be grown.
 - (5) The soils can be managed so that, in all horizons within a depth of 40 inches or in the root zone if the root zone is less than 40 inches deep, during part of each year the conductivity of saturation extract is less than 4 mmhos/cm and the exchangeable sodium percentage (ESP) is less than 15.
 - (6) The soils are not flooded frequently during the growing season (less often than once in 2 years).
 - (7) The soils have a product of K (erodibility factor x percent slope of less than 2.0 and a product of I (soil erodibility) x c (climatic factor) not exceeding 60.
 - (8) The soils have a permeability rate of at least 0.06 inch per hour in the upper 20 inches and the mean annual soil temperature at a depth of 20 inches is less than 59 degrees F.; the permeability rate is not a limiting factor if the mean annual soil temperature is 59 degrees F. or higher.
 - (9) Less than 10 percent of the surface layer (upper 6 inches) in these soils consists of rock fragments coarser than 3 inches.
- (c) Identification of prime farmland. Prime farmland shall be identified on the basis of soil surveys submitted by the applicant. The regulatory authority also may require data on irrigation, drainage, flood control, and subsurface water management. The requirement for submission of soil

surveys may be waived by the regulatory authority if the applicant can demonstrate according to the procedures in paragraph (d) of this section that no prime farmlands are involved. Soil surveys shall be conducted according to standards of the National Cooperative Soil Survey, which include the procedures set forth in U.S. Department of Agriculture Handbooks 436 (Soil Taxonomy) and 18 (Soil Survey Manual), and shall include:

- (1) Data on moisture availability, temperature regime, flooding, water table, erosion characteristics, permeability, or other information that is needed to determine prime farmland in accordance with paragraph (b) of this section;
- (2) A map designating the exact location and extent of the prime farmland; and
- (3) A description of each soil mapping unit.

(d) Negative determination of prime farmland. The land shall not be considered as prime farmland where the applicant can demonstrate one or more of the following situations.

- (1) Lands within the proposed permit boundaries have been used for the production of cultivated crops for less than 5 years out of 20 years preceding the date of the permit application.
- (2) The slope of all land within the permit area is 10 percent or greater.
- (3) Land within the permit area is not irrigated or naturally sub-irrigated, has no developed water supply that is dependable and of adequate quality, and the average annual precipitation is 14 inches or less.
- (4) Other factors exist, such as a very rocky surface, or the land is frequently flooded, which clearly place all land within the area outside the purview of prime farmland.
- (5) A written notification based on scientific findings and soil surveys that land within the proposed mining area does not meet the applicability requirements in paragraph (a) of this section is submitted to the regulatory authority by a qualified person other than the applicant, and is approved by the regulatory authority.

(e) Plan for restoration of prime farmland. The applicant shall submit to the regulatory authority a plan for the mining and restoration of any prime farmland within the proposed permit boundaries. This plan shall be used by the regulatory authority in judging the

technological capability of the applicant to restore prime farmlands.

The plan shall include --

- (1) A description of the original undisturbed soil profile, as determined from a soil survey, showing the depth and thickness of each of the soil horizons that collectively constitute the root zone of the locally adapted crops and are to be removed, stored, and replaced;
 - (2) The proposed method and type of equipment to be used for removal, storage, and replacement of the soil in accordance with paragraph (g) of this section;
 - (3) The location of areas to be used for the separate stockpiling of the soil and plans for soil stabilization before redistribution;
 - (4) If applicable, documentation such as agricultural school studies or other scientific data from comparable areas that supports the use of other suitable material, instead of the A, B, or C soil horizon, to obtain on the restored area equivalent or higher levels of yield as non-mined prime farmlands in the surrounding area under equivalent levels of management; and
 - (5) Plans for seeding or cropping the final graded mine land and the conservation practices to control erosion and sedimentation during the first 12 months after regrading is completed. Proper adjustments for seasons must be made so that final graded land is not exposed to erosion during seasons when vegetation or conservation practices cannot be established due to weather conditions; and
 - (6) Available agricultural school studies, company data, or other scientific data for comparable areas that demonstrate that the applicant using his proposed method of reclamation will achieve, within a reasonable time, equivalent or higher levels of yield after mining as existed before mining.
- (f) Consultation with Secretary of Agriculture and issuance of permit.
- (1) The regulatory authority may grant a permit which shall incorporate the plan submitted under paragraph (e) of this section, if it finds in writing that the applicant --
 - (i) has the technological capability to restore the prime

farmland within the proposed permit area, within a reasonable time, to equivalent or higher levels of yields as nonmined prime farmland in the surrounding area under equivalent levels of management; and

(ii) Will achieve compliance with the standards of paragraph (g) of this section.

(2) Before any permit is issued for the areas that include prime farmlands, the regulatory authority shall consult with the Secretary of Agriculture. The Secretary of Agriculture will provide a review of the proposed method of soil reconstruction and comment on possible revisions that will result in a more complete and adequate restoration. The Secretary of Agriculture has assigned his responsibilities under this paragraph to the Administrator of the U.S. Soil Conservation Service and the U.S. Soil Conservation Service will carry out the consultation and review through the State Conservationist.

(g) Special requirements. For all prime farmlands to be mined and reclaimed, the applicant shall meet the following special requirements:

(1) All soil horizons to be used in the reconstruction of the soil shall be removed before drilling, blasting, or mining to prevent contaminating the soil horizons with undesirable materials. Where removal of soil horizons result in erosion that may cause air and water pollution, the regulatory authority shall specify methods of treatment to control erosion of exposed overburden. The permittee shall --

(i) Remove separately the entire A horizon or other suitable soil materials which will create a final soil having an equal or greater productive capacity than that which existed prior to mining in a manner that prevents mixing or contamination with other material before replacement;

(ii) Remove separately the B horizon of the natural soil or a combination of B horizon and underlying C horizon or other suitable soil material that will create a reconstructed root zone of equal or greater productivity capacity than that which existed prior to mining in a manner that prevents mixing or contamination with other material; and

- (iii) Remove separately the underlying C horizons or other strata, or a combination of such horizons or other strata, to be used instead of the B horizon that are of equal or greater thickness and that can be shown to be equal or more favorable for plant growth than the B horizon, and that when replaced will create in the reconstructed soil a final root zone of comparable depth and quality to that which existed in the natural soil.
- (2) If stockpiling of soil horizons is allowed by the regulatory authority in lieu of immediate replacement, the A horizon and B horizon must be stored separately from each other. The stockpiles must be placed within the permit area and where they will not be disturbed or exposed to excessive erosion by water and/or wind before the stockpiled horizons can be redistributed on terrain graded to final contour. Stockpiles in place for more than 30 days must meet the requirements of MC-715.16(c).
- (3) Scarify the final graded land before the soil horizons are replaced.
- (4) Replace the material from the B horizon, or other suitable material specified in paragraph (g) (1) (ii) or (g) (1) (iii) of this section in such a manner as to avoid excessive compaction of overburden and to a thickness comparable to the root zone that existed in the soil before mining.
- (5) Replace the A horizon or other suitable soil materials, which will create a final soil having an equal or greater productive capacity than existed prior to mining, as the final surface soil layer to the thickness of the original soil as determined in paragraph (g) (1) (i) of this section in a manner that --
- (i) Prevents excess compaction of both the surface layer and underlying material and reduction of permeability to less than 0.06 inch per hour in the upper 20 inches of the reconstructed soil profile; and
- (ii) Protects the surface layer from wind and water erosion before it is seeded or planted.
- (6) Apply nutrients and soil amendments as needed to establish quick vegetative growth.

Underground Mining Performance Standards

MC-717.11 General Obligations

- (a) Compliance. All underground coal mining and associated reclamation operations conducted on lands where any element of the operations is regulated by the State shall comply with these performance standards.
- (1) For the purposes of this part, underground coal mining and associated reclamation operations mean a combination of surface operations and underground operations. Surface operations include construction, use, and reclamation of new and existing access and haul roads, above ground repair areas, storage areas, processing areas, shipping areas, and areas upon which are sited support facilities including hoist and ventilating ducts, and on which materials incident to underground mining operations are placed. Underground operations include underground construction, operation, and reclamation of shafts, adits, underground support facilities, underground mining, hauling, storage, and blasting.
 - (2) For the purpose of this part the term permittee means the person permitted to conduct underground mining operations by the State or if no permit is issued in the State, the person operating a mine.
 - (3) For the purpose of this part, disturbed areas means surface work areas and lands affected by surface operations including but not limited to, roads, mine entry excavations, above ground (surface) work areas, such as tipples, coal processing facilities, and other operating facilities, waste work and spoil disposal areas, and mine waste impoundments or embankments
- (b) Authorization to operate. A copy of all current permits, licenses, approved plans or other authorizations to operate the mine shall be available for inspection at or near the mine site.

MC-717.12 Signs and Markers

- (a) Specifications. All signs required to be posted shall be of a standard design that can be seen and read easily and shall be made of durable material, and shall conform to local ordinances and codes. The signs and other markers shall be maintained during all operations to which they pertain.
- (b) Mine and permit identification signs. Signs identifying the mine area

shall be displayed at all points of access to the permit area from public highways. Signs shall show the name, business address, and telephone number of the permittee and identification numbers of current mining and reclamation permits or other authorizations to operate. Such signs shall not be removed until after release of all bonds.

MC-717.14 Backfilling and Grading of Road Cuts, Mine Entry Area Cuts, and Other Surface Work Areas.

- (a) Upon completion of underground mining. Surface work areas which are involved in excavation, disposal of materials, or otherwise affected, shall be regraded to approximate original contour. The permittee shall transport, backfill and compact fill material to assure stability or to prevent leaching of toxic pollutants. Barren rock or similar materials excess to the mining operations and which are disposed on the land surface shall be subject to the provision of MC-717.15 of this part. Roads and support facility areas existing prior to the effective date of this part and used in support of underground mining operations which are subject to this part shall be regraded to the extent deemed feasible by the regulatory authority based on the availability of backfill material and resulting stability of the affected lands after reclamation. As a minimum, the permittee shall be required to:
- (1) Retain all earth, rock and other mineral nonwaste materials on the solid portion of existing or new benches, except that the regulatory authority may permit placement of such material at the site of the faceup as a means of disposing of excavated spoil when additional working space is needed to facilitate operations. Such placement of material shall be limited to minimize disturbance of land and to the hydrologic balance. Such fills shall be stabilized with vegetation and shall achieve a minimum static safety factor of 1.5. In no case shall the outslope exceed the angle of repose.
 - (2) Backfill and grade to the most moderate slope possible to eliminate any highwall along roads, mine entry faces or other areas. Slopes shall not exceed the angle of repose or such lesser slopes as required by the regulatory authority to maintain stability.

- (b) On approval by the regulatory authority and in order to conserve soil moisture, ensure stability, and control erosion on final graded slopes, cut-and-fill terraces may be allowed if the terraces are appropriate substitutes for construction of lower grades on the reclaimed lands. The terraces shall meet the following requirements:
- (1) The width of the individual terrace bench shall not exceed 20 feet unless specifically approved by the regulatory authority as necessary for stability erosion control, or roads.
 - (2) The vertical distance between terraces shall be as specified by the regulatory authority to prevent excessive erosion and to provide long-term stability.
 - (3) The slope of the terrace outslope shall not exceed 1v:2h (50 percent). Outslopes which exceed 1v:2H (50 percent) may be approved if they have a minimum static safety factor of 1.5 or more and provide adequate control over erosion and closely resemble the surface configuration of the land prior to mining. In no case may highwalls be left as part of terraces.
 - (4) Culverts and underground rock drains shall be used on the terrace only when approved by the regulatory authority.
- (c) All Surface operations on steep slopes of 20 degrees or more or on such lesser slopes as the regulatory authority define as a steep slope shall be conducted so as not to place any material on the downslope below road cuts, mine working or other benches, other than in conformance with paragraph (a)(1) of this part.
- (d) Regrading or stabilizing rills and gullies. When rills or gullies deeper than 9 inches form in areas that have been regraded and the topsoil replaced but vegetation has not yet been established, the permittee shall fill, graded, or otherwise stabilize the rills and gullies and reseed or replant the areas according to MC-717.20. The regulatory authority shall specify that erosional features of lesser size be stabilized if they result in additional erosion and sedimentation.
- (e) Covering coal and acid-forming, toxic-forming, combustible, and other waste materials; stabilizing backfilled materials; and using waste material for fill. Any acid-forming, toxic-forming, combustible materials. or any other waste materials as identified by

the regulatory authority that are exposed, used, or produced during underground mining and which are deposited on the land surface shall, after placement in accordance with MC-717.15 of this part, be covered with a minimum of 4 feet of nontoxic and noncombustible material; or, if necessary, treated to neutralize toxicity, in order to prevent water pollution and sustained combustion, and to minimize adverse effects on plant growth and land uses. Where necessary to protect against upward migration of salts, exposure by erosion, to provide an adequate depth for plant growth, or to otherwise meet local conditions, the regulatory authority shall specify thicker amount of cover using nontoxic material. Acid forming or toxic forming material shall not be buried or stored in proximity to a drainage course so as to cause or pose a threat of water pollution or otherwise violate the provisions of MC-717.17 of this part.

