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DIVISION OF
OIL, GAS & MINING

PETER STIRBA (Bar No. 3118)
MARGARET H. OLSON (Bar No. 6296)
STIRBA & HATHAWAY
Attorneys for Plaintiff/Appellant
215 South State Street, Suite 1150
Salt Lake City, UT 84111
Telephone: (801) 364-8300

IN THE UTAH SUPREME COURT

HIDDEN VALLEY COAL COMPANY :
Plaintiff/Appellant, :
v. :
the UTAH BOARD OF OIL, GAS & :
MINING and the UTAH DIVISION :
OF OIL, GAS & MINING, :
Defendants/Appellees. :

DOCKETING STATEMENT
(Subject to Assignment to the
Court of Appeals)
Case No. _____
Priority 15

On Appeal From the Third Judicial District Court
County of Salt Lake, State of Utah

The Honorable Glenn Iwasaki
Third District Court Judge

Appellant, Hidden Valley Coal Company, by and through counsel of record, submits its
Docketing Statement pursuant to Utah R. App. P. 9.

Date of the Order Sought to Be Reviewed: November 5, 1992.

Date the Notice of Appeal was Filed: December 4, 1992.

Authority Conferring Jurisdiction on the Supreme Court: Utah Code Ann. § 78-2-2(3)(e)(iv) (1992) and Utah Code Ann. § 40-10-30 (3) (1986).

Statement of the Nature of the Proceeding: This is a case of first impression under the Utah Coal Mining and Reclamation Act ("UCMRA"). Utah Code Ann. § 40-10-1 *et seq.* HVCC challenges the Division's issuance of an NOV and civil penalties issued at the Hidden Valley Mine in Emery, County, Utah. The Division's Enforcement action was upheld by the Board on administrative review and by the Third Judicial District Court on judicial review. This appeal seeks appellate review of the administrative action against HVCC and is a review on the record rather than a trial *de novo*. Utah Code Ann. § 40-10-30 (1986).

Concise Statement of Material Facts:

Plaintiff Hidden Valley Coal Company ("HVCC") is a Utah corporation which owns a coal property in Emery County, Utah, hereinafter referred to as the "Mine Site." The Mine Site is located in a desert area with a low annual rainfall making establishment of vegetation and top soil very difficult. The weather patterns are such that the Mine Site receives very infrequent, severe rainfall. The undisturbed area around the Mine Site is sparsely vegetated.

No development activities have occurred at the Mine Site since 1980. HVCC reclaimed the Mine Site in 1986. Pursuant to HVCC's Reclamation Plan, HVCC contracted to have the site regraded, scarified and reseeded. Since 1986, HVCC conformed to all requests to reclaim the property in the manner that was specified by the Division.

A bond release inspection was conducted by the Division on May 24, 1988. At that time the access road, from the end of the paved county road to the Mine Site, was ripped, water bars constructed, and seeded and mulched. Accordingly, the Division approved a Phase I bond release for the Mine Site, reducing the reclamation bond by approximately 60% from \$ 171,515.00 to \$ 68,606.00 based upon completion of backfilling, grading, topsoil placement and reseeded in accordance with the approved reclamation plan. At the time of the Phase I bond release, HVCC was in compliance at the Mine Site with the reclamation plan and all rules and regulations for that phase of reclamation work.

The Division has inspected the Mine Site at least 28 different times since 1987. The Division's inspection reports consistently find the Mine Site to be in full compliance. Prior to November 19, 1991, the Division made no indication whatsoever that any violation existed at the Mine Site or under the reclamation plan. The Division also inspected the Mine Site in April and May of 1991. At that time the conditions at the Mine Site did not constitute a violation of any kind. From 1987 - 1991 there has been insignificant, insubstantial change in the erosion conditions at the Mine Site.

On or about November 19, 1991, the Division conducted another inspection of the Mine Site. On November 22, 1991, Notice of Violation 91-26-8-2 ("NOV") was issued by the Division to HVCC relating to reclamation of 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 alleges 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 outlopes and road upslopes. The NOV was issued notwithstanding the fact that the conditions at the Mine Site have remained unchanged since 1986, since the bond release, and since at least 28 prior inspections. If the NOV is upheld, the received abatement action may subject HVCC to reclamation liability for an additional ten years.

HVCC appealed the Division's issuance of the NOV to the Board of Oil, Gas and Mining ("Board"). The NOV was upheld by the Board Order issued on July 30, 1992. A copy of that Order is attached hereto as Exhibit "A". Under Utah Code Ann. § 40-10-30 (1986) HVCC appealed the Board decision to the Third Judicial District Court. On November 5, 1992, the District Court upheld the Board's Order as to Part 1 of the NOV. The District Court ruled that Part 2 of the NOV which addresses the placement of perimeter markers was unsupported by substantial evidence on the record. A copy of that Order is attached hereto as Exhibit "B". HVCC is now appealing the District Court's Order pursuant to Utah Code Ann. § 40-10-30(3) (1986). A copy of the Notice of Appeal is attached hereto as Exhibit "C".

Issues Presented:

1. Has the Board/trial court erroneously interpreted and applied UCMRA in its finding that the Division was not estopped in the enforcement of its NOV after it had repeatedly

found the Mine Site to be in compliance and had approved HVCC's reclamation activities for a Phase I bond release?

2. Has the Board/trial court erroneously interpreted and misapplied Utah Code Ann. § 40-8-9(2) (1987) and Utah Code Ann. § 40-10-4 (1979) and the rules promulgated thereunder in its determination that a two-year statute of limitations did not apply to bar the issuance of the NOV?

3. Has the Board/trial court erroneously interpreted and applied UCMRA in its finding that the Division established a *prima facie* case supporting its issuance of the NOV and that HVCC failed to rebut the Division's case?

Standard of Review: The standard of review is statutory. Appeals taken from an order of the Board under Title 40 Chapter 10 is on the record and not a trial *de novo*. Utah Code Ann. § 40-10-30 (1986). The court shall set aside the Board action if it is found to be:

- (a) unreasonable, unjust, arbitrary, capricious, or an abuse of discretion;
- (b) contrary to a constitutional right, power, privilege, or immunity;
- (c) in excess of statutory jurisdiction, authority, or limitations;
- (d) not in compliance with procedure required by law;
- (e) based on a clearly erroneous interpretation or application of the law; or
- (f) as to an adjudicative proceeding, unsupported by substantial evidence on the record.

Id. Further, *Cowling v. Bd. of Oil, Gas and Mining*, 830 P.2d 220 (Utah 1991) recently held that "[w]hen a lower court reviews an order of an administrative agency and we exercise appellate review of the lower court's judgment, we act as if we were reviewing the administrative agency decision directly." *Id.* at 223.

Statement Regarding Assignment to the Court of Appeals: This is a case of first impression under the Utah Coal Mining and Reclamation Act ("UCMRA"). Utah Code Ann. § 40-10-1 *et seq.* When challenging administrative action of the Board, mine permittees have no guidance from the Supreme Court regarding UCMRA. A decision by the Supreme Court on the issues presented will aid the efficient administration of justice and finality for these and future litigants.

Determinative Authority:

Issue No. 1: *Plateau Mining v. Utah Div. of State Lands*, 802 P.2d 720 (Utah 1990); *Mendez v. State Dep't of Social Services*, 813 P.2d 1234 (Utah Ct. App. 1991); *Celebrity Club, Inc. v. Utah Liquor Control Comm'n*, 602 P.2d 689 (Utah 1979); *Utah State University v. Sutro & Co.*, 646 P.2d 715 (Utah 1982); and *Ehlers & Ehlers v. Carbon County*, 805 P.2d 789 (Utah Ct. App. 1991); *Morgan v. Bd. of State Lands*, 549 P.2d 695 (Utah 1976).

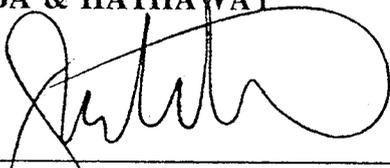
Issue No. 2: Utah Code Ann. § 40-8-9(2) (1987); Utah Code Ann. § 40-10-4 (1979); Utah Admin. R. 614-1Q-900(a) (1991)

Issue No. 3: Utah Admin. R. 614-301-742.312.1 (1991); Utah Admin. R. 614-301-742.113 (1991); Utah Admin. R. 614-301-521.251 (1991) and Utah Admin. R.614-301-354 (1991).

Prior or Related Appeals: (1) *Hidden Valley Coal Company v. the Utah Board of Oil, Gas and Mining and the Utah Division of Oil, Gas and Mining*, Case No. 920398, Utah Supreme Court. This appeal was withdrawn on stipulation of counsel so that the parties could pursue judicial review in the Third District Court. (2) *Hidden Valley Coal Company v. the Utah Board of Oil, Gas and Mining and the Utah Division of Oil, Gas and Mining*, Case No. 920904813CV, Third Judicial District Court, County of Salt Lake, State of Utah.

Dated this 23rd day of December, 1992.

STIRBA & HATHAWAY

BY: 

PETER STIRBA
Attorneys for Plaintiff/Appellant
Hidden Valley Coal Company

CERTIFICATE OF SERVICE

I hereby certify that on this 22 day of December, 1992, a true and correct copy of the foregoing DOCKETING STATEMENT was mailed, postage pre-paid, to the following:

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

Debra S. Maynard

k\pl\hvc-dock.smt

SCHEDULE OF ATTACHMENTS

- A. Order of the Board of Oil Gas and Mining dated July 30, 1992.
- B. Order of the Third Judicial District Court dated November 5, 1992.
- C. Notice of Appeal dated December 4, 1992.

EXHIBIT "A"

RECEIVED

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

JUL 31 1992

STIRBA & HATHAWAY

---oo0oo---

IN THE MATTER OF NOTICE OF	:	ORDER
VIOLATION N91-26-8-2, HIDDEN	:	
VALLEY MINE, EMERY COUNTY,	:	DOCKET NO. 92-005
UTAH	:	CAUSE NO. ACT/015/007
	:	

---oo0oo---

On June 30, 1992, the above entitled matter came before the Hearing Examiner, Chairman James W. Carter. Representing the Board of Oil, Gas and Mining's Examiner ("Examiner") was Thomas A. Mitchell, Esq., Assistant Attorney General. Representing the Division of Oil, Gas and Mining ("DOGM") was William R. Richards, Esq., Assistant Attorney General, and representing the Respondent Hidden Valley Mine was Peter Stirba, Esq. The Board considered the Examiner's recommended Findings of Fact and Order at their regularly scheduled hearing on July 22, 1992 and adopted it with the modifications contained herein.

FINDINGS OF FACT

1. NOV 91-26-8-2, parts one and two, was issued on November 20, 1991. There was an assessment conference and fact of violations hearing resulting in the final Division assessment on December 20, 1991.

2. The Petitioner timely appealed the final Division assessment and findings and paid the total assessment in the

amount of \$760.00 for part one of two, and \$460.00 for part two of two into the Division.

3. The Respondent, Hidden Valley Mine, is subject to the jurisdiction of the Board of Oil, Gas and Mining pursuant to Utah Statute, Utah Code Ann. § 40-10-3 (1953, as amended).

4. On September 7, 1979, Hidden Valley's predecessor, Soldier Creek Coal Company (Soldier Creek), submitted a Mining and Reclamation Plan for the land which is the subject of these enforcement proceedings. In that plan Soldier Creek stated that it intended to develop an underground coal mine by June of 1981 which was intended to produce approximately 500,000 tons per year for 40 years.

5. On April 14, 1980, the Division of Oil, Gas and Mining approved Soldier Creek's Mining and Reclamation Plan pursuant to the State Coal Program's interim regulations.

6. On April 17, 1980, surface mining operations commenced at the Hidden Valley Mine pursuant to the approved Mining and Reclamation Plan. These operations included the construction and paving of a 2.5 mile road; construction of an access road to two portal areas where pads were constructed adjacent to coal seams; construction of portal entry face ups; top soil removal from the surface; sediment pond construction and installation of drainage diversions.

7. On January 23, 1981, the Utah State Coal Program was approved by the federal government with Utah as a primacy state, and the Utah Permanent Program Regulations became effective.

8. On March 23, 1981, Soldier Creek informed the Division for the first time that the Hidden Valley mine would temporarily suspend operations.

9. By letter dated May 24, 1985, the Division notified Soldier Creek that it must elect to either permit the Hidden Valley Mine under the Permanent Program Regulations or reclaim the mine in accordance with the approved plan and Permanent Program Regulations.

10. After September 15, 1985, Hidden Valley elected to cease mining operations and reclaim the mine site. In May, 1986, the Respondent filed a Reclamation Plan incorporating the Permanent Program reclamation standards, which plan was approved by the Division.

11. Reclamation of the mine site was undertaken by Respondent, and Phase I bond release was authorized by the Division on May 24, 1988.

12. Subsequent to Phase I bond release, the Respondent has failed to comply with the Permanent Program standards and with the approved Reclamation Plan by failing to adequately construct and maintain erosion control structures on the outslope of the access haul road.

13. The Respondent has failed to comply with the Permanent Program standards and the approved Reclamation Plan by having failed to seed the disturbed area constituting the outslopes of the access road.

14. The Respondent has failed to comply with the Permanent Program standards and the approved Reclamation Plan by having failed to place disturbed area boundary markers at the toe of the slope of the disturbed area below the access road, and instead has placed them at the edge of the road above the disturbed area.

15. The violations which are the subject of this enforcement proceeding are continuing violations, and constitute a current and ongoing basis for enforcement.

16. The Respondent has not changed its position or incurred any detriment in reliance upon any act or statement of the Division or its inspection and permitting staff.

CONCLUSIONS OF LAW

1. This Board has jurisdiction over the Respondent and the Hidden Valley Mine pursuant to Utah Code Ann. § 40-10-3. This provision of the Utah Coal Statute provides that an operator comes within the jurisdiction of the Board and the Division when the operator mines or intends to mine 250 tons of coal within any 12-month period.

2. The intent of an operator to mine is to be determined by an objective standard based upon the acts and representations of the operator during relevant time periods. The Board concludes that Hidden Valley possessed the requisite intent to conduct mining activities, subjecting itself to the jurisdiction of the Utah Coal Statute.

3. The Board concludes that the Permanent Program standards apply to the Respondent because the operator neither permanently ceased operations nor abandoned the intent to mine prior to the Permanent Program becoming effective, and because Hidden Valley specifically agreed to application of the Permanent Program rules in its 1986 Reclamation Plan.

4. The Board concludes the Division has made a prima facie case to support the issuance of the NOV's which are the subject of this enforcement action. The Board further concludes that Hidden Valley has not carried its burden of proof to rebut the Division's prima facie case.

5. The Board concludes that the statute of limitations provision contained in the Utah Mined Land Reclamation Act is not incorporated by reference under Utah Code Ann. § 40-10-1 et seq. because it is inconsistent with the approved federal program as well as less stringent. Further, the Board concludes that even if there were an applicable statute of limitations, the statute has not begun to run because the violations are continuing.

6. The Board concludes that the Respondent has not proven the elements of estoppel necessary to avail itself of that affirmative defense.

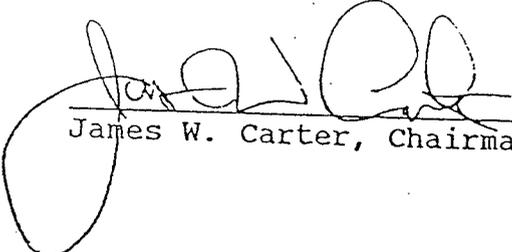
ORDER

1. The Division's action in issuing the NOV subject to this enforcement action should be upheld.

2. The Division's penalty assessments are upheld as to all parts of the NOV, with the exception of that part relating to the placement of the disturbed area boundary markers, where the negligence points should be reduced to zero. Final assessment for part two of two of the violation is reduced from \$460.00 to \$330.00.

ISSUED AND SIGNED this 30th day of July, 1992.

STATE OF UTAH
BOARD OF OIL, GAS AND MINING



James W. Carter, Chairman

CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the foregoing ORDER in Docket No. 92-005, Cause No. ACT/015/007 to be mailed by certified mail, postage prepaid, on the 30th day of July, 1992, to the following:

Peter Stirba
Stirba & Hathaway
215 South State #1150
Salt Lake City, Utah 84111

Hand Delivered to:

William R. Richards
Assistant Attorney General
Utah Division of Oil, Gas and Mining
3 Triad Center, Suite 350
355 West North Temple
Salt Lake City, Utah 84180

Synda Jensen

EXHIBIT "B"

11 23 AM '92

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

Clerk *[Signature]*

In the Matter of)
HIDDEN VALLEY COAL COMPANY,) Case No. 920904813CV
Appellant,)
vs.)
the UTAH BOARD OF OIL, GAS AND) Judge Glen K. Iwasaki
MINING and the UTAH DIVISION)
OF OIL, GAS AND MINING,)
Appellee.)

ORDER

The above entitled matter came before this Court on Wednesday, October 28, 1992, for oral argument on Appellant Hidden Valley's appeal from a formal adjudicatory decision of the Board of Oil, Gas and Mining.

On appeal, this Court has applied the standard of judicial review set forth under Utah Code Ann. § 40-10-30. The review of this matter is a review of the record in the tribunal below, and not a trial de novo. This Court has applied the criteria for review of the Board's final decision set forth at Utah Code Ann.

§ 40-10-30 to the issues raised by Appellant in its Brief. Based on this review, the Court rules as follows:

Appellant has contested the Board's jurisdiction under Utah Code Ann. § 40-10 et seq. This Court finds that Appellant had the requisite intent to mine 250 tons of coal or more. This finding is based upon the evidence in the record evidencing the Appellant's contemporaneous statements at the time of surface disturbance, and the prolonged period during which Appellant continued to submit itself to the jurisdiction of the Board of Oil, Gas and Mining and the Division of Oil, Gas and Mining under the state's coal program. Therefore the Division of Oil, Gas and Mining has jurisdiction over Appellant's surface coal mining reclamation operations.

The Appellant has contested the enforcement actions taken by the Division of Oil, Gas and Mining based on its argument that the statute of limitations in Utah Code Ann. § 40-8 et seq. are applicable to Utah Code Ann. § 40-10 et seq. The Court finds that the Board's conclusion of law that this statute of limitation is inconsistent with the Utah Coal Statute is correct. Therefore, Appellant's argument that the Division of Oil, Gas and Mining's enforcement is time-barred is erroneous.

The Appellant has contested the applicability of the Utah State permanent program under the state coal statute, Utah Code Ann. § 40-10 et seq. The Court finds that the Board's application of the law to the facts in this matter was correct

and that the permanent program performance standards apply to the Appellant.

The Appellant has argued that the enforcement actions taken by the Division of Oil, Gas and Mining in this matter were barred by the equitable principles of estoppel. This Court finds that the elements of estoppel have not been met and that the enforcement actions of the Division of Oil, Gas and Mining in this matter are not barred by this doctrine. This Court finds that the Board correctly applied the legal elements of the doctrine of estoppel, and that the record below supports the finding that Appellant took no acts in reliance upon the inspection reports to which Appellant points as being the basis for the application of the doctrine of estoppel.

Concerning the issue of whether or not there was a prima facie showing made of the elements of the Notices of Violation (NOVs) in this matter, the Court upholds the Board's ruling as to part one of the NOV concerning failure to address the erosion on the outslopes of the reclaimed access road. The Court finds that the record contains substantial evidence on this matter.

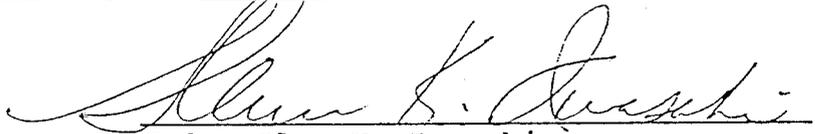
Concerning part two of the NOV addressing the failure to re-seed disturbed areas, the Court finds that there is substantial evidence on the record and that indeed it is undisputed that the Appellant failed to re-seed the areas addressed in the Notice of Violation.

Concerning the final portion of part two of the NOV, addressing the improperly located perimeter markers, the Court

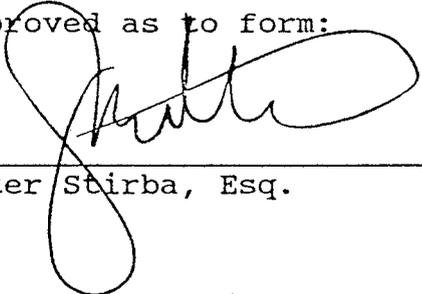
overturns the findings of the Board as to a prima facie showing and determines that the record does not contain substantial evidence as to the location of the perimeter markers being in violation of the plan or permanent program performance standards under the state's Coal Act. The Court does not find that the Appellant was in compliance in this respect, but only determines that there was a failure of the Division to make a prima facie showing in the record below as to this element.

This Order disposes of and finalizes all matters raised on appeal by the Appellant from the decision of the Board of Oil, Gas and Mining in this matter.

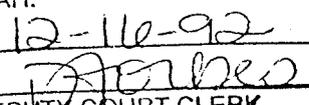
SO ORDERED this 5th day of November, 1992.


Judge Glenn K. Iwasaki

Approved as to form:


Peter Stirba, Esq.

I CERTIFY THAT THIS IS A TRUE COPY OF AN ORIGINAL DOCUMENT ON FILE IN THE THIRD DISTRICT COURT, SALT LAKE COUNTY, STATE OF UTAH.

DATE: 12-11-92

DEPUTY COURT CLERK

CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the foregoing ORDER in Case No. 920904813CV to be mailed by first class mail, postage prepaid, on the ____ day of _____, 1992, to the following:

Peter Stirba, Esq.
Stirba & Hathaway
215 South State Street, Suite 1150
Salt Lake City, Utah 84111

Thomas A. Mitchell, Esq.
William R. Richards, Esq.
Division of Oil, Gas and Mining
3 Triad, Suite 350
355 West North Temple
Salt Lake City, Utah 84180-1203

EXHIBIT "C"

\$160.00
612053219

PETER STIRBA (Bar No. 3118)
MARGARET H. OLSON (Bar No. 6296)
STIRBA & HATHAWAY
Attorneys for Plaintiff and Appellant
215 South State Street, Suite 1150
Salt Lake City, UT 84111
Telephone: (801) 364-8300

2002
11/13/92

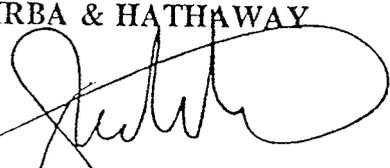

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

HIDDEN VALLEY COAL COMPANY,	:	
Plaintiff and Appellant,	:	NOTICE OF APPEAL
v.	:	
the UTAH BOARD OF OIL, GAS & MINING and the UTAH DIVISION OF OIL, GAS & MINING,	:	
Defendants and Appellees.	:	Case No. 920904813CV
	:	Judge Glenn K. Iwasaki

Plaintiff and Appellant, Hidden Valley Coal Company, by and through counsel of record, hereby gives notice of appeal to the Utah Supreme Court of the Order of the Third Judicial District Court dated November 5, 1992. The District Court upheld, in part, the decision of the Board of Oil, Gas and Mining dated July 30, 1992. The Plaintiff now appeals that portion of the District Court's Order which upholds the Board. A copy of the District Court's Order is attached hereto as Exhibit "A" and made a part hereof.

Dated this 4th day of December, 1992.

STIRBA & HATHAWAY

BY: 

PETER STIRBA

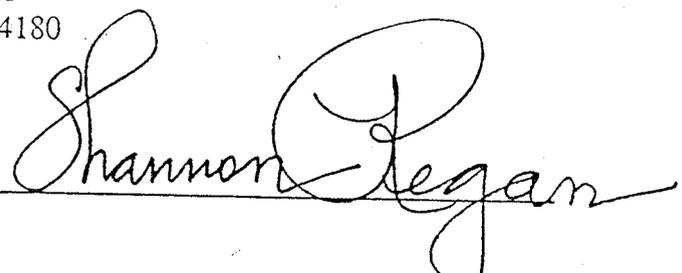
MARGARET H. OLSON

Attorneys for Plaintiff and Appellant
Hidden Valley Coal Company

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of December, 1992, a true and correct copy of the foregoing NOTICE OF APPEAL was mailed, postage pre-paid, to the following:

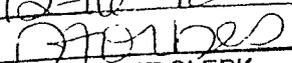
William R. Richards
Thomas A. Mitchell
Assistants Attorney General
UTAH DIVISION OF OIL, GAS & MINING
3 Triad Center, Suite 350
355 West North Temple
Salt Lake City, Utah 84180



k\pl\hvc-appe.not

I CERTIFY THAT THIS IS A TRUE COPY OF AN ORIGINAL DOCUMENT ON FILE IN THE THIRD DISTRICT COURT, SALT LAKE COUNTY, STATE OF UTAH.

DATE: 12-16-92


DEPUTY COURT CLERK



Jan

VACATION/TERMINATION OF NOTICE OF VIOLATION/CESSATION ORDER

To the following Permittee or Operator:

Name HIDDEN VALLEY MINE, HIDDEN VALLEY COAL CO.
Mailing Address 1801 E. UNIVERSITY DR., PHOENIX AZ 85034
State Permit No. ACT/OIS/007

Utah Coal Mining & Reclamation Act, Section 40-10-1 et seq., Utah Code Annotated (1953):

Notice of Violation No. N 91-26-8-2 dated NOV 20, 19 91.

Cessation Order No. C 92-26-1-2 dated SEP 7, 19 92.

Part 1 of 2 is vacated terminated because of submittal of
complete and accurate plans: JAR, N91-26-8-2 rec @
DOGMI2-14-92

Part 2 of 2 is vacated terminated because (same as above)

Part ____ of ____ is vacated terminated because _____

Date of service/mailling 12/15/92

Time of service/mailling 3:00 a.m. p.m.

LEE EDMONSON
Permittee/Operator representative

MANAGER PLANNING + REGULATORY
Title AFFAIRS

Signature

LOWELL P. BRAXTON
Division of Oil, Gas & Mining

ASSOCIATED DIRECTOR, MINING
Title

Lowell P Braxton 12-15
Signature

RECEIVED

JAN 07 1993

DIVISION OF
COURT REPORTS

PETER STIRBA (Bar No. 3118)
MARGARET H. OLSON (Bar No. 6296)
STIRBA & HATHAWAY
Attorneys for Appellant
215 South State Street, Suite 1150
Salt Lake City, UT 84111
Telephone: (801) 364-8300

IN THE UTAH SUPREME COURT

HIDDEN VALLEY COAL COMPANY, :

Appellant, :

v. :

the UTAH BOARD OF OIL, GAS & :
MINING and the UTAH DIVISION :
OF OIL, GAS & MINING, :

Appellees. :

CERTIFICATE OF
REQUEST OF TRANSCRIPT

Case No. _____

Priority 15

On Appeal From the Third Judicial District Court
County of Salt Lake, State of Utah

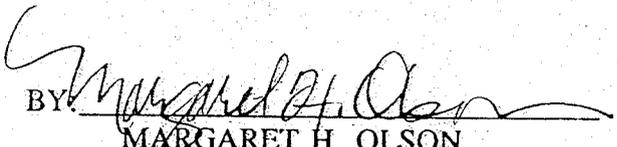
The Honorable Glenn Iwasaki
Third District Court Judge

Appellant, Hidden Valley Coal Company, by and through counsel of record, pursuant to Utah Rules of Appellate Procedure 11(e)(1), hereby certifies to the Court that only the dispositive part of the hearing on the parties' appellate briefs, held October 29, 1992, was ordered by the Appellant and, hence, the entire transcript in the Third District Court will not

be a part of the record on appeal. The reason for this is the standard of review enumerated in *Cowling v. Oil, Gas & Mining*, 830 P.2d 220, 223 (Ut. 1991) that "[w]hen a lower court rules on an order of an administrative agency and we exercise appellate review of the lower court's judgment, we act as if we were reviewing the administrative agency decision directly." As such, the entire District Court transcript is unnecessary for purposes of this appeal.

Dated this 6th day of January, 1993.

STIRBA & HATHAWAY

BY: 

MARGARET H. OLSON

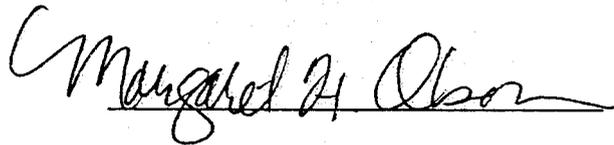
Attorneys for Appellant

Hidden Valley Coal Company

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of January, 1993, a true and correct copy of the foregoing CERTIFICATE OF NO REQUEST OF TRANSCRIPT was mailed, postage pre-paid, to the following:

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

A handwritten signature in cursive script, appearing to read "Margaret H. Olson", written over a horizontal line.

k\pl\hvc-cert.no

Bill

LAW OFFICES
STIRBA & HATHAWAY
A PROFESSIONAL CORPORATION
SUITE 1150
215 SOUTH STATE STREET
SALT LAKE CITY, UTAH 84111

PETER STIRBA

TELEPHONE: (801) 364-8300
FACSIMILE: (801) 364-8355

TELECOPIER TRANSMISSION SHEET

January 14, 1993

TO: Thomas A. Mitchell
William R. Richards
Assistant Attorneys General
Division of Oil, Gas & Mining
359-3940

THIS TRANSMISSION TOTALS 2 PAGES INCLUDING THIS COVER SHEET.