¶ (f) Grading along the contour. All final grading, preparation of earth, rock and other nonwaste materials before replacement of topsoil in accordance with MC-717.20, shall be done along the contour to minimize subsequent erosion and instability. If such grading, preparation or placement along the contour would be hazardous to equipment operators, grading, preparation or placement in a direction other than generally parallel to the contour may be used. In all cases, grading, preparation or placement shall be conducted in a manner which minimizes erosion and provides a surface for replacement of topsoil which will minimize slippage.

¶ MC-717.15 Disposal of Excess Rock and Earth materials on Surface Areas.

Excess rock and earth material produced from an underground mine and not disposed in underground workings or used in backfilling and grading operations shall be placed in surface disposal areas in accordance with requirements of MC-715.15. Where the volume of such material is small and its chemical and physical characteristics do not pose a threat to either public safety or the environment the regulatory authority may modify the requirements of MC-715.15 in accordance with MC-717.14 (a) (1).

¶ MC-717.17 Protection of the Hydrologic System

The permittee shall plan and conduct underground coal mining and reclamation operations to minimize disturbance of the prevailing hydrologic balance in order

to prevent long-term adverse changes in the hydrologic balance that could result from underground coal mining operations, both on and off site. Changes in water quality and quantity, in the depth to ground water, and in the location of surface water drainage channels shall be minimized and applicable Federal and State statutes and regulations shall not be violated. The permittee shall conduct operations so as to minimize water pollution and shall, where necessary, use treatment methods to control water pollution. The permittee shall emphasize underground coal mining and reclamation practices that will prevent or minimize water pollution and changes in flows in preference to the use of water treatment facilities prior to discharge to surface waters. Practices to control and minimize pollution include, but are not limited to, diverting water from underground workings or preventing water contact with acid-or-toxic forming materials, and minimizing water contact time with waste materials, maintaining mine barriers to enhance postmining inundation and sealing, establishing disturbed areas through grading, diverting runoff, achieving quick growing stands of temporary vegetation, and lining drainage channels. If treatment is required to eliminate pollution of surface or ground waters, the permittee shall operate and maintain the necessary water treatment facilities as set forth in this section.

- (a) Water quality standards and effluent limitations. All surface drainage from the disturbed area, including disturbed areas that have been graded, seeded or planted and which remain subject to the requirements of this section, except for drainage from disturbed areas that have met the requirements of MC-717.20, shall be passed through a sedimentation pond or a series of sedimentation ponds prior to leaving the permit area. All waters which flow or are removed from underground operations or underground waters which are removed from other areas to facilitate mining and which discharge to surface waters must be passed through appropriate treatment facilities prior to discharge where necessary to meet effluent limitations.

For purposes of this section only, disturbed areas shall include areas of surface operations but shall not include those areas in which only diversion ditches, sedimentation ponds, or roads are installed in accordance with this section and the upstream area is not otherwise disturbed by the permittee. Disturbed areas shall not include those surface areas overlying the underground working unless those areas are also disturbed by surface operations such as fill (disposal) areas, support facilities areas, or other major activities which create a risk of pollution.

The regulatory authority may grant exemptions from this requirement only when the disturbed drainage area within the total disturbed area is small and if the permittee shows that sedimentation ponds are not necessary to meet effluent limitations of this paragraph and to maintain water quality in downstream receiving waters. Sedimentation ponds required by this paragraph shall be constructed in accordance with paragraph (e) of this section in appropriate locations prior to any mining in the affected drainage area in order to control sedimentation or otherwise treat water in accordance with this paragraph. Discharges from areas disturbed by underground operation any be surface operation and reclamation activities conducted thereon, must meet all applicable Federal and State regulations and, at a minimum, the following numerical effluent limitations.

EFFLUENT LIMITATIONS, IN MILLIGRAMS PER LITER,

mg/l except for pH

<i>Effluent characteristics</i>	<i>Maximum allowable¹</i>	<i>Average of daily values for 30 consecutive discharge days¹</i>
<i>Iron, total.....</i>	<i>7.0</i>	<i>3.5</i>
<i>Manganese, total..</i>	<i>4.0</i>	<i>2.0</i>
<i>Total suspended solids²</i>	<i>70.0</i>	<i>25.0</i>
<i>pH³</i>	<i>Within the..... range 6.0 to 9.0</i>	

¹Based on representative sampling.

²In Utah, total suspended solids limitations will be determined on a case-by-case basis, but they must not be greater than 45 mg/l (maximum allowable) and 25 mg/l (average of daily value for 30 consecutive discharge days) based on a representative sampling.

³Where the application of neutralization and sedimentation treatment technology results in inability to comply with the manganese limitations set forth, the regulatory authority may allow the pH level in the discharge to exceed to a small extent the upper limit of 9.0 in order that the manganese limitations will be achieved.

- (1) Any overflow or other discharge of surface water from the disturbed area within the permit area demonstrated by the permittee to result from a precipitation event larger than the 10-year 24-hour frequency event will not be subject to the effluent limitations of paragraph (a).
- (2) The permittee shall install, operate, and maintain adequate facilities to treat any water discharged from the disturbed area that violates applicable Federal or State regulations or the limitations of paragraph (a). If the pH of waters to be discharged from the disturbed area is normally less than 6.0, an automatic lime feeder or other neutralization process approved by the regulatory authority shall be installed, operated, and maintained. If the regulatory authority finds that small and infrequent treatment requirements to meet applicable standards do not necessitate use of any automatic neutralization process, and the mine normally produces less than 500 tons of coal per day, the regulatory authority can approve the use of a manual system if the permittee agrees to ensure that consistent and timely treatment is carried out.

2 (b) Surface water monitoring.

- (1) The permittee shall submit for approval by the regulatory authority a surface water monitoring program which meets the following requirements:
 - x (i) Provides adequate monitoring of all discharge from the disturbed area and from the underground operations.
 - (ii) Provides adequate data to describe the likely daily and seasonal variation in discharges from the disturbed area in terms of flow, pH, total iron, total manganese, and total suspended solids and as requested by the regulatory authority, any other parameter characteristic of the discharge.
 - (iii) Provides monitoring at appropriate frequencies to measure normal and abnormal variations in concentrators.
 - (iv) Provides an analytical quality control system including standard methods of analysis such as those specified in 40 CFR 136.
 - (v) Provides regular reports of all measurements to the regulatory authority within 60 days of sample collection unless violations of permit conditions occur in which case the regulatory authority shall be notified immediately after receipt of analytical results.

by the permittee. If the discharge is subject to regulation by a Federal or State permit issued in compliance with section 301 of the Federal Water Pollution Control Act Amendment of 1972 (33 U.S.C. MC-1311), a copy of the completed reporting form supplied to meet the permit requirements may be submitted to the regulatory authority to satisfy the reporting requirements if the data meet the frequency and other requirements of this paragraph.

P (2) Equipment, structures, or other measures necessary to accurately measure and sample the quality and quantity of surface water discharges from the disturbed area of the permit area shall be properly installed, maintained and operated and shall be removed when no longer required.

\ (c) Diversion and conveyance of overland flow away from disturbed areas.

In order to minimize erosion and to prevent or remove water from contacting toxic-producing deposits, overland flow from undisturbed areas may, as required or approved by the regulatory authority, be diverted away from disturbed areas by means of temporary or permanent diversion structures. The following requirements shall be met for such diversions:

P (1) Temporary diversion structures shall be constructed to safely pass the peak runoff from a precipitation event with a one year recurrence interval, or a larger event as specified by the regulatory authority. [The design criteria must assure adequate protection of the environment and public during the existence of the temporary diversion structure.

? (2) Permanent diversion structures are those remaining after mining and reclamation and approved for retention by the regulatory authority and other appropriate State and Federal agencies. To protect fills and property, to prevent water from contacting toxic-producing deposits, and to avoid danger to public health and safety, permanent diversion structures shall be constructed to safely pass the peak runoff from a precipitation event with a 100-year recurrence interval or a larger event as specified by the regulatory authority. Permanent diversion structures shall be constructed with gently sloping banks that are stabilized by vegetation. Asphalt, concrete, or other similar linings shall not be used unless specifically required to prevent seepage or to provide stability and they are approved by the regulatory authority.

- (3) Diversions shall be designed, constructed, and maintained in a manner so as to prevent additional contributions of suspended solids to streamflow, or to runoff outside the permit area to the extent possible, using the best technology currently available. In no event shall such contributions be in excess of requirements set by applicable State or Federal law. Appropriate sediment control measures for these diversions shall include, but not be limited to, maintenance of appropriate gradients, channel lining, vegetation, and roughness structures and detention basins.
- (d) Stream channel diversions. In the event that the regulatory authority permits diversion of streams, the regulations of MC-715.17(d) shall apply.
- (e) Sediment control measures. Appropriate sediment control measures shall be designed, constructed, and maintained to prevent additional contributions of sediment to streamflow or to runoff outside the permit area to the extent possible, using the best technology currently available.
- (1) Sediment control measures include practices carried out within and adjacent to the disturbed area. The scale of downstream practices shall reflect the degree to which successful techniques are applied at the sources of the sediment. Sediment control measures consist of the utilization of proper mining, reclamation methods, and sediment control practices (singly or in combination) including but not limited to:
- (i) Disturbing the smallest practicable area at any one time during the mining operation through progressive backfilling, grading and timely revegetation;
 - (ii) Consistent with the requirements of MC-715.14 and MC-715.15 of this chapter shaping the backfill material to promote a reduction of the rate and volume of runoff.
 - (iii) Retention of sediment within the pit and disturbed area;
 - (iv) Diversion of overland and channelized flow from undisturbed areas around or in protected crossings through the disturbed area;
 - (v) Utilization of straw dikes, riprap, check dams, mulches, vegetative sediment filters, dugout ponds, and other

measures that reduce overland flow velocity, reduce runoff volume or entrap sediment;

(vi) Sedimentation ponds.

(2) Sedimentation ponds may be used individually or in series, should be located as near as possible to the disturbed area and where possible out of major stream courses, and shall (either individually or in series) meet the following criteria:

(i) Sedimentation ponds must provide 24 hour theoretical detention time for the inflow or runoff entering the pond(s) from a 10 year, 24 hour precipitation event. Runoff diverted, in accordance with paragraphs (c) and (d) of this section, away from the disturbed drainage areas need not be considered in sedimentation pond design. In determining the runoff volume the characteristics of the mine site, reclamation procedures, and on-site sediment control practices shall be considered.

(ii) Upon approval of the regulatory authority theoretical detention time may be reduced to not less than 10-hours, as demonstrated by the permittee, equal to the improvement in sedimentation removal efficiency as a result of pond design including but not limited to pond configuration, inflow-outflow facilities and their relative location, baffles to decrease inflow velocity and short circuiting, a surface area sufficient to achieve the sediment trap efficiency necessary to meet effluent limitations (MC-715(a), and sediment control measures provided in MC-715.17(e)(1).

(iii) The regulatory authority may approve a detention time less than the time required by paragraph (e)(2)(i) or (ii) of this section, when the permittee has demonstrated that the size distribution or the specific gravity of the suspended matter or the utilization of chemical treatment or flocculation are such that the effluent limitations can be met. The detention time shall be stipulated.

(3) An additional sediment storage volume must be provided equal to 0.1 acre-feet for each acre of disturbed area within the upstream drainage area. Upon approval of the regulatory authority, the sediment storage volume may be reduced in an amount

as demonstrated by the permittee, equal to the sediment removed by other appropriate sediment control measures such as those identified in paragraph (e)(1) of this section, or by lesser sediment yields as evidenced by empirical data for runoff characteristics.

- ¶ (4) Ponds may be of the permanent pool or self-dewatering type. Dewatering-type ponds shall use siphon or other dewatering methods approved by the regulatory authority to prevent discharges of pollutants within the design flow.
- ¶ (5) Spillway systems shall be properly located to maximize the distances from the point of inflow into the pond to maximize detention times. Spillway systems shall be provided to safely discharge the peak runoff from a precipitation event with a 25-year recurrence interval, or larger event as specified by the regulatory authority.
- (6) Sediment shall be removed from sedimentation ponds so as to assure maximum sediment removal efficiency and attainment and maintenance of effluent limitations. Sediment shall be disposed of in a manner that minimizes adverse effects on surface waters due to its chemical and physical characteristics, on infiltration, vegetation or surface or ground water quality.
- (7) If a sedimentation pond includes an embankment that is more than 20 feet in height, as measured from the upstream toe of the embankment to the crest of the emergency spillway, or has a storage volume of 20-acre-feet or more, the following additional requirements shall be met:
- (i) An appropriate combination of principal and emergency spillways shall be provided to safely discharge the runoff resulting from a 100-year 6-hour precipitation event, or larger event as specified by the regulatory authority.
 - (ii) Ponds shall be designed and constructed with an acceptable static safety factor of at least 1.5 for the normal pool level to ensure embankment slope stability.
 - (iii) The minimum top width of the embankment shall not be less than the quotient of $\frac{H+35}{5}$ where H is the height of the embankment as measured from the upstream toe to the top of the embankment.

- (iv) Ponds shall have appropriate barriers to control seepage along conduits that extend through the embankment.
- (8) All ponds shall be designed and inspected under the supervision of, and certified after construction by, a registered professional engineer.
- (9) All ponds, including those not meeting the size or other criteria 30 CFR 77.216(a), shall be examined for structural weakness, erosion, and other hazardous conditions in accordance with the inspection requirements contained in 30 CFR 77.216-3.
- (10) All ponds shall be removed and the land affected regraded and revegetated consistent with the requirements of MC-717.14 and MC-717.20.
- (f) Discharge structures. Discharges from sedimentation ponds and diversion structures shall be controlled, where necessary, using energy dissipators, surge ponds, and other devices to reduce erosion and prevent deepening or enlargement of stream channels and to minimize disturbances to the hydrologic balance.
- (g) Acid and toxic materials. Drainage to ground and surface waters which emanates from acid-forming or toxic-forming mine waste materials and spoils placed on the land surface shall be avoided by:
 - (1) Identifying, burying and treating where necessary, spoil or other materials that, in the judgement of the regulatory authority, will be toxic to vegetation or that will adversely affect water quality if not treated or buried. Such material shall be disposed in accordance with the provision of MC-717.14(e);
 - (2) Preventing or removing water from contact with toxic-producing deposits;
 - (3) Burying or otherwise treating all toxic or harmful materials within 30 days if such materials are subject to wind and water erosion, or within a lesser period designated by the regulatory authority. If storage of such materials is approved, the materials shall be placed on impermeable material and protected from erosion and contact with surface water. Coal waste ponds and other coal waste materials shall be maintained according to MC-717.17(g)(4) and MC-717.18 shall apply;
 - (4) Burying or otherwise treating waste materials from coal preparation plants no later than 90 days after the cessation of the filling of the disposal area. Burial or treatment shall be in accordance with MC-717.14 (e) of this part;

(5) Casing, sealings, or otherwise managing boreholes, shafts, wells, and auger holes or other more or less horizontal holes to prevent pollution of surface or ground water and to prevent mixing of ground waters of significantly different quality. All boreholes that are within the permit area but are outside the surface coal mining area or which extend beneath the coal to be mined and into waterbearing strata shall be plugged permanently in a manner approved by the regulatory authority, unless boreholes have been approved for use in monitoring.

(h) Ground water systems

(1) Underground operations shall be conducted to minimize adverse effects on ground water flow and quality, and to minimize offsite effects. The permittee will be responsible for performing monitoring according to subparagraph (2) of this paragraph to ensure operations conform to this requirement.

(2) Ground water levels, subsurface flow and storage characteristics, and the quality of ground water shall be monitored in a manner approved by the regulatory authority to determine the effects of underground coal mining operations on the quantity and quality of water in ground water systems at the mined area and in associated offsite areas. When operations are conducted in such a manner that may affect the ground water system, ground water levels and ground water quality shall be periodically monitored using wells which can adequately reflect changes in ground water quantity and quality resulting from such operations. Sufficient water wells must be used by the permittee. The regulatory authority may require drilling and development of additional wells if needed to adequately monitor the ground water system. As specified and approved by the regulatory authority, additional hydrologic tests, such as aquifer tests, must be undertaken by the permittee to demonstrate compliance with subparagraph (1) of this paragraph.

(i) Water rights and replacement. The permittee shall replace the water supply of an owner of interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground

or surface source where such supply has been affected by contamination, diminution, or interruption proximately resulting from surface coal mine operation by the permittee.

(j) Hydrologic impact of roads.

(1) General. Access and haul roads and associated bridges, culverts, ditches, and road rights-of-way shall be constructed, maintained and reclaimed so as to the extent possible, using the best technology currently available, prevent additional contributions of suspended solids to streamflow, or to runoff outside the permit area to the extent possible, using the best technology currently available. In no event shall the contributions be in excess of requirements set by applicable State or Federal law. All haul and access roads shall be removed and the land affected shall be regraded and revegetated consistent with the requirements of MC-717.14 and MC-717.20, unless retention of a road is approved and assured of necessary maintenance to adequately control erosion.

(2) Construction.

(i) All roads, insofar as possible, shall be located on ridges or on flatter and more stable slopes to minimize erosion. Stream fords are prohibited unless they are specifically approved by the regulatory authority as temporary routes across dry streams that will not adversely affect sedimentation and that will not be used for coal haulage. Other stream crossings shall be made using bridges, culverts, or other structures designed and constructed to meet the requirements of this paragraph. Roads shall not be located in active stream channels nor shall they be constructed or maintained in a manner that increases erosion or causes significant sedimentation or flooding. However, nothing in this paragraph will be construed to prohibit relocation of stream channels in accordance with paragraph (d) of this section.

(ii) In order to minimize erosion and subsequent disturbances of the hydrologic balance, roads shall be constructed in compliance with the following grade restrictions or other grades determined by the regulatory authority to be necessary to control erosion:

(a) The overall sustained grade shall not exceed 1v:10h (10 percent).

- (b) The maximum grade greater than 10 percent shall not exceed 1v:6.5h (15 percent) for more than 300 feet.
- (c) There shall not be more than 300 feet of grade exceeding 10 percent within each 1,000 feet.
- (iii) All access and haul roads shall be adequately drained using structures such as, but not limited to, ditches, water barriers, cross drains, and ditch relief drains. For access and haul roads that are to be maintained for more than 1 year, water control structures shall be designed with a discharge capacity capable of passing the peak runoff from a 10-year, 24-hour precipitation event. Drainage pipes and culverts shall be constructed to avoid plugging or collapse and erosion at inlets and outlets. Drainage ditches shall be provided at the toe of all cut slopes formed by construction of roads. Trash racks and debris basins shall be installed in the drainage ditches wherever debris from the drainage area could impair the functions of drainage and sediment control structures. Ditch relief and cross drains shall be spaced according to grade. Effluent limitations of paragraph (a) of this section shall not apply to drainage from access and haul roads located outside the disturbed area as defined in this section unless otherwise specified by the regulatory authority.
- (iv) Access and haul roads shall be surfaced with durable material. Toxic or acid-forming substances shall not be used. Vegetation may be cleared only for the essential width necessary for road and associated ditch construction and to serve traffic roads.

(3) Maintenance.

- (i) Access and haul roads shall be routinely maintained by means such as, but not limited to, wetting, scraping, or surfacing.
- * (ii) Ditches, culverts, drains, trash racks, debris basins, and other structures serving to drain access and haul roads shall not be restricted or blocked in any manner that impedes drainage or adversely affects the intended purpose of the structure.

- (4) Access roads constructed for and used only to provide infrequent service to surface facilities, such as ventilators or monitoring devices shall be exempt from the requirements of subparagraph (2) of this paragraph provided adequate stabilization to control erosion is achieved through use of alternative measures.

- (k) Hydrologic impacts of other transport facilities. Railroad loops, spurs, conveyors, or other transport facilities shall be constructed, maintained, and reclaimed to prevent additional contributions of suspended solids to streamflow, or to runoff outside the permit area to the extent possible, using the best technology currently available and to control other diminution or degradation of water quality and quantity. In no event shall contributions be in excess of requirements set by applicable State or Federal Law.
- (1) Discharge of waters into underground mines. Surface and ground waters shall not be discharged or diverted into underground mine workings.

MC-717.18 Dams Constructed of or Impounding Waste Material

- (a) General. No waste material shall be used in or impounded by existing or new dams without the approval of the regulatory authority. The permittee shall design, locate, construct, operate, maintain, modify, and abandon or remove all dams (used either temporarily or permanently) constructed of waste materials, in accordance with the requirements of this section.
- (b) Construction of Dams.
 - (1) Waste shall not be used in the construction of dams unless demonstrated through appropriate engineering analysis, to have no adverse effect on stability.
 - (2) Plans for dams subject to this section, and also including those dams that do not meet the size or other criteria of 30 CFR 77.216 (a), shall be approved by the regulatory authority before construction and shall contain the minimum plan requirements established by the Mine Safety and Health Administration pursuant to 30 CFR 77.216-2.
 - (3) Construction requirements are as follows:
 - (i) Design shall be based on the flood from the probable maximum precipitation event unless the permittee shows that the failure of the impounding structure would not cause loss of life or severely damage property or the environment, in which case, depending on site conditions, a design based on a precipitation event of no less than 100-year frequency may be approved by the regulatory authority.

(ii) The design freeboard distance between the lowest point on the embankment crest and the maximum water elevation shall be at least 3 feet to avoid overtopping by wind and wave action.

(iii) Dams shall have a minimum safety factors as follows:

<i>Case</i>	<i>Loading condition</i>	<i>Minimum safety Factor</i>
I.....	<i>End of construction.....</i>	1.3
II.....	<i>Partial pool with steady seepage saturation.....</i>	1.5
III....	<i>Steady seepage from spillway or decant crest.....</i>	1.5
IV.....	<i>Earthquake (cases II and III with seismic loading).....</i>	1.0

(iv) The dam, foundation, and abutments shall be stable under all conditions of construction and operation of the impoundments. Sufficient foundation investigations and laboratory testing shall be performed to determine the factors of safety of the dam for all loading conditions in paragraph (b) (3) (iii) of this section and for all increments of construction.

(v) Seepage through the dam, foundation, and abutments shall be controlled to prevent excessive uplift pressures, internal erosion, sloughing, removal of material by solution, or erosion of material by loss into cracks, joints, and cavities. This may require the use of impervious blankets, pervious drainage zones or blankets, toe drains, relief wells, or dental concreting of jointed rock surface in contact with embankment materials.

(vi) Allowances shall be made for settlement of the dams and the foundation so that the freeboard will be maintained.

- (vii) Impoundments created by dams of waste materials shall be subject to a minimum drawdown criteria that allows the facility to be evacuated by spillways or decants of 90 percent of the volume of water stored during the design precipitation event within 10 days.
 - (viii) During construction of dams subject to this section, the structures shall be periodically inspected by a registered professional engineer to ensure construction according to the approved design. On completion of construction, the structure shall be certified by a registered professional engineer experienced in the field of dam construction as having been constructed in accordance with accepted professional practice and the approved design.
 - (ix) A permanent identification marker, at least 6 feet high that shows the dam number assigned pursuant to 30 CFR 77.216-1 and the name of the person operating or controlling the dam, shall be located on or immediately adjacent to each dam within 30 days of certification of design pursuant to this section.
- (4) All dams, including those not meeting the size or other criteria of 30 CFR 77.216 (a), shall be routinely inspected by a registered professional engineer, or someone under the supervision of a registered professional engineer, in accordance with the Mine Safety and Health Administration regulations pursuant to 30 CFR 77.216-3.
- (5) All dams shall be routinely maintained. Vegetative growth shall be cut where necessary to facilitate inspection and repairs. Ditches and spillways shall be cleaned. Any combustible materials present on the surface, other than that used for surface stability such as mulch or dry vegetation, shall be removed and any other appropriate maintenance procedures followed.
- (6) All dams subject to this section shall be recertified annually as having been constructed and modified in accordance with current prudent engineering practices to minimize the possibility of failures. Any changes in the geometry of the impounding structure shall be highlighted and included in the annual recertification report. These certifications shall include a report on existing and required monitoring procedures and instrumentation,

the average and maximum depths and elevations of any impounded waters over the past year, existing storage capacity of impounding structures, any fires occurring in the material over the past years, and any other aspects of the structures affecting their stability.

- Q (7) Any enlargements, reductions in size, reconstruction or other modifications of the dams shall be approved by the regulatory authority before construction begins.
- (8) All dams shall be removed and the disturbed areas regraded, revegetated, and stabilized before the release of bond unless the regulatory authority approves retention of such dams as being compatible with an approved postmining land use MC-715.13.