PLEASE NOTE: The information contained in this facsimile message is privileged and confidential and is intended only for the use of the individual or entity named above and others who have been specifically authorized to receive it. If you are not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, or if any problems occur with transmission, please notify us immediately by telephone at (801) 364-8300. Thank you.

Re: *Hidden Valley Coal Company*

Dear Tom and Bill:

This is to confirm our telephone conversation of a couple hours ago.

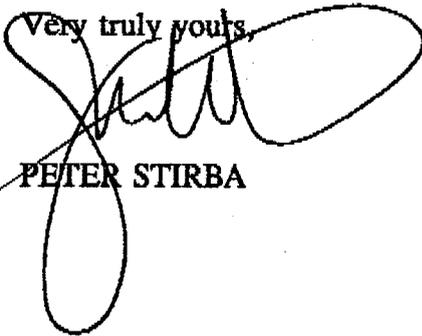
As we discussed, in light of the likelihood that Hidden Valley will request an extension of time in which to comply with its approved plan, my understanding is that the Division will take no action with respect to this matter until the three of us have had a chance to talk on Tuesday further about this matter. As we also discussed, Tom will talk to Mr. Braxton and advise him of our discussion and perhaps to anticipate a call from Mr. Edmonson regarding the extension request. I am glad that we are in agreement that there is no practical basis upon which Hidden Valley can comply given the time of year and the requirement to seed.

Thomas A. Mitchell
William R. Richards
January 14, 1993
Page 2

As we further discussed, any action taken by Hidden Valley is not to be construed as evidencing Hidden Valley's intent not to prosecute its pending appeal to its conclusion. While it was constructive that Hidden Valley tried to negotiate a resolution to this dispute and to come to some agreement as to the bond clock issue, since that did not occur, Hidden Valley intends to continue with its appeal and pursue whatever relief is appropriate with the Division or in court in order to preserve the status quo until the Supreme Court has ruled.

I appreciate your cooperation and assistance in dealing with these issues. I will call you some time Tuesday at the latest and we can evaluate the necessity for a stay or an extension at that time.

Very truly yours,



PETER STIRBA

PS/kg
cc: Lee Edmonson



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

State of Utah

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203
801-538-5340

CC. Pam G-L

December 15, 1992

TO: Pamela Grubaugh-Littig, Permit Supervisor

FROM: Thomas Munson, Senior Reclamation Hydrologist *TM*

RE: Review of Plan Amendments for the Hidden Valley Plan and the Abatement Plans of NOV N91-26-8-2, Hidden Valley Mine, Hidden Valley Coal Company, ACT/015/007, Folder #2, Emery County, Utah

Synopsis

This memo reviews the abatement plan titled Hidden Valley Coal Company Plan for Abatement of Notice of Violation No. N91-26-8-2, dated December 8, 1992, submitted on December 14, 1992 by JBR Consultants. This same document was faxed to the Division on December 11, 1992. The review was carried out on the JBR submittal. No other documents or submittals by the operator were reviewed.

Analysis

The operator has provided a plan that treats the gully erosion at the outfalls of the road water bars using alternative erosion control methods. These methods have not been tried at other mine sites in Utah with these slope conditions, in other words, the operator is attempting to repair gully erosion on slopes beyond the envelope of design parameters.

The treatment of the water bar outfalls were reviewed under the operator's assumptions and premise that the gullies will not act as diversions. If this assumption proves false the following analysis will be revised and changes to the plan will be required. It has been determined by the operator that the only acceptable means of treatment is using fiber dams, reshaping the gullies by hand, and where feasible laying synthetic fiber erosion matting.

The operator states that the function of these porous dams will be to reduce velocity of runoff in the outfall, causing sediments to deposit behind and within the dams. It was assumed that deposition of sediments behind these dams will build up the gully floor to a reasonable elevation. The overall result will be a series of steps down the outfall, with the flat sections vegetated and the steep

sections stabilized. In addition to the work performed on the gullies, the water bars will be improved by adding more substantial check dams perpendicular to the water bars.

The plan amendments discussing the NOV abatement plan are found in the PAP on revised pages 21-b, 27, and 52-b. The NOV abatement plan has been placed at the end of Appendix III of the PAP. The plan amendments were part of the December 8, 1992 submittal.

Recommendations

The amendment plans and the abatement plan for the NOV are considered the same based on the review of the revised pages submitted, referencing the abatement plan of December 8, 1992 as being included at the end of Appendix III.

The Division accepts these plans as a means of potentially repairing the gullies at the water bar outfalls, but does not believe that these methods are considered standard engineering practices for use on the vertical unconsolidated gully slopes found at Hidden Valley.

In accepting gully repair and water bar enhancement as an appropriate abatement of N91-26-8-2, the Division is not making a statement that the site is erosionally stable. Therefore the Division is not representing that, in the event of failure of these gully structures, measures beyond those contemplated by JBR, will not be required. Nor is the Division representing that the present site configuration will meet future bond release criteria with respect to erosion. Site maintenance in accordance with performance standards, rules, and the permit is an ongoing responsibility of the operator.

In making the finding that the plan submitted to abate N91-26-8-2 is acceptable, the Division is not representing that the present site configuration is acceptable for post-mining land use and bond release purposes or that compliance with the sediment control performance standards cited at R645-301-752 has been established with respect to future inspections.

The operator must meet the implementation date of April 1, 1993 and the work completed within thirty days.



1.5
cc. ^{one} ~~Run~~ ^{Daniel} ~~T. Mitchell~~ B
1-26-93
LWS TAKE PRIDE IN AMERICA
Bill

United States Department of the Interior

OFFICE OF SURFACE MINING
Reclamation and Enforcement
Suite 1200
505 Marquette Avenue N.W.
Albuquerque, New Mexico 87102

IN REPLY REFER TO:

January 21, 1993

RECEIVED

JAN 25 1993

DIVISION OF

Lowell Braxton, Acting Director
Division of Oil, Gas and Mining
Department of Natural Resources
3 Triad Center, Suite 350
355 West North Temple
Salt Lake City, Utah 84180-1203

Dear Mr. Braxton:

The Office of Surface Mining Reclamation and Enforcement (OSM) has completed review of Utah's September 17, 1992 definitions of "affected area," "road," and "public road," formally-proposed amendment (Administrative Record No. UT-782, State Program Amendment Tracking (SPATS) No. UT-017-FOR). Utah submitted the proposed amendment in response to Utah's and OSM's September 4, 1992 Settlement Agreement. OSM finds those provisions of the proposed amendment identified in the enclosure to this letter to be less effective than the Federal counterpart regulations and less stringent than the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The Director of OSM is prepared to delay final rulemaking on the proposed amendment to allow Utah an opportunity to submit draft proposed rule changes, policy statements, clarifying opinions, or other evidence that the proposed rules are no less effective than the Federal regulations and no less stringent than SMCRA. Utah must submit such additional information no later than 30 days from the date of this letter. Upon submission by Utah of new material to address the deficiencies, OSM would reopen the comment period on the new information for 15 days. After the close of the reopened comment period, OSM would then publish a final rule announcing the Director's decision on the amendment. The Director's approval of any rules in proposed form is contingent upon Utah's adoption of the rules in the form in which they were reviewed by OSM and the public. Should Utah indicate that it does not wish to, or is unable to, submit further modifications to address the identified deficiencies, the Director would not approve those provisions which contain identified deficiencies.

With respect to the editorial note, although Utah's editorial note is verbatim to that note OSM codified for the Federal definition of "affected area," the addition of this note does not, in and of itself, act to suspend any part of Utah's proposed definition of "affected area." Thus, while the Federal definition of "affected area," as modified by the Federal suspension, does not exclude from regulation public roads which are included in the Federal definition of "surface coal mining operations," Utah's proposed definition of "affected area," without a suspension applicable to the Utah regulatory program, would exclude from regulation public roads which are included in its statutory definition of "surface coal mining operations" or regulation definition of "coal mining and reclamation operations." For this reason, Utah's proposed definition of "affected area" at Utah Admin. R. 645-100-200 is less effective than the Federal counterpart definition of "affected area" at 30 CFR 701.5.

To be no less effective than the Federal definition, as modified by the suspension notice, Utah needs to delete both the editorial note and the sentence to which it pertains (the last sentence of the proposed definition). These changes would have the effect of including all roads included within the Federal definition of "surface coal mining operations," which is the purpose of the suspension notice. Alternatively, Utah could resolve this deficiency by following its administrative procedures and explicitly suspending that part of Utah's definition of "affected area" which excludes from regulation public roads that are included in the Utah statutory definition of "surface coal mining operations" at U.C.A. 40-10-3(18) or the rule definition of "coal mining and reclamation operations" at Utah Admin. R. 645-100-200. ~~Also, please note that the definitions of "affected area" in attachments 1 and 2 are different.~~ In attachment 2, Utah shows that it proposes to delete the phrase ", except as provided in this definition", whereas in attachment 1, Utah shows that it proposes to retain this phrase. To be no less effective than the Federal definition of "affected area" as modified by the Federal suspension notice, the phrase should be deleted. If Utah decides to revise its proposed amendment in response to this issue letter and resubmit it to OSM, please revise attachment 1 to delete the phrase.

2. Definition of "Public Road."

In the proposed definition of "public road," Utah restricts the applicability of the definition to Utah Admin. R. 645-103-100, but the referenced rule does not mention public roads. As explained in the September 14, 1983, preamble (48 FR 41312, 41319), the Federal regulation at 30 CFR 761.5 defines "public road" in accordance with the definition of "affected area" as published on August 2, 1982 (47 FR 33424). Since the

ISSUES IDENTIFIED BY OSM FOR UTAH'S SEPTEMBER 17, 1992,
DEFINITIONS OF "AFFECTED AREA," "ROAD," AND "PUBLIC ROAD"
FORMALLY-PROPOSED AMENDMENT (ADMINISTRATIVE RECORD NO. UT-782,
SPATS NO. UT-017-FOR)

1. Definitions of "Affected Area" and "Road."

In response to Utah's and OSM's September 4, 1992, settlement agreement, Utah proposes to revise its definitions of "affected area" and "road" at Utah Administrative Rule 645-100-200 to read the same as the Federal definitions of "affected area" and "road" at 30 CFR 701.5. Some problems result from Utah literally adhering to the settlement agreement and adopting these Federal definitions.

In the proposed definitions of "affected area" and "road," Utah limits the definitions to "surface coal mining and reclamation operations" (emphasis added) rather than "coal mining and reclamation operations" as the existing definitions currently do. Utah does define "surface coal mining and reclamation operations" in its statute at Utah Code Annotated 40-10-3(17), but it defines the analogous term "coal mining and reclamation operations" in its rules at Utah Admin. R. 645-100-200 and uses this term throughout its rules. For reasons of clarity and consistency of its rule language, OSM recommends that Utah use the existing term "coal mining and reclamation operations" in its proposed rule definitions of "affected area" and "road."

At the end of the proposed definition of "affected area," Utah adds a sentence and editorial note that reads as follows:

The affected area shall include every road used for the purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road was designated as a public road pursuant to the laws of the jurisdiction in which it is located; is maintained with public funds, and constructed, in a manner similar to other public roads of the same classification within the jurisdiction; and there is substantial (more than incidental) public use.

Editorial Notes:

2. The definition of *Affected area*, insofar as it excludes roads which are included in the definition of *Surface coal mining operations*, was suspended at 51 FR 41960, Nov. 20, 1986. *Accordingly, Utah's definition of "Affected area" is suspended insofar as it excludes roads which are included in the definition of "Coal mining and reclamation operations".*

With respect to the editorial note, although Utah's editorial note is verbatim to that note OSM codified for the Federal definition of "affected area," the addition of this note does not, in and of itself, act to suspend any part of Utah's proposed definition of "affected area." Thus, while the Federal definition of "affected area," as modified by the Federal suspension, does not exclude from regulation public roads which are included in the Federal definition of "surface coal mining operations," Utah's proposed definition of "affected area," without a suspension applicable to the Utah regulatory program, would exclude from regulation public roads which are included in its statutory definition of "surface coal mining operations" or regulation definition of "coal mining and reclamation operations." For this reason, Utah's proposed definition of "affected area" at Utah Admin. R. 645-100-200 is less effective than the Federal counterpart definition of "affected area" at 30 CFR 701.5.

To be no less effective than the Federal definition, as modified by the suspension notice, Utah needs to delete both the editorial note and the sentence to which it pertains (the last sentence of the proposed definition). These changes would have the effect of including all roads included within the Federal definition of "surface coal mining operations," which is the purpose of the suspension notice. Alternatively, Utah could resolve this deficiency by following its administrative procedures and explicitly suspending that part of Utah's definition of "affected area" which excludes from regulation public roads that are included in the Utah statutory definition of "surface coal mining operations" at U.C.A. 40-10-3(18) or the rule definition of "coal mining and reclamation operations" at Utah Admin. R. 645-100-200.

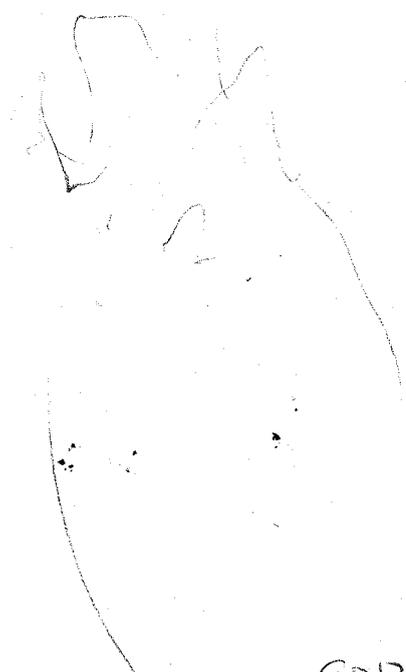
~~Also, please note that the definitions of "affected area" in attachments 1 and 2 are different.~~ In attachment 2, Utah shows that it proposes to delete the phrase ", except as provided in this definition", whereas in attachment 1, Utah shows that it proposes to retain this phrase. To be no less effective than the Federal definition of "affected area" as modified by the Federal suspension notice, the phrase should be deleted. If Utah decides to revise its proposed amendment in response to this issue letter and resubmit it to OSM, please revise attachment 1 to delete the phrase.

2. Definition of "Public Road."

In the proposed definition of "public road," Utah restricts the applicability of the definition to Utah Admin. R. 645-103-100, but the referenced rule does not mention public roads. As explained in the September 14, 1983, preamble (48 FR 41312, 41319), the Federal regulation at 30 CFR 761.5 defines "public road" in accordance with the definition of "affected area" as published on August 2, 1982 (47 FR 33424). Since the

definition of "affected area" was remanded by the courts as being inconsistent with SMCRA to the extent that it excludes all public roads from regulation under SMCRA, the applicability of the very similar definition of "public road" must be limited to ensure that it does not have an equivalent effect. Because the Federal definition of "public road" applies only to the lands unsuitable provisions of 30 CFR Part 761, it is unaffected by the remand of the definition of "affected area." However, the Utah definition of "public road" is affected since it currently applies throughout the State's rules. To be no less stringent than SMCRA and no less effective than the Federal regulations, Utah needs to revise its program to specify that the definition of public road applies only to Utah Admin. R. 645-103-200, 645-301-521.123, and 645-301-521.133 since these are the only rules in which the Utah regulations use the term "public road" in a lands unsuitable context.

Also, please note that the definitions of "public road" in attachments 1 and 2 are different. In attachment 1, Utah shows that it proposes a criterion (d) under the definition that reads "which meets road construction standards for other public roads of the same classification in the local jurisdiction." In attachment 2, Utah shows a criterion (d) but deletes the words for the criterion. After OSM received the proposed amendment, OSM confirmed with Utah that the attachment 1 version of this amendment is what Utah intended to propose to OSM. If Utah decides to revise its proposed amendment in response to this issue letter and resubmit it to OSM, please revise attachment 2 to retain the words for criterion (d).



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RECEIVED

FEB 05 1993

DIVISION OF
OIL GAS & MINING

PETER STIRBA (Bar No. 3118)
MARGARET H. OLSON (Bar No. 6296)
STIRBA & HATHAWAY
Attorneys for Plaintiff and Appellant
215 South State Street, Suite 1150
Salt Lake City, UT 84111
Telephone: (801) 364-8300

**IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH**

HIDDEN VALLEY COAL COMPANY,	:	HIDDEN VALLEY COAL
	:	COMPANY'S RULE 62(d)
Plaintiff and Appellant,	:	MOTION FOR A STAY
	:	PENDING APPEAL OR IN THE
v.	:	ALTERNATIVE FOR A STAY
	:	PENDING A RULE 8
the UTAH BOARD OF OIL, GAS &	:	ADJUDICATION BY THE
MINING and the UTAH DIVISION	:	UTAH COURT OF APPEALS
OF OIL, GAS & MINING,	:	
	:	Case No. 920904813CV
Defendants and Appellees.	:	Judge Glenn Iwasaki

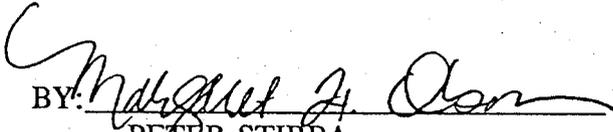
Plaintiff and Appellant Hidden Valley Coal Company ("HVCC"), by and through counsel undersigned, hereby moves the Court for a stay pending its appeal to the Utah Court of Appeals ordering the Defendants and Appellants, their officers, agents, employees, representatives, and all persons acting in concert with the Defendants and Appellants, to refrain from issuing, enforcing, implementing or acting upon in any way any notice of violation or cessation order requiring HVCC to effect or implement its abatement plan for NOV N91-26-8-2. In the

alternative, HVCC moves the Court to stay the Defendants from taking any such action pending an adjudication under Utah R. App. P. 8(a) by the Utah Court of Appeals.

This motion is based upon Utah R. Civ. P. 62(d), Utah Code Jud. Admin. 4-501(4), Utah R. App. P. 8(a), the record and pleadings herein, and a Memorandum in support, filed and served herewith.

DATED this 5th day of February, 1993.

STIRBA & HATHAWAY

BY: 

PETER STIRBA

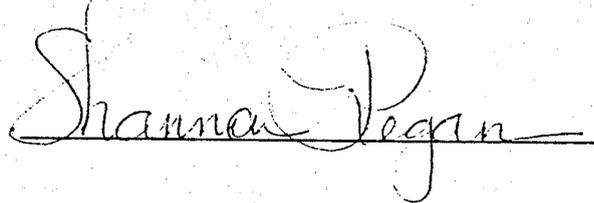
MARGARET H. OLSON

Attorneys for Plaintiff and Appellant
Hidden Valley Coal Company

CERTIFICATE OF HAND DELIVERY

I hereby certify that on this 5th day of February, 1993, a true and correct copy of the foregoing HIDDEN VALLEY COAL COMPANY'S RULE 62(d) MOTION FOR A STAY PENDING APPEAL OR IN THE ALTERNATIVE FOR A STAY PENDING A RULE 8 ADJUDICATION BY THE UTAH COURT OF APPEALS was hand delivered to the following:

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

A handwritten signature in cursive script that reads "Shanna Pagan". The signature is written in dark ink and is positioned to the right of the recipient's address.

kpl/hvc-62d.mot

PETER STIRBA (Bar No. 3118)
MARGARET H. OLSON (Bar No. 6296)
STIRBA & HATHAWAY
Attorneys for Plaintiff and Appellant
215 South State Street, Suite 1150
Salt Lake City, UT 84111
Telephone: (801) 364-8300

RECEIVED

FEB 05 1993

DIVISION OF
OIL GAS & MINING

IN THE THIRD JUDICIAL DISTRICT COURT

SALT LAKE COUNTY, STATE OF UTAH

HIDDEN VALLEY COAL COMPANY,	:	REQUEST FOR EXPEDITED
	:	HEARING ON HIDDEN
Plaintiff and Appellant,	:	VALLEY COAL COMPANY'S
	:	RULE 62(d) MOTION FOR A
v.	:	STAY PENDING APPEAL OR
	:	IN THE ALTERNATIVE FOR A
the UTAH BOARD OF OIL, GAS &	:	STAY PENDING A RULE 8
MINING and the UTAH DIVISION	:	ADJUDICATION BY THE
OF OIL, GAS & MINING,	:	UTAH COURT OF APPEALS
	:	
Defendants and Appellees.	:	Case No. 920904813CV
	:	
	:	Judge Glenn Iwasaki

Plaintiff, by and through counsel undersigned, pursuant to Utah Code Jud. Admin. 4-501(3)(b), hereby requests an expedited hearing on its RULE 62(d) MOTION FOR A STAY PENDING APPEAL OR IN THE ALTERNATIVE FOR A STAY PENDING A RULE 8 ADJUDICATION BY THE UTAH COURT OF APPEALS dated February 5, 1993.

DATED this 5th day of February, 1993.

STIRBA & HATHAWAY

BY: Margaret H. Olson

~~PETER~~ STIRBA

MARGARET H. OLSON

Attorneys for Plaintiff and Appellant
Hidden Valley Coal Company

CERTIFICATE OF HAND DELIVERY

I hereby certify that on this 5th day of February, 1993, a true and correct copy of the foregoing REQUEST FOR EXPEDITED HEARING ON HIDDEN VALLEY COAL COMPANY'S RULE 62(d) MOTION FOR A STAY PENDING APPEAL OR IN THE ALTERNATIVE FOR A STAY PENDING A RULE 8 ADJUDICATION BY THE UTAH COURT OF APPEALS was hand delivered to the following:

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

Shanna Pagan

Bell

SUPREME COURT OF UTAH

STATE OF UTAH

SALT LAKE CITY, UTAH

February 2, 1993

RECEIVED

FEB 08 1993

OFFICE OF THE CLERK

DIVISION OF
OIL, GAS & MINING

Thomas A. Mitchell
William R. Richards
ASSISTANT ATTORNEY GENERAL
#3 Triad Center, Suite 350
355 West North Temple
Salt Lake City, UT 84140-1203

Hidden Valley Coal Company,
Plaintiff and Appellant,

v.

the Utah Board of Oil, Gas &
Mining and the Utah Division
of Oil, Gas & Mining,
Defendants and Appellees.

No. 930017
920904813

Pursuant to the authority vested in this Court, this case is poured-over to the Court of Appeals for disposition. All further pleadings and correspondence should be directed to that Court. The address is 230 South 500 East, Suite 400, Salt Lake City, Utah 84102.

Geoffrey J. Butler
Clerk


CONSULTANTS GROUP

GEOLOGY

ENGINEERING

ENVIRONMENT

HYDROLOGY

February 1, 1993

Ms. Susan White
 Reclamation Specialist
 Utah Division of Oil, Gas and Mining
 3 Triad Center, Suite 350
 Salt Lake City, Utah 84180

SUBJECT: Hidden Valley Coal Company

Dear Ms. White.

JBR Consultants Group, as Hidden Valley Coal Company's representative, is proposing the following seed mix as a supplement to the seed mix approved in the Plan For Abatement of NOV N91-26-8-2, dated December 8, 1992. As required under that Plan, if conditions do not allow for seeding prior to February 1, 1993, an alternative seed mix to that listed in the Plan will be submitted for Division approval. As you know, seeding has not yet been done; therefore an alternative mix is required. The mix listed below includes warm-season species that would be appropriate for seeding in early spring. The originally approved mix has been purchased; it will be used in conjunction with this alternative, supplemental mix, for a total seeding rate of 30.6 lbs/acre PLS.

<u>Common Name</u>	<u>Scientific Name</u>	<u>lbs/acre PLS</u>
Sand dropseed	Sporobolus cryptandrus	0.1
Galleta grass	Hilaria jamesii	3.0
Blue grama grass	Bouteloua gracilis	0.5
Desert marigold	Baileya multiradiata	0.5
Desert globemallow	Sphaeralcea ambigua	1.0
	Total	5.1

JBR's seed supplier has indicated that some of these species are in short supply; therefore, we would like to order the supplemental mix as soon as possible. We would appreciate timely verbal approval, or comments, on the mix by the Division. Thank you for your assistance on this matter.

Sincerely,

Joseph M. Jarvis (RDK)
 Joseph M. Jarvis
 President, JBR Consultants Group

Copy: Lee Edmonson, CalMat
 Karla Knoop, JBR Consultants Group

Principal Office:
 8160 South Highland Drive, Suite A-4
 Sandy, Utah 84093
 (801) 943-4144
 Fax: (801) 942-1852

Reno Office:
 1575 Delucchi Lane, Suite 220
 Reno, Nevada 89502
 (702) 828-4558
 Fax (702) 828-4651

Cedar City Office:
 865 South Cedar Knolls West
 Cedar City, Utah 84720
 (801) 586-8793

January 26, 1993

Mr. Lee Edmonson
CALMAT Company
Properties Division
1801 East University Drive
Phoenix, Arizona 85034

Bill -
My draft
of what to do?
TAC.

Dear Mr. Edmonson:

Re: NOV N26-8-2, Implementation of Abatement Plan, Hidden Valley Mine,
Hidden Valley Coal Company, ACT/015/007, Folder #2, Emery County, Utah

An extension of time to within 30 days of written notification by the
Division to implement and complete the seeding of the site as outlined in the
abatement plan is granted.

Sincerely,

Lowell P. Braxton
Acting Director

cc: Pamela Grubaugh-Littig
Susan White
Bill Malencik, PFO
01500730





The CalMat Companies January 20, 1993

orig: Mine file
Pam Grubbs/Litty
Tom Mitchell
LFB
RECEIVED

JAN 25 1993

DIVISION OF
OIL, GAS & MINING

Lowell Braxton, Acting Director
DIVISION OF OIL, GAS & MINING
Three Triad Center
355 West North Temple, #350
Salt Lake City, Utah 84180-1203

Re: NOV 91-26-8-2

Dear Lowell:

This is to confirm our telephone conversation of January 14, 1993 wherein you granted an extension of time to Hidden Valley Coal Company to comply with its abatement plan previously submitted and approved by the Division. It is my understanding that considering the practical difficulties of seeding the site at this time, and for other reasons, the extension of time is for a reasonable time when it becomes practical to implement the plan. I think both you and I would agree that this would probably be some time in the late spring.

Would you please inform me more specifically when the Division would like the work performed so that Hidden Valley can have some lead time in order to do the work that is anticipated. Our consultant, Karla Knoop of JBR Consulting, will also be visiting the site from time to time to assess conditions and will be discussing the situation with Division staff on an ad hoc basis.

As you know, Hidden Valley has appealed the decision from the Third District Court which upheld various aspects of the initial NOV. As you also know, Hidden Valley intends to prosecute that appeal to its conclusion and this extension request should not be considered as limiting Hidden Valley's option to pursue its appeal or to seek appropriate judicial relief pending a resolution of the issues by the Utah Supreme Court. While I have appreciated your candor and assistance throughout these recent negotiations, I do not want you or the Division to misunderstand that Hidden Valley believes it has no choice in light of the bond clock issue to pursue its appellate rights.

Pam please draft a response -
LFB 1-25

Mr. Lowell Braxton
January 20, 1993
Page 2

In any event, I will expect written confirmation from you concerning a new time frame for implementation of the abatement plan which more specifically delineates what the Division believes is reasonable under the circumstances.

Thank you for your cooperation and assistance.

Very truly yours,



Lee Edmonson, Manager
Planning and Regulatory Affairs

LE/cn

93-004

*Dear Bill -
Help.*

January 22, 1993

date?

Mr. Lee Edmonson
CALMAT Company
Properties Division
1801 East University Drive
Phoenix, Arizona 85034

MT. I wasn't sure what

*type of letter
should accompany
this would normally,*

Dear Mr. Edmonson:
(ad approval)

Re: Review of Abatement Plan for the NOV #N91-26-8-2, Hidden Valley Mine, Any
Plan, Hidden Valley Coal Company, ACT/015/007, Folder #2, Emery County,
Utah

special

Enclosed please find the reviews for the abatement plan for the Hidden Valley Mine NOV #N91-26-8-2. If you have any questions, please call me.

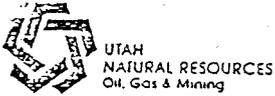
One page.