MC-717.20 Topsoil Handling and Revegetation

- (a) Topsoil shall be removed as a separate operation from areas to be disturbed by surface operations, such as roads, and areas upon which support facilities are to be sited. Selected overburden materials may be used instead of, or as a substitute for topsoil where the resulting soil medium is determined by the regulatory authority to be equal to or more suitable for revegetation. Topsoil shall be segregated, stockpiled, and protected from wind and water erosion, or contaminants. Disturbed areas no longer required for the conduct of mining operations shall be regraded, topsoil distributed and revegetated.
- (b) The permittee shall establish on all land that has been disturbed by mining operations a diverse, effective, and permanent vegetative cover capable of self-regeneration and plant succession, and adequate to control soil erosion. Introduced species may be substituted, for native species if approved by the regulatory authority. Introduced species shall meet applicable State and Federal seed or introduced species statutes, and may not include poisonous or potentially toxic species.



PRC/015/022

Soldier Creek Coal Co. HIDDEN VALLEY MINE

Telephone 801 - 637-4429 / 637-5203

P. O. Box K AS
Price, Utah 84501

May 24, 1979



Mr. Cleon B. Feight
Department of Natural Resources
Division of Oil, Gas, and Mining
1588 West North Temple
Salt Lake City, Utah 84116

SUBJECT: Access Road - Soldier Creek Coal Company
Hidden Valley Mine

Dear Mr. Feight

As you are aware, Soldier Creek Coal Company is presently developing a new underground coal mine. The new mine will be named Hidden Valley, and is located approximately seven (7) miles south of the town of Emery. The mine is scheduled to be in operation by June, 1981. Maximum production of 500,000 tons per year will be achieved by 1982.

The total mining property consists of 960 acres, which are located in Sections 17 and 18, Township 23 South, Range 6 East. Refer to Figure 1 for the exact location. There are no government coal leases involved in this mining operation. Surface rights are owned in full by Soldier Creek Coal Company.

The Utah State Legislature, during the 1979 session, approved funds for the construction of an access road from U-10 to the mine site area. This type of development is made possible by the 1975 Resource Development Act, which allows for the construction of this type of road.

Sevier County will be engineering and constructing this road. Presently, a contract between Sevier County, Emery County, the Utah Department of Transportation, and Soldier Creek Coal Company is being finalized. This agreement should be completed by July. Engineering on this access road has already been started by Horrocks Engineers of American Fork, Utah. They are acting as consultants for Sevier County. Upon its completion, this road will be a multiple use county road. Final right-of-way approval from the Bureau of Land Management is expected in June of this year. Construction could possibly begin in August.

To provide access to the mine portal area, a road approximately 3,000 feet will have to be constructed by Soldier Creek Coal Company, refer to Figure 2. In order to minimize the impact on the environment, we would like to construct this portion of the road in conjunction with the county road. This would eliminate the necessity of two separate contractors moving onto the job site. Unnecessary equipment and their effects could be prevented.

Approval of this short portion of road by the Division of Oil, Gas, and Mining would be prior to having an approved Office of Surface Mining Permit. The requirements for obtaining this permit are now being compiled. The application should be submitted to your agency for approval in October of 1979.

Design of this mine portal access road has already begun. This road, along with the county road, will be paved to prevent excessive erosion. All OSM requirements will be followed during design and construction. The preliminary alignment show in Figure 2 is the only reasonable access to the portal area. The majority of the road would cut through sandstone formations, thus preventing construction erosion problems. Any possible erosion problems could be collected in a sediment pond located at the bottom of the road construction area.

Your cooperation and prompt attention to this matter would be greatly appreciated.

Sincerely,

HIDDEN VALLEY MINE



J. T. Paluso
Project Engineer

JTP:jm
Enclosures

File

July 25, 1979

Memo to Coal File:

Re: Soldier Creek Coal Company
Hidden Valley Mine
PRO/015/022

On July 20, 1979 it was decided by Ron Daniels that no interim mine development permit was available for use in approving the road work as proposed by Tom Paluso for the Hidden Valley Mine.

It was decided that at the very least, the project needed an approved interim program permit application which would have included with it a particular emphasis on a wildlife and biologic survey of the cliffs to be disturbed by the road.

Since the State's permanent program rules probably will not be finalized until the September Board meeting, the timely filing of an interim program application by the company would at least begin the approval process before the permanent program is in effect. The road plans and construction would then be reviewed for compliance under the interim program.

RONALD W. DANIELS 
COORDINATOR OF MINED
LAND DEVELOPMENT

RWD/sp

SCOTT M. MATHESON
Governor



OIL, GAS, AND MINING BOARD

GORDON E. HARMSTON
Executive Director,
NATURAL RESOURCES

STATE OF UTAH

CHARLES R. HENDERSON
Chairman

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF OIL, GAS, AND MINING

1588 West North Temple

Salt Lake City, Utah 84116

(801) 533-5771

CLEON B. FEIGHT
Director

JOHN L. BELL
C. RAY JUVELIN
THADIS W. BOX
CONSTANCE K. LUNDBERG
EDWARD T. BECK
E. STEELE McINTYRE

April 14, 1980

Mr. Tom Paluso, Project Engineer
Soldier Creek Coal Company
Hidden Valley Mine
P.O. Box AS
Price, Utah 84501

Re: Final Approval
Hidden Valley Mine
ACT/015/022
Emery County, Utah

Dear Mr. Paluso:

The Board of Oil, Gas, and Mining, at its April 10, 1980 Executive Session, fully executed the Mined Lands Reclamation Contract submitted by Soldier Creek Coal Company for the Hidden Valley Mine. A copy of this Contract is enclosed for your records.

Soldier Creek Coal Company has now fulfilled all of the requirements under the Utah Mined Land Reclamation Act as well as the Interim Program Regulations for Coal Mining and Reclamation Operations for the Hidden Valley Mine. Further, during the 30 day public comment period subsequent to publication of the Division's tentative approval of the Mining and Reclamation Plan for this operation, no adverse comments were received.

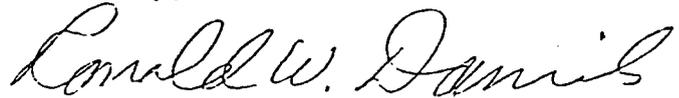
The Division therefore, issues Final Approval to Soldier Creek Coal Company for the Hidden Valley Mine and operations may now lawfully commence. Please note however, that this approval is issued under the Interim Program Regulations only and that a Permanent Program Mining and Reclamation Plan will be required for the Hidden Valley Mine as soon as the State's regulations are approved.

Please notify the Division within 30 days of commencement of operations as required under Rule 40-8-15 of the Utah Mined Land Reclamation Act. Also under this Rule it is required that an annual Operations and Progress Report be submitted at the end of each calendar year for all active operations.

Mr. Tom Paluso
April 14, 1980
Page Two

Should you have any questions relative to this Final Approval,
please feel free to contact the Division.

Sincerely,



RONALD W. DANIELS
COORDINATOR OF MINED
LAND DEVELOPMENT

RWD/sp
enc: Contract
cc: Don Crane, O.S.M., Denver
Murray Smith, O.S.M., Denver



Soldier Creek Coal Company
HIDDEN VALLEY MINE

Telephone 801 - 637-4429

P.O. Box AS
Price, Utah 84501

April 16, 1980

RECEIVED
APR 21 1980

DIVISION OF
OIL, GAS & MINING

Mr. Ronald W. Daniels
Division of Oil, Gas, and Mining
1588 West North Temple
Salt Lake City, Utah 84116

Re: Commencement of Operation Notification
Soldier Creek Coal Company
Hidden Valley Mine
ACT/015/022

Dear Mr. Daniels:

In regards to your final approval letter dated April 14, 1980, Soldier Creek Coal Company would like to take this opportunity to notify the Division that commencement of operations at the Hidden Valley Mine will begin on April 17, 1980. Immediate activity will be limited to the construction of the access road. This notification is in response to Rule 40-8-15.

Sincerely,

SOLDIER CREEK COAL COMPANY
Hidden Valley Mine

J. T. Paluso

J. T. Paluso
Project Engineer

JTP:dt

*Copy to osm
full copy*

MINUTES OF THE MEETING OF THE
SOLDIER CREEK COAL COMPANY MANAGEMENT COMMITTEE
HELD SEPTEMBER 9, 1980

A Management Committee Meeting of the Soldier Creek Coal Company Division was held on Tuesday, September 9, 1980, at 10:30 a.m., at the offices of the Company, 800 Wilshire Boulevard, Los Angeles, California.

The following members of the Committee were present:

D. C. Lauritzen
D. W. Mayhew
M. A. Morphy
S. T. Pealer
M. D. Ross
D. P. Tsoneff
R. J. Van Thyne

Messrs. J. R. Elliott, John L. Frogge, B. F. Lewis, R. W. Olsen and R. W. Nielson were in attendance at the meeting at the invitation of the Committee. Mr. M. D. Ross acted as Chairman and Mr. J. L. Frogge acted as secretary of the meeting.

On motion duly made, seconded, and unanimously carried, the minutes of the previous meeting of the Committee, held July 22, 1980, were approved as written.

MINUTES
APPROVED

At the request of Chairman Ross, Mr. Nielson presented highlights of the Soldier Creek Coal Company Division's Comparative Statement of Income and Retained Earnings for the month and four months ended August 31, 1980, and 1979; and Balance Sheet for July 31, 1980, and April 30, 1980. Mr. Nielson explained that the net income figures of \$88,147 and \$385,606 for the month of August, 1980, and for the four months ended August 31, 1980, respectively, were significantly higher than the figures for the corresponding period in the preceding fiscal year as a consequence of sales to others. In addition, Mr. Nielson stated that to date \$643,000 had been accrued to provide for potential liability for federal coal royalties in the event the Company's case against the federal government contesting same is ultimately unsuccessful.

FINANCIAL
REVIEW

Chairman Ross presented a production report for the Soldier Canyon Mine for the month of August, 1980, and a comparative report of production and operations (including shipments) for the mine for the month and four months ended August 31, 1980, and 1979. At the request of Mr. Ross, Mr. Olsen reported that a production record had been established at the Soldier Canyon Mine on September 2, 1980, wherein 1500 tons of coal were mined during that production shift. The previous record for production during a working shift had been 1460 tons.

OPERATIONS REVIEW

At the request of Chairman Ross, Mr. Olsen then reported that on August 23, 1980, a team of employees from the Soldier Canyon Mine placed first in the novice category at the 4th Annual Rocky Mountain Mine Rescue, Benchman and First Aid Contest. Mr. Olsen reported that this was the first year that the team from the Company's mine had competed in the contest, which is judged by MSHA representatives, and that the team had come very close to winning first-place in the overall [veterans] category. He further indicated that it was anticipated two teams from the mine would enter the contest next year, one novice team and the team that competed on August 23, 1980.

MINE RESCUE TEAM AWARD

Mr. Ross then presented a historical breakdown of hourly wage rates at the Soldier Canyon Mine and proposed increases for those rates as set forth below. Chairman Ross indicated that management at the mine believed such proposed increases were in order to keep them at favorable levels necessary to retain and attract qualified personnel.

HOURLY WAGE RATE INCREASE APPROVED

After discussion, and upon motion duly made, seconded, and unanimously carried, the wage rates set forth below were approved to become effective September 29, 1980.

	<u>FACE RATE</u>	<u>NON-FACE RATE</u>	<u>LANSMAN/TRAINEE RATE</u>
Date of Last Increase:	12-10-79	12-10-79	12-10-79
Previous Daily/Hourly Rate:	\$91.04/\$11.38	\$86.24/\$10.78	\$81.44/\$10.18
Proposed Daily/Hourly Rate:	\$97.60/\$12.20	\$92.80/\$11.60	\$88.00/\$11.00
Percentage Increase:	7.206	7.607	8.055
Effective Date:	9-29-80	9-29-80	9-29-80

At the request of Chairman Ross, Mr. Tsoneff presented highlights to a guideline sales and marketing plan for the Company's Coal Division, copies of which were provided to each of the committee members at the meeting. That plan involved both short- and long-term considerations. Mr. Tsoneff said that the short-term aspects of the plan were primarily procedural and involved the assignment of responsibility and authority for coal marketing/sales to Messrs. Ross and Tsoneff. In addition, the short-term aspects of the plan outlined commitments [some in the final negotiation stage] for the production of the Soldier Canyon Mine to the Company and others. Mr. Tsoneff indicated that it was anticipated that these commitments would require the total "maximum consistent efficient production" of that mine [defined by the plan to be 800,000 tons per year] through calendar year 1983. Mr. Tsoneff said that although the production levels required to meet these commitments were slightly above those which are believed most efficient, such levels were realistic and would be profitable.

SALES/
MARKETING
PLAN

Mr. Tsoneff then presented the short-term alternatives outlined in the plan pertaining to the decision to produce quantities in excess of the "maximum consistent efficient production" level in the event such a course of action is deemed advisable. Those alternatives were: to substantially increase production at the Soldier Canyon Mine to 920,000 tons per year for two to three years; to act as a broker for some of the production of other mines in the Price, Utah, area; or to purchase another producing mine in such area.

Mr. Tsoneff then presented highlights to the portion of the sales/marketing plan pertaining to long-term considerations. Those long-term considerations primarily involved four alternative courses of action. Those alternatives consisted of the following: operating the Soldier Canyon Mine only; operating that mine and a mine at the Hidden Valley property; operating the Soldier Canyon Mine with the ability to subsequently mine the P. G. & E. property adjacent to that mine (or portions thereof) or purchase a producing mine in the Price, Utah, area; or operating the Soldier Canyon Mine, the Hidden Valley Mine and the P. G. & E. property simultaneously. Mr. Tsoneff pointed out that a prerequisite to choosing one of such alternatives was the need to make a policy decision regarding whether the Company was primarily concerned with supplying its own coal needs and selling small product surpluses to others or whether it was desired that it not only supply its own needs, but to also engage in the business of producing and/or selling coal to others.

←
Looking @
options

Thereupon, there followed a discussion regarding the above-stated alternatives and immediate interim decisions to be made in conjunction with the sales/marketing plan. As part of that discussion, the factors affecting the development of the Hidden Valley property were thoroughly discussed. In anticipation of such discussion, various in-depth pro forma reports pertaining to the cost of mining, preparing and delivering coal from the Hidden Valley property to the Levan siding and costs ancillary thereto were provided to the committee members. It was estimated in the sales/marketing plan that additional capital expenditures of approximately \$35 million (in current dollars) would have to be made in order to operate the Hidden Valley Mine. This investment, that already invested in the property and the production costs associated with mining and hauling coal therefrom indicated that in order to achieve a reasonable return on investment, such coal would have to be sold at approximately \$42 per ton f.o.b. the Levan siding, which is substantially greater than the current average price for coal of similar qualities. Most significant among such costs was the estimated cost of transportation from the mine to the above-mentioned siding, which is approximately 90 miles away. Another current problem which would increase production costs is the lack of an available labor supply in the area of the Hidden Valley property.

After further discussion, and upon motion duly made, seconded, and unanimously carried, it was decided that:

(1) Further development of the Hidden Valley property will be temporarily suspended and will be reassessed from time-to-time in light of the then current level of capital expenditures believed necessary to make the property operational as a mine and the costs of mining and hauling coal therefrom vis-a-vis the market for coal;

(2) At the direction of Messrs. Morphy, Ross and Tsoneff, appropriate representatives of the Company will investigate the opportunities existing for brokering coal produced from other mines; purchasing another operational mine in the Price, Utah, area or additional coal properties; and operating another entity's coal property;

(3) Soldier Creek Coal Company personnel will make a pro forma evaluation regarding the highest amount that the Company could realistically bid for the federal coal property which is adjacent to the Soldier Canyon Mine; it was anticipated that such property will be placed on the market for bids sometime in 1982; and

(4) Discussions with P.G. & E. will be continued so as to develop and assess alternatives whereby the Company might purchase (a portion of) such company's coal property, which is contiguous to the Soldier Canyon Mine, and/or operate such property for P.G. & E. and/or jointly develop such property with P.G. & E.

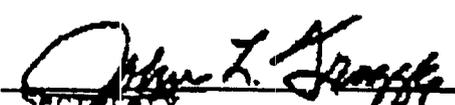
Chairman Ross then presented highlights to a memorandum which was provided to the members of the committee and which described the substance of a meeting between representatives of the Company and of P.G. & E.'s coal properties as described above. It was the consensus opinion of the Committee that such discussions should continue with P.G. & E., especially regarding the availability of a portion of such company's coal property for purchase by the Company.

DISCUSSIONS
REGARDING
DEVELOPMENT
OF P.G. & E.
COAL PROPERTY

Chairman Ross provided the Committee members with copies of a news release, dated August 20, 1980, made by Governor Scott M. Matheson, of Utah. That news release outlined Governor Matheson's impressions of the First Annual United States-Japan Coal Conference. The Governor was greatly pleased with and optimistic about the prospects of selling significant amounts of coal produced in the United States for use in Japan. He indicated that the Japanese want to purchase western steam coal - - particularly from Utah; and that it was expected that total steam coal imports to Japan from the United States would be 22 million tons annually in 1985, 54 million tons annually in 1990 and 81 million tons annually beginning in 1995.

NEWS RELEASE
GOVERNOR
OF UTAH

There being no further business to come before the meeting, upon motion duly made, seconded, and unanimously carried, the meeting was concluded at 12:35 p.m.


Secretary


Chairman

ACT/015/032



SCOTT M. MATHESON
Governor

OIL, GAS, AND MINING BOARD

GORDON E. HARMSTON
Executive Director,
NATURAL RESOURCES

STATE OF UTAH
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS, AND MINING
1588 West North Temple
Salt Lake City, Utah 84116
(801) 533-5771

CHARLES R. HENDERSO:
Chairman

CLEON B. FEIGHT
Director

JOHN L. BELL
C. RAY JUVELIN
THADIS W. BOX
MAXILIAN A. FARBMAN
EDWARD T. BECK
E. STEELE McINTYRE

January 28, 1981

Mr. Carl Pollastro
Soldier Creek Coal Company
P.O. Box I
Price, Utah 84501

Dear Mr. Pollastro:

The Division of Oil, Gas and Mining is pleased to announce that the Secretary of the Interior has granted approval to the State of Utah's permanent program to regulate coal mining operations on fee, state, and federal lands within its boundaries. This approval, with the list of conditions relative to the approval, was published in the Federal Register on January 21, 1981. That date is the effective date for the institution of the permanent program in Utah. In accordance with Section 771.21 of the Regulations Pertaining to Surface Effects of Underground Coal Mining Activities promulgated under the Utah Coal Mining and Reclamation Act, Chapter 10 of Title 40, Utah Code Annotated 1953, all operators of coal mines within the State must file a complete application for a permit to mine no later than two months after this approval date. The date of consequence becomes March 23, 1981.

It is the Division's judgement that all of the conditions will be satisfied within the required time frames and that the responsibilities between the Office of Surface Mining and the Division will be satisfactorily defined in the new Cooperative Agreement to be executed in the very near future. Presently, the Cooperative Agreement between the Office of Surface Mining and the Division under the interim program is in effect. As you know, we are attempting to develop an efficient system which will benefit all of us who are involved.

Enclosed you will find a copy of the Division's Permit Application Guidelines for Organizational Format and Content and a copy of the U.S. Geological Survey's Coal Mine Plan Check List. Utilizing these two items will be very beneficial in the preparation of your Mining and Reclamation Plan and facilitate the review process by the various State and federal agencies.

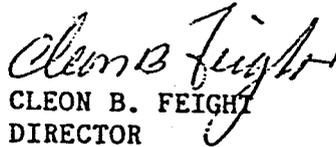
Mr. Carl Pollastro
January 28, 1981
Page Two

Thirteen (13) copies of the Mining and Reclamation Plan Permit Application are required to be submitted, six (6) copies for the Division and (7) copies for the Office of Surface Mining. The application should be submitted to the Division of Oil, Gas and Mining accompanied by a \$5.00 application fee. Copies of the application may be forwarded directly to the Office of Surface Mining to avoid delays in handling.

Please be reminded, also, that the permanent program performance standards, Section 817 et. seq., are now in effect regarding inspections and enforcement procedures.

If you would like a copy of the approval and conditions please let us know and we will be more than happy to forward a copy to you.

Sincerely,


CLEON B. FEIGHT
DIRECTOR

CBF/te



Route & file
COPY ACT/015/022
J.M.

Soldier Creek Coal Co.

Telephone 801-637-6360

P.O. Box I
Price, Utah 84501 *

March 23, 1981



Mr. Cleon B. Feight
Department of Natural Resources
Division of Oil, Gas, and Mining
1588 West North Temple
Salt Lake City, Utah 84116

Re: Surface Mining and Reclamation Plan
Soldier Creek Coal Company
Hidden Valley Mine ACT-015-022

Dear Mr. Feight:

Due to the continuing slow development of a coal market in the Emery Field, permit activity on the Hidden Valley Mine has been temporarily delayed. Soldier Creek Coal Company has made the decision not to submit the required Surface Mining and Reclamation Plan by the March 23, 1981 deadline.

Prior to any further activity on the property, the completed plan will be submitted for the Division's approval.

Sincerely,

SOLDIER CREEK COAL COMPANY

J.T. Paluso
Chief Engineer

JTP:nda



SOLDIER CREEK COAL CO.

Telephone (801) 637-6360

P.O. Box I
Price, Utah 84501

June 27, 1985

Ms. Dianne Nielson, Director
Division of Oil, Gas, and Mining
355 W. North Temple
3 Triad Center
Suite 350
Salt Lake City, UT 84180

Re: Soldier Creek Coal Company -
Hidden Valley Mine Permitting

Dear Dianne:

As mentioned to you during the Utah Mining Association meeting held last Tuesday in Salt Lake City, the Soldier Canyon Mine has been purchased in principal by Sun Oil Company. The closing date for the purchase is tentatively set for September 6, 1985.

One of the items that has not yet been finalized between us and Sunedco, the coal mining division of Sun Oil, is what will happen to the Hidden Valley Mine in Emery County.

We were notified by certified mail on May 29, 1985, that we had 30 days to decide whether to reclaim or permit the property. I am formally requesting that we be granted an extension until September 15, 1985, to notify the Division of our plans. This will allow sufficient time for both parties to make a logical decision regarding the property.

If you need any additional information, feel free to contact me.

Sincerely,

SOLDIER CREEK COAL CO.

M.D. Ross
Vice President & General Manager

MDR:pp

cc: Files

Mr. J.T. Paluso - Soldier Creek Coal Co.

orig mine file
cc L. Bratton
DRW

INA/015/022
#2

RECEIVED

JUL 01 1985

DIVISION OF OIL
GAS & MINING



STATE OF UTAH
NATURAL RESOURCES
Oil, Gas & Mining

Norman H. Bangerter, Governor
Dee C. Hansen, Executive Director
Dianne R. Nielson, Ph.D., Division Director

355 W. North Temple • 3 Triad Center • Suite 350 • Salt Lake City, UT 84180-1203 • 801-538-5340

July 12, 1985

Mr. M. D. Ross
Vice President & General Manager
Soldier Creek Coal Company
P. O. Box I
Price, Utah 84501

Dear Mr. Ross:

RE: Hidden Valley Mine, INA/015/022, Emery County, Utah

Pursuant to our conversation of July 10, 1985, the Division acknowledges purchase of the Soldier Creek mine by Sunedco as enumerated in your June 27, 1985 letter and agrees to a September 15, 1985 date wherein the Division will be notified regarding Soldier Creek Coal Company's plans to permit or reclaim the Hidden Valley Mine. As discussed, the extension is granted to facilitate economic decision-making by Sunedco/Soldier Creek due to the above-cited purchase.

In our conversation, you affirm the Soldier Creek purchase will not affect the Mined Land Reclamation Contract dated April 4, 1980 between Soldier Creek Coal Company and the Division of Oil, Gas and Mining (DOGGM) wherein Soldier Creek Coal Company affirms its responsibility for reclamation of the Hidden Valley Mine. After the above-referenced sale is consummated, any changes that this action may have vis-a-vis the ultimate responsibility for the April 4, 1980 reclamation contract for Hidden Valley must be documented with DOGM. These changes should be discussed in Soldier Creek Coal Company's September 15, 1985 decision response to DOGM. Please contact the undersigned if further information is required.

Sincerely,

Lowell P. Braxton
Administrator
Mineral Resource Development
and Reclamation Program

btb

cc: Dianne Nielson
0168R-39



STATE OF UTAH
NATURAL RESOURCES
Oil, Gas & Mining

Norman H. Bangerter, Governor
Dee C. Hansen, Executive Director
Dianne R. Nielson, Ph.D., Division Director

355 W. North Temple • 3 Triad Center • Suite 350 • Salt Lake City, UT 84180-1203 • 801-538-5340

September 16, 1985

CERTIFIED RETURN RECEIPT REQUESTED
(P402 457 232)

Mr. John Rains
California Portland Cement Company
P. O. Box 947
Colton, California 92324

Dear Mr. Rains:

RE: Hidden Valley Mine, INA/015/022, Emery County, Utah

Pursuant to our telephone conversation of September 11, 1985, enclosed find copies of correspondence between the Division of Oil, Gas and Mining and Soldier Creek Coal Company dated May 24, 1985 wherein Soldier Creek Coal Company was asked to commit to reclamation of the Hidden Valley Mine or permitting the same under the permanent coal regulatory program constraints.