Lowell P. Braxton
Acting Director

cc: Pamela Grubaugh-Littig

LIST OF EXHIBITS

- EXHIBIT I - SKETCH OF MINE
- ✓ EXHIBIT II - VIOLATION
- ✓ EXHIBIT III - UTAH COAL MINE REGS
- ✓ EXHIBIT IV - MRP (PERMIT INTERIM/FINAL REGS) *Road, Pad, Coal Seam.
April - August 1980.
CONSTRUCTIVE/DEV WORK*
- ✓ EXHIBIT V - MRP (COMMITMENT TO REPAIR EROSION)
- ✓ EXHIBIT VI - MRP (COMMITMENT TO SEED ALL DISTURBED AREAS)
- ✓ EXHIBIT VII - PHOTOS OF GULLEY EROSION
- ✓ EXHIBIT VIII - PHOTOS OF ROAD OUTSLOPE AND PAD OUTSLOPE
- ✓ EXHIBIT IX - GULLEY AND PAD ADDITIONAL MEASUREMENTS
- EXHIBIT X - PERMIT
- ✓ EXHIBIT XI - PRECIPITATION RECORDS
- ✓ EXHIBIT XII - EROSION PROCESS AND CROSS SECTION SKETCH OF CUTSLOPE ROAD
- EXHIBIT XIII - INSPECTION REPORTS



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

NO. N 91-26-8-2

notice of violation

To the following Permittee or Operator:

Name Cal Chat Co.

Mine Hidden Valley Surface Underground Other

County Emery State Ut Telephone _____

Mailing Address 1801 University Drive, Phoenix, Arizona 85034

State Permit No. ACT/015/007

Ownership Category State Federal Fee Mixed

Date of inspection November 20, 1991, 19____

Time of inspection 8 a.m. p.m. to _____ a.m. p.m.

Operator Name (other than Permittee) Lee Edmonson

Mailing Address Same As Above

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 Nov. 22, 1991 Time of service/ mailing 4 a.m. p.m.

Lee Edmonson
Permittee/Operator representative

Environmental Engineer
Title

Chaired
Signature

Wm. J. Malencik
Division of Oil, Gas & Mining representative

Rec. Spec.
Title

Wm. J. Malencik
Signature
11/21/91

26
Identification Number

SEE REVERSE SIDE

WHITE-DOG M YELLOW-OSM PINK-PERMITTEE/OPERATOR GOLDENROD-NOV FILE

cc: Ms. Karla Knoop.



NOTICE OF VIOLATION NO. N 91-26-8-2

Violation No. 1 of 2

Nature of violation

Failure to maintain diversion to be stable
Failure to minimize erosion to the extent possible

Provisions of act, regulations or permit violated

R-614-301-742.312.1
R-614-301-742.113

Portion of operation to which notice applies

Road outslope and upslope re disturbed areas

Remedial action required (including any interim steps)

- Submit a plan to stabilize diversion and minimize erosion
- Coordinate with Town Museum

Abatement time (including interim steps)

5 p.m. December 29, 1991



NOTICE OF VIOLATION NO. N 91-26-8-2

Violation No. 2 of 2

Nature of violation

- Failure to clearly mark with perimeter markers all disturbed areas.
- Failure to seed and revegetate all disturbed areas.

Provisions of act, regulations or permit violated

- R-614-301-521.251
- R-614-301-354

Portion of operation to which notice applies

- Road and stream disturbed out-slopes
- Road up-slopes.

Remedial action required (including any interim steps)

- Seed the specified disturbed areas not previously seeded.
- Reseed the road.
- Seed and reseeding to be completed as specified in the Mining & Reclamation Plan.
- Coordinate with Susan White.

Abatement time (including interim steps)

5pm December 20, 1991.



MODIFICATION OF NOTICE OF VIOLATION/CESSATION ORDER

To the following Permittee or Operator:

Name Cal Mat Co - Hidden Valley Coal Co

Mailing Address 1801 University Drive, Phoenix, Arizona, 85034

State Permit No. Act/015/007

Utah Coal Mining & Reclamation Act, Section 40-10-1 et seq., Utah Code Annotated (1953):

Notice of Violation No. N 91-26-8-2 dated Nov 22, 1991.

Cessation Order No. C N/A dated _____, 19____.

Part 1 of 2 is modified as follows: Abatement period is extended to 5pm, January 20, 1992.

Reason for modification is Refer to Mr. Dragoos letter of 12/31/91

Part 2 of 2 is modified as follows: Abatement period is extended to 5pm, January 20, 1992

Reason for modification is Refer to Mr. Dragoos letter of 12/31/91

Part N/A is modified as follows: _____

Date of service/ mailing January 3, 1992

Time of service/ mailing 12:00 a.m. p.m.

Date of inspection November 20, 1991

Lee Edmonson
Permittee Operator representative

Environmental Engineer
Title

Mailed
Signature

Wm. J Malencik
Division of Oil, Gas & Mining

Rec. Spec.
Title
26.

Jim J. Malencik
Signature
12/31/91/1-3-92

REGULATION CITATION ON NOV 91-26-8-2 HIDDEN VALLEY COAL CO.

VIOLATION 1 OF 2 (EROSION)

R614-301-742.312.1 "THE DIVERSION AND ITS APPURTENANT STRUCTURES WILL BE DESIGNED, LOCATED, CONSTRUCTED, MAINTAINED AND USED TO BE STABLE."

R614-301-742.113 "MINIMIZE EROSION TO THE EXTENT POSSIBLE."

VIOLATION 2 OF 2 (DISTURBED AREA AND SEEDING)

R614-301-521.251 "FOR THE PURPOSES OF UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, THE PERIMETER OF ALL AREAS AFFECTED BY SURFACE OPERATIONS OR FACILITIES BEFORE BEGINNING MINING ACTIVITIES WILL BE CLEARLY MARKED."

R614-301-354 "REVEGETATION: TIMING. DISTURBED AREAS WILL BE PLANTED DURING THE FIRST NORMAL PERIOD FOR FAVORABLE PLANTING CONDITIONS AFTER REPLACEMENT OF THE PLANT-GROWTH MEDIUM. THE NORMAL PERIOD FOR FAVORABLE PLANTING IS THAT PLANTING TIME GENERALLY ACCEPTED LOCALLY FOR THE TYPE OF PLANT MATERIALS SELECTED.

- 521.180. Other relevant information required by the Division.
- 521.200. Signs and Markers Specifications. Signs and markers will:
- 521.210. Be posted, maintained, and removed by the person who conducts the coal mining and reclamation operations;
- 521.220. Be a uniform design that can be easily seen and read; be made of durable material; and conform to local laws and regulations;
- 521.230. Be maintained during all activities to which they pertain;
- 521.240. Mine and Permit Identification Signs.
- 521.241. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, identification signs will be displayed at each point of access from public roads to areas of surface operations and facilities on permit areas;
- 521.242. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, identification signs will be displayed at each point of access to the permit area from public roads;
- 521.243. Show the name, business address, and telephone number of the permittee who conducts coal mining and reclamation operations and the identification number of the permanent program permit authorizing coal mining and reclamation operations; and
- 521.244. Be retained and maintained until after the release of all bonds for the permit area;
- 521.250. Perimeter Markers.
- 521.251. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, the perimeter of all areas affected by surface operations or facilities before beginning mining activities will be clearly marked; or
- 521.252. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, the perimeter of a permit area will be clearly marked before the beginning of surface mining activities;
- 521.260. Buffer Zone Markers.
- 521.261. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, signs will be erected to mark buffer zones as required under R614-301-731.600 and will be clearly marked to prevent disturbance by surface operations and facilities; or
- 521.262. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, buffer zones will be marked along their boundaries as required under R614-301-731.600; and
- 521.270. Topsoil Markers. Markers will be erected to mark where topsoil or other vegetation-supporting material is physically segregated and stockpiled as required under R614-301-234.
522. Coal Recovery. The permit application will include a description of the measures to be used to maximize the use and conservation of the coal resource. The description will assure that coal mining and reclamation operations are conducted so as to maximize the utilization and conservation of the coal, while utilizing the best technology currently available to maintain environmental integrity, so that re-affecting the land in the future through coal mining and reclamation operations is minimized.
523. Mining Method(s). Each application will include a description of the mining operation proposed to be conducted during the life of the mine within the proposed permit area, including, at a minimum, a narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage and the major equipment to be used for all aspects of those operations.
- 523.100. SURFACE COAL MINING AND RECLAMATION ACTIVITIES proposed to be conducted within the permit area within 500 feet of an underground mine will be described to indicate compliance with R614-301-523.200.
- 523.200. No SURFACE COAL MINING AND RECLAMATION ACTIVITIES will be conducted closer than 500 feet to any point of either an active or abandoned underground mine, except to the extent that:
- 523.210. The operations result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public; and
- 523.220. The nature, timing, and sequence of the activities that propose to mine closer than 500 feet to an active underground mine are jointly approved by the Division and MSHA.
524. Blasting and Explosives. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, each permit application will contain a blasting plan for the proposed permit area explaining how the applicant will comply with R614-301-524. This plan will include, at a minimum, information setting forth the limitations the operator will meet with regard to ground vibration and airblast, the bases for those limitations, and the methods to be applied in controlling the adverse effects of blasting operations. Each blasting plan will also contain a description of any system to be used to monitor compliance with the standards of R614-301-524.600 including the type, capability, and sensitivity of any blast-monitoring equipment and proposed procedures and locations of monitoring. Blasting operations conducted within 500 feet of active underground mines require approval of MSHA. Blasts that use more than five pounds of explosive or blasting agent will be conducted according to the schedule required under R614-301-524.400. For the purposes of UNDERGROUND COAL MINING AND

EXHIBIT III

R614-100- ADMINISTRATIVE: INTRODUCTION

R614-100- ADMINISTRATIVE: INTRODUCTION

- 100. Scope
- 200. Definitions
- 300. Responsibility
- 400. Applicability
- 500. Petition to Initiate Rulemaking
- 600. Notice of Citizen Suits
- 700. Availability of Records
- 800. Computation of Time

R614-100- ADMINISTRATIVE: INTRODUCTION

R614-100-100. Scope

110. General Overview. The rules presented herein establish the procedures through which the Utah State Division of Oil, Gas and Mining will implement those provisions of the Coal Mining Reclamation Act of 1979, (the Act) pertaining to the effects of coal mining and reclamation operations and pertaining to coal exploration.
120. R614 Rules Organization. The R614 Rules have been subdivided into the four major functional aspects of the Division's coal mining and exploration State Program.
121. The heading entitled ADMINISTRATIVE encompasses general introductory material, definitions applicable throughout the R614 Rules, procedures for the exemption of certain coal extraction activities, designating areas unsuitable for coal mining, protection of employees, and requirements for blaster certification.
122. The heading entitled COAL EXPLORATION establishes the minimum requirements for acquiring approval and identifies performance standards for coal exploration.
123. The heading entitled COAL MINE PERMITTING describes certain procedural requirements and options attendant to the coal mine permitting process. Moreover, the minimum requirements for acquiring a permit for a coal mining and reclamation operation are identified.
124. The heading entitled INSPECTION AND ENFORCEMENT delineates the authority, administrative procedures, civil penalties, and employee protection attendant to the Division's inspection and enforcement program.
130. Effective Date. The provisions of R614-100 through and including R614-402 will become effective and enforceable upon final approval by the Office of Surface Mining, U.S. Department of the Interior. Existing coal regulatory program rules, R614 Chapters I and II, will be in effect until approval of R614-100 through R614-402 by the Office Surface Mining and will be considered repealed upon approval of R614-100 through R614-402.

R614-100-200. Definitions

As used in the R614 Rules, the following terms have the specified meanings:

"Abandoned site" means, for the purpose of R614-400, a coal mining and reclamation operation for which the Division has found in writing that, (a) All coal mining and reclamation operations at the site have ceased; (b) The Division has issued

at least one notice of violation or the initial program equivalent, and either: (i) Is unable to serve the notice despite diligent efforts to do so; or (ii) The notice was served and has progressed to a failure-to-abate cessation order or the initial program equivalent; (c) The Division: (i) Is taking action to ensure that the permittee and operator, and owners and controllers of the permittee and operator, will be precluded from receiving future permits while violations continue at the site; and (ii) Is taking action pursuant to section 40-10-20(5), 40-10-20(6), 40-10-22(1)(d), or 40-10-22(2)(a) of the Act to ensure that abatement occurs or that there will not be a recurrence of the failure-to-abate, except where after evaluating the circumstances it concludes that further enforcement offers little or no likelihood of successfully compelling abatement or recovering any reclamation costs; and (d) Where the site is, or was, permitted or bonded: (i) The permit has expired or been revoked, or permit revocation proceedings have been initiated and are being pursued diligently; and (ii) The Division has initiated and is diligently pursuing forfeiture of, or has forfeited, the performance bond. (e) In lieu of the inspection frequency established in R614-400-130 the Division shall inspect each abandoned site as necessary to monitor for changes of environmental conditions or operational status at the site. (f) Before ceasing to perform inspections at the frequency required by R614-400-130 at an abandoned site, the Division will: (i) Evaluate the environmental conditions and operational status of the site; and (ii) Document in writing the inspection frequency necessary to comply with paragraph (e) of this definition and the reasons for selecting that frequency.

"Account" means the Abandoned Mine Reclamation Account established pursuant to 40-10-25 of the Act.

"Acid Drainage" means water with a pH of less than 6.0 and in which total acidity exceeds total alkalinity discharged from an active, inactive, or abandoned coal mining and reclamation operation, or from an area affected by coal mining and reclamation operations.

"Acid-Forming Materials" means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, form acids that may create acid drainage.

"Act" means Utah Code Annotated 40-10-1 et seq.

"Adjacent Area" means the area outside the permit area where a resource or resources, determined according to the context in which adjacent area is used, are or reasonably could be expected to be adversely impacted by proposed coal mining and reclamation operations, including probable impacts from underground workings.

"Administratively Complete Application" means an application for permit approval or approval for coal exploration, where required, which the Division determines to contain information addressing each application requirement of the State Program and to contain all information necessary to initiate processing and public review.

"Affected Area" means any land or water surface area which is used to facilitate, or is physically altered by, coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which coal mining and reclamation operations are conducted; any adjacent lands the

Reclamation Plan

Chapter III

Introduction

Soldier Creek Coal Company, a Utah Corporation and a wholly-owned subsidiary of CalMat Company, purchased this property and leased the right to mine coal from Ivie Creek Coal Company to develop the coal as a fuel source for their cement kilns (See Plate I for location and Plate 1a for ownership). A mining and reclamation plan was submitted for this mine on September 7, 1979 under the OSM Interim Regulations. This mining and reclamation plan was granted conditional tentative approval on February 4, 1980 under the Interim Program by the Utah Division of Oil, Gas and Mining. Final approval under the Interim Program Regulations for Coal Mining and Reclamation Operations and the Utah Mined Land Reclamation Act was received April 14, 1980. A corporate guarantee of \$152,500 was posted to cover projected reclamation costs under the Interim Plan. These plans, amendments and correspondence are on file at the Division's offices in Salt Lake City.

The mining plan for Hidden Valley proposed production to begin in

June, 1981. Maximum production was to be 500,000 tons annually with an expected mine life of 40 years. The initial development work commenced on April 17, 1980 with this goal in mind. However by August, 1980 it became evident that economic conditions had changed and it was decided by the company to cease development.

Within this short construction period a paved 2.75 mile access road from Highway 10 to the proposed coal processing site was completed with state funds and dedicated to Sevier and Emery Counties (See Appendix I, ROW documents). A 0.5 mile graveled Class II road was completed to gain access to the coal seams adjacent to Ivie Creek. The upper seam is designated the B coal seam and the lower seam is called the A seam. At the coal seams two pads were constructed for the future portal operations area. Culverts were installed in the graveled access road and in the benches for drainage control. A sediment pond was constructed on the lower pad to receive surface flows from the pads. Bulk coal samples were obtained from the existing exploratory adits in the two naturally exposed coal seams (See Figure I). These exposed coal seams were faced up and diversions were constructed above the seams in anticipation of portal construction. Topsoil was stockpiled adjacent to the upper or "B" seam pad.

Because mine development did not proceed beyond this stage, no coal production was realized. Consequently no other proposed facilities for mining and coal processing were constructed on the

EXHIBIT V

portion to be restored, it is expected that the channel bottom will rest on bedrock. The gradient of the channel will be the same as it was on the culvert (0.071 ft/ft) (Figure V). The channel will be riprapped to stabilize the disturbed section.

The other two 18" diameter culverts are road drainage culverts which were spaced to convey runoff under the road to prevent significant erosion. With the removal of these culverts waterbars will be installed approximately every 200 feet at a 45° angle to the direction of the roadbed. These waterbars will serve a similar purpose as the culverts, to control and collect surface runoff from the road and the hillsides above the road. The 13 waterbars will be approximately 18" high by 72" wide with a rounded crest extending across the road (Figure VI). The area just up hill from the bar will be excavated to a depth of 12" by a width of 48". The small flows diverted at each waterbar will be discharged to the west into the natural rockfill above the ephemeral drainage.

The roadbed will then be ripped to increase percolation and water-holding capacity. The entire road surface will be seeded. A gate with a lock will be installed near the top of the road to discourage trespass and prevent livestock drift onto the revegetated areas (Plate III).

This reclamation process on the road will restore the natural

JUL 25 1991

DIVISION OF OIL
GAS & MINING PRICE UTAH

drainage patterns and control erosion.

A variance is requested to allow the access road and associated cut and fill terraces to remain upon reclamation. A description of the means by which this variance will allow the postmining land use to be achieved is described in the following paragraphs. The variance will simply enhance the premining land use capabilities, while allowing the use to remain the same. It will also enhance the ability to meet other requirements of the Division such as revegetation, erosion and runoff control. In addition, CalMat, the land owner, approves of the variance; the variance is also compatible with the operation of adjacent lands.

A stability analysis has been conducted on the slopes which would not be restored to natural contours and is described in this document. All coal wastes have been covered, so retention of the cuts and fills will not result in exposure of waste materials. As described below, greater benefits to the watershed will occur as a result of maintaining the cut and fill terraces than would occur if the natural contours were restored. High velocity runoff and consequent erosion will be minimized if the road bed is in place, and use of the road surface as a livestock trail will prevent impact to Ivie Creek and its adjacent riparian lands as a result of trampling.

Retention of the cut and fill terraces of the roadway will aid in the protection of critical soils and enhance the forage production at the site. According to the RMP for the adjacent San Rafael Planning Area, one of the main BLM means of protecting critical soils is to grade slopes such that they serve to collect water to aid in onsite revegetation. The roadway functions to provide this. In addition, the roadway is in line with other BLM goals of water-barring roads and protection of riparian areas as described later in this section.

Plan Revision

AMENDMENT TO
APPROVED Mining & Reclamation Plan
Approved, Division of Oil, Gas & Mining
March 15, 1991
by Smw/JK date 7/27/91

~~water-barring of the road and filling of the small roadside ditch
the discharge into this culvert will be eliminated.~~

UMC 817.103 Backfilling and Grading: Covering Coal and Acid- and
Toxic-Forming Materials

~~Coal or other associated materials are not readily evident on the
site. Should any of these materials be discovered during
excavation and backfilling they will be placed against the coal
seams and covered with other non-toxic materials. There is no
water drainage from the coal seams or adits. Therefore, acid mine
drainage and related toxic elements would not be discharged from
the site. See letter in Appendix Ia.~~

UMC 817.106 ,Regrading or Stabilizing Rills and Gullies

The existing rills in the road surface will be eliminated with
water-barring and ripping of the road surface. The rills or
gullies that may appear during post-reclamation monitoring will
be stabilized by filling with soil and rocks. Chronic sites will
be stabilized with small gabions or rock check dams.

VI. Revegetation - Including Seeding, Mulching, Planting, Irrigation, Etc.

UMC 817.111 Revegetation: General Requirements

The entire 6.7 acres of disturbed ground will be properly scarified, seeded, fertilized, mulched and covered to provide the best possible opportunity for plant growth. The road fill slopes and some small sites will require hand application of seed, mulch and fertilizer. The reclamation work is scheduled for late fall, 1986.

The proposed fertilization rate is based upon lab analysis of composite soil samples secured in March, 1986. Additional soil samples will be taken after topsoil materials are spread on the "B" seam pad and from mixed materials on "A" seam pad. These later analyses will be used to determine the actual fertilization rates.

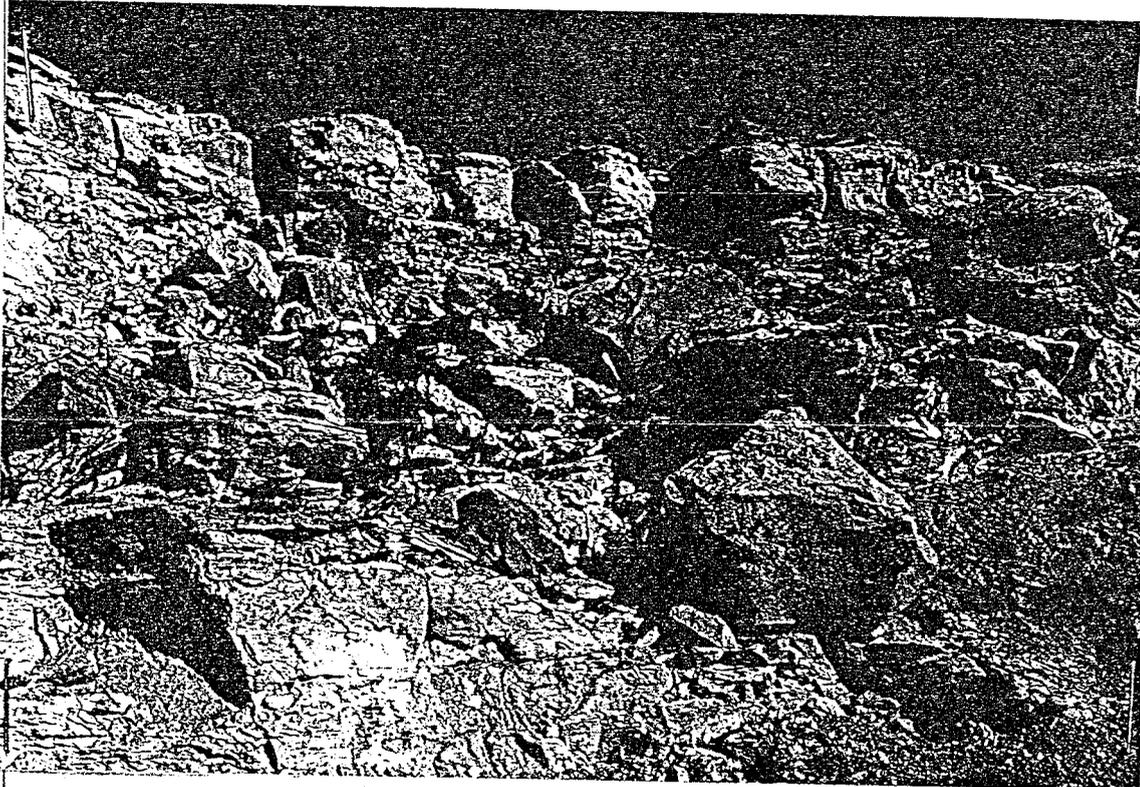
Irrigation is not planned.

It is not contemplated that there will be a pest or disease control problem.

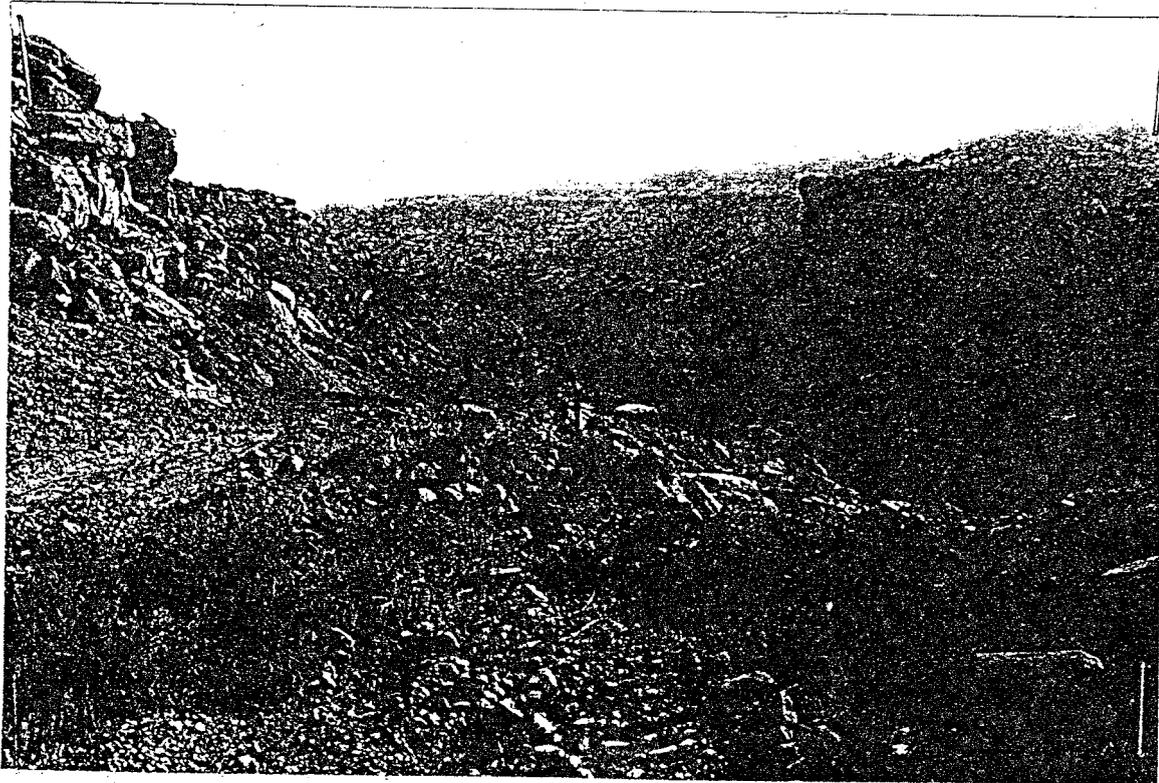
Cattle grazing during the revegetation process will be limited by

HIDDEN VALLEY COAL CO
(NOV 91-26-B-2)

- General View - Undisturbed Above Road.
- Mason Contributes To Water ~~Disturbance~~ Erosion On The Road Cut Slope & Upslope



Sandstone Slickrock
Above Road
Cutslope

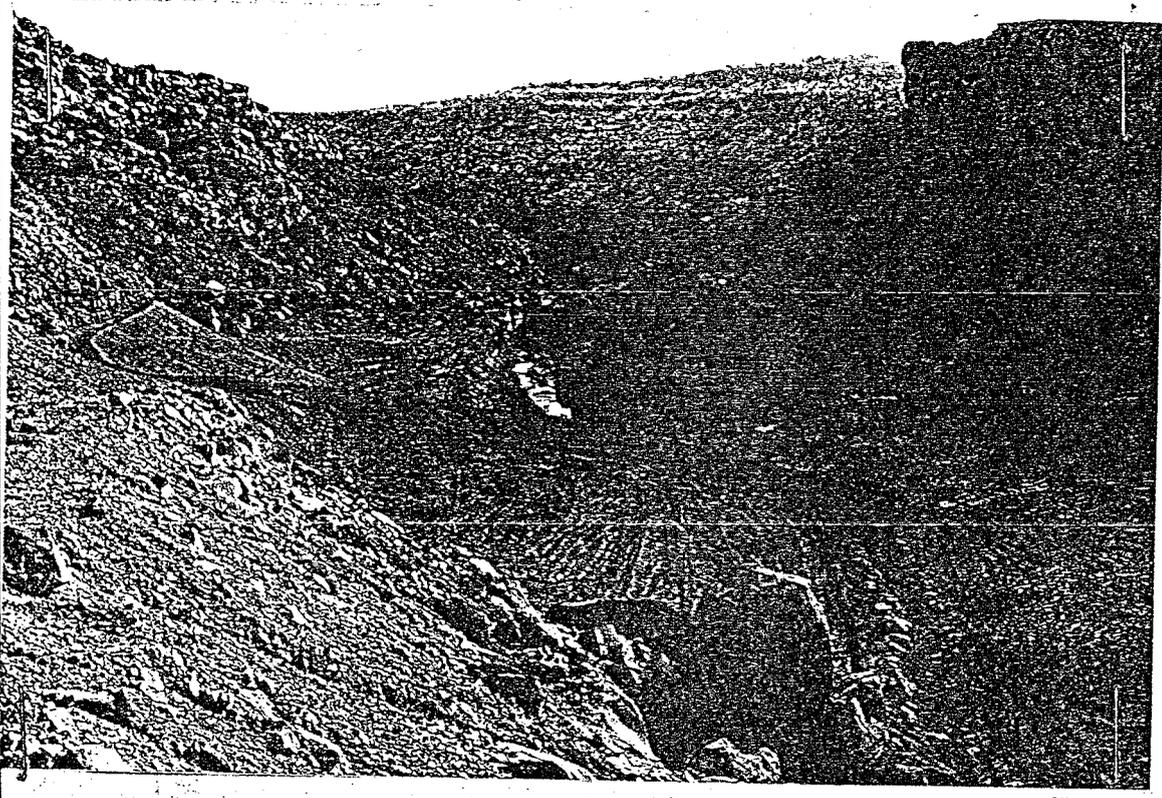


X Disturbed
Marked
Crest Of
Road Cutslope

42-381 30 SHEETS 3 SQUARE
42-382 100 SHEETS 3 SQUARE
42-383 200 SHEETS 3 SQUARE
NATIONAL
MADE IN U.S.A.