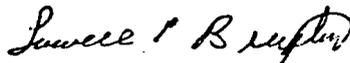
You indicated in our conversation the Hidden Valley Mine was not sold to Sun Oil Company and California Portland Cement Company is the responsible party for operations or reclamation of this property. I have been informed by J. T. Paluso, Soldier Creek Coal Company, that Soldier Creek has transmitted or can transmit files relative to the reclamation aspects of this property to California Portland Cement Company. The Division's position has not changed subsequent to the May 24, 1985 letter with the exception that the date by which the "reclaim or permit" decision from Soldier Creek Coal Company to the Division was extended from June 24, 1985 to September 15, 1985 to accommodate the Soldier Creek purchase by Sun (which presumably was to include the Hidden Valley Mine).

Page 2
Mr. John Rains
INA/015/022
September 16, 1985

I am now asking California Portland Cement Company to respond to the alternatives enumerated in the attached May 24, 1985 letter within 15 working days of acknowledged receipt of this letter. In this response, would you please affirm that California Portland Cement Company is still the responsible party for the Mined Land Reclamation Contract dated April 4, 1980 between Soldier Creek Coal Company (a division of California Portland Cement Company) and DOGM, wherein monetary responsibility for the Hidden Valley Mine property reclamation program was enumerated.

Please advise if you have questions on the matter in the interim period.

Sincerely,



Lowell P. Braxton
Administrator
Mineral Resource Development
and Reclamation Program

btb
cc: Tom Paluso
Ken May
Pam Grubaugh-Littig
Sandy Pruitt
0168R-32 & 33

Make file
LPB

CalMat Co



P. O. BOX 2950, LOS ANGELES, CALIFORNIA 90051 (213) 258-2777
3200 SAN FERNANDO ROAD, LOS ANGELES, CALIFORNIA 90065

October 2, 1985

State of Utah
Natural Resources
355 W. North Temple
3 Triad Center, Suite 350
Salt Lake City, UT 84180-1203

RECEIVED

OCT 07 1985

DIVISION OF OIL
GAS & MINING

Attention: Lowell P. Braxton
Administrator
Mineral Resource Development
and Reclamation Program

Gentlemen:

Re: Hidden Valley Mine, INA/015/000, #2
Emery County, Utah
007

In response to your letter of September 16, 1985, please be advised that ownership of the Hidden Valley Mine was in no way affected by the recent sale to Sunedco Coal Co. of the Soldier Creek Coal Company. The Hidden Valley Mine is owned by Hidden Valley Coal Company, formerly known as Soldier Creek Coal Company, a wholly owned subsidiary of California Portland Cement Company. Accordingly, California Portland Cement Company will, as it has, continue to be responsible for reclamation of the Hidden Valley Mine site pursuant to the Mined Land Reclamation Contract dated April 4, 1980.

Should you have any questions, please feel free to contact me.

Very truly yours,

Ronald E. Evans
Executive Vice President and
General Manager--California
Portland Cement Division

REE:cm

Mine file
L.O. B.

CalMat Co

P. O. BOX 947 / COLTON, CALIFORNIA 92324 / TELEPHONE (714) 825-4260



CALIFORNIA PORTLAND
CEMENT DIVISION

October 7, 1985

RECEIVED

OCT 09 1985

DIVISION OF OIL
GAS & MINING

State of Utah
Natural Resources
355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203

Attention: Lowell P. Braxton, Administrator
Mineral Resource Development and
Reclamation Program

Re: Hidden Valley Mine, INA/015/~~000~~ 007
Emery County, Utah

Dear Mr. Braxton:

In response to your letter dated September 16, 1985, please be advised that California Portland Cement Company will reclaim the operation to the standards of our approved mining and reclamation plan.

Following are reclamation proposals for your consideration:

1. Present access to the property will be left in place.
2. Proposed time sequence for reclamation is to start field work during spring/summer and complete fall 1986.
3. We propose not to disturb the naturally revegetated areas.
4. After reclamation is completed, we request that bonding and/or collateral requirements be eliminated or considerably reduced to reflect reclamation efforts.
5. We request input from the Division of Oil, Gas and Mining as to what constitutes sufficiency with regard to the reclamation requirements for this property.

Very truly yours,

John W. Rains
John W. Rains
Chief Mining Engineer

JWR:cy

February 11, 1985

TO: Coal File, Inspection and Enforcement
FROM: Sandy Pruitt, Mining Field Specialist *SP*
RE: Hidden Valley Mine, Soldier Creek Coal Company,
INA/015/001, File #7, Emery County, Utah

The inactive Hidden Valley Mine site was inspected by Sandy Pruitt in response to Ten Day Notice #X-84-2-31-1 received January 21, 1985. On January 30, 1985, a topsoil marker was in place on the topsoil stockpile at the Hidden Valley Mine as required for appropriate response to the Ten Day Notice.

The condition of the mine site appeared good. No excessive erosion was apparent. Revegetation success of a small disturbed area along the road was good with some establishment of Shadscale similar to adjacent areas. All drainage culverts inspected along the road were clear for unobstructed flow. There was no evidence of a recent sediment pond discharge or any circulation along the discharge pipe. The north portal remained fenced. There is no evidence of recent access. The adjacent two portals have been backfilled.

Following the mine inspection, Mr. Dave Spillman and Tom Paluso were contacted at the Soldier Creek Mine office. At this office, a March 23, 1981 letter notifying DOGM of a temporary cessation of the Hidden Valley Mine was available for inspection as required.

No water monitoring data was available or had been collected since the mine was shut down in January, 1981. This was a violation of the approved mine plan, the permanent performance standards and the interim performance standards which are applicable, due to the unique status of the inactive mine operation. NOV #N85-2-1-1 was issued for the failure to conduct surface and groundwater monitoring in accordance with approved plans. The provisions cited were UMC 817.131(a); the interim performance standard, MC 717.17(b); and the interim permit approved April 14, 1980. The remedial action of the NOV requires that Soldier Creek Coal Company conduct water monitoring in accordance with the approved Interim Program Permit or subsequent modifications approved by DOGM no later than February 28, 1985.

The interim performance standards were enforced under the direction of Ron Daniels since the Hidden Valley Mine was permitted under the Interim Program and operations ceased during the Interim Program. In the mine cessation notification letter, dated March 23, 1981, Soldier Creek Coal Company informed DOGM of their

Page 2
INA/015/022
February 11, 1985

intentions not to submit a Permanent Program Mining Permit Application until they intended to reactivate the mine . Dave Spillman informed this inspector that Soldier Creek Coal Company has no intentions to reclaim the Hidden Valley Mine site at this time, therefore, DOGM must now require a Permanent Mining Permit Application in lieu of reclamation.

wj

cc: Dave Spillman, Soldier Creek Coal Company
Donna Griffin, OSM
Joseph Helfrich, DOGM

Statistics:

See Deer Creek Mine memo on February 7, 1985.

0071Q-31-33



STATE OF UTAH
NATURAL RESOURCES
Oil, Gas & Mining

Norman H. Bangerter, Governor
Dee C. Hansen, Executive Director
Dianne R. Nielson, Ph.D., Division Director

355 W. North Temple • 3 Triad Center • Suite 350 • Salt Lake City, UT 84180-1203 • 801-538-5340

December 11, 1985

TO: John J. Whitehead, Permit Supervisor/Reclamation
Hydrologist

FROM: Thomas Munson, Reclamation Hydrologist *TM*

RE: Permit Review, California Portland Cement Company,
Hidden Valley Mine, INA/015/007, Emery County, Utah

The mine is currently permitted under the interim regulations with very little or no commitments regarding specific reclamation procedures or plans. The Mining and Reclamation Plan (MRP) contains three pages on reclamation, an inadequate bond (probably) and a proposed seed mix. Other than these three things, nothing more has been completed regarding reclamation. A letter was sent by Lowell Braxton to Mr. Rains of California Portland Cement on September 16, 1985. An October 7, 1985 response was received by Mr. Braxton explaining Portland Cement's willingness to reclaim everything except the access road. Apparently, they fall under the interim regulations because they were not active following August of 1981 as determined in a decision by the Attorney General's Office. They, therefore, fall under the requirements of the interim regulations regarding reclamation.

Attached is a list of the applicable interim regulations which relate to the basic hydrology requirements for reclamation either solely or in part. Further definition or refinement of the requirements of these regulations will come at a later date when the intentions of the operator are better known.

I recommend that we send them a copy of the interim regulations with a list of applicable regulations for each discipline and then schedule a meeting with the people responsible for putting together the plan.

Page 2
Memorandum - John J. Whitehead
INA/015/007
December 12, 1985

MC 715.13 Postmining Use of Land - page 12
MC 715.14 Backfilling and Grading - page 16
MC 715.15 Disposal of Spoil and Waste Material in Areas
Other than the Mine Workings or Excavations -
page 23
MC 715.16 Topsoil Handling - page 27
MC 715.17 Protection of the Hydrologic System - page 29
MC 715.17(a) Water Quality Standards and Effluent Limitations
- page 30
MC 715.17(b) Surface Water Monitoring - page 32
MC 715.17(c) Diversions and Conveyance of Overland Flow Away
from Disturbed Areas - page 33
MC 715.17(d) Stream Flow Diversions - page 34
MC 715.17(e) Sediment Control Measures - page 35
MC 715.17(g) Acid and Toxic Materials - page 38
MC 715.17(i) Water Rights and Replacement - page 40
MC 715.17(k) Permanent Impoundments - page 43
MC 715.17(l) Hydrologic Impact of Roads - page 43
MC 715.17(m) Hydrologic Impacts of Other Transport Facilities
- page 45
MC 715.18 Dams Constructed of or Impounding Waste Material -
page 46
MC 715.20 Revegetation - page 55
MC 715.20(c) Timing of Revegetation - page 56
MC 715.20(d) Mulching - page 57
MC 717.14 Backfilling and Grading of Road Cuts, Mine Entry
Area Cuts, and Other Surface Work Areas - page 70
MC 717.14(b) Cut and Fill Terraces - page 71
MC 717.14(d) Regrading or Stabilizing Rills and Gullies - page
71
MC 717.14(f) Grading Along the Contour - page 72
MC 717.17 Protection of the Hydrologic System - page 72
MC 717.17(j) Hydrologic Impact of Roads - page 82

btb
cc: Lowell Braxton
9486R-5 & 6

January 16, 1986

TO: Coal File
FROM: *gn* John J. Whitehead, Permit Supervisor/Reclamation
Hydrologist
RE: Surface Mining Reclamation Plan, California Portland
Cement Company, Hidden Valley Mine, INA/015/007, Emery
County, Utah

The memo is to document a meeting and conversation between John Whitehead and Lowell Braxton on January 14, 1986 wherein the reclamation of the Hidden Valley Mine was discussed. The issue at hand was whether the Hidden Valley Mine should be required to reclaim according to the interim regulations or whether the company should be required to reclaim to permanent standards in the regulations currently existing.

The review of the approved reclamation plan (submitted and approved under the interim regulations) by the staff reveals that there are very few specifics and details in regards to reclamation contained in the document. This would preclude reclamation occurring without an inordinant number of enforcement actions and other problems. In addition, on page 5-1 of the approved plan, the company has committed that all reclamation will conform in so far as possible with federal and state rules and regulations in effect at that time. Therefore, it was concluded that the Hidden Valley Mine should be required to reclaim according to permanent program regulations.

btb
cc: Lowell Braxton
Joe Helfrich
Technical Review Staff
9291R-20

File



STATE OF UTAH
NATURAL RESOURCES
Oil, Gas & Mining

Norman H. Bangarter, Governor
Dee C. Hansen, Executive Director
Dianne R. Nielson, Ph.D., Division Director

355 W. North Temple • 3 Triad Center • Suite 350 • Salt Lake City, UT 84180-1203 • 801-538-5340

January 23, 1986

Mr. John W. Rains
Chief Mining Engineer
California Portland Cement Division
P. O. Box 947
Colton, California 92324

Dear Mr. Rains:

RE: Reclamation of Hidden Valley Mine, INA/015/007, Emery
County, Utah

This letter is in response to your letter of October 7, 1985. Subsequent to receipt of that letter, the Division of Oil, Gas and Mining (DOG M) has reviewed the reclamation plan on file with the Division and has visited the mine site. Several questions and concerns have arisen in regard to reclamation of this mine site. The technical review of the current approved plan found that there are very few specifics and details in regards to reclamation contained in the plan. This alone would preclude reclamation occurring without an inordinant number of enforcement actions and other problems arising during the process. In addition, on page 5-1 of the approved plan, the commitment was made that reclamation will conform in so far as possible with federal and state rules and regulations in effect at that time. Based on these items, it is the Division's conclusion that reclamation should be based on the permanent program regulations and standards in effect at this time. Further, a permanent reclamation plan which addresses the current regulations should be compiled and forwarded to the Division.

In order to reclaim this site during the field season of 1986, it is imperative that you forward the new plan to our office no later than March 14, 1986. The Division would be

Page 2

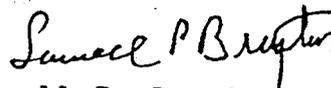
Mr. John W. Rains

INA/015/007

January 23, 1986

most happy to accommodate a meeting with representatives of California Portland Cement to discuss this project and what may be required in the reclamation plan. Please advise me if this should be your desire.

Sincerely,



Lowell P. Braxton
Administrator
Mineral Resource Development
and Reclamation Program

btb

cc: Joe Helfrich
Technical Review Staff

9294R-56 & 57

CalMat Co

3200 SAN FERNANDO ROAD/P.O. BOX 2950/LOS ANGELES, CALIFORNIA 90051/(213) 258-2777

True file
LIB
J. Whitehead



A2

May 28, 1986

INA/015/0.7

Lowell D. Braxton
Administrator
Mined Land Reclamation Program
Utah Division of Oil, Gas and Mining
3 Triad Center, Suite 350
Salt Lake City, UT 84180-1203

RECEIVED
JUN 05 1986

DIVISION OF
OIL, GAS & MINING

Dear Mr. Braxton:

California Portland Cement Company, a Division of CalMat Co., desires to complete the final reclamation in 1986 on the Hidden Valley Coal Mine in Emery County. To meet this schedule, we are submitting eight copies of the final reclamation plan for review by your staff. This current plan replaces the reclamation plan developed originally under the Interim Program and was formatted and written according to the 1986 guidelines.

We wish to express to you our appreciation for the cooperation of Mr. John Whitehead and his staff in developing this final reclamation plan. All written comments and telephone conversations should be directed to Mr. John W. Rains, Chief Mining Engineer. His address is CalMat Co., P. O. Box 947, Colton, CA 92324, telephone (714) 825-4260.

Sincerely,

A handwritten signature in dark ink, appearing to be 'RE' followed by a flourish.

Ronald E. Evans
Executive Vice President,
General Manager
Cement Division

REE:jj

FINDINGS DOCUMENT

Calmat Company
Hidden Valley Coal Company
Hidden Valley Mine
INA/015/007, Emery County, Utah

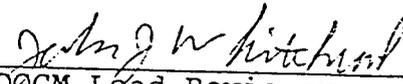
December 8, 1986

1. The plan and the permit application are accurate and complete and all requirements of the Surface Mining Control and Reclamation Act (the "Act"), and the approved Utah State Program have been complied with (UMC 786.19(a)).
2. The applicant proposes acceptable practices for the reclamation of disturbed lands. These practices have been shown to be effective in the short-term; there are no long-term reclamation records utilizing native species in the western United States. Nevertheless, the regulatory authority has determined that reclamation, as required by the Act, can be feasibly accomplished under the Mining and Reclamation Plan (MRP) (UMC 786.19(b)). (See Technical Analysis (TA), Section UMC 817.21-.25 and 817.111-.117.)
3. The assessment of the probable cumulative impacts of all anticipated coal mining activities in the general area on the hydrologic balance has been made by the regulatory authority. The reclamation plan proposed under the application has been designed to prevent damage to the hydrologic balance in the permit area (UMC 786.19(c) and UCA 40-10-11(2)(c)). (See Cumulative Hydrologic Impact Analysis (CHIA) Section, attached to this Findings Document.)
4. The proposed permit area is:
 - A. not included within an area designated unsuitable for underground coal mining operations;
 - B. not within an area under study for designated lands unsuitable for underground coal mining operations;
 - C. not on any lands subject to the prohibitions or limitations of 30 CFR 761.11(a) (national parks, etc.), 761.11(f) (public buildings, etc.) and 761.11(g) (cemeteries);
 - D. not within 100 feet of the outside right-of-way line of a public road (UMC 761.11);
 - E. not within 300 feet of any occupied dwelling (UMC 786.19(d)). (See MRP Section 782.16.).

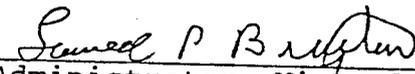
5. The regulatory authority's issuance of a permit is in compliance with the National Historic Preservation Act and implementing regulations (36 CFR 800) (UMC 786.19(e)). (See attached letter from State Historic Preservation Officer (SHPO) dated July 10, 1986.)
6. The applicant has the legal right to enter and complete reclamation activities in the permit area through a fee coal and surface agreement (UMC 786.19(f)).
7. The applicant has shown that prior violations of applicable laws and regulations have been corrected (UMC 785.19(g)). (Memo of November 7, 1986 from Joe Helfrich, Division of Oil, Gas and Mining (DOGM), Inspection and Enforcement section.)
8. Neither Hidden Valley Coal Company nor its parent company, Calmat, are delinquent in payment of fees for the Abandoned Mine Reclamation Fund (it has no active operations) (UMC 786.19(h)) (personal communication, Valerie Coleman, OSM, Washington, D. C., November 21, 1986).
9. The applicant does not control and has not controlled mining operations with a demonstrated pattern of willful violations of the Act of such nature, duration and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of the Act (UMC 786.19(i)) (personal communication, Valerie Coleman, OSM, Washington, D. C., November 21, 1986).
10. Underground coal mining and reclamation operations to be performed under the permit will not be inconsistent with other operations anticipated to be performed in areas adjacent to the proposed permit area (UMC 786.19(j)).
11. A detailed analysis of the proposed bond has been made. The bond estimate is \$171,515.00 in 1987 dollars. The regulatory authority has made appropriate adjustments to reflect costs which would be incurred by the state, if it was required to contract the final reclamation activities for the mine site. The bond shall be posted (UMC 786.19(k)) with the regulatory authority prior to final permit issuance.
12. No lands designated as prime farmlands or alluvial valley floors occur on the permit area (UMC 786.19(l)).
13. The proposed postmining land-use of the permit area has been approved by the regulatory authority (UMC 786.19(n)). (See TA, Section UMC 817.133.)

14. The regulatory authority has made all specific approvals required by the Act, and the approved State Program (UMC 786.19(n)).
15. The proposed operation will not affect the continued existence of any threatened or endangered species or result in the destruction or adverse modification of their critical habitats (UMC 785.19(c)).
16. All procedures for public participation required by the Act, and the approved Utah State Program have been complied with (UMC 786.11-.15).

Prior to the permit taking effect, the applicant must agree to comply with the special stipulations in the permit and post the performance bond for reclamation activities.



DOG M Lead Reviewer



Administrator, Mineral Resource
Development and Reclamation Program



Associate Director, Mining



Director



STATE OF UTAH
NATURAL RESOURCES
Oil, Gas & Mining

file
Norman H. Bangerter, Governor
Dee C. Hansen, Executive Director
Dianne R. Nielson, Ph.D., Division Director

355 W. North Temple • 3 Triad Center • Suite 350 • Salt Lake City, UT 84180-1203 • 801-538-5340

June 1, 1988

TO: John J. Whitehead, Permit Supervisor
FROM: Pamela Grubaugh-Littig, Reclamation Engineer *PL*
RE: Phase I Bond Release Inspection, Hidden Valley Mine,
CalMat, INA/015/007, Emery County, Utah

The Phase I bond release inspection for the Hidden Valley Mine was conducted by me on May 24, 1988. The backfilling and grading has been done to acceptable standards at the mine site. The portals were sealed and backfilled (both coal seams). Soils used for the backfilling and grading were derived from sandstone and alluvial deposits, and are coarse and friable with slight cohesive properties. No topsoil per se was available.

The access road, from the end of the paved county road to the mine site, was ripped, water bars constructed, and seeded and mulched. The road base material which was being stored at an area above the mine site was removed and that site was ripped and seeded. All of this reclamation work at the mine site was completed prior to Christmas, 1986.

During the Phase I bond release inspection, it was noted that there is ground cover, of which the quality and quantity will be sampled sometime this year.

After the reclamation work was completed in December, 1986, severe spring and fall storms in 1987 hit the site. The damage from these storms required repair of the silt fence as well as channel reconstruction. This work has been completed.

Therefore, it is recommended that the Phase I bond release be approved, i.e., 60 percent of the bond, or \$102,909.00.

djh
9075R/58



STATE OF UTAH
NATURAL RESOURCES
Oil, Gas & Mining

Norman H. Bangerter, Governor
Dee C. Hansen, Executive Director
Dianne R. Nielson, Ph.D., Division Director

355 W. North Temple • 3 Triad Center • Suite 350 • Salt Lake City, UT 84180-1203 • 801-538-5340

July 16, 1988

Mr. John Rains
Chief Mining Engineer
California Portland Cement Division
695 South Rancho Avenue
Colton, California 92324-0514

Dear Mr. Rains:

Re: Phase I Bond Release Approval, California Portland Cement,
Hidden Valley Mine, INA/015/007, Folder #2 and #4, Emery County,
Utah

The Phase I bond release application has been reviewed, determined complete and approved by the Division. A bond release inspection of the reclaimed site was conducted on May 24, 1988 (copy of inspection attached). As a result of this inspection, the backfilling, grading, topsoil placement, and drainage controls were determined complete. The Division concludes, therefore, that 60 percent of the bond may be released, or \$102,909, effective June 1, 1988. Bond Number 400HJ8041(A) with St. Paul Fire and Insurance Company may be reduced by a rider to \$68,606.

If you have any questions, please call Pamela Grubaugh-Littig.

Sincerely,

A handwritten signature in cursive script that reads "Lowell P. Braxton".

Lowell P. Braxton
Administrator
Mineral Resource Development
and Reclamation Program

PGL/djh
cc: J. Whitehead
P. G.-Littig
9075R/50



STATE OF UTAH
NATURAL RESOURCES
Oil, Gas & Mining

Norman H. Bangerter, Governor
Dee C. Hansen, Executive Director
Dianne R. Nielson, Ph.D., Division Director

355 W. North Temple • 3 Triad Center • Suite 350 • Salt Lake City, UT 84180-1203 • 801-538-5340

June 16, 1988

CERTIFIED RETURN RECEIPT REQUESTED
(P 879 596 367)

Emery County Board of
Commissioners
P. O. Box 629
Castle Dale, Utah 84513

To Whom It May Concern:

Re: Phase I Bond Release, California Portland Cement Division,
Hidden Valley Mine, INA/015/007, Folder #4, Emery County, Utah

This letter is to advise you that the application for Phase I bond release at the Hidden Valley Mine has been approved by the Division. The reclamation bond will be reduced from \$171,515 to \$68,606, because backfilling, grading, installations of drainage controls, and revegetation have all been done at the site.

If you have any comments, please call Pamela Grubaugh-Littig, Reclamation Engineer.

Sincerely,

A handwritten signature in cursive script that reads "Lowell P. Braxton".

Lowell P. Braxton
Administrator
Mineral Resource Development
and Reclamation Program

PGL/djh
cc: J. Rains, CALMAT
J. Whitehead
P. Grubaugh-Littig
9075R/51



STATE OF UTAH
NATURAL RESOURCES
Oil, Gas & Mining

Norman H. Bangerter, Governor
Dee C. Hansen, Executive Director
Dianne R. Nielson, Ph.D., Division Director

355 W. North Temple • 3 Triad Center • Suite 350 • Salt Lake City, UT 84180-1203 • 801-538-5340

July 17, 1988

Mr. D. Lawrence Langley
Attorney-In-Fact
St. Paul Fire Insurance Company
385 Washington Street
St. Paul, Minnesota 55102

Dear Mr. Langley:

Re: Phase I Bond Release Approval, Bond No. 400HJ8041(A), California
Portland Cement Division, Hidden Valley Mine, INA/015/007, Emery
County, Utah

This letter is to advise you that Bond Number 400HJ8041(A) may be reduced to \$68,606. This reduction is due to the Phase I bond release approval effective June 1, 1988.

If you have any questions, please call Pamela Grubaugh-Littig, Reclamation Engineer. Thank you.