HIDDEN VALLEY COAL CO
NOV 91-26-8-2 (2 of 2)

Disturbed Marker/Outslope Disturbed
Area Not Seeded



Lower Road
Outslope
Outslope
Construction

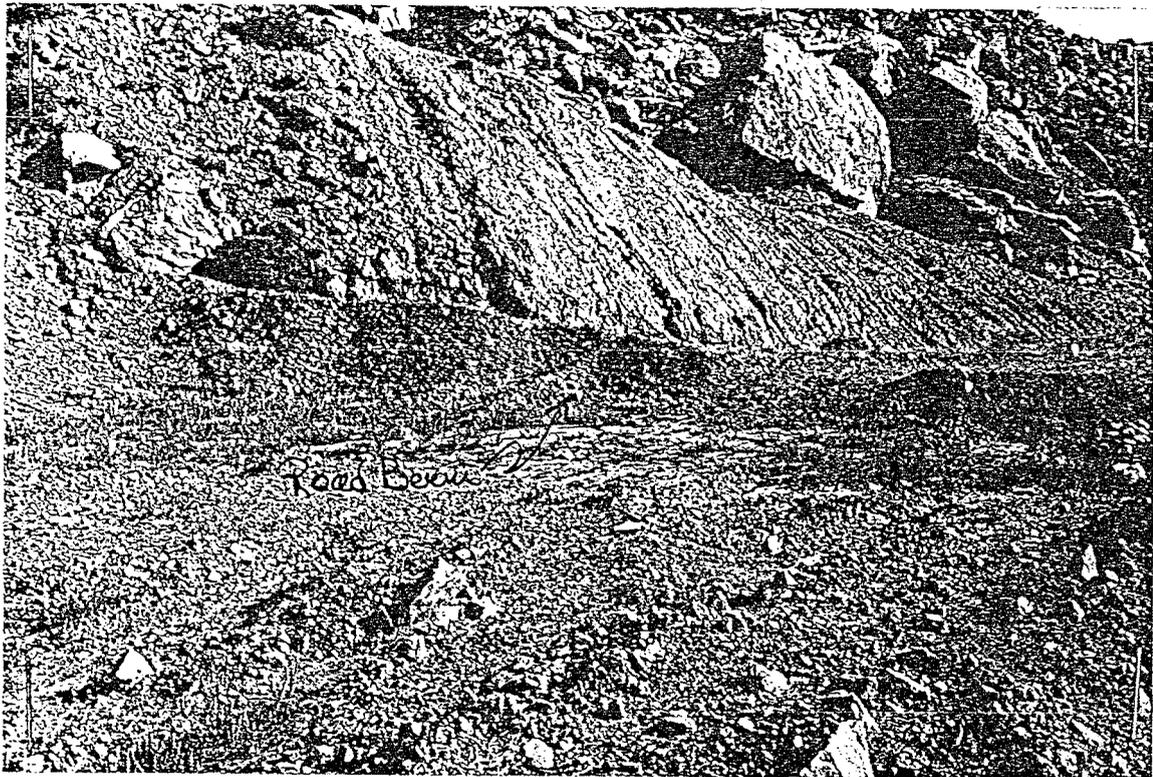


Upper Road
no Outslope
Construction

42-381 50 SHEETS 5 SQUARE
42-382 100 SHEETS 5 SQUARE
42-383 200 SHEETS 5 SQUARE
NATIONAL

Hidden Valley Coal Co.
(NOV. 91-26-8-2)

Road Water Bar/Barri.



- Prior to the road construction runoff flowed without any artificial conveyance systems.
- The approved plan provided that the road would remain for post mining land use.
- The road water bar was constructed to prevent runoff from going down the road.
- The water bar acted to concentrate runoff and directed the runoff to the road outlope.

WMM 12/18/91

HIDDEN VALLEY COAL CO

(NOV 91-26-8-Z) 192

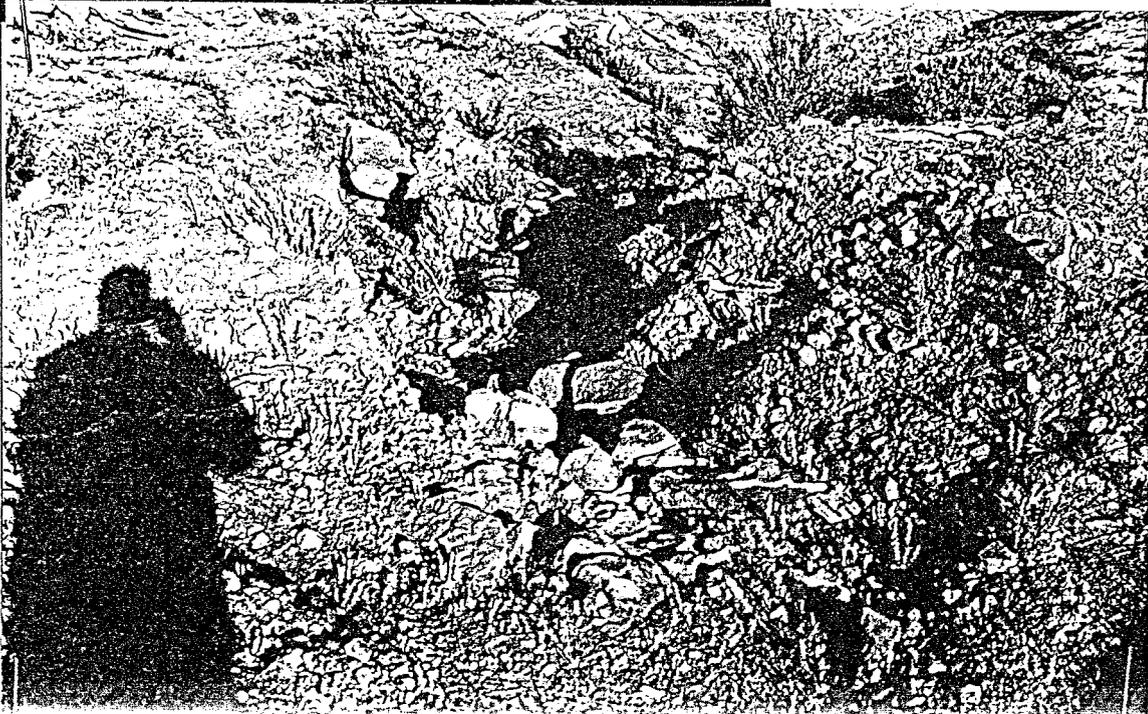
EROSION PHOTOS (GULLEY) # 1



26" Deep
x
58" Wide

Banks unstable

x Some rump rap at the headcut,



42.381 50 SHEETS 5 SQUARE
42.382 100 SHEETS 5 SQUARE
42.383 200 SHEETS 5 SQUARE

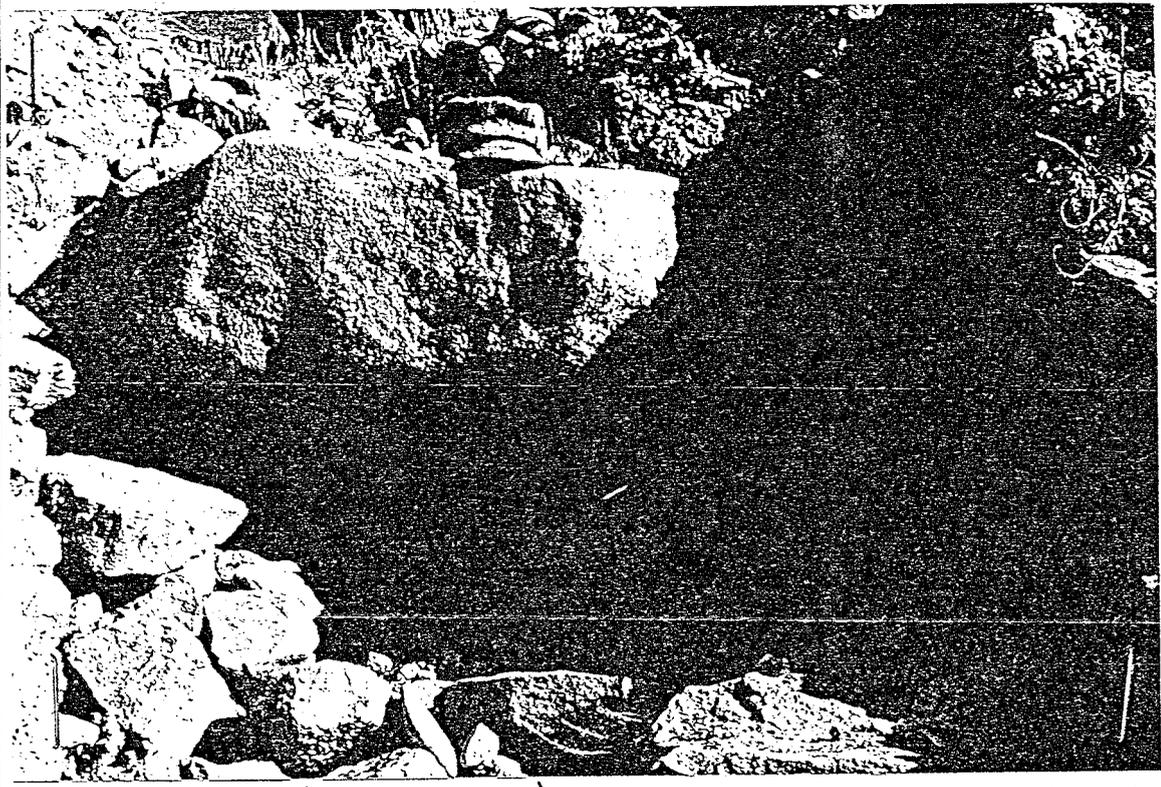


12/18/91

4

HIDDEN VALLEY COAL CO
(NOV 91-26-8-2) 1 of 2

Erosion Photo Gully #2



57" deep
82" wide

↑ ("UP" Gully) large Rock Temporarily Stopped Headcut
Viewpoint



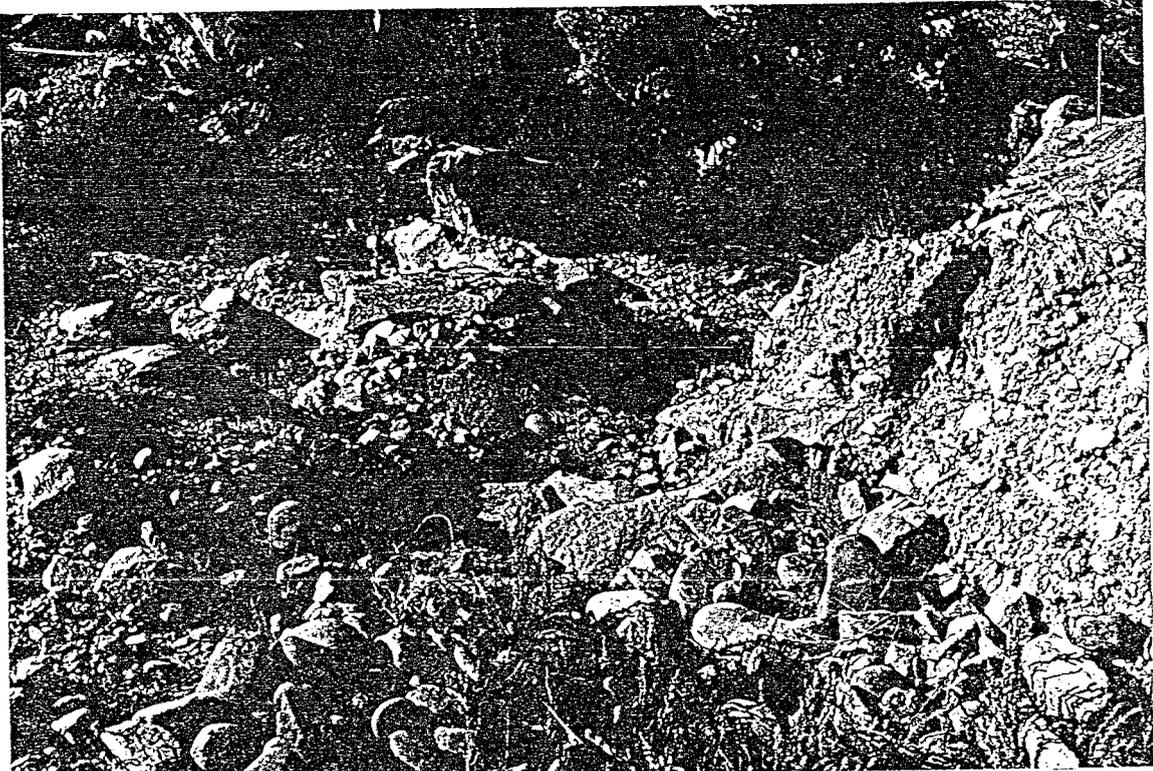
Round river
rock jaw
protection
not effective
protection

↓ (Down Gully) River Rock rip rap has washed away.
Viewpoint

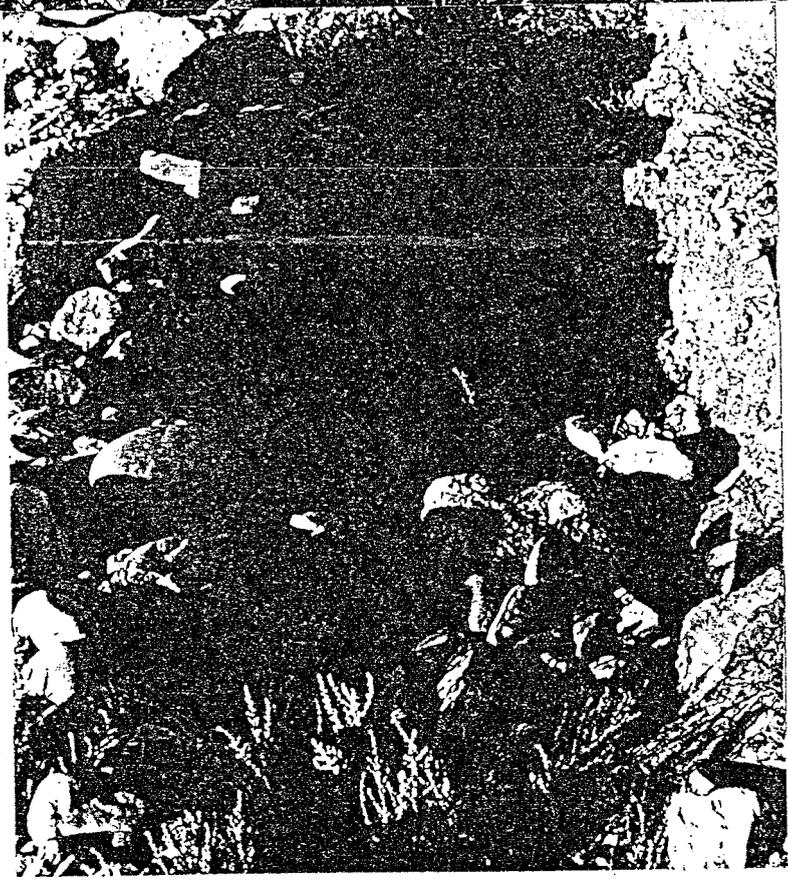
47.381 100 SHEETS 3 SQUARE
47.381 100 SHEETS 3 SQUARE
47.381 200 SHEETS 3 SQUARE
NATIONAL

HIDDEN VALLEY Coal Co
NOV 691-26-8-2 (1 of 2)

Erosion Photo Gully # 3.



Down Gully
Viewpoint
54" Deep
79" Wide

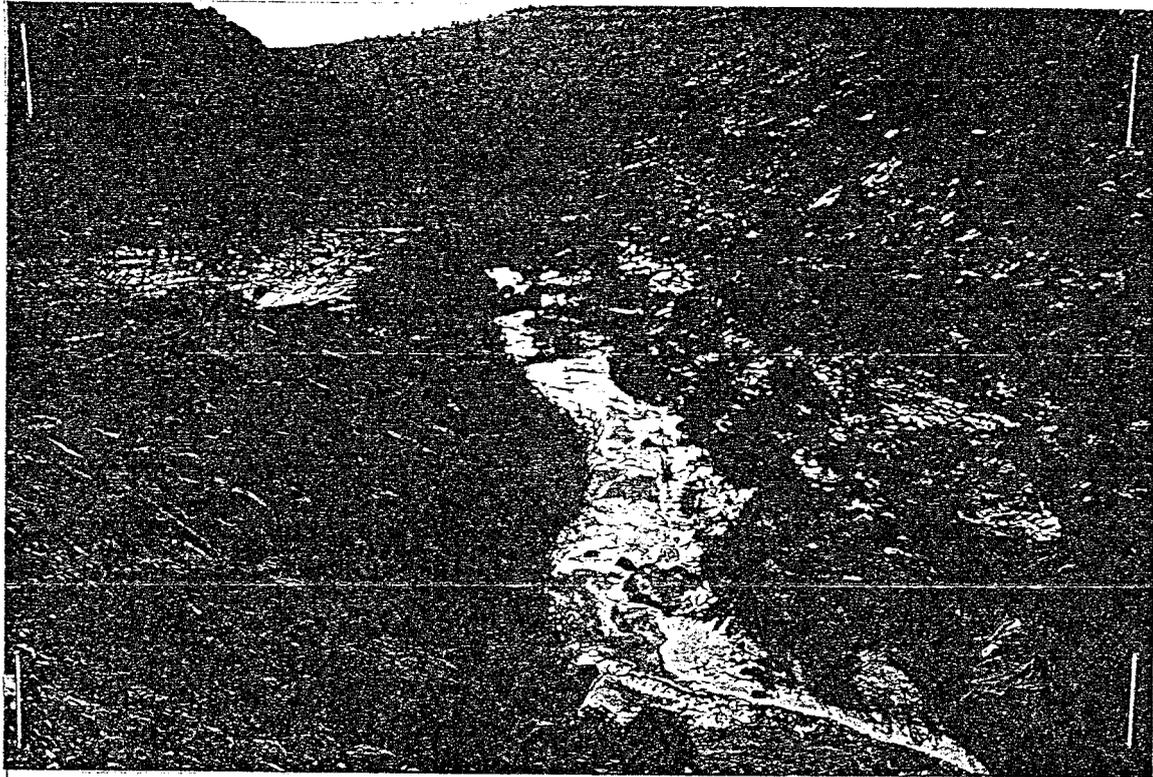


Up Gully Viewpoint

42-301 50 SHEETS 8 SQUARE
42-302 100 SHEETS 8 SQUARE
42-309 200 SHEETS 8 SQUARE
NATIONAL

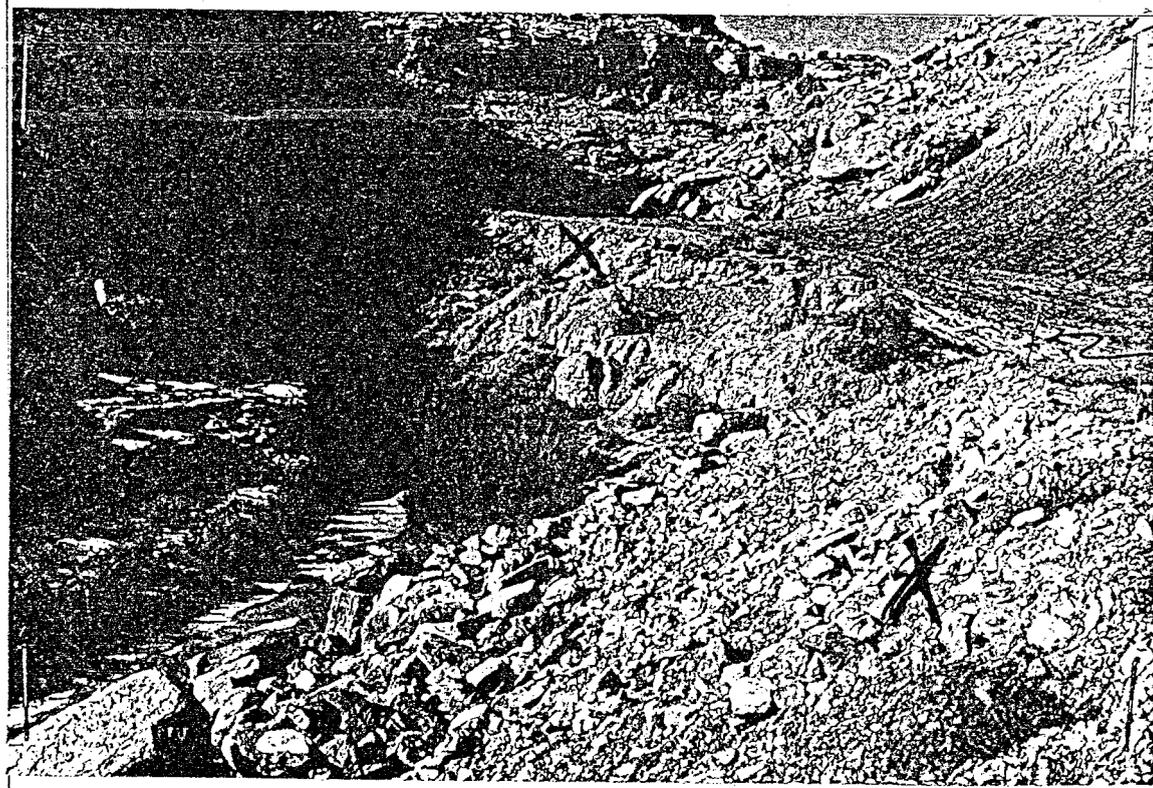
HIDDEN VALLEY COAL Co
NOV 91-26-8-2 (2 of 2)

Disturbed Markers/Outslope Disturbed
Areas Not Seeded



DOWN CANYON
VIEW

IVIE CREEK



UP CANYON
VIEW

Disturbed Marker

X Downcast
Material
Disturbed

42-381 50 SHEETS 3 SQUARE
42-382 100 SHEETS 3 SQUARE
42-383 100 SHEETS 3 SQUARE
NATIONAL

Hidden Valley Coal Co.

num. 12/18/91 ⁷



- Photo of a Gully on Road Outslope
- Not cited in the NOU.
- Gully Had Been Repaired By Permittee
- Runoff may be diverted by the large rocks - (under as to side) and found a new gully since the protective channel does not have a controlled shape.

EXHIBIT IX

ATTACHMENT I

HIDDEN VALLEY COAL COMPANY
ACT/015/007

I. NOTICE OF VIOLATION

A. N91-26-8-2, 1 of 2, 11/22/91

**R614-301-742.312.1 FAILURE TO MAINTAIN DIVERSIONS TO BE STABLE.
**R614-301-742.113 FAILURE TO MINIMIZE EROSION TO EXTENT POSSIBLE.
**ABATEMENT: SUBMIT PLANS TO STABILIZE DIVERSIONS AND
MINIMIZE EROSION.

B. N92-25-1-1, 1/21/92

**R645-301-731.610 DISTURBING LAND WITHIN 100 FEET OF IVIE CREEK
WITHOUT AUTHORIZATION FROM THE DIVISION.
**ABATEMENT: COMPLY WITH R645-301-731.611 AND 731.620.
SUBMIT AMENDED PAP TO DEMONSTRATE COMPLIANCE.

II. EROSION GULLIES AT HIDDEN VALLEY COAL COMPANY ADDITIONAL EXPLANATORY INFORMATION

**ADDITIONAL MEASUREMENTS: 3 EROSION GULLIES CITED IN THE VIOLATION DATED NOVEMBER 22, 1991 AND MEASUREMENTS OF 2 OTHER GULLIES THAT WERE ORIGINALLY OBSERVED AND NOT CITED IN THE VIOLATION.

**DATE: 3/10/92

**MEASUREMENTS AND PHOTOS TAKEN BY: TOM MUNSON AND BILL MALENCIK IN THE PRESENCE OF JOE JARVIS

**EQUIPMENT: 100' STEEL TAPE MEASURE, 24' TAPE MEASURE AND 35MM CAMERA WITH COLOR SLIDE FILM

**WHERE: GULLY EROSION ON THE ROAD OUTSLOPE, 4 BELOW GATE AND 1 ABOVE GATE AND THE DISTURBED ENCROACHMENT ON IVIE CREEK (STREAM BUFFER ZONE)

MEASUREMENTS BELOW
TAKEN ON 3/10/92

ORIGINAL MEASUREMENTS
TAKEN ON 11/19/91

GULLY A TOTAL LENGTH - 19 FEET....CITED AS A VIOLATION
CROSS SECTION

STATION	DEPTH	WIDTH	REMARKS
@3'	22"	44"	INSTABILITY ON BOTH BANKS.
@6'	36"	60"	TENSION CRACKS.
@13'	24"	24"	LOOSE SOIL IN THE BOTTOM OF THE GULLY. SOME RIP RAP AT THE HEADCUT.

GULLY #1
ORIGINAL MEASUREMENTS
DEPTH: 26"
WIDTH: 58"

GULLY B TOTAL LENGTH - 51 FEET....CITED AS A VIOLATION
CROSS SECTION

STATION	DEPTH	WIDTH	REMARKS
@46'	60"	7'	SLOPE ESTIMATE 6:1
@38'	16"	4'	ALL RIVER ROCK RIP RAP
@30'	24"	4'	WASHED OUT OF THE
@17'	16"	7'	EROSION GULLY.

GULLY #2
ORIGINAL MEASUREMENTS
DEPTH: 57"
WIDTH: 82"

GULLY C TOTAL LENGTH - 53 FEET....NOT CITED AS A VIOLATION
CROSS SECTION

STATION	DEPTH	WIDTH	REMARKS
@49'	42"	10'	
@41'	36"	14'	ISLAND 3' WIDE GULLY SPLITS
@30'	36"	15'	ISLAND 6' WIDE INTO TWO
@25'	24"	12'	ISLAND 5' WIDE WATERCOURSES
@20'	12"	14'	

OBSERVED AND
NOT MEASURED

GULLY D TOTAL LENGTH - 53 FEET....CITED AS A VIOLATION
CROSS SECTION

STATION	DEPTH	WIDTH	REMARKS
@47'	52"	8'	TENSION CRACKS PREPARATORY
@33'	48"	9'	TO BANK FAILURE.
@20'	20"	6'	RIVER ROCK RIP RAP REMOVED
@9'	24"	12'	BY RUNOFF.

GULLY #3
ORIGINAL MEASUREMENTS
DEPTH: 54"
WIDTH: 79"

GULLY E TOTAL LENGTH - 83 FEET....NOT CITED AS A VIOLATION
CROSS SECTION

STATION	DEPTH	WIDTH	REMARKS
@70'	36"	8'	
@62'	38"	13'	
@45'	34"	14'	
@10'	9"	10'	

OBSERVED AND
NOT MEASURED

DISTURBED ENCROACHMENT ON IVIE CREEK

<u>STREA</u> <u>SEAM</u> <u>ENCROACHMENT</u>	<u>TOP</u> <u>WIDTH</u>	<u>SLOPE</u> <u>MEASUREMENT</u>	<u>REMARKS</u>
A	255'	65'	ROCK AT THE BOTTOM. SOME SUITABLE AREAS FOR SEEDING.
B	132'	33'	ALL ROCK. NO AREAS SUITABLE FOR SEEDING.

EXHIBIT III

Precipitation Records Elev. - End of Blacktop County Road 6100'

I } East Mountain - Elev. 8,935' } See
 Year Comparison } 1990 77% Normal 1991-91%. } Table 2 - Pg 4
 } Hunter Plant - Elev. -- 5,800' }
 } 1990 68% 1991-96%. }

II } • East Mtn. 3.11 inches 216% normal } Sept See Table 1 Pg 5
 Monthly Comparison } • Hunter 2.11 inches 264% normal }

III. Mine reclaimed in fall of 1986 (Hunter Plant)
 Monthly Precip - over 1" per month. (During Period July - Sept)
 1987 - July & August.
 1988 - none
 1989 - July & August.
 1990 - Sept
 Monthly Precip - over 2" per month (During Period July - Sept.)
 1991 - Sept

IV. Approx Distance Hunter to Hidden Valley Approx 20 miles

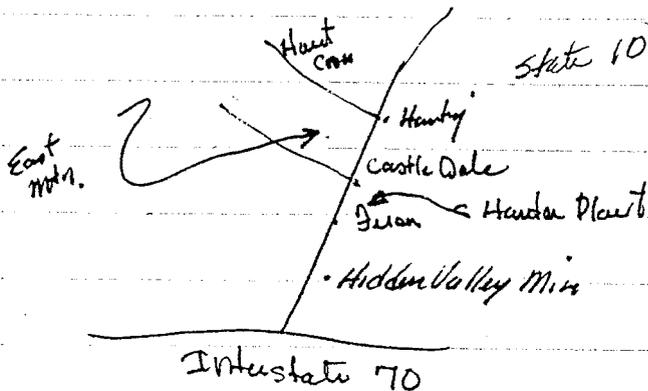


EXHIBIT XI

II. CLIMATIC OBSERVATIONS

In general, runoff and subsequent water supplies are a direct function of the climatic conditions in any given area. Furthermore, the significance of the weather affecting the flow characteristics of the East Mountain springs cannot be overemphasized.