Sincerely,

Lowell P. Braxton
Administrator
Mineral Resource Development
and Reclamation Program

PGL/djh
cc: J. Rains, CALMAT
J. Whitehead
P. Grubaugh-Littig
9075R/49

FILED

JUN 16 1992

SECRETARY, BOARD OF
OIL, GAS & MINING

PETER STIRBA (Bar No. 3118)
STIRBA & HATHAWAY
Attorneys for Hidden Valley
215 South State Street, Suite 1150
Salt Lake City, Utah 84111
Telephone: (801) 364-8300

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

IN THE MATTER OF NOTICE OF	:	RESPONDENT HIDDEN VALLEY
VIOLATION N91-26-8-2,	:	COAL COMPANY'S PROPOSED
HIDDEN VALLEY MINE,	:	LIST OF EXHIBITS
EMERY COUNTY, UTAH	:	Cause No. ACT/015/007

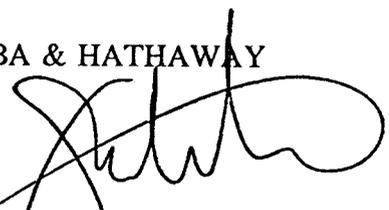
Hidden Valley Coal Company ("HVCC"), by and through its counsel of record, hereby submits its proposed list of exhibits:

1. Interim Program Rules, adopted on May 25, 1978.
2. Letter dated October 16, 1978 from the Division to Soldier Creek.
3. July 25, 1979 "Memo to Coal File".
4. Letter dated July 16, 1988 from the Division to HVCC.
5. Minutes of the September 9, 1980 meeting of the Soldier Creek Management Committee.
6. Letter dated October 2, 1985, from HVCC to the Division.

7. Letter dated October 7, 1985, from HVCC to the Division.
8. Division memorandum dated December 11, 1985.
9. Division memorandum dated June 1, 1988.
10. Letter dated June 16, 1988 from the Division to Emery County.
11. Letter dated July 17, 1988 from the Division to St. Paul Fire Insurance Company.
12. Affidavit of Lee Edmonson dated February 24, 1992, filed March 5, 1992.
13. Video of mine property.
14. State inspection reports.

DATED this 16th day of June, 1992.

STIRBA & HATHAWAY

BY: 

PETER STIRBA

Attorneys for Respondent Hidden Valley
Coal Company

CERTIFICATE OF SERVICE

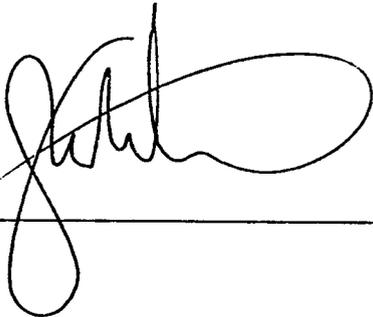
I hereby certify that on this 16th day of June, 1992, a true and correct copy of the foregoing RESPONDENT HIDDEN VALLEY COAL COMPANY'S PROPOSED LIST OF EXHIBITS was hand delivered to the following:

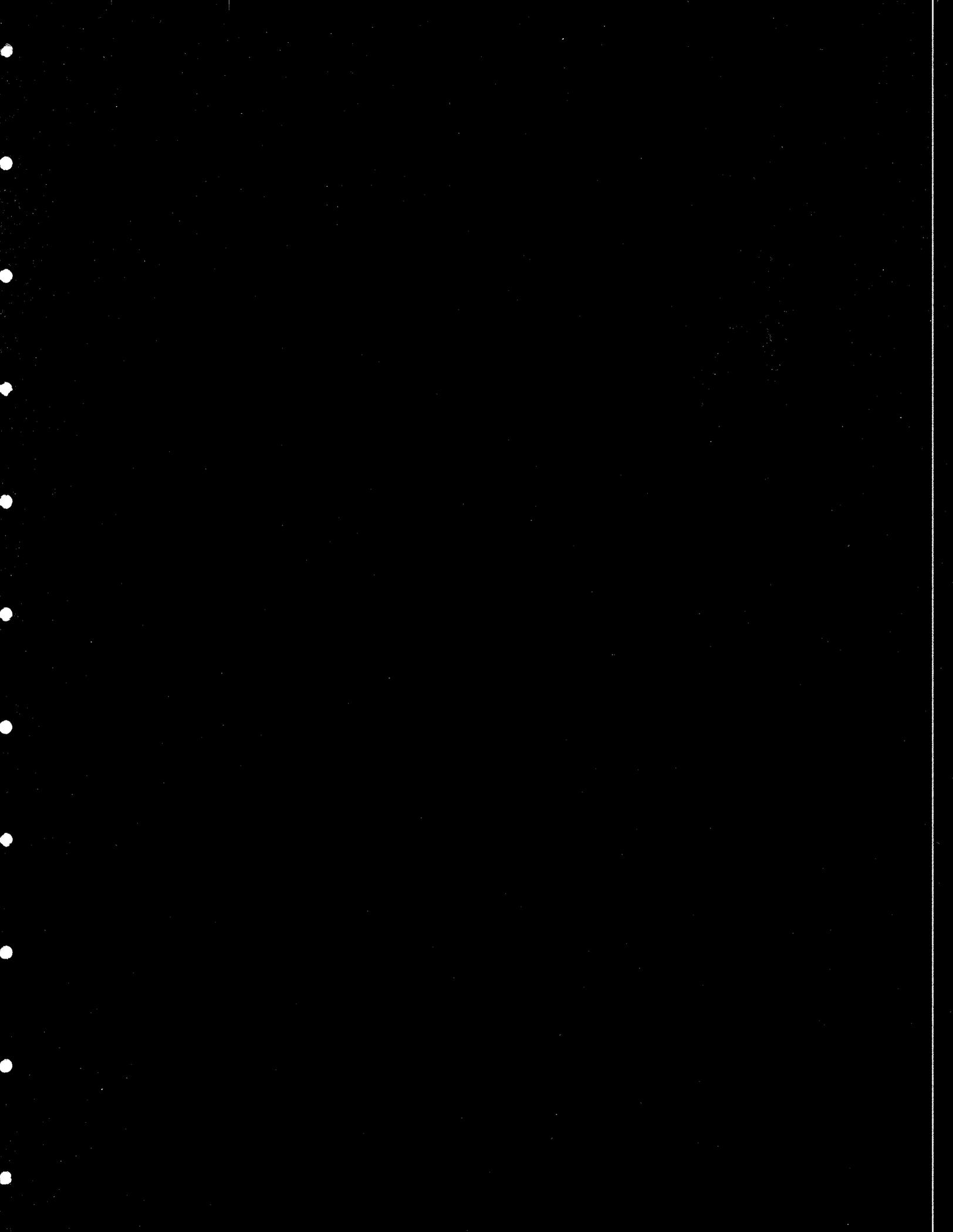
William R. Richards
Assistant Attorney General
UTAH DIVISION OF OIL, GAS & MINING
3 Triad Center, Suite 350
355 West North Temple
Salt Lake City, Utah 84180

Jan Brown, Docket Secretary
Utah Board of Oil, Gas & Mining
3 Triad Center, Suite 350
355 West North Temple
Salt Lake City, Utah 84180

Dr. Dianne R. Nielson, Director
Utah Division of Oil, Gas & Mining
3 Triad Center, Suite 350
355 West North Temple
Salt Lake City, Utah 84180

Denise Drago, Esq.
FABIAN & CLENDENIN
P.O. Box 510210
Salt Lake City, Utah 84151





FILED

FEB 10 1992

SECRETARY, BOARD OF
OIL, GAS & MINING

BEFORE THE BOARD OF OIL, GAS & MINING

DEPARTMENT OF NATURAL RESOURCES

STATE OF UTAH

IN THE MATTER OF NOTICE OF	:	HIDDEN VALLEY COAL COMPANY'S
VIOLATION N92-25-1-1,	:	APPLICATION FOR BOARD REVIEW
HIDDEN VALLEY MINE,	:	OF CITATION
EMERY COUNTY, UTAH	:	
	:	CAUSE NO. ACT/015/007

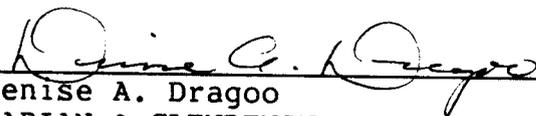
Applicant Hidden Valley Coal Company ("Hidden Valley"), by and through its counsel of record, hereby petitions the Utah Board of Oil, Gas & Mining ("Board") for review of the fact of notice of violation 92-25-1-1 ("NOV") issued by the Utah Division of Oil, Gas & Mining ("DOGM") regarding Hidden Valley Mine Permit No. ACT/015/007. A copy of the NOV is attached as Exhibit "A." In addition, Hidden Valley seeks review of any DOGM assessment in this matter. Upon issuance of the assessment, a check payable to DOGM in the amount of the penalty assessed thereunder will be deposited with DOGM. This penalty should be held in escrow pending final resolution of this matter.

Hidden Valley requests the Board to vacate the NOV and the final assessment in its entirety and return the escrowed penalty to applicant. Hidden Valley challenges the NOV on jurisdictional grounds on the basis that (1) Hidden Valley is exempt from

regulation under the Utah Code Mining & Reclamation Act ("UCMRA"); (2) the NOV is barred by the statute of limitations applicable to UCMRA; and (3) the NOV is barred by waiver, estoppel and laches. Hidden Valley requests a hearing before the Board on these matters at its next regularly scheduled meeting in Salt Lake City, Utah.

In addition, Hidden Valley has petitioned the Board for temporary relief concerning abatement the NOV pending review of this matter by the Board. A ruling on the Petition for Temporary Relief should be made no later than February 21, 1992, which is the current deadline for abatement of the NOV. A memorandum in support of this application will be filed following receipt of a proposed assessment.

RESPECTFULLY SUBMITTED this 10th day of February, 1992.


Denise A. Dragoo
FABIAN & CLENDENIN,
a Professional Corporation
215 South State Street
Twelfth Floor
P.O. Box 510210
Salt Lake City, Utah 84151
Telephone: (801) 531-8900
Attorneys for Hidden Valley
Coal Company

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of February, 1992, a true and correct copy of the foregoing Application for Board Review was hand delivered to the following:

Jan Brown, Docket Secretary
Utah Board of Oil, Gas & Mining
3 Triad Center, Suite 350
355 West North Temple
Salt Lake City, Utah 84180

Dr. Dianne R. Nielson, Director
Utah Division of Oil, Gas & Mining
3 Triad Center, Suite 350
355 West North Temple
Salt Lake City, Utah 84180

DAD:021092b

A handwritten signature in cursive script, reading "Julie McKenzie", is written over a horizontal line.



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

NO. N 92-25-1-1

notice of violation

To the following Permittee or Operator:

Name HIDDEN VALLEY COAL CO.
 Mine HIDDEN VALLEY Surface Underground Other
 County EMERY State UTAH Telephone 602-254-8465
 Mailing Address 1801 UNIVERSITY DRIVE
 State Permit No. ACT 1015 1007
 Ownership Category 950 State Federal Fee Mixed
 Date of inspection 1/22/92, 19____
 Time of inspection 11:30 a.m. p.m. to _____ a.m. p.m.
 Operator Name (other than Permittee) LEE EDMONSON
 Mailing Address 1801 E UNIVERSITY DRIVE PHOENIX, ARIZ. 85034

Under authority of the Utah Coal Mining and Reclamation Act, Section 40-10-1 et seq., Utah Code Annotated, 1953, the undersigned authorized representative of the Division of Oil, Gas & Mining has conducted an inspection of above mine on above date and has found violation(s) of the act, regulations or required permit condition(s) listed in attachment(s). This notice constitutes a separate Notice of Violation for each violation listed.

You must abate each of these violations within the designated abatement time. You are responsible for doing all work in a safe and workmanlike manner.

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

This notice shall remain in effect until it expires as provided on reverse side of this form, or is modified, terminated or vacated by written notice of an authorized representative of the director of the Division of Oil, Gas & Mining. Time for abatement may be extended by authorized representative for good cause, if a request is made within a reasonable time before the end of abatement period.

Date of service/ mailing 1/21/92 Time of service/ mailing 10:35 a.m. p.m.

Lee Edmonson
Permittee/Operator representative

Thomas Munson
Title

Lee Edmonson
Signature

THOMAS MUNSON
Division of Oil, Gas & Mining representative

Reclamation Specialist III
Title

Thomas Munson
Signature

#25
Identification Number

SEE REVERSE SIDE

WHITE-DOGM YELLOW-OSM PINK-PERMITTEE/OPERATOR GOLDENROD-NOV FILE



UTAH
NATURAL RESOURCES
Oil, Gas & Mining

NOTICE OF VIOLATION NO. N 92-25-1-1

Violation No. 1 of 1

Nature of violation

Disturbing land within 100 feet of Live
Creek, a perennial stream, without authorization
from the Division.

Provisions of act, regulations or permit violated

R645-301-731.610 STREAM BUFFER ZONE

Portion of operation to which notice applies

Plat outlope to Live Creek

Remedial action required (including any interim steps)

- 1) Comply with R645-301-731.611
- 2) Comply with R645-301-731.620

Submit an amendment to the PAP to demonstrate
compliance with the above mentioned Rules.

Abatement time (including interim steps)

5:00 PM, FEBRUARY 21, 1992