Most of the water supply in the Western United States originates in the high mountain ranges as snowfall during winter periods. Snowmelt augmented by spring precipitation produces runoff which is utilized downstream. Fall precipitation influences soil moisture conditions prior to snowpack accumulation and has a bearing upon runoff the following year.

A. Regional Climatology

From 1982 to 1984 the Western United States, especially Utah, experienced an unprecedented wet cycle of precipitation. The pattern changed in 1985 with conditions returning to slightly above normal. During the 1986 water year the extremely wet trend returned, and the upper Colorado River Basin experienced above average precipitation. The 1987 weather pattern changed dramatically with near normal valley precipitation and mountain snowfall much below normal. The resulting 1987 runoff was substantially below normal. The drought continued into 1988, 1989, 1990, and 1991 with runoff amounts much below normal for five consecutive years.

B. Local Climatology

1. Precipitation

Valley precipitation in Emery County during 1991 was above average. The mountains in the San Rafael Basin received below normal snowfall during the

1990-91 winter; however, precipitation at Electric Lake (22.56") was above normal due to an abnormally wet summer.

Precipitation amounts recorded at Hunter Plant, Huntington Plant, Electric Lake, and East Mountain for the 1991 water year (October 1990 to September 1991) will be presented since these sites include low elevation, intermediate elevation, and two high elevation observation sites in the immediate vicinity of mining activities. The values are shown in Table 1 on the following page.

A comparison of precipitation for 1990 and 1991 merits consideration in this study. The intent is to develop a correlation between yearly precipitation and spring discharges on East Mountain. Table 2 is a comparison of the 1990-1991 precipitation levels recorded at the four locations.

TABLE 2: COMPARISON OF 1990 AND 1991 PRECIPITATION (Inches)

<u>Station</u>	<u>Amount</u>	<u>1990 % of Normal</u>	<u>Amount</u>	<u>1991 % of Normal</u>	<u>1991 As % of 1990</u>
Hunter Plant	4.73	68	6.66	96	141
Huntington Plant	11.76	157	11.61	155	99
Electric Lake	20.40	104	22.56	115	111
East Mountain	10.90	77	12.69	91	116
Average %		102		114	117

Table 2 indicates that 1991 precipitation was higher than 1990 at Hunter, Electric Lake, and East Mountain and lower at Huntington. The overall precipitation at the four stations averaged seventeen percent (17%) higher in 1991 than in 1990.

TABLE 1: PRECIPITATION IN EMERY COUNTY, UTAH (1991 Water Year)

<u>Month</u>	<u>Hunter Plant</u> (Elev. 5800')		<u>Huntington Plant</u> (Elev. 6500')		<u>Electric Lake</u> (Elev. 8350')		<u>East Mountain</u> (Elev. 8985')	
	<u>Precip</u> <u>(in.)</u>	<u>% Of</u> <u>Normal</u>	<u>Precip</u> <u>(in.)</u>	<u>% Of</u> <u>Normal</u>	<u>Precip.</u> <u>(in.)</u>	<u>% Of</u> <u>Normal</u>	<u>Precip.</u> <u>(in.)</u>	<u>% of</u> <u>Normal</u>
<u>1990</u>								
October	0.04	5	0.45	36	1.32	62	0.48	34
November	0.00	0	0.03	5	0.90	48	0.26	20
December	0.19	35	0.43	91	1.64	57	0.66	63
<u>1991</u>								
January	0.02	5	0.44	83	1.49	74	0.34	33
February	0.29	70	0.37	109	1.61	93	0.39	34
March	0.77	183	0.68	110	4.24	222	2.34	144
April	0.10	23	0.13	24	3.06	182	0.59	66
May	1.09	185	3.13	549	2.60	174	1.83	232
June	0.58	126	0.60	146	0.57	70	0.21	40
July	0.94	162	1.14	120	1.04	89	1.01	72
August	0.53	52	1.87	275	1.39	164	1.48	87
September	2.11	264	2.34	442	2.70	257	3.11	216
TOTALS	6.66	96	11.61	155	22.56	115	12.70	91
Mean Monthly	0.55	---	0.97	---	1.88	---	1.06	---

Tables 3, 4, 5, and 6 indicate monthly precipitation values at Hunter, Huntington, Electric Lake, and East Mountain from the beginning of operation at each site. The tables indicate monthly trends as well as the great fluctuation in yearly totals. Figure 2 shows monthly precipitation at the East Mountain site for the 1991 water year.

The correlation of precipitation levels with spring discharges will be discussed in the East Mountain Springs section of this report.

TABLE 3: HUNTER PLANT PRECIPITATION

Elevation - 5,800 Feet

<u>Water Year</u>	<u>OCT</u>	<u>NOV</u>	<u>DEC</u>	<u>JAN</u>	<u>FEB</u>	<u>MAR</u>	<u>APR</u>	<u>MAY</u>	<u>JUN</u>	<u>JUL</u>	<u>AUG</u>	<u>SEPT</u>	<u>TOTAL</u>
75-76	0.13	0.25	0.19	0.02	0.40	0.00	0.89	0.84	0.03	0.31	0.08	0.70	3.84
76-77	0.00	0.02	0.00	0.37	0.07	0.00	0.03	1.28	0.07	1.35	0.41	0.50	4.10
77-78	0.01	0.18	0.00	1.28	1.05	1.74	0.34	1.21	0.00	0.69	1.14	0.14	7.78
78-79	0.03	2.22	0.22	1.43	0.53	2.43	0.24	0.47	0.00	0.00	0.79	0.00	8.36
79-80	0.00	0.00	0.41	1.70	1.70	0.67	0.75	1.11	0.00	0.02	0.51	2.06	8.93
80-81	0.66	0.06	0.02	0.00	0.07	1.48	0.16	0.45	0.14	0.20	0.70	2.43	6.37
81-82	0.58	0.27	0.45	0.94	0.45	0.54	0.00	0.02	0.00	0.15	1.06	1.23	5.69
82-83	0.20	1.25	0.45	0.54	0.41	0.84	0.37	0.51	0.00	2.18	1.58	0.88	9.21
83-84	0.53	0.66	1.07	0.03	0.35	0.34	0.34	0.05	1.09	1.80	1.89	2.35	10.50
84-85	1.6	0.06	1.24	0.20	0.95	1.01	0.67	0.64	0.26	1.50	0.03	0.86	9.11
85-86	0.92	1.40	0.42	0.10	0.97	0.40	0.31	0.00	0.31	0.55	1.01	0.57	7.05
86-87	0.92	0.08	0.10	0.32	0.45	0.90	0.12	1.38	1.25	1.65	1.27	0.11	8.55
87-88	1.91	1.02	0.66	0.55	0.00	0.66	1.64	0.59	0.20	0.69	0.44	0.78	9.14
88-89	0.69	0.04	0.48	1.23	0.02	0.23	0.00	0.37	0.14	1.01	1.70	0.35	6.26
89-90	0.20	0.00	0.03	0.31	0.72	0.71	0.51	0.06	0.24	0.56	0.38	1.11	4.73
90-91	0.04	0.00	0.19	0.02	0.29	0.77	0.10	1.09	0.58	0.94	0.53	2.11	6.66

TABLE 4: HUNTINGTON PLANT PRECIPITATION

Elevation - 6,500 Feet

<u>Water Year</u>	<u>OCT</u>	<u>NOV</u>	<u>DEC</u>	<u>JAN</u>	<u>FEB</u>	<u>MAR</u>	<u>APR</u>	<u>MAY</u>	<u>JUN</u>	<u>JUL</u>	<u>AUG</u>	<u>SEPT</u>	<u>TOTAL</u>
70-71	---	---	---	---	---	0.08	0.29	0.16	0.11	0.57	0.63	0.43	2.27
71-72	2.26	0.59	1.62	0.04	0.00	0.32	0.28	0.16	0.77	0.40	0.66	1.07	8.17
72-73	4.27	1.28	0.34	0.49	0.80	2.42	0.50	0.17	0.97	1.09	1.94	0.12	14.39
73-74	0.08	0.02	0.37	0.20	0.03	0.01	0.00	0.00	0.00	0.09	0.00	0.07	0.87
74-75	0.68	1.19	1.13	1.01	0.30	0.80	0.03	0.75	1.44	2.62	0.31	0.24	9.50
75-76	0.23	0.95	0.03	0.20	0.23	0.00	2.34	0.86	0.02	0.73	0.19	0.85	6.63
76-77	0.56	0.00	0.00	0.35	0.00	0.00	0.00	1.76	0.00	2.08	0.96	0.70	6.41
77-78	0.66	0.12	0.82	1.45	1.00	1.36	0.94	0.72	0.12	0.05	0.72	0.77	8.73
78-79	0.02	2.65	0.25	1.21	0.52	2.50	0.00	0.84	0.05	0.09	3.32	0.20	11.65
79-80	0.17	0.14	0.15	2.88	3.63	0.68	1.13	1.88	0.65	0.18	0.38	2.22	14.09
80-81	1.20	0.06	0.00	0.00	0.00	0.62	0.08	1.75	0.48	0.00	0.58	1.53	6.30
81-82	1.12	0.25	1.30	1.63	0.20	0.73	0.00	0.17	0.00	0.08	0.71	1.91	8.10
82-83	0.20	0.60	0.67	0.16	0.65	1.87	0.08	0.40	0.00	1.61	0.39	1.15	7.78
83-84	0.76	0.76	2.13	0.10	0.15	1.18	0.72	0.17	1.04	0.74	1.39	0.46	9.60
84-85	2.07	0.34	1.74	0.49	0.27	0.53	0.44	1.08	0.42	3.21	0.04	0.81	11.44
85-86	0.77	1.28	0.64	0.01	0.98	0.28	0.43	0.10	0.17	0.42	0.55	1.08	6.71
86-87	0.38	0.15	0.05	0.81	0.66	0.13	1.22	1.48	1.01	2.14	0.65	0.00	8.68
87-88	1.36	1.35	0.51	1.77	0.00	0.10	1.35	0.94	0.83	0.04	0.13	0.92	9.30
88-89	0.31	0.13	0.83	0.68	0.28	0.21	0.20	0.22	1.28	0.78	1.72	0.74	7.38
89-90	0.21	0.28	0.42	0.51	1.18	0.94	1.30	1.35	0.65	1.30	1.27	2.35	11.76
90-91	0.45	0.03	0.43	0.44	0.37	0.68	0.13	3.13	0.60	1.14	1.87	2.38	11.61

FIGURE 2
EAST MOUNTAIN PRECIPITATION
1991 WATER YEAR

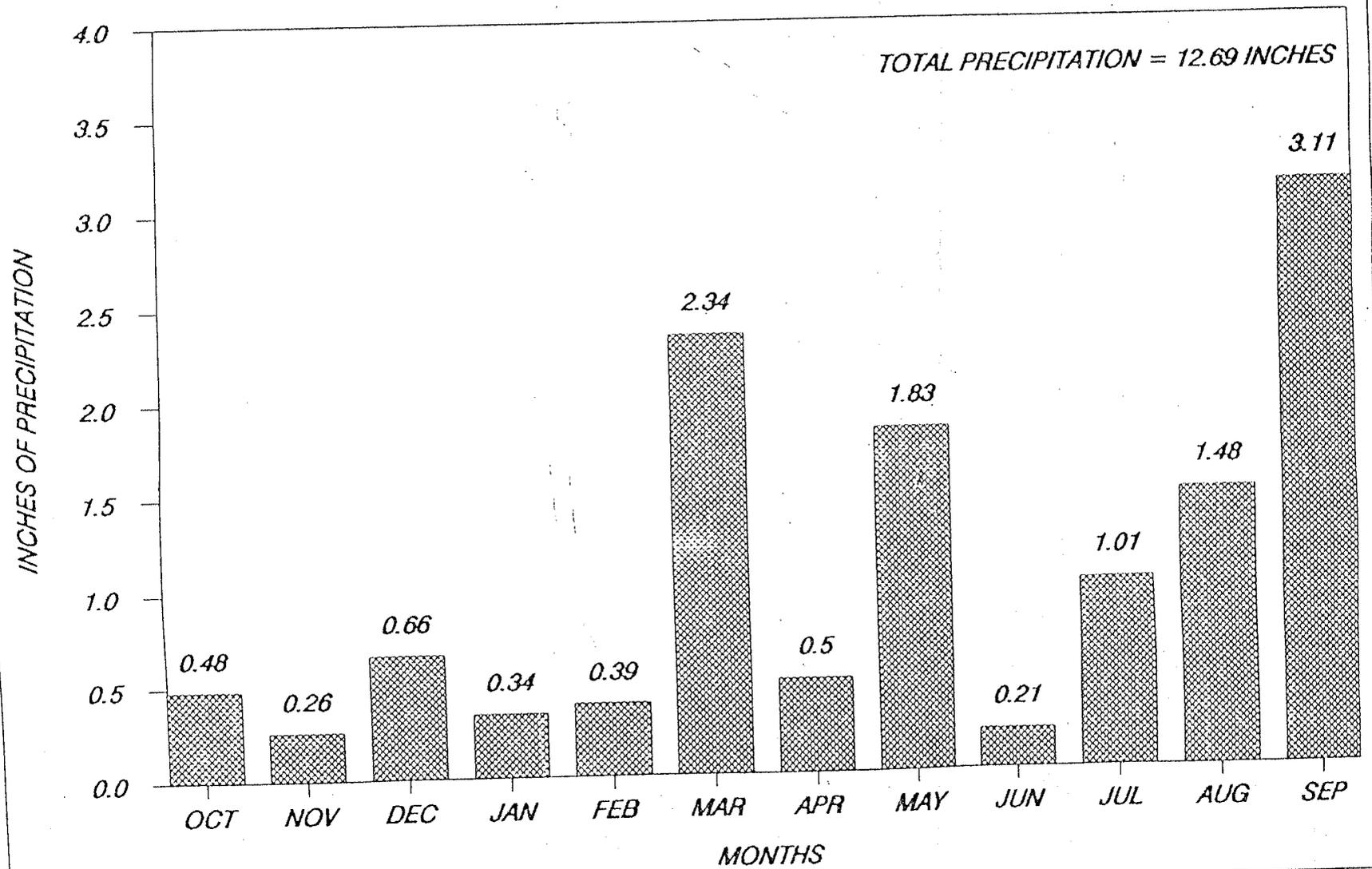
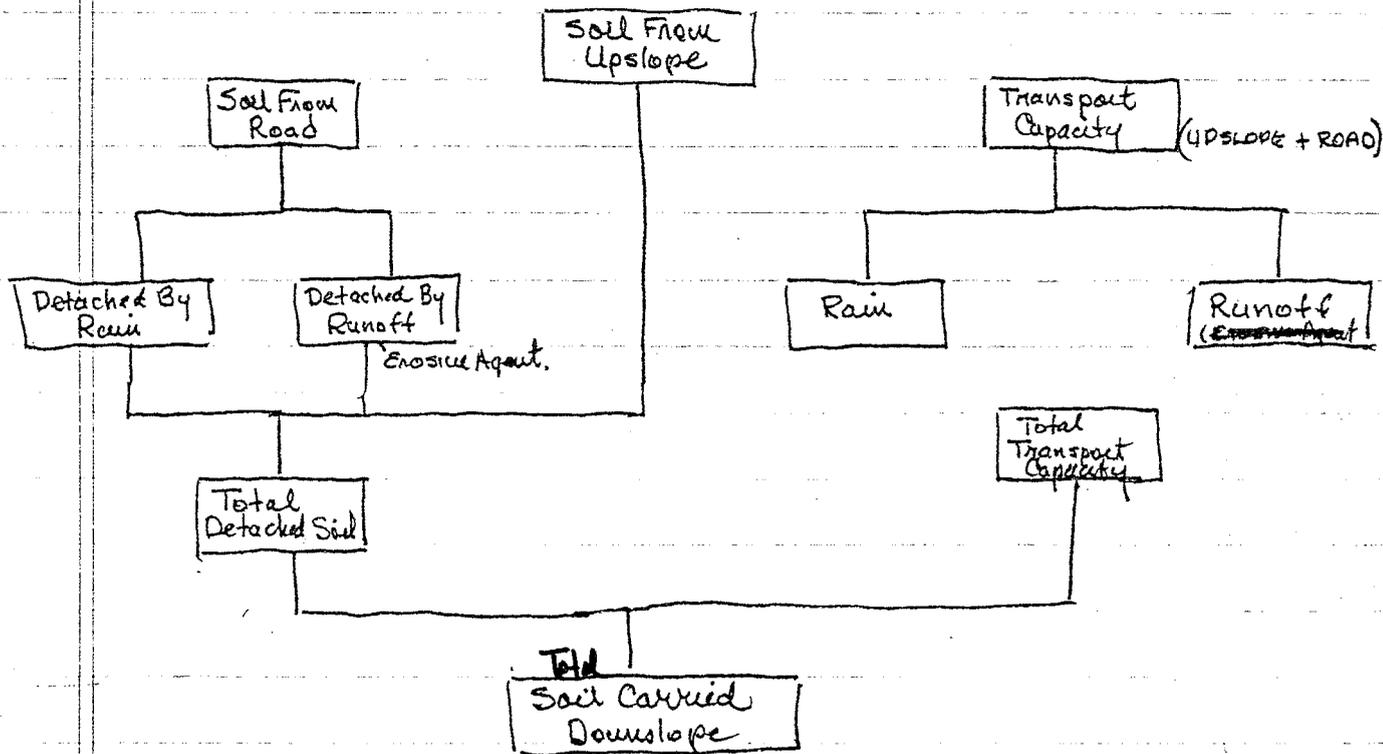


EXHIBIT XII

Soil Erosion Process

Removal of soil & other allied material by wind & water

Hidden Valley. Schematic



Detaching the soil particle by - first raindrop - next runoff

Transportation of the soil particle

Transportation capacity of runoff

Runoff from the slick rock areas that are not silt laden have more energy for soil detachment than muddy silt laden runoff

∴ water coming off the slick rock hits the road, concentrated by water bars and then is diverted over unprotected upslope where it has the energy to dislodge soil particles resulting in gully erosion on the upslope

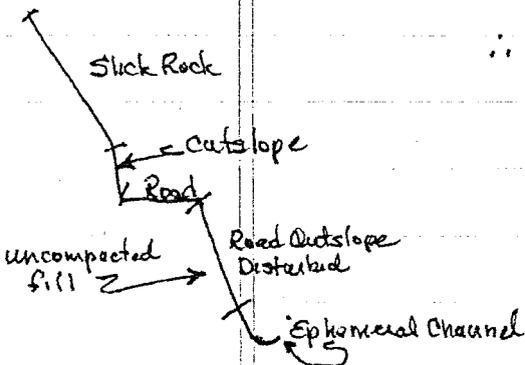


EXHIBIT XIII

INSPECTION REPORTS (Abstract)

- 2/8/91 • All divisions appear stable without significant erosion
Δ Division definition - man made - my comments related
to man made divisions - no ^{manmade} divisions on the outslope
- 4/26/91 • Road outslope drainage areas need to be watched
as related to high intensity storms.
- 5/7/91 • Same field conditions as covered in previous reports
- 11/19/91 • Now.
- 3/10/92 • Measurements.

9/10/91 Klein, White Mountain.

pg 3 road banks and the outslope drainage areas
appear to be in good working order.

S/ Hugh Klein

Jess Kelly.



inspection report

Permit No. ACT/015/007
Inspection Date 2/8/91

Permittee/Operator Name Cal Mat Co
 Business Address 1801 University Dr
 City Phoenix State Az Zip 85034
 Mine Hidden Valley Surface Underground Other
 County Emery State Ut
 Company Official(s) J. Nove
 State Official(s) Bill Malenak
 Time of inspection 1 a.m. p.m. to 4:00 a.m. p.m. Partial Complete
 Date of last inspection 1/10/91 Weather conditions Clear/Dry/Pleasant Temp.
 Acreage 950 Permitted 7 Disturbed 7 Regraded 7 Seeded 7 Bonded
 Enforcement Action _____

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

	YES	NO	N/A	COMMENTS		YES	NO	N/A	COMMENTS
1. Permits	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	9. Protection of fish, wildlife, and related environmental values	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Signs and markers	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	10. Slides and other damage	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Topsoil	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	11. Contemporaneous reclamation	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Hydrologic balance					12. Backfilling and grading	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
- Stream channel diversions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	13. Revegetation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
- Diversions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	14. Subsidence control	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
- Sediment ponds and impoundments	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	15. Cessation of operations	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
- Other sediment control measures	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16. Roads				
- Surface and groundwater monitoring	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	- Construction	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Effluent limitations	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	- Drainage controls	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Explosives	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	- Surfacing	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Development waste and spoil disposal	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	- Maintenance	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Coal processing waste	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	17. Other transportation facilities	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. Noncoal waste	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	18. Support facilities and utility installations	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

INSPECTION REPORT COMMENTS

Permit No. ACT/015/007

Inspection Date 2/8/91

Please number comments to correspond with topics on previous page.

General Comments. This complete inspection was ^{Performed} in coordination with c/o Karla Knapp, D.B.R., the designated field representative (CalMat). She advised me that a Feb field trip would be made wherein she would (1) upgrade the T.D. sign and (2) review the fence locations as depicted on the Dec. 1990 Reclamation map/plate III, revised 12/18/90.

Field conditions as related to on site environmental control measures have not change since the last inspections as described by c/o White and the previous oversight inspection completed in December 1990.

Pending Enforcement Items. As a result of the December inspection, OSM on 1/4/91 issued TDN 91-02-246-1 TV 2 on two issues.

(1) Failure to demonstrate alternative sediment control areas to meet effluent standards, and

(2) Failure to reshape cut & fill slopes to original contour.

Observations All diversions appeared stable without significant erosion or sediment deposition which would limit their effectiveness to convey runoff.

Copy of report mailed to _____

Copy of report given to _____

Inspector's signature _____ No. _____

INSPECTION REPORT COMMENTS

Permit No. ACT/015/007

Inspection Date 2/8/91

Please number comments to correspond with topics on previous page.

Municipal Waste. No cans or garbage was observed at the mine site including at the end of the blacktop road adjacent to the permit area.

Revegetation. The vegetation was still in a dormant stage. No significant changes could be detected over and above what had previously been reported and/or observed.

Copy of report mailed to Lee Edmondson (Calmat), Karla Knaap (JBR), John Kathman (OSM)

Copy of report given to Joe Helfrich (DOSM)

Inspector's signature [Signature] No. 26

2/11/91



inspection report

Permit No. ACT/015/007

Inspection Date 4/26/91

Permittee/Operator Name Cal Chat Co.

Business Address 1801 University Drive

City Phoenix State Arizona Zip 85034

Mine Hidden Valley Surface Underground Other

County Emery State Ut.

Company Official(s) None

State Official(s) Bruce Malenich

Time of inspection 1:00 a.m. p.m. to 4:00 a.m. p.m. Partial Complete

Date of last inspection 3/21/91 Weather conditions Clear / Windy

Acreage 950 Permitted 7 Disturbed 7 Regraded 7 Seeded 7 Bonded

Enforcement Action None

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

	YES	NO	N/A	COMMENTS		YES	NO	N/A	COMMENTS
1. Permits	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	9. Protection of fish, wildlife, and related environmental values	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Signs and markers	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	10. Slides and other damage	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Topsoil	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	11. Contemporaneous reclamation	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Hydrologic balance					12. Backfilling and grading	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
- Stream channel diversions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	13. Revegetation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
- Diversions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	14. Subsidence control	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
- Sediment ponds and impoundments	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	15. Cessation of operations	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
- Other sediment control measures	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16. Roads				
- Surface and groundwater monitoring	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	- Construction	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Effluent limitations	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	- Drainage controls	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5. Explosives	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	- Surfacing	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Development waste and spoil disposal	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	- Maintenance	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Coal processing waste	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	17. Other transportation facilities	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. Noncoal waste	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	18. Support facilities and utility installations	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

INSPECTION REPORT COMMENTS

Permit No. ACT/015/007

Inspection Date 4/26/91

Please number comments to correspond with topics on previous page.

Stream Channel Division. The stream channel division was checked from the top to the bottom. No problems were noted.

Other Sediment Control. The silt fences below the A & B coal seams remain functional.

Non Coal Waste. The mine site was clean and no mine associated waste nor trash was observed.

Wildlife & Environmental Values. Water was running in the main creek. Only a few deer tracks were observed next to the creek.

Backfilling & Grading. The Divisions position on highwalls on the Hidden Valley was sustained by OSM.

Revegetation. The mine site was dry, with minimal moisture in the top six inches of soil. It is premature to make any substantial judgements on the vegetation, especially in those areas where erosion matting was installed.

Roads. The road berms have held up with no short-circuiting of runoff. The outlope drainage areas need to be watched, especially when high intensity storms hit the mine area.

Copy of report mailed to Cal Nat/hee Edmonson; OSM/Brian Smith; DORM/ Joe Helbrech

Copy of report given to PFU

Inspector's signature Jm. J. Helbrech No. 266



inspection report

Permit No. ACT/015/007
Inspection Date 5/7/91

Permittee/Operator Name Cal Mat Co.
Business Address 1801 University Drive
City Phoenix State Ariz Zip 85034
Mine Hidden Valley Surface Underground Other
County Emery State Ut
Company Official(s) None
State Official(s) Bill Malencik, Hugh Klein
Time of inspection 1:00 a.m. p.m. to 4:00 a.m. p.m. Partial Complete
Date of last inspection 4/26/91 Weather conditions Clear/Windy
Acreage 950 Permitted 7 Disturbed 7 Regraded 7 Seeded 7 Bonded
Enforcement Action None

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

	YES	NO	N/A	COMMENTS		YES	NO	N/A	COMMENTS
1. Permits	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	9. Protection of fish, wildlife, and related environmental values	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Signs and markers	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	10. Slides and other damage	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Topsoil	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	11. Contemporaneous reclamation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Hydrologic balance					12. Backfilling and grading	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Stream channel diversions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	13. Revegetation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
- Diversions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	14. Subsidence control	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Sediment ponds and impoundments	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	15. Cessation of operations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Other sediment control measures	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16. Roads				
- Surface and groundwater monitoring	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	- Construction	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Effluent limitations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	- Drainage controls	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Explosives	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	- Surfacing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Development waste and spoil disposal	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	- Maintenance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Coal processing waste	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	17. Other transportation facilities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Noncoal waste	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	18. Support facilities and utility installations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

INSPECTION REPORT COMMENTS

Permit No. ACT/015/007

Inspection Date 5/7/91

Please number comments to correspond with topics on previous page.

General Comments On site conditions were substantially the same as covered in the previous inspection dated 4/26/91. The mine site was dry and showed no evidence of rain or runoff.

Followup on Previous Inspections Division on May 6, 1991 received W. Harold Tipton's letter on IOB 91-02-370-002 TV1 relative to the elimination of highwalls. The letter indicates and orders a federal inspection.

Other Sediment Control Silt fences and the erosion matting are were checked and no problems noted.

Vegetation The seeding project showed minimal response to vegetation establishment. Saltbush plants were observed along the reclaimed road. Grass plants are hard to find except in moisture depressions.

Copy of report mailed to Cal Mat/ Lee Edmonson; OSM/Bruce Smith; DOGM/ Joe Helbrich

Copy of report given to filed PFO

Inspector's signature [Signature]

No. 261

5/10/91



inspection report

Hidden Valley Coal Co.

Permit No. Act/015/007

Inspection Date 11/10/91

Permittee/Operator Name Cal Mat Co.

Business Address 1801 University Drive

City Phoenix State Arizona Zip 85034

Mine Hidden Valley Surface Underground Other

County Emery State _____

Company Official(s) Ms. Karla Knapp (OBR)

State Official(s) Bill Maknuk, DOSM; Mitch Rollings

Time of inspection 8:00 a.m. p.m. to 1:00 a.m. p.m. Partial Complete

Date of last inspection 10/8/91 Weather conditions Clear/Coal/Snow N Slopes.

Acreage 950 Permitted 7 Disturbed 7 Regraded 7 Seeded 7 Bonded

Enforcement Action CR 91-26-8-2

*1/2 failure to maintain stable dimensions MINOR EROSION
2/2 failure to seed and mark all disturbed areas.*
COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

	YES	NO	N/A	COMMENTS		YES	NO	N/A	COMMENTS
1. Permits	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	9. Protection of fish, wildlife, and related environmental values	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Signs and markers	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	10. Slides and other damage	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Topsoil	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	11. Contemporaneous reclamation	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Hydrologic balance					12. Backfilling and grading	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Stream channel diversions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	13. Revegetation	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
- Diversions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	14. Subsidence control	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
- Sediment ponds and impoundments	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	15. Cessation of operations	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
- Other sediment control measures	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16. Roads				
- Surface and groundwater monitoring	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	- Construction	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Effluent limitations	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	- Drainage controls	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5. Explosives	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	- Surfacing	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Development waste and spoil disposal	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	- Maintenance	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Coal processing waste	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	17. Other transportation facilities	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. Noncoal waste	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	18. Support facilities and utility installations	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

INSPECTION REPORT COMMENTS

Permit No. ACT/015/017

Inspection Date 11/19/91

Please number comments to correspond with topics on previous page.

General Comments:

- Participants To The Inspection: Bill Malenick, DOGM; Mitch Rollins, OSM; Karla Knopp WBR/Cal Mat Representative.
- Status Of Mining Operation: Reclaimed fall 1986
- Pending Issues: Highwall, DOGM/OSM/Cal Mat field investigation of 10/8/91. Final decision has not been rendered.
- Enforcement Action: See page 1, also signs & markers, revegetation and road drainage controls. Discussed with Mr Knopp and Mr. Rollins at the inspection closure.

Signs & Markers:

- Permittee installed a new T.D sign.
- All disturbed areas were not clearly marked i.e., road out slope and Tve Creek upslope where rock and soil was pushed over the embankment.
- Nov. N 91-26-8-2 issued with abatement measures as follows:
 - (1) Install disturbed markers at the toe of the road and stream out slope.
 - (2) Mow stream buffer zone sign to the toe of the stream out slope.

Copy of report mailed to _____

Copy of report given to _____

Inspector's signature _____ No. _____

INSPECTION REPORT COMMENTS

Permit No. Act/015/017

Inspection Date 11/19/01

Please number comments to correspond with topics on previous page.

Other Sediment Control Measures:

• Silt fences on both sides of the stream channel discussion needs routine maintenance. Runoff is concentrating next to the silt fence hence follows the silt fence causing minor erosion at this time and exposing the bottom of the previously buried silt fence.

• Sediment control measure needs to be installed at the upper end of the silt fence and B coal seam to minimize the possibility of current rules from getting out of compliance.

Non Coal Waste: No cans, trash, or mine related items were observed at the mine site.

Revegetation: The disturbed areas that have not been seeded were included in NOV N 91-26-8-2, 2/2. The areas included the upslope and road downslope; Trc Creek upslope where material had been pushed over the embankment. Also the road surface where previously seedings have failed.

Copy of report mailed to _____

Copy of report given to _____

Inspector's signature _____ No. _____

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



INSPECTION REPORT COMMENTS

Permit No. Art/015/017

Inspection Date 11/19/91

Please number comments to correspond with topics on previous page.

Road Drainage Controls, Three erosion rills were included in NOV N 91-26-B-2, 1/2. Two are on the upslope below the gate with the maximum measurements as follows:

Rill #1 54" deep, 79" wide } Below Gate

Rill #2 52" deep, 82 wide }

Rill #3 26" deep, 52 wide - Above Gate

The third rill is above the gate with measurements as noted above. Support Facilities: The drift fence was fully functional. The water bar on the upper end has vegetation and debris caught in the fence. The material should be cleaned from the fence before the high runoff season.

Copy of report mailed to Sal Mat/hee Edmonson; JBR, Carla Knoop; OSM/Brina Smith; OSM/Joe Heltich

Copy of report given to filed RFO.

Inspector's signature [Signature]

No. 26

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

11/21/91

RECEIVED

Per route to file

DEC 05 1991

Permit file ACT/015/007 #

Page 1 of 2 Pages

United States Department of the Interior DIVISION OF Office of Surface Mining OIL GAS & MINING Mine Site Evaluation Inspection Report

For Office Use Only

1a Y Y M M 1b Batch 1c Report

2. Name of Permittee

ADDITIONAL MATERIALS

3. Street Address

20 BOX 947

4. City

MOULTON

5. State

CA

6. Zip Code

92326

7. Area Code

714

8. Telephone Number

625-7260

9. MSHA Number

10. Date of Inspection (Y Y M M D D)

9 1 1 9 1

11. State Permit Number

ACT/015/007

12. Name of Mine

ADDITIONAL MATERIALS

13. County Code

015

14. State Code

01

15. Strata

16. State Area Office

17. OSM Field Office No.

02

18. OSM Area Office No.

19. OSM Sample No.

125

20. Type of Inspection (Code)

2

21. Joint Inspection Yes No

X

22. Inspector's ID No.

370

23. Status

- A 01 Type of Permit
B A Mine Status (Code)
C 20 Type of Facility (Code)
D 00950.7 Number of Permitted Acres
E 00007.7 Number of Disturbed Acres

24. Type of Activity (check applicable boxes).

- A Steep Slope
B Mountain Top Removal
C Prime Farmlands
D Alluvial Valley Floors
E Anthracite
F Federal Lands
G Indian Lands
H Other

25. Performance Standards (Codes)

Instructions: Indicate compliance code. For any standard marked 2 or 3 provide narrative to support this determination.

Standards That Limit the Effects to the Permit Area

- A 1 Distance Prohibitions
B 1 Mining Within Permit Boundaries
C 2 Signs and Markers
D 2 Sediment Control Measures
E 1 Design and Certification Requirements-- Sediment Control
F 1 Effluent Limits
G 1 Surface Water Monitoring
H 1 Ground Water Monitoring
I 3 Blasting Procedures
J 1 Haul/Access Road Design and Maintenance
K 3 Refuse Impoundments
L 1 Other: Specify

Standards That Assure Reclamation Quality and Timeliness

- M 1 Topsoil Handling
N 1 Backfilling and Grading
O 1 Following Reclamation Schedule
P 2 Revegetation Requirements
Q 3 Disposal of Excess Spoil
R 1 Handling of Acid or Toxic Materials
S 2 Highwall Elimination
T 3 Downslope Spoil Disposal
U 1 Post Mining Land Use
V 3 Cessation of Operations: Temporary
W 1 Other

United States Department of the Interior
Office of Surface Mining
Mine Site Evaluation Inspection Report

26. State Permit Number

27. Date of Inspection
(Y M M D D)

ACT / 015 / 007

9 1 1 1 1 9

28. Yes No Do mining and reclamation activities on the site comply with the plans in the permit?
 If no, provide narrative to support this determination.

29. Indicate number of complete and partial inspections conducted by the State to date for this annual review period:

29a. Number of Completes

29b. Number of Partials

30. Indicate number of complete and partial inspections required by the State during this annual review period:

30a. Number of Completes

30b. Number of Partials

31. Has inspection frequency been met?

31a. Yes No Completes

31b. Yes No Partials

32. FEDERAL ENFORCEMENT INFORMATION. [Enter violation number. Check appropriate box(es)]

Ten-Day Notice No.	Notice of Violation No.	Cessation Order No.	Violation Codes
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Authorizations to Operate
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Signs and Markers
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Backfilling and Grading
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Highwall Elimination
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Rills and Gullies
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Improper Fills
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Topsoil Handling
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Sediment Ponds
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Effluent Limits
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Water Monitoring
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Buffer Zones
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Roads
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Dams
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Blasting
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Revegetation
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Spoil on the Downslope
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Mining Without Permit
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Exceeding Permit Limits
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Distance Prohibitions
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Toxic Materials
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Other Violations

33. Name of Authorized Representative (print or type)

NATHAN S. FOLLOWS

Signature of Authorized Representative

[Signature]

Signature of Reviewing Official

[Signature]

Date

11/27/91

Date

12/12/91

02 0
03 0
03 0
01 0

California Materials, Company
P.O. Box 947
Colton, CA 92324
714-825-4260

ACT/015/007
Hidden Valley Coal Mine

11/19/91
Complete inspection

Mitchell S. Rollings, 370, OSM
Bill Malencik, DOGM
Karla Knoop, JBR Consultants Group (representing the permittee)

This was a complete, random sample, oversight inspection. The site is inactive and reclaimed. Disturbance consists of a road from the end of the blacktopped county route to the mine site, the "A seam" portals location, and the "B seam" portals location. The A and B seams are separated by a reclaimed stream channel diversion.

The A seam side consists of a section of highwall with a reclaimed slope below. The pad area extends to the Ivie Creek arroyo. The sedimentation pond used to be at the end of the pad on this side, but this has been reclaimed. Drainage goes to Ivie Creek by exiting the disturbed area through a riprap channel where the pond spillway was located. A highwall diversion ditch routes runoff from above the wall to the central diversion and into Ivie Creek.

The highwall on the A seam side is currently under discussion by OSM and DOGM. While OSM has found in the past that the existing wall did not replace or enhance a pre-existing cliff, DOGM is currently assembling a package of old photographs not subject to OSM's earlier review that have a bearing on the highwall issue. Prior to leaving the Salt Lake City DOGM office I looked at some of the photographs that they are going to be sending AFO for review. The entire package will have to be reviewed, but one photo appears to give credence to DOGM's claim that a cliff of some type did exist in that location.

The outcrops of the pad area for the A seam side are the subject of a DOGM NOV issued as a result of this inspection. See below.

The B seam side is essentially the same layout as the A seam side. The B seam side appears to have had the highwall completely reclaimed. There are vertical features on this side, but these ~~are~~ appear incidental to the mining operation. The B seam disturbance drains to a silt fence that parallels the central diversion. The bottom of the silt fence is exposed in some places because runoff intersected by the fence drains parallel to the fabric for a ways before it is filtered through. Runoff has not gone under the bottom of the fabric yet, but the operator must do some maintenance work to this before a violation develops.

The central drainage channel is rock lined and the channel appears to be holding up well to the runoff it transports. Some erosion is starting to develop at the junction of the reclaimed slope and the undisturbed area near the beginning of the channel and should be addressed by the operator before becoming a violation.

The outslopes of the pad area for the B seam side are the subject of a DOGM NOV issued as a result of this inspection. See below.

The access road to the site has been in contention before between OSM and DOGM. As it stands, the road has been accepted as part of the postmining land use for livestock access to the area. The surface of what used to be the travelled part of the road has been ripped, waterbarred, seeded, and mulched. The road is part of the DOGM NOV issued as part of this inspection. See below.

ENFORCEMENT ACTIONS

DOGM issued Notice of Violation 91-26-8-2 with two violations. Violation 1 of 2 dealt with erosion that had developed on the outslopes of the road where waterbars had been placed. There are three locations that are in violation. The first was pretty much north of the end of the silt fence along the central channel and measured 54 inches deep and 79 inches wide. The second is the first waterbar below where the road crosses the canyon and this measured 57 inches deep and 82 inches wide. The third location is the first waterbar below the access barrier and measured 26 inches deep and 58 inches wide. When the operator is fixing these locations, they may consider doing some work to a few of the other waterbar outlets. Some of these exhibited potential for a violation to develop.

Violation 2 of 2 dealt with slopes that the operator's representative said had not been handled during the reclamation of the site because the company was under the impression that they were not responsible for the disturbance. This violation is for the fill slopes of both the A and the B seam pads, the cut slopes of the road that are not stabilized vertical features, and the fill slopes of the road. The fill slope of the B seam pad is rather small and located near the center of the edge of the pad disturbance. The rest of the edge of the pad disturbance blends into the undisturbed and has been seeded and mulched. The fill slope of the A seam pad is much more extensive and almost extends for the entire length of the edge of the pad. This extends from the central channel to the drainage channel for the A seam disturbance. The cut slopes of the road are located from about 100 feet above the point where the road crosses the canyon down to where vertical consolidated cut wall starts. Ms. Knoop said that about the bottom three feet of these cut slopes were reseeded. The fill slopes of the road extend from slightly below where the road crosses the canyon all the way to where the fill slopes blend into the pad disturbance. There is a 50 foot section about two-thirds of the way down where no fill was placed. This is not part of the violation. The violation applies only to fill material for all locations. This violation was issued 11/20/91, and the abatement date is 12/20/91.

A situation was discovered after I got back to the Salt Lake City DOGM office that may indicate another violation exists. I did not address during this inspection because it would have called for additional site investigation. When I was investigating the highwall issue a few weeks ago one of the people first involved in the disturbance of the site stated that access was gained by coming down Ivie Creek canyon. The existing access road was not yet built. I assumed the creek road was used pre-law. However, the Salt Lake City DOGM office has a photograph of the A and B seam disturbance dated 1979, and the present access road was not constructed at that time. This indicates that the company used the road in the Ivie Creek canyon post-law and as such it would have to be permitted. This comment is being made in this report so that the next time this site is inspected by OSM, the inspector can investigate the situation.



SOURCE MONITORING ACCEPTANCE AND ENFORCEMENT
RANDOM SAMPLE MEIR SUPPLEMENT

1. Permittee California Materials 5. Days since Last State Complete Inspection (LSCI) 70 9/10/91
 2. Permit Number ACT/015/007 6. Block 25 Categories in NON-COMPLIANCE this RSI 4
 3. Joint Inspection Y Y/N 4. Date 11-19-91 7. Total Violations this RSI 4

8. List (only once) all violations:
 1) where State enforcement was required and taken during the LSCI;
 2) recorded in the LSCI report but the State failed to take enforcement;
 3) observed during this RSI which clearly existed during the LSCI but the State failed to take enforcement; and
 4) existing during this RSI which are not already listed under one of the categories above.

A	B	C	D	E	F	G	H	I	J	K
SPECIFIC STATE LAW/REGULATION VIOLATED	BLOCK 25 CATEGORY	ABATED (Y/N)	STATE ACTION	REASON IF UNCITED	CAUSE	SERIOUSNESS PED	IMPACT	OSMRE ACTION	OPTIONAL	
1. <u>7/11 P</u> <u>7/31 P</u> <u>9/10 P</u>	<u>C</u>	<u>N</u>	<u>4</u>	<u>-</u>	<u>4</u>	<u>1</u>	<u>1</u>	<u>1</u>		
	vi. <u>disturbed area boundary markers not properly located. cited with #3 below</u>									
	<u>D</u>	<u>N</u>	<u>4</u>	<u>-</u>	<u>4</u>	<u>1</u>	<u>1</u>	<u>1</u>		
	vi. <u>erosion from outlets of water bars</u>									
	<u>P</u>	<u>N</u>	<u>4</u>	<u>1</u>	<u>4</u>	<u>1</u>	<u>1</u>	<u>1</u>		
	vi. <u>vegetation on cut + fill slopes - cited with #1 above</u>									
	<u>S</u>	<u>N</u>	<u>2</u>	<u>6</u>	<u>5</u>	<u>3</u>	<u>1</u>	<u>1</u>		
	vi. <u>highwalls - issue still pending</u> <u>Issued during prior oversight</u>									
	Description: _____									
6. _____										
	Description: _____									
7. _____										
	Description: _____									
8. _____										
	Description: _____									
9. _____										
	Description: _____									
10. _____										
	Description: _____									

- | | | | | | |
|--|--|---|---|--|---|
| <p>STATE ACTION</p> <ol style="list-style-type: none"> 1) Existed on LSCI, cited 2) Existed on LSCI, not cited 3) Cited Prior to LSCI, Abatement Pending 4) Occurred since LSCI 5) Permit defect | <p>STATE'S REASON FOR NOT CITING VIOLATION (AFTER DISCUSSION WITH THE STATE)</p> <ol style="list-style-type: none"> 1) Not a Violation 2) Precluded by State Policy 3) Not included under State Program 4) Warning given in lieu of a Citation 5) Violation not recognized (missed) 6) Practice allowed under approved Permit 7) Too minor to cite 8) Working with Operator to Correct 9) Other: _____ | <p>CAUSES</p> <ol style="list-style-type: none"> 1) Permit Defect 2) Unusual Weather Conditions 3) Unofficial Waiver 4) Operator Negligence 5) Other: _____ | <p>PROBABILITY OF EVENT OCCURRENCE</p> <ol style="list-style-type: none"> 1) None or Unlikely 2) Likely 3) Occurred | <p>IMPACT</p> <p><u>Decon Remains Within the Permit Area</u></p> <ol style="list-style-type: none"> 1) None or Minor 2) Moderate 3) Considerable <p><u>Decon Extends Beyond the Permit Area</u></p> <ol style="list-style-type: none"> 4) None or Minor 5) Moderate 6) Considerable <p><u>Obstruction to Enforcement</u></p> <ol style="list-style-type: none"> 7) None or Minor 8) Moderate 9) Considerable | <p>OSMRE ACTION</p> <ol style="list-style-type: none"> 1) Deferred to State Action 2) TDN issued 3) IH-CD issued 4) Previously Cited, Abatement Pending 5) Abated during or before OSMRE Inspection 6) TDN issued 7) TDN issued for Permit Defect |
|--|--|---|---|--|---|



State of Utah

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

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

355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203
801-538-5340

December 5, 1991

To: File

From: Pamela Grubaugh-Littig, Permit Supervisor. *pgl*

Re: Errors in the OSM Mine Site Evaluation Inspection Report, Hidden Valley Coal Company, Hidden Valley Mine, ACT/015/007, Folder #5, Emery County, Utah

The OSM inspection report received at the Division on December 5, 1991, has some errors that should be pointed out. The Name of the permittee is wrong--the permittee is Hidden Valley Coal Company, not California Materials. The address is also incorrect, it is 1801 East University Drive, Phoenix, Arizona 85034.

cc: Lowell P. Braxton

3/20

Tom

How is the Hidden
Valley insp report +
the measurements Tom
and I took.

Would you have Tom
eyeball these and give
me a call.

I'm holding sending these
documents to Lee until
Tom has a chance to see
them.

Travis
B



State of Utah

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

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Executive Director

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Division Director

355 West North Temple
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Salt Lake City, Utah 84180-1203
801-538-5340

INSPECTION REPORT

Permit No. ACT/015/007 Inspection Date: March 10, 1992
 Permittee and/or Operators Name: Hidden Valley Coal Company
 Bus. Address: 1801 University Dr. City: Phoenix State: AZ Zip: 85034
 Mine Name: Hidden Valley County: Emery State: Utah
 Type of Mining Activity: Underground XX Surface Other
 Company Officials: Joe Jarvis (JBR) State Officials: Malencik & Munson
 Time of Inspection: 10:30 a.m. - 2:00 p.m. Partial X Complete:
 Acreage: Permitted 950 Disturbed 7 Regraded 7
 Seeded 7 Bonded 7 Date of Last Inspection: February 5, 1992
 Weather Conditions: Clear/Cool - Temp 60° Enforcement Action: None
2 Violations Still Outstanding: N91-26-8-2, N92-25-1-1

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

	YES	NO	N/A	NOTES
1. PERMITS	()	()	()	()
2. SIGNS AND MARKERS	(X)	(X)	()	(X)
3. TOPSOIL	()	()	()	()
4. HYDROLOGIC BALANCE:				
a. STREAM CHANNEL DIVERSIONS	(X)	(X)	()	(X)
b. DIVERSIONS	()	()	()	()
c. SEDIMENT PONDS AND IMPOUNDMENTS	()	()	()	()
d. OTHER SEDIMENT CONTROL MEASURES	()	()	()	()
e. SURFACE AND GROUNDWATER MONITORING	()	()	()	()
f. EFFLUENT LIMITATIONS	()	()	()	()
5. EXPLOSIVES	()	()	()	()
6. DISPOSAL OF DEVELOPMENT WASTE AND SPOIL	()	()	()	()
7. COAL PROCESSING WASTE	()	()	()	()
8. NONCOAL WASTE	()	()	()	()
9. PROTECTION OF FISH, WILDLIFE AND RELATED ENVIRONMENTAL VALUES	()	()	()	()
10. SLIDES AND OTHER DAMAGE	()	()	()	()
11. CONTEMPORANEOUS RECLAMATION	()	()	()	()
12. BACKFILLING AND GRADING	()	()	()	()
13. REVEGETATION	(X)	(X)	()	(X)
14. SUBSIDENCE CONTROL	()	()	()	()
15. CESSATION OF OPERATIONS	()	()	()	()
16. ROADS				
a. CONSTRUCTION	()	()	()	()
b. DRAINAGE CONTROLS	(X)	(X)	(X)	(X)
c. SURFACING	()	()	()	()
d. MAINTENANCE	()	()	()	()
17. OTHER TRANSPORTATION FACILITIES	()	()	()	()
18. SUPPORT FACILITIES				
UTILITY INSTALLATIONS	()	()	()	()
19. GULLY AND ENCROACHMENT MEASURES	(X)	(X)	()	(X)

Permit No. ACT/015/007 Inspection Date March 10, 1992

(Comments are Numbered to Correspond with Topics Listed Above)

GENERAL COMMENTS - The purpose of the instant inspection was two-fold:

- (1) To perform the March 1992 partial inspection of the Hidden Valley Mine and
- (2) To gather explanatory information in a format that could be more easily presented and understood by the board at a hearing now scheduled for April 22, 1992. The information consisted of additional measurements and 35 mm slides of the gully erosion and the unauthorized encroachment on Ivie Creek. This approach was discussed with Mr. Edmonson.

SIGNS AND MARKERS - Perimeter and stream buffer zone markers have not been changed to the boundaries of the disturbed area as discussed in the two outstanding violations mentioned on Page 1. The abatement action is held in abeyance pending the board hearing. The stay has been approved by the Director (DOGM).

REVEGETATION - Some disturbed areas (road upslope and downslope) have not been seeded. Abatement is being held in abeyance for reasons cited above. Also, encroachment areas adjacent to Ivie Creek have not been seeded. New seedlings have emerged this spring. Most were observed on the reclaimed road bed, the least on the pad area below the B seam. The seedlings were predominately grass seedlings. Last year halogeton plants were abundant and observed on the road bed appearing to be most abundant in the unprotected area outside of the fenced area.

ROAD DRAINAGE - The rill erosion on the road upslope was not upheld by the Director; however, she encouraged the permittee to consider taking some remedial measures. The gully erosion on the downslope was upheld and now is pending a hearing and decision by the Board of Oil, Gas and Mining. No abatement work has been done, nor has a plan been submitted to abate the violation.

OTHER - Several rills were observed on the S.E. slope adjacent to the matted A seam. The rill depth varied between 4 and 8 inches. Runoff from the upslope ridge was concentrating and being diverted by nature over the outslope. The runoff (disturbed) could be routed with Division approval into the undisturbed drainage contiguous to the ridge area. This is an area that needs to be observed by the permittee and the Division before it degenerates to a compliance problem.

Permit No. ACT/015/007 Inspection Date March 10, 1992(Comments are Numbered to Correspond with Topics Listed Above)

Discussed the matting on the A and B seams; more particularly what may happen when the matting is no longer effective because of decomposition of the straw and netting. The key question is will enough vegetation become established to fully stabilize the steep slopes? If not, the permittee needs to consider an approach, proposal, or some means of forecasting what can be done to secure bond release. The danger is doing nothing on such an approach until the bond time frame becomes critical. This matter was discussed by Tom Munson, the undersigned and Joe Jarvis (JBR). Further, a follow-up telephone call to Mr. Edmonson by the undersigned highlighted the aforementioned discussion. The essence of the DOGM discussion was associated with vegetal establishment, erosion, and current expectations (regulations) to meet bond release requirements on such complex mine sites.

Attachment I shows the results of the measurements taken on the road gullies and the pad encroachment on Ivie Creek (stream buffer zone).

Copy of report:

Mailed to: Lee Edmonson (Hidden Valley Coal Company)Mailed to SLC for: Brian Smith (OSM) Joe Helfrich (DOGM)Filed to: PFODate: March 13, 1992Inspector's Signature and Number: 

Wm. J. Malencik #26

ATTACHMENT I

HIDDEN VALLEY COAL COMPANY
ACT/015/007

I. NOTICE OF VIOLATION

A. N91-26-8-2, 1 of 2, 11/22/91

**R614-301-742.312.1 FAILURE TO MAINTAIN DIVERSIONS TO BE STABLE.
**R614-301-742.113 FAILURE TO MINIMIZE EROSION TO EXTENT POSSIBLE.
**ABATEMENT: SUBMIT PLANS TO STABILIZE DIVERSIONS AND
MINIMIZE EROSION.

B. N92-25-1-1, 1/21/92

**R645-301-731.610 DISTURBING LAND WITHIN 100 FEET OF IVIE CREEK
WITHOUT AUTHORIZATION FROM THE DIVISION.
**ABATEMENT: COMPLY WITH R645-301-731.611 AND 731.620.
SUBMIT AMENDED PAP TO DEMONSTRATE COMPLIANCE.

II. EROSED GULLIES AT HIDDEN VALLEY COAL COMPANY ADDITIONAL EXPLANATORY
INFORMATION

**ADDITIONAL
MEASUREMENTS: 3 EROSION GULLIES CITED IN THE VIOLATION DATED
NOVEMBER 22, 1991 AND MEASUREMENTS OF 2 OTHER GULLIES
THAT WERE ORIGINALLY OBSERVED AND NOT CITED IN THE
VIOLATION.

**DATE: 3/10/92

**MEASUREMENTS AND
PHOTOS TAKEN BY: TOM MUNSON AND BILL MALENCIK IN THE PRESENCE OF
JOE JARVIS

**EQUIPMENT: 100' STEEL TAPE MEASURE, 24' TAPE MEASURE AND 35MM
CAMERA WITH COLOR SLIDE FILM

**WHERE: GULLY EROSION ON THE ROAD OUTSLOPE, 4 BELOW GATE AND 1
ABOVE GATE AND THE DISTURBED ENCROACHMENT ON IVIE
CREEK (STREAM BUFFER ZONE)

MEASUREMENTS BELOW
TAKEN ON 3/10/92

ORIGINAL MEASUREMENTS
TAKEN ON 11/19/91

GULLY A TOTAL LENGTH - 19 FEET....CITED AS A VIOLATION
CROSS SECTION

STATION	DEPTH	WIDTH	REMARKS
@3'	22"	44"	INSTABILITY ON BOTH BANKS.
@6'	36"	60"	TENSION CRACKS.
@13'	24"	24"	LOOSE SOIL IN THE BOTTOM OF THE GULLY. SOME RIP RAP AT THE HEADCUT.

GULLY #1
ORIGINAL MEASUREMENTS
DEPTH: 26"
WIDTH: 58"

GULLY B TOTAL LENGTH - 51 FEET....CITED AS A VIOLATION
CROSS SECTION

STATION	DEPTH	WIDTH	REMARKS
@46'	60"	7'	SLOPE ESTIMATE 6:1
@38'	16"	4'	ALL RIVER ROCK RIP RAP
@30'	24"	4'	WASHED OUT OF THE
@17'	16"	7'	ERODED GULLY.

GULLY #2
ORIGINAL MEASUREMENTS
DEPTH: 57"
WIDTH: 82"

GULLY C TOTAL LENGTH - 53 FEET....NOT CITED AS A VIOLATION
CROSS SECTION

STATION	DEPTH	WIDTH	REMARKS
@49'	42"	10'	
@41'	36"	14'	ISLAND 3' WIDE 1 GULLY SPLITS
@30'	36"	15'	ISLAND 6' WIDE 1 INTO TWO
@25'	24"	12'	ISLAND 5' WIDE 1 WATERCOURSES
@20'	12"	14'	

OBSERVED AND
NOT MEASURED

GULLY D TOTAL LENGTH - 53 FEET....CITED AS A VIOLATION
CROSS SECTION

STATION	DEPTH	WIDTH	REMARKS
@47'	52"	8'	TENSION CRACKS PREPARATORY TO BANK FAILURE.
@33'	48"	9'	
@20'	20"	6'	RIVER ROCK RIP RAP REMOVED BY RUNOFF.
@9'	24"	12'	

GULLY #3
ORIGINAL MEASUREMENTS
DEPTH: 54"
WIDTH: 79"

GULLY E TOTAL LENGTH - 83 FEET....NOT CITED AS A VIOLATION
CROSS SECTION

STATION	DEPTH	WIDTH	REMARKS
@70'	36"	8'	
@62'	38"	13'	
@45'	34"	14'	
@10'	9"	10'	

OBSERVED AND
NOT MEASURED

DISTURBED ENCROACHMENT ON IVIE CREEK

<u>SEAM</u> <u>ENCROACHMENT</u>	<u>TOP</u> <u>WIDTH</u>	<u>SLOPE</u> <u>MEASUREMENT</u>	<u>REMARKS</u>
A	255'	65'	ROCK AT THE BOTTOM. SOME SUITABLE AREAS FOR SEEDING.
B	132'	33'	ALL ROCK. NO AREAS SUITABLE FOR SEEDING.

LAW OFFICES
STIRBA & HATHAWAY
A PROFESSIONAL CORPORATION
SUITE 1150
215 SOUTH STATE STREET
SALT LAKE CITY, UTAH 84111

PETER STIRBA

TELEPHONE: (801) 364-8300
FACSIMILE: (801) 364-8355

December 21, 1992

Thomas A. Mitchell
Assistant Attorney General
Division of Oil, Gas & Mining
Three Triad Center
355 West North Temple, #350
Salt Lake City, Utah 84180-1203

Re: Notice of Appeal on Hidden Valley Coal Company

Dear Tom:

I understand you did not receive a copy of the Notice of Appeal filed in the above case and mailed to you on December 4. Enclosed is another copy.

Very truly yours,


PETER STIRBA

PS/kg
Enc.

RECEIVED

DEC 22 1992

DIVISION OF
OIL GAS & MINING

PETER STIRBA (Bar No. 3118)
MARGARET H. OLSON (Bar No. 6296)
STIRBA & HATHAWAY
Attorneys for Plaintiff and Appellant
215 South State Street, Suite 1150
Salt Lake City, UT 84111
Telephone: (801) 364-8300

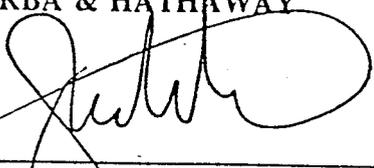
IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

HIDDEN VALLEY COAL COMPANY,	:	NOTICE OF APPEAL
Plaintiff and Appellant,	:	
v.	:	
the UTAH BOARD OF OIL, GAS & MINING and the UTAH DIVISION OF OIL, GAS & MINING,	:	Case No. 920904813CV
Defendants and Appellees.	:	Judge Glenn K. Iwasaki

Plaintiff and Appellant, Hidden Valley Coal Company, by and through counsel of record, hereby gives notice of appeal to the Utah Supreme Court of the Order of the Third Judicial District Court dated November 5, 1992. The District Court upheld, in part, the decision of the Board of Oil, Gas and Mining dated July 30, 1992. The Plaintiff now appeals that portion of the District Court's Order which upholds the Board. A copy of the District Court's Order is attached hereto as Exhibit "A" and made a part hereof.

Dated this 4th day of December, 1992.

STIRBA & HATHAWAY

BY: 

PETER STIRBA

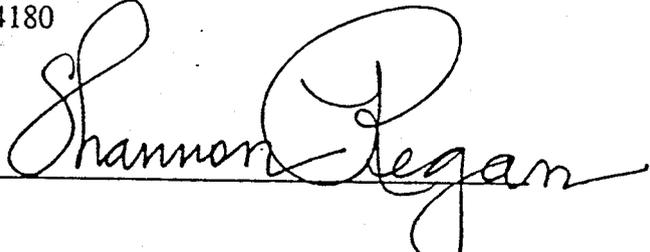
MARGARET H. OLSON

Attorneys for Plaintiff and Appellant
Hidden Valley Coal Company

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of December, 1992, a true and correct copy of the foregoing NOTICE OF APPEAL was mailed, postage pre-paid, to the following:

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



k\pl\hvc-appe.not

PETER STIRBA (Bar No. 3118)
MARGARET H. OLSON (Bar No. 6296)
STIRBA & HATHAWAY
Attorneys for Plaintiff
215 South State Street, Suite 1150
Salt Lake City, UT 84111
Telephone: (801) 364-8300

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

HIDDEN VALLEY COAL COMPANY,	:	
Plaintiff,	:	COST BOND ON APPEAL
v.	:	
the UTAH BOARD OF OIL, GAS & MINING and the UTAH DIVISION OF OIL, GAS & MINING,	:	Case No. 920904813CV
Defendants.	:	Judge Glenn K. Iwasaki

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

KNOW ALL MEN BY THESE PRESENTS, that I, Kris Gines, a property owner of Salt Lake County, Utah is held and bound unto the Clerk of the District Court of Salt Lake County in the sum of Three Hundred Dollars (\$300.00) to be paid to the said Clerk, for which payment I do hereby bind myself, my heirs, executors and administrators firmly by these presents.

The conditions of this bond are such that,

WHEREAS, the Court entered an Order on November 5, 1992;

WHEREAS, Hidden Valley Coal Company, the above-named Plaintiff, has taken an Appeal to the Utah Supreme Court;

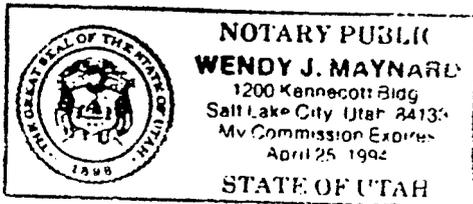
WHEREAS, the Court requires a cost bond of \$300.00;

NOW, THEREFORE, I hereby promise and hold myself amenable to the order of the above-entitled Court and irrevocably appoint the Clerk of the above-entitled Court as my agent upon whom papers affecting my liability on this Bond may be served, and if this appeal is dismissed, or the Judgment appealed from affirmed, I hereby promise to pay the costs on Appeal up to the sum of Three Hundred Dollars (\$300.00).

DATED this 4th day of December, 1992.


Kris Gines

On the 4 day of December, 1992, personally appeared before me Kris Gines, the signer of the foregoing Cost Bond on Appeal, who duly acknowledged to me that she executed the same.

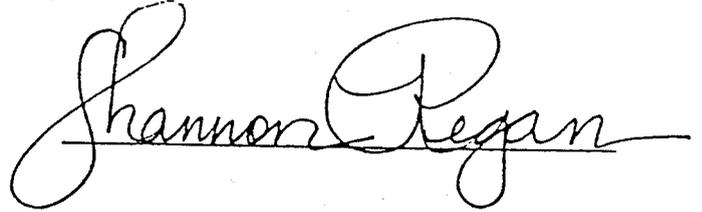



Notary Public

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of December, 1992, a true and correct copy of the foregoing COST BOND ON APPEAL was mailed, postage pre-paid, to the following:

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

A handwritten signature in cursive script that reads "Shannon Regan". The signature is written in black ink and is positioned to the right of the recipient's address.

k\plhvc-cost.bnd

*My new file
cc Staff
DRB
Lowell
P-6L
UB*

FABIAN & CLENDENIN

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

TWELFTH FLOOR
215 SOUTH STATE STREET
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P. BRUCE BADGER
JOHN (JACK) D. RAY
KATHLEEN H. SWITZER
CRAIG T. JACOBSEN
BRUCE D. REEMSNYDER

OF COUNSEL
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HELEN J. EDWARDS

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GEORGE D. MELLING, JR.
WARREN PATTEN
M. BYRON FISHER
STANFORD B. OWEN
WILLIAM H. ADAMS
ANTHONY L. RAMPTON
PETER W. BILLINGS, JR.
THOMAS CHRISTENSEN, JR.
DENISE A. DRAGOO
JAY B. BELL
DANIEL W. ANDERSON
GARY E. JUBBER
ROSEMARY J. BELESS
ANNA W. DRAKE
W. CULLEN BATTLE
KEVIN N. ANDERSON
RANDY K. JOHNSON

Copy Susan

December 11, 1992

RECEIVED

DEC 11 1992

HAND DELIVERED

DIVISION OF
OIL, GAS & MINING

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

RE: Revegetation Standards - Hidden Valley Mine

Dear Dr. Nielson:

At the request of Hidden Valley Coal Company ("HVCC"), we have reviewed the application of revegetation standards to the road and stream buffer area at the Hidden Valley Mine ("Mine"). As a result of the settlement discussions on December 3, 1992 between the Division of Oil, Gas & Mining ("Division") and HVCC, the parties are reviewing alternatives for the abatement of NOV 91-21-8-2 which is currently in litigation and resolution of the conditions of the May 2, 1980 stream buffer zone variance. HVCC is anxious to resolve these matters to assure the certainty as to its remaining reclamation obligations at the Mine. HVCC seeks to determine applicable revegetation standards, the specific areas of abatement to which these standards apply and the long-term obligations incurred by undertaking revegetation under the abatement plan. HVCC seeks to achieve a written consent decree or stipulation to avoid the cost and delay of litigation.

I. DO THE REVEGETATION STANDARDS APPLY TO THE AREAS CITED?

A. The Road As An Approved Post-Mining Land Use

The Division approves the road to the Mine as a post-mining land use under HVCC's 1986 reclamation plan. The Division's revegetation requirements provide a clear exception for roads which are approved as a post-mining land use.

Dr. Dianne R. Nielson
December 11, 1992
Page 2

R645-301-353. Revegetation: General Requirements. The permittee will establish on regraded areas and on all other disturbed areas, except water areas and surface areas of roads that are approved as part of the postmining land use, a vegetative cover that is in accordance with the approved permit and reclamation plan [emphasis added].

Under these regulations, the surface of the Mine road is not subject to revegetation standards.

B. Road as a Previously Disturbed Area

The road to the Mine was constructed in 1980, was not reclaimed to the requirements of the permanent program and may have been redisturbed by reclamation operations. Pursuant to the Division's regulations, revegetation standards applicable to the Mine road outcrops may be only those necessary to control erosion. R645-301-356.250 provides:

For areas previously disturbed by mining that were not reclaimed to the requirements of R645-200 to R645-203 and R645-301 to R645-302 and are remined or otherwise redisturbed by coal mining and reclamation operations, at a minimum, the vegetative ground cover will be not less than the ground cover existing before redisturbance and will be adequate to control erosion.

C. Vegetation and Erosion Control Standards

The erosion control standards applicable to roads specifically include "vegetating or otherwise stabilizing all exposed surface in accordance with current, prudent engineering practices." R645-301-752.210. In addition, cut and fill slopes of roads not approved as a post-mining land use must be reshaped to complement the drainage pattern of surrounding terrain. R645-301-762. However, this requirement is not applicable to the Mine road which has been approved as a post-mining land use. Id.

Dr. Dianne R. Nielson
December 11, 1992
Page 3

D. The Road as an Exception to a Disturbed Area

The Division's revegetation standards apply to "disturbed areas." R645-301-353. The term "disturbed area" is defined at R645-100-200 to exclude "roads that are designed, constructed and maintained in accordance with R645-301 and R645-302." Although the Mine road was designed and constructed in 1980 prior to adoption of the permanent standards, it may still qualify as an "existing structure." Under the definitions at R645-100-200, an "existing structure" is defined to include those built prior to January 21, 1981. The variance which was granted to HVCC's road under the terms of the 1986 permit may constitute an "existing structure exemption" under R645-100-420. If the Mine road is an "existing structure," it only needs to meet performance standards, not design standards. As indicated above, the surface of roads approved as a post-mining land use are specifically excluded from revegetation performance standards. In addition, cut and fill slopes may not be "disturbed areas" if the road otherwise meets the requirements of R645-301. Under R645-301, the only applicable standards appear to be use of revegetation or other engineering practices as erosion control.

In sum, this circular argument leads HVCC back to erosion control of out slopes by revegetation or other engineering practices. The reference area of the out slopes would appear to be the vegetation growing on the out slopes prior to redisturbance or that needed to control erosion. It seems unlikely that vegetation adequate to control erosion will succeed. Therefore, alternate engineering practices may be required.

II. APPLICATION OF REVEGETATION STANDARDS TO STREAM BUFFER ZONE

On May 2, 1980, the Division granted a variance to the stream buffer zone requirements at the Mine with the stipulation that the out slope of the fill of a pad area be stabilized and that runoff from the out slope meet the effluent limitations. HVCC believed that the terms of this variance were met long ago, however, the Division further required that the operator treat the out slope of the "A" seam. August 5, 1992 Division Memorandum. HVCC initially agreed to revegetate a small area on the out slope of the A-seam pad. However, the Division concluded that revegetation of this small area would restart the ten-year bond clock for reclamation liability. Therefore, by letter dated September 25, 1992, HVCC withdrew the seeding from its plan of

Dr. Dianne R. Nielson
December 11, 1992
Page 4

compliance. Under the terms of the settlement proposal, the Division has asked that this seeding take place.

A. A-Seam Pad as a Previously Disturbed Area.

The standard of revegetation applicable to the A-Seam pad as an area previously disturbed by mining is set forth at R645-301-356.250. Under this provision:

the vegetative ground cover will be not less than the ground cover existing before redisturbance and will be adequate to control erosion.

The pad was constructed prior to adoption of permanent program standards and would appear to be a previously disturbed area.

B. The A-Seam Pad as an "Existing Structure."

Under the definitions of R645-100-200 an "existing structure" is defined to include structures built prior to January 21, 1981. The A-Seam Pad was built prior to this date and a variance was granted to the structure in 1980. Therefore, the pad would appear to be an "existing structure exemption" under R645-100-420 which only must meet performance standards, not design standards.

III. DOES REVEGETATION RESTART THE BOND CLOCK?

The Division requires a period of ten years of extended responsibility for successful vegetation. R645-301-357.220. Pursuant to R645-301-357.100, this ten year period commences:

after the last year of augmented seeding, fertilization, irrigation or other work, excluding husbandry practices that are approved by the Division in accordance with R645-301-357.300.

Under this regulation, if seeding of the stream buffer zone and or the road out slopes is considered to be revegetation, this work would appear to restart the bond clock.

Certain exceptions to extending this period of liability appear to be available. If seeding is not undertaken for the

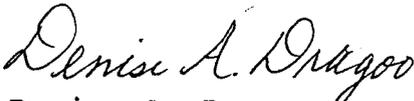
Dr. Dianne R. Nielson
December 11, 1992
Page 5

purpose of revegetation but for erosion control, the Division may have discretion not to restart the bond clock. In addition, the "husbandry practices" exception may be available if the activities do not constitute "augmented seeding." R645-301-357.300. The Division must determine what constitutes "husbandry practices" and adopt these practices into the Utah Coal Program. Id. Conservation practices including seeding may be approved as a "husbandry practice." Id.

In considering these alternatives, it should be noted that the recent vegetation survey at Hidden Valley Mine showed excellent revegetation of this area. The Mine as a whole is well on its way to meeting the Division's revegetation standards. If revegetation is considered over the entire area of the Mine as opposed to isolating the road and pad out slopes, revegetation standards could be met during the initial ten-year period. Because revegetation at the Mine has progressed to this point, the additional seeding activities requested by the Division may be viewed as erosion control activities which exceed the vegetation cover requirements of R645-301-353.

In conclusion, it appears that abatement of NOV N91-26-8-2 and satisfaction of the stream buffer zone variance may be achieved through erosion control. Revegetation is one form of erosion control but reseeding activities may restart the ten-year revegetation bond clock. If possible, erosion control, should be achieved through alternate engineering methods which cause minimum surface disturbance. If areas are seeded to prevent erosion control, an interpretation should be sought by the Division that these activities do not restart the bonding clock.

Very truly yours,


Denise A. Dragoo

cc: Lee Edmunson
Joe Jarvis
Karla Knoop

DAD:121092b



The CalMat Companies

December 11, 1992

VIA FACSIMILE

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

Re: NOV N91-26-8-2

Dear Dr. Nielson:

Following our meeting with the Division staff on December 3, 1992, we have modified our Abatement Plan on the above-referenced matter to conform with the comments contained in your letter of November 17, 1992, as clarified during the meeting. The modified Abatement Plan is attached hereto for your review and approval.

Please note that the Revegetation Monitoring Study, dated November 20, 1992, attached as an appendix to the Abatement Plan, is an integral part of the proposed plan, as it provides the basis for a number of conclusions contained in the plan, as well as justification for the methodologies to be employed in the plan's implementation. Also appended to the proposed Abatement Plan by this reference is the discussion and argument regarding the extended liability and bonding period; the so called "bond clock."

The Abatement Plan and bond clock interpretation are integrally linked in this submittal. The nature and extent of the remedial work proposed in the Abatement Plan necessitates that the Division make an interpretation of, or set policy for, what types of activities constitute maintenance and remedial erosion control, based upon experience within a specific reclamation site, and whether or not such proposed activities will restart the bonded liability period.

Dr. Dianne Nielson
December 11, 1992
Page 2

Hidden Valley Coal Company hereby requests an interpretation of the applicability of restarting the bonded liability period for the mine site if the work proposed in the Abatement Plan is performed. In my opinion, the arguments for erosion control and not restarting the bond clock under the circumstances proposed in the Abatement Plan for the Hidden Valley site, given the results of the Revegetation Monitoring Study, are persuasive. We are hopeful that you will agree once you have carefully considered all of the factors involved in this matter.

If you desire any additional information or clarification regarding this submittal, please do not hesitate to call me.

Sincerely,

HIDDEN VALLEY COAL COMPANY



Lee Edmonson
Assistant Secretary & Manager,
Planning and Regulatory Affairs

LE/cn

Enclosures

92-155



UTAH
NATURAL RESOURCES
Oil, Gas & Mining

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

gfd

MODIFICATION OF NOTICE OF VIOLATION/CESSATION ORDER

To the following Permittee or Operator:

Name Hidden Valley Mine, Hidden Valley Coal Company

Mailing Address 1801 E University Dr, Phoenix AZ 85034

State Permit No. ACT/015/007

Utah Coal Mining & Reclamation Act, Section 40-10-1 et seq., *Utah Code Annotated* (1953):

Notice of Violation No. N 91-26-8-2 dated NOV 20, 19 91.

Cessation Order No. C 92-26-1-2 dated SEP 1, 19 92.

Part 1 of 2 is modified as follows: Extension is granted for submittal of the abatement of the above-noted violation and COs per letter from Dianne R. Nielson dated 11/17/92

~~XXXXXXXXXXXXXXXXXXXX~~ which was extended to December 7, 1992 (and then per operator request dated 12/4/92) extended to December 11, 1992.

Part 2 of 2 is modified as follows: (same as above to allow abatement date to December 11, 1992) Additionally, the road upslope does not apply and submittal and approval of a

~~XXXXXXXXXXXXXXXXXXXX~~ plan in lieu of implementation will terminate this portion of the violation.

Part _____ of _____ is modified as follows: _____

Date of ~~XXXXXX~~ mailing 12/10/92 Time of ~~XXXXXX~~ mailing 3:00 a.m. p.m.

Date of inspection _____

Lee Edmonson
Permittee/Operator representative

Manager, Planning & Regulatory Affairs
Title

Signature *Lowell P. Braxton*

Lowell P. Braxton
Division of Oil, Gas & Mining

Associate Director, Mining
Title

Signature _____

**HIDDEN VALLEY COAL COMPANY
PLAN FOR ABATEMENT
OF
NOTICE OF VIOLATION NO. NS1-26-S-2**

December 8, 1992

Submitted by

**Hidden Valley Coal Company
1801 University Drive
Phoenix, Arizona 85034**

Prepared by

811

19 pages

**HIDDEN VALLEY COAL COMPANY
NOV ABANDONMENT PLAN**

Introduction

The proposed plan is intended to satisfy two violations that were issued for the reclaimed Hidden Valley Mine under NOV M-91-26-8-2 on November 20, 1991. The Hidden Valley site is owned and operated by Hidden Valley Coal Company. It is considered a difficult site to reclaim due to the inherent instability of the landscape and soils, and due to the erratic, scattered precipitation events that include intense convection storms. Significant plant growth can be short-lived, and erosion events from convection storms are characteristic of this terrain.

Following several heavy precipitation events that caused erosion in the reclaimed areas, repairs were made to the site, using modifications of original reclamation techniques in some areas. This has provided some stability to the site considering the natural erosion rate in the area. The seeded vegetation responded well to spring moisture in 1991 and 1992. Perennial plants have become established on the roadbed and the A- and B-veam fill slopes, in spite of six years of drought in the region. In particular, species seeded only in 1986 during the initial revegetation efforts have now appeared five growing seasons later as immature plants. A recently completed vegetation survey (attached as an appendix to this report) provides evidence of vegetation success.

The establishment of any seeded plant species in the roadbed has been difficult even with repeated seeding, fertilizing, mulching and covering with netting. Now that some desirable vegetation is becoming established, we will avoid further mechanical disturbances on the roadbed, either to alter water bar outfalls or to aid in revegetation.

The following sections describe plans to abate the two violations within the constraints given above. The first addresses the violation for erosion of road slopes and the second addresses seeding of disturbed areas associated with the road. Some of the procedures and methods proposed below differ from those described in the approved Hidden Valley Mine Reclamation Plan; a plan amendment has also been prepared.

Erosion Control

Hidden Valley Coal Company plans to abate the first violation by performing repair work on the water bars and the outfall locations using non-mechanical, hand labor. Use of equipment would not significantly increase the chances for success of the repairs. Even if equipment usage was considered acceptable from a re-disturbance standpoint, the same type of structures would be proposed as are proposed below; equipment would simply allow more dirt and rock to be moved faster. However, given the nature of the slope to be worked, equipment would only be able to access the upper third of the outfalls in most instances; hand work would be required for the majority of the outfall lengths. The detriment to vegetation by bringing in equipment is not acceptable for the benefits gained.

The proposed work will begin no later than April 1, 1993, and as soon as practical after approval has been obtained, materials have been received, and environmental conditions are acceptable. Conditions necessary for work to proceed are (1) no snow cover (for safety reasons it is not possible to work on the steep, unstable slope when snow is present), (2) ground not frozen such that digging is possible, and (3) moisture content such that fill slope materials are workable without forming clods. It is planned that a two-person labor crew will be supervised by a designated professional in accomplishing the proposed work. Level of effort is anticipated to be approximately one month for the crew to

accomplish the repairs. Given the non-uniform conditions within and among water bars, and given the non-standard materials and techniques proposed, close technical supervision of the crew will be necessary. In addition, is it anticipated that a product representative of the proposed material will be onsite during the initial stages of the repair work to provide guidance.

It is important to note that each of the water bar outfalls has eroded to a different level and configuration. At a given outfall, condition varies along the outfall length as well. In addition, particle size of the outfalls ranges from very fine textured clays up to large boulders and bedrock. Given the above, field fitting of the proposed structures will be essential to insure the greatest chance of success. The information provided below provides as much specificity as possible regarding dimensions and methods proposed. It is expected that the height, width, and thickness of structure will vary, as well as the distance between structures.

Next, it is important to note that the proposed techniques are thought to provide the best possible chance of success given the inherent constraints of site topography, substrate and climate. The natural, undisturbed watersheds above the roadway contribute sediment-laden runoff to the disturbed area, as evidenced by deposition in the water bars. Consequently, some erosion and sediment contribution to the ephemeral channel at the base of the slope is a natural phenomenon. The proposed treatments are not expected to eliminate all erosion from the disturbed area, nor are they expected to prevent all sediment contribution to the ephemeral drainage. Instead, they are expected to provide a measure of stability such that erosion will be minimized to the extent possible. Every effort will be made to insure that structures are installed properly and maintained after installation.

A description of the repair work follows.

First, the outfalls will be groomed or shaped within the confines of the existing gullies by rearranging loose rock and slump features. The side slopes of gullies - where steep, undercut or unstable - will be laid back to a gentler angle. Smaller boulders will be strategically placed within the gully, or will be removed. Larger boulders will be pried loose and rolled downhill where possible and desirable. Due to the nature of the unengineered fill in which these gullies occur, the reshaping will not result in a uniform channel down the steep slope, but will provide the best possible "foundation" for further repairs.

Next, small, porous check dams will be installed at frequent intervals along the outfall channels. These dams will be constructed of a fiber barrier using a product equivalent to the fiberdam material constructed by Synthetic Industries. Manufacturer's recommendations (attached at the end of this report) for material installation will be followed. The material is a flexible, moldable mass of fibers that, although irregular in shape, can be molded to fit within a non-uniform cross sectional area. It will be shaped to about a one-foot thickness, with maximum height approximately two feet. The center of the dams will be lower than the edges and will function as a spillway. The dams will be held in place with 18- 24-inch long metal rebar stakes. A schematic cross section showing the check dam treatment follows this report.

These dams will be spaced closely down the outfall; distance between dams will not be uniform, but is expected to range between approximately 5 - 15 feet. Generally, they will be spaced such that the downstream toe of a given dam will be at approximately the same elevation as the maximum potential elevation of sediments deposited behind the next dam downstream. The level to which sediments can be deposited above a dam is dependant upon the

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spillway elevation, the gradient above the dam, and particle size of the sediments. This level will not be known exactly; instead, visual estimation of dam location will be done using professional judgement. Presence of bedrock or large boulders will further affect spacing.

Where feasible, a synthetic fiber erosion matting will be laid in the channel between the check dams to provide additional protection. In areas where large rock may preclude placement of matting, the rock itself will serve as protection.

The function of these porous dams will be to reduce velocity of runoff in the outfall, causing deposition of sediments behind and within the fiber dams. Water will pass through the dams, as well as over the spillways; the porous nature of the dams will not block flow or set up conditions whereby forces against the dams are excessive. Allowing water to pass through the dams also reduces the chance of erosion around the edges of the dams, causing failure. Over time, sediments will eventually clog the dams. This, in combination with deposition behind the dams, will in effect, build back up the gully floor to some reasonable elevation. The retention of the fine sediments will, in turn, allow greater moisture retention and these areas will have a greater opportunity for plant colonization. The result will be a series of steps down the outfall, with the flat sections vegetated and the steep sections stabilized.

In addition, a continuation of ongoing work on the water bars themselves will be done. Level of effort will be greater than in the past, in an attempt to maintain retention potential for sediments and runoff water. This work will entail removal of sediments deposited in the bars and construction or enlargement of substantial check dams perpendicular to the bars to serve as retention structures.

Monitoring and Maintenance. In order to insure that erosion is minimized, each structure will be inspected periodically to insure proper functioning. During the regular inspection period of April through October, structures will be examined a minimum of once per month during the regular monthly site visit. In addition, they will be inspected after weather patterns indicate that substantial runoff may have occurred at the site. Any needed maintenance or repairs to the structures will be done within one calendar month following the identification of a problem. In addition, a photographic record will be kept to track outfall condition and to identify trends toward stabilization.

Revegetation

The revegetation techniques to answer the second violation will be limited to hand distribution methods only. The history of revegetation at Hidden Valley has shown that seedings only respond when sufficient moisture is available during the spring growing season. The use of mulching, netting and erosion blankets has not significantly altered the local environment conditions to foster plant growth. Thus, the revegetation attempts will utilize hand methods to increase moisture retention without severely damaging the surface of the steep slopes.

The areas to be seeded are: the access road which has previously been seeded three times; road fill slopes; and stream buffer zone slopes. The road upslopes will not be seeded. All seeding will be done using hand broadcast methods with the included seed mixture. On the access road - where total vegetation cover has recently been measured at 29 percent, and total perennial cover at 8 percent - the surface crust will be disturbed and seed will be broadcast in selected bare areas. Where substrate conditions allow on the remaining areas (road fill and buffer zone), pitting with a pulaski head tool at the rate of one pit per square yard will be done prior to broadcast seeding.

The revegetation work will be accomplished when soil conditions permit. These acceptable soil conditions are defined as less than 10 percent snow cover, frost free in the upper six inches, and sufficiently dry in the upper six inches to not clod when worked. If conditions do not permit seeding by February 1, 1993, an alternative seed mix to that listed below will be submitted for Division approval.

The following seed mixture and rates will be used:

Common Name	Scientific Name	lbs/acre	PLS
Indian ricegrass	<i>Oryzopsis hymenoides</i>	3	
Russian wildrye	<i>Elymus junceus</i>	3*	
Ephraim crested wheat	<i>Agropyron cristatum</i>	3**	
squirraltail	<i>Eitanion hystrix</i>	1	
yellow sweetclover	<i>Malilotus officinalis</i>	3	
fourwing saltbush	<i>Atriplex canescens</i>	3	
shadscale	<i>Atriplex confertifolia</i>	2	
winterfat	<i>Ceratoides lanata</i>	3	
Palmer's penstemon	<i>Penstemon palmari</i>	2	
Castle Valley saltbush	<i>Atriplex gardneri</i> var <i>cuneata</i>	2	
buckwheat	<i>Eriogonum corymbosum</i>	0.5	
	Total	25.5	

* exotic used in first mixture in 1986

** exotic but an excellent soil binder and better suited for this site than other native seeds available

This mixture varies from that listed in the Interim Plan. The species selection is based on what has grown and survived at Hidden Valley in the last five years.

Monoammonium phosphate fertilizer will be spread at a rate of 242 lbs/acre on all of the areas to be reseeded.

INSTALLATION

ESTIMATE THE MINIMUM THICKNESS RECOMMENDED FOR THE FIBERDAM AND THE SPACING BETWEEN FIBERDAMS USING THE FOLLOWING CHART:

CHANNEL DEPTH (INCHES)	MINIMUM RECOMMENDED FIBERDAM THICKNESS (INCHES)	RECOMMENDED SPACING BETWEEN FIBERDAMS (INCHES)
LESS THAN 6	4	15
12	7	30
18	10	45
24	12	70
36	18	90
48	20	120

STEP 1

- PLACE FIBER INTO THE CHANNEL AT THE RECOMMENDED THICKNESS UNTIL CHANNEL DEPTH IS 90% FILLED.
- PLACE FIBER AT EACH EDGE OF THE FIBERDAM UNTIL A "U" SHAPE IS FORMED AT THE TOP OF THE CHANNEL.
- ANCHOR THE FIBER TO THE SIDES OF THE CHANNEL USING STAKES OR STAPLES. THE MIDDLE OF THE DAM SHOULD BE LOWER THAN THE EDGES.
- PLACE STAKES AT THE BACK OF THE FIBERDAM AWAY FROM THE WATER FLOW.
- STAKES MAY PENETRATE THE FIBERDAM TO HOLD IT IN PLACE.
- STAKES SHOULD NOT BE PLACED GREATER THAN 6 INCHES APART. (SEE FIGURE 1).

STEP 2

- INSTALL THE NEXT FIBERDAM USING THE PROCEDURE OUTLINED IN STEP 1.
- REPEAT STEPS 1 AND 2 IN SEQUENCE UNTIL THE TOP OF THE CHANNEL IS REACHED.
- ON SOME INSTALLATIONS, IT IS RECOMMENDED THAT LANDSTRAND, COATED WITH ASPHALT EMULSION, BE USED BETWEEN FIBERDAMS TO AID IN COLLECTING SEDIMENT AND ENHANCING VEGETATION GROWTH.

FIBERDAM

BARRIER FOR EROSION CONTROL AND SEDIMENT COLLECTION

FIBERDAM IS A BARRIER FOR REDUCING THE VELOCITY OF WATER IN A CHANNEL AND CAUSING THE DEPOSIT OF SEDIMENT. PLACED IN RILLS AND GULLYS, FIBERDAM WILL ALLOW THE CHANNEL TO HEAL ITSELF BY CAUSING SEDIMENT DEPOSIT FOR GROWTH OF VEGETATION.

UNLIKE STRAW OR HAY BALES, FIBERDAM DOES NOT BLOCK THE FLOW OF WATER. FIBERDAM IS A FIBER BARRIER WHICH ALLOWS WATER TO PASS AT A REDUCED VELOCITY. FIBERDAM WILL NOT DECAY LIKE STRAW OR HAY BALES. IT FILLS WITH SEDIMENT AND BECOMES A PERMANENT REINFORCEMENT IN THE CHANNEL.

FEATURES

- LIGHTWEIGHT EASY TO TRANSPORT AND INSTALL.
- EASY INSTALLATION ANCHOR WITH WOODEN STAKES OR METAL STAPLES.
- FLEXIBLE WILL CONFORM TO ANY SHAPED CHANNEL.
- CUSTOM FIT THE AMOUNT OF FIBER USED IS DETERMINED BY THE EXPECTED WATER FLOW AND THE SIZE OF THE CHANNEL.

PRODUCT DATA

MATERIAL COMPOSITION-	POLYPROPYLENE
SPECIFIC GRAVITY-	0.91
IGNITION TEMPERATURE-	1,100 F (593 C)
WATER ABSORPTION-	NIL
FIBER DENIER-	400 NOMINAL
FIBER DIAMETER-	10 MILS NOMINAL
FIBER LENGTH-	6 INCHES NOMINAL

As a result of NOV N91-25-8-2, additional treatment to water bar outfalls has been done. The treatment consists of reshaping gullies formed in the outfalls, placement of porous check dams, and placement of erosion matting. Details on the design, functioning and maintenance of the outfall treatments are contained in the NOV Abatement Plan which is attached at the end of Appendix III of the Reclamation Plan.

Also as a result of the NOV cited above, reseeded of the road surface has been done in selected bare areas, and seeding has been done on the road fill slopes. Additional descriptions on surface preparation, seed mix and amendments are contained in other pages of this Plan Amendment.

water-barring of the road and filling of the small roadside ditch the discharge into this culvert will be eliminated.

UNC 817.103 Backfilling and Grading: Covering Coal and Acid- and Toxic-Forming Materials

Coal or other associated materials are not readily evident on the site. Should any of these materials be discovered during excavation and backfilling they will be placed against the coal seams and covered with other non-toxic materials. There is no water drainage from the coal seams or adits. Therefore, acid mine drainage and related toxic elements would not be discharged from the site. See letter in Appendix Ia.

UNC 817.105 Regrading or Stabilizing Rills and Gullies

The existing rills in the road surface will be eliminated with water-barring and ripping of the road surface. The rills or gullies that may appear during post-reclamation monitoring will be stabilized by filling with soil and rocks. Chronic sites [REDACTED] will be stabilized with small gabions [REDACTED] or rock check dams.

As a result of NOV M91-25-8-2, a fourth reseeded effort has been made on the road surface. The effort consisted of disturbing the soil surface in selected bare areas to prepare the seed bed, followed by hand broadcasting with an approved seed mix and fertilizer.

In addition, the road fill out slopes were seeded for the first time as a result of the NOV. Surface treatment consisted of hand pitting at a rate of one pit per square yard where substrate conditions allow. The entire road fill out slope was then seeded and fertilized by hand broadcasting.

The seed mix and fertilizer used in these efforts is given elsewhere in this Plan amendment.

As a result of NOV 891-26-B-2, additional treatment to water box outfalls has been done. The treatment consists of reshaping gullies formed in the outfalls, placement of porous check dams, and placement of erosion matting. Details on the design, functioning, and maintenance of the outfall treatments are contained in the NOV Abatement Plan which is attached at the end of Appendix III of the Reclamation Plan.

Amendments added to the soil in areas which were reseeded as a result of NOV NS1-25-8-2 consisted of 242 lbs/acre of monoammonium phosphate fertilizer. This fertilizer is preferable to the diammonium phosphate which was previously permitted, especially where alkaline soils occur.

AS a result of NOV N91-26-B-2, additional reseeded of the road surface has been done in selected bare areas, and seeding has been done on the road fill slopes. On the roadway itself, the effort consisted of disturbing the soil surface in selected bare areas to prepare the seedbed, followed by hand broadcasting with an approved seed mix and fertilizer. On the road fill out slopes, surface treatment consisted of hand pitting at a rate of one pit per square yard where substrate conditions allows. The entire road fill out slope was then seeded and fertilized by hand broadcasting.

Seeding that occurred in accordance with the abatement of NOV NS1-25-8-2 was done using the following seed mix:

<u>Common Name</u>	<u>Scientific Name</u>	<u>PLS</u> <u>lbs/acre</u>
Indian ricegrass	Oryzopsis hymenoides	3
Russian wildrye	Elymus junceus	3*
Ephraim crested wheat	Agropyron cristatum	3**
squirreltail	Sitanion hystrix	1
yellow sweetclover	Melilotus officinalis	3
fourwing saltbush	Atriplex canescens	3
shadscale	Atriplex confertifolia	2
Winterfat	Ceratoides lanata	3
Palmer's penstemon	Penstemon palmeri	2
Castle Valley saltbush	Atriplex gardneri var. cuneata	2
buckwheat	Eriogonum corymbosum	0.5
	<u>total</u>	<u>25.5</u>

* exotic used in first mixture in 1986

** exotic but an excellent soil binder and better suited for this site than other native seeds available

This mixture is based on what has grown and survived at Hidden Valley in the five years since revegetation efforts began.

Revegetation that was done in accordance with the abatement of NOV
M91-26-8-2 did not include the use of any such or netting.

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As a result of MOV N91-26-B-2, seeding and fertilizing of the pad
outcrops within the buffer zone has been done using non-mechanical
methods.



State of Utah

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

Bill

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

355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203
801-538-5340

November 17, 1992

CERTIFIED MAIL
Return Receipt Requested
P 074 975 191

FAXED 11-17-92

Mr. Lee Edmonson
CALMAT Company
Properties Division
1801 East University Drive
Phoenix, Arizona 85034

United States Corporation Company
600 Deseret Plaza Building
15 E. First South
Salt Lake City, Utah 84111

Dear Mr.  Edmonson:

Re: Response to Abatement Plan for NOV 91-26-8-1 and CO 92-26-1-2, Hidden Valley Mine, Hidden Valley Coal Company, ACT/015/007, Folder #2, Emery County, Utah

We have reviewed your submission dated October 29, 1992. Based on our phone conversation today, the Division is requesting that you submit additional information and plan amendments, as indicated below within 15 days of receipt of this letter. Work must be completed in the field within 30 days of approval by the Division, unless the Division determines that field conditions justify a delay in implementation. Failure to meet either of these deadlines will reinstate the failure to abate cessation order.

There are two parts to the violation. Part one deals with erosion, part two deals with the failure to seed all disturbed areas.

Part 1 of 2

Nature of violation:

- (1) Failure to maintain diversions to be stable pursuant to Utah Admin. R. 645(614)-301-742.312.1.
- (2) Failure to minimize erosion to the extent possible pursuant to Utah Admin. R. 645(614)-301-742.113.

Hidden Valley's abatement plan for part one of the violation does not adequately address how Hidden Valley will stabilize diversions and minimize erosion to the extent possible on the outslopes of the access roads as required by the pertinent regulations cited above. The information submitted for abatement does not comply with the currently approved plan and lacks sufficient detail.

Part 2 of 2

Nature of violation:

- (1) Failure to seed and revegetate all disturbed areas pursuant to Utah Admin. R. 645(614)-301-354.

Hidden Valley's abatement plan for part two of the violation does not adequately address how Hidden Valley will seed and revegetate the disturbed areas as required by the pertinent regulation cited above. For example, the proposed revegetation plan does not clearly state where seeding will take place. The NOV requires that the following disturbed areas will be seeded and revegetated: (1) the access road; (2) the outslopes of the access road; and (3) the stream disturbed outslopes. The abatement plan also contains statements inconsistent with abatement of the violation such as at page three of the abatement plan: "The sites requested for seeding, pitting, mulching, crimping will not be revegetated."

To be technically complete, Hidden Valley's plan must contain specific, detailed, and supported procedures for abatement of the violations which will bring the Hidden Valley mine into regulatory compliance. The submission should also demonstrate why the work being performed does not require restarting the bond clock.

We also note that the abatement plan proposes to abate the violation by utilizing procedures or methods that are not contained in the approved reclamation plan. Hidden Valley must

Page 3
Lee Edmonson
November 17, 1992

either act in accordance with the currently approved plan or provide an amendment to the plan together with a justification as to why it is not prudent and feasible to follow the approved plan. Any changes to the approved plan to abate either part of NOV 91-26-8-1 will be considered amendments and must be submitted to the Division in the proper format to amend the approved plan.

Amendments should be in page format for inclusion in the Rulemaking Plan, and can be submitted in conjunction with the plan for abatement of the NOV.

If you have any questions or want to discuss the proposed plan further, please contact me.

Best regards,

A handwritten signature in cursive script, appearing to read "Dianne", with a large, sweeping initial "D" that loops back to the left.

Dianne R. Nielson
Director

kak
cc: P. Littig
cc by fax: Denise Dragoo
Peter Stirba
DN92-85

NORA S. WORTHEN
Certified Shorthand Reporter
240 East 400 South
Salt Lake City, Utah 84111
(801) 535-5040

November 16, 1992

Peter Stirba
STIRBA & HATHAWAY
215 South State Street
Suite 1150
Salt Lake City, Utah 84111

Re: Hidden Valley Coal Company vs. Utah Board of Oil, Gas &
Mining, et al, Case No. 920904813 CV

Reporter's partial transcript of proceedings in the above-entitled
case which was heard on October 29, 1992 before the Honorable Glenn
K. Iwasaki.

Original & 1 copy - 7 pages

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Orig memo file
cc: [unclear]
P. [unclear]
Mitchell
W. Richards
JBR

LAW OFFICES
STIRBA & HATHAWAY
A PROFESSIONAL CORPORATION
SUITE 1150
215 SOUTH STATE STREET
SALT LAKE CITY, UTAH 84111

MARGARET H. OLSON

TELEPHONE: (801) 364-8300
FACSIMILE: (801) 364-8355

October 29, 1992

Copy Tom M.
Susan

Dianne Nielson
DIVISION OF OIL, GAS & MINING
Three Triad Center
355 West North Temple
Salt Lake City, Utah 84180

Re: *Hidden Valley Coal Company / Abatement of C92-26-1-2*

Dear Director Nielson:

Enclosed is the Plan of Abatement for the above Cessation Order and Notice of Violation No. N91-26-8-2 prepared by JBR Consultants Group. Please notify me immediately if this does not meet the requirements of your Cessation Order.

Very truly yours,

MARGARET H. OLSON

MHO/kg
Enclosure

HIDDEN VALLEY COAL COMPANY NOV ABATEMENT PLAN

Introduction

The proposed plan is intended to satisfy the violations under NOV N-91-26-8-2 recorded at the Hidden Valley reclamation site owned and operated by Hidden Valley Coal Company. The Hidden Valley site is considered difficult to stabilize due to the inherent instability of the landscapes and soils and the erratic scattered precipitation events that include intense convection storms. Thus, significant plant growth is short-lived and erratic and erosion events from convection storms are characteristic of this terrain.

Following several heavy precipitation events that caused erosion in the reclaimed areas, the repairs and modifications of reclamation techniques have somewhat stabilized the site considering the natural erosion rate in the area. The seeded vegetation has responded to spring moisture in 1991 and 1992 and has become established on the roadbed and the fill slopes of A and B seams. In particular, species seeded only in 1986 during the initial revegetation efforts have now appeared five growing seasons later as immature plants.

The establishment of any seeded plant species in the roadbed has been difficult even with repeated seeding, fertilizing, mulching and covering with netting. Now that some desirable vegetation is becoming established, we will avoid further disturbances on the roadbed. This would include the prohibition against bringing machinery onto the roadbed, either to alter waterbar outfalls or to aid in revegetation.

Violation Abate
ment requires
them to dress
the road.
scarify, seed,
fertilizer,
mulch.

The following sections describe plans to abate the two violations within the constraints given above. The first addresses the violation for erosion of road slopes and the second addresses seeding of disturbed areas associated with the road.

Erosion Control

Hidden Valley Coal Company plans to abate the first violation by performing repair work on the outfall locations using non-mechanical, hand labor. A description of the repair work follows.

First, the outfalls will be groomed or shaped within the confines of the existing gulleys by rearranging loose rock and slump features. Due to the nature of the unengineered fill in which these gulleys occur, the reshaping will not result in a uniform channel down the steep slope, but will provide the best possible "foundation" for further repairs.

Next, small, porous check dams will be installed at frequent intervals along the outfall channels. These dams will be constructed of a fiber barrier using a product equivalent to the fiberdam material constructed by Synthetic Industries. The material is a flexible, moldable mass of fibers that, although irregular in shape, can be molded to fit within a non-uniform cross sectional area. It will be shaped to about a 1-foot thickness, with maximum height approximately two feet. The center of the dams will be lower than the edges, functioning as a spillway. The dams will be held in place with wooden or metal stakes.

The function of these porous dams will be to reduce velocity of runoff in the outfall, causing deposition of sediments behind and within the fiber dams. Water will pass through the dams, as well as over the spillways; the porous nature of the dams will not block flow or set up conditions whereby forces against the dams are excessive. Allowing water to pass through the dams also reduces the chance of erosion around the edges of the dams, causing failure. Over time, sediments will eventually clog the dams. This, in combination with deposition behind the dams, will in effect, build back up the gulley floor to some reasonable elevation. The retention of the fine sediments will, in turn, allow greater moisture retention and these areas will have a greater opportunity for plant colonization.

These dams will be spaced closely down the channel, at a distance determined from field conditions. As needed, a synthetic fiber erosion matting may be laid in the channel between the check dams to provide additional protection.

The goal of the repair work is to enable development of a series of steps down the outfall, with the flat sections vegetated and the steep sections stabilized.

Revegetation The abatement doesn't require a plan to be submitted it just requires them to do the work. Changes desired should be done through the permit process. We need to collect the data. Call to determine road needed.
The revegetation techniques to answer the second violation will be limited to hand distribution methods only. The history of revegetation at Hidden Valley has shown that seedings only respond when sufficient moisture is available during the spring growing season. The use of mulching, netting and erosion blankets has not significantly altered the local environment conditions to foster plant growth. Thus, the revegetation attempts will utilize hand methods to increase moisture retention without severely damaging the surface of the steep slopes.

The areas requested for seeding will be broadcast seeded with the included seed mixture.

1. The sites requested for seeding and pitting will be done by broadcast seeding and pitting with a pulaski hand tool at the rate of one pit per square yard.

2. The sites requested for seeding, pitting, mulching and netting will be broadcast seeding after pitting as described in #1. The use of mulch and netting has not been beneficial at Hidden Valley.

3. The sites requested for seeding, pitting, mulching, crimping will not be revegetated. This site was seeded prior to the 1986 reclamation work, and through natural succession, is now progressing towards a natural colonized site. Need clarification as to where this is, as described by Karla 11/2/92 I agree no work needs to be done.

Hidden Valley project in site may require the seeding methods to be modified.

↑ This may be true for plant growth but the netting has greatly reduced erosion. Netting maybe needed when seeding hill slopes which have no rock.

These criteria are based on a field visit to the Division at Karla in Dec. None of these criteria were formally submitted. I talked w/ Karla 11/2/92 she said that plan was written in December and included an analysis.

a map. Lee needed a plan immediately so they submitted this plan without the map.

The revegetation work will be accomplished in the fall, 1992 season when soil conditions permit. Those acceptable soil conditions defined as less than 10% snow cover, frost free in the upper six inches and is sufficiently dry in the upper six inches to not clod when worked.

The following seed mixture and rates will be used:

<u>Common Name</u>	<u>Scientific Name</u>	<u>PLS lbs/acre</u>
Indian ricegrass	<i>Oryzopsis hymenoides</i>	3
Russian wildrye	<i>Elymus junceus</i>	3*
Ephraim crested wheat squirreltail	<i>Agropyron cristatum</i>	3**
yellow sweetclover	<i>Sitanion hystrix</i>	1
fourwing saltbush	<i>Melilotus officinalis</i>	3
shadscale	<i>Atriplex canescens</i>	3
winterfat	<i>Atriplex confertifolia</i>	2
	<i>Ceratoides lanata</i>	3
	Total	<u>21.0</u>

* exotic used in first mixture in 1986

** exotic but an excellent soil binder and better suited for this site than other native seeds available

This mixture varies from that listed in the Interim Plan. The species selection is based on what has grown and survived at Hidden Valley in the last five years.



State of Utah

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

Norman H. Beninger
Governor
Dee C. Hansen
Executive Director
Dianne R. Melson, Ph.D.
Division Director

356 West North Temple
3 Third Center, Suite 300
Salt Lake City, Utah 84103-1203
801-538-5340

Received 10-1-92

Ann E

RECEIVED

OCT 02 1992

STIRBA & HATHAWAY

September 28, 1992

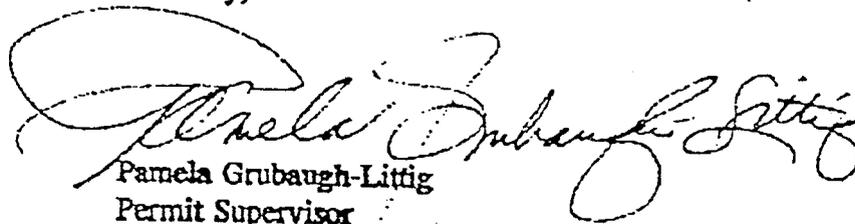
Mr. Lee Edmonson
CALMAT Company
Properties Division
1801 East University Drive
Phoenix, Arizona 85034

Dear Mr. Edmonson:

Re: Cessation Order C92-26-1-2, Hidden Valley Coal Company, Hidden Valley Mine,
ACT/015/007, Folder #2 and #5, Emery County, Utah

Enclosed please find Cessation Order (CO) No. C92-26-1-2 (Errata). This CO is
reissued to Hidden Valley Coal Company as a replacement document, with a copy sent to the
resident agent, United States Corporation Company.

Sincerely,


Pamela Grubaugh-Littig
Permit Supervisor

jbe
Enclosure
cc: Bill Malancik, PFO
015007CC

RECEIVED

OCT 02 1992

STIRBA & HATHAWAY
Page 1 of 3

ERRATA

NO. C 92-26-1-2

To the following Permittee or Operator:

Name HIDDEN VALLEY COAL COMPANY

Mine HIDDEN VALLEY

Surface Underground Other

County EMERY

State UT

Telephone (602) 254-8465

Mailing Address 1801 EAST UNIVERSITY DRIVE, PHOENIX AZ 85034

State Permit No. ACT/015/007

Ownership Category State Federal Fee Mixed

Date of Inspection NOVEMBER 20, 1991

Time of Inspection 8:00 a.m. p.m. to 3:00 a.m. p.m.

Operator Name (other than Permittee) LEE EDMONSON

Mailing Address 1801 E UNIVERSITY DR PHOENIX AZ 85034

Under authority of the Utah Coal Mining & 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 that a Cessation Order must be issued with respect to each of the conditions, practices or violations listed in the attachment(s). This order constitutes a separate Cessation Order for each condition, practice or violation listed.

In accordance with Section 40-10-22, Utah Code Annotated, you are ordered to cease immediately the operations described in the attachment(s) and to perform the affirmative obligations described in the attachment(s) within the designated time for abatement. Reclamation operations not directly the subject of this order shall continue while this order is in effect. You are responsible for doing all work in a safe and workmanlike manner.

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

This order 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 Division of Oil, Gas & Mining.

CERTIFIED RETURN RECEIPT P 074 979 291

Date of ~~issue~~/mailing SEPTEMBER 28, 1992

Time of ~~issue~~/mailing 3:00 a.m. p.m.

EFFECTIVE SEPTEMBER 1, 1992

LEE EDMONSON
Permittee/Operator representative

Title

Signature

PERMIT SUPERVISOR
Title

#20
Identification Number

PAMELA GRUBAUGH-LITTIG
Division of Oil, Gas & Mining representative

Pamela Grubaugh-Littig
Signature

SEE REVERSE SIDE

WHITE-DOG/M YELLOW-OPERATOR PINK-OSM GOLDENTROD-NOV FILE
CC: UNITED STATES CORP CO P 074 979 292

CESSATION ORDER NO. C 92-26-1-2

Violation No 1 of 2

Nature of condition, practice or violation

FAILURE TO ABATE AFOREMENTIONED VIOLATION
FAILURE TO MAINTAIN DIVERSIONS TO BE STABLE
FAILURE TO MINIMIZE EROSION TO THE EXTENT POSSIBLE

Provisions of act, regulations or permit violated

UCA et sec 40-10-20 (8)
R645-400-314
R645-301-742.312.1
R645-301-742.113

Check appropriate box

- Condition, practice or violation is creating an imminent danger to health or safety of the public.
- Permittee/Operator is/has been conducting mining activities without a permit.
- Condition, practice or violation is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.
- Permittee or Operator has failed to abate Violation(s) No. 1 OR 2 included in Notice of Violation No. N91-26-8-2 within time for abatement originally fixed or subsequently extended.

Operation(s) to be ceased immediately N/A

MINE IS IN A RECLAMATION STAGE, COVERED BY BOED, AND NO MINING IS TAKING PLACE AT THIS MINE.

Affirmative obligation(s) and abatement time (if applicable)

SUBMIT A COMPLETE AND ACCURATE PLAN TO REPAIR AND CONTROL EROSION

CESSATION ORDER NO. C92-26-1-2

Violation No. 2 of 2

Nature of condition, practice or violation

- FAILURE TO ABATE AFOREMENTIONED VIOLATION
- FAILURE TO CLEARLY MARK WITH PERIMETER MARKERS ALL DISTURBED AREAS
- FAILURE TO SEED AND REVEGETATE ALL DISTURBED AREAS

Provisions of act, regulations or permit violated

- UCA et sec 40-10-20 (8)
- R645-301-521.251
- R645-301-354

Check appropriate box

- Condition, practice or violation is creating an imminent danger to health or safety of the public.
- Permittee/Operator is/has been conducting mining activities without a permit.
- Condition, practice or violation is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.
- Permittee or Operator has failed to abate Violation(s) No. 2 OR 2 included in Notice of Violation No. N91-26-8-2 within time for abatement originally fixed or subsequently extended.

Operation(s) to be ceased immediately N/A

MINE IS IN A RECLAMATION STAGE COVERED BY BOND AND NO MINING IS TAKING PLACE AT THIS MINE.

Affirmative obligation(s) and abatement time (if applicable)

- INSTALL PERIMETER MARKERS TO CLEARLY MARK ALL THE DISTURBED AREAS.
- SEED THE SPECIFIED DISTURBED AREAS NOT PREVIOUSLY SEEDED
- RESEED THE ROAD
- SEEDING AND RESEEDING TO BE COMPLETED AS SPECIFIED IN THE MINING AND RECLAMATION PLAN

LAW OFFICES
STIRBA & HATHAWAY
A PROFESSIONAL CORPORATION
SUITE 1150
215 SOUTH STATE STREET
SALT LAKE CITY, UTAH 84111

PETER STIRBA

TELEPHONE (801) 364-8300
FACSIMILE (801) 364-8355

TELECOPIER TRANSMISSION SHEET

October 29, 1992

TO: William R. Richards
Assistant Attorney General
Division of Oil, Gas & Mining
359-3940

THIS TRANSMISSION TOTALS 2 PAGES INCLUDING THIS COVER SHEET.

PLEASE NOTE: The information contained in this facsimile message is privileged and confidential and is intended only for the use of the individual or entity named above and others who have been specifically authorized to receive it. If you are not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, or if any problems occur with transmission, please notify us immediately by telephone at (801) 364-8300. Thank you.

Re: *Hidden Valley Coal Company*

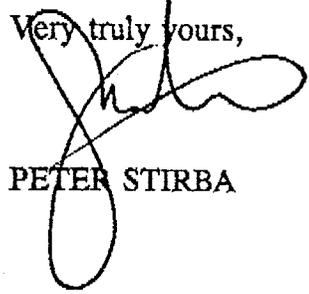
Dear Bill:

Would you please make sure that the proposed Order is first submitted to me for my approval pursuant to Rule 4-501 as it is just simpler that way.

Also, I presume that Hidden Valley will take appropriate action pursuant to the NOV and therefore I would appreciate it if the Division would not take any emergency action adverse to my client without us first at least talking on the phone. I can assure you that neither myself nor my client have any tricks up our sleeves for which the Division should have any concerns.

I look forward to receiving your proposed Order. I appreciate your kind comments after today's hearing.

Very truly yours,



PETER STIRBA

PS/kg

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

RECEIVED

SEP 23 1992

DIVISION OF
OIL, GAS & MINING

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

HIDDEN VALLEY COAL COMPANY	:	
Plaintiff,	:	ORDER EXTENDING THE
	:	TEMPORARY RESTRAINING
v.	:	ORDER
	:	
the UTAH BOARD OF OIL, GAS &	:	
MINING and the UTAH DIVISION	:	Case No. 920904813CV
OF OIL, GAS & MINING,	:	
	:	Judge Glenn Iwasaki
Defendants.	:	

Based upon the parties' Stipulation and for good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. The Temporary Restraining Order entered September 11, 1992, is extended and will remain in full force and effect until October 20, 1992 at 3:35 p.m.

2. If a hearing on Plaintiff's Motion for a Preliminary Injunction is held as presently scheduled on September 29, 1992 at 2:00 p.m., or any time before October 20, 1992 at 3:35 a.m., the Temporary Restraining Order will expire upon the conclusion of that hearing.

DATED this 21st day of September, 1992.

BY THE COURT:

/s/
JUDGE GLENN IWASAKI

CERTIFICATE OF DELIVERY

I hereby certify that on this 17 day of September, 1992, a true and correct copy of the foregoing ORDER EXTENDING THE TEMPORARY RESTRAINING ORDER was hand delivered to the following:

William R. Richards
Thomas A. Mitchell
Assistants 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 Dragoo
FABIAN & CLENDENIN
P.O. Box 510210
Salt Lake City, Utah 84151



SEP 11, 92

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

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

HIDDEN VALLEY COAL COMPANY	:	
Plaintiff,	:	PLAINTIFF HIDDEN VALLEY
v.	:	COAL COMPANY'S MOTION
	:	FOR A TEMPORARY
	:	RESTRAINING ORDER
the UTAH BOARD OF OIL, GAS &	:	
MINING and the UTAH DIVISION	:	Case No. 920904813CV
OF OIL, GAS & MINING,	:	
Defendants.	:	Judge Leslie A. Lewis

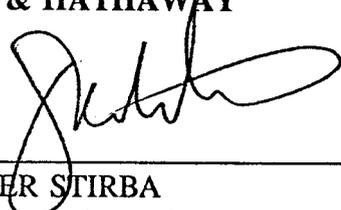
Plaintiff Hidden Valley Coal Company hereby moves the Court for a Temporary Restraining Order, ordering the Defendants, their officers, agents, employees, representatives, and all persons acting in concert with the Defendants, from enforcing, implementing or acting upon in any way a Cessation Order, No. C 92-26-1-2, issued by the Defendants by certified mail on September 1, 1992 or a Notice of Violation, issued by Defendants on January 21, 1992 until the resolution of *Hidden Valley Coal Company v. The Utah Board of Oil Gas and Mining, et. al.*, Case No. 920904813CV, currently pending before this Court. This motion is based upon the Affidavit of Lee Edmonson and the pleadings herein, which establish that Plaintiff Hidden

Valley Coal Company will sustain immediate and irreparable injury, loss and damage of \$ 750.00 per day in the event that Defendants enforce any fine, penalty or civil remedy implicated by the Cessation Order dated September 1, 1992.

Dated this 14th day of September, 1992.

STIRBA & HATHAWAY

BY: _____


PETER STIRBA
Attorneys for Plaintiff Hidden Valley
Coal Company

CERTIFICATE OF DELIVERY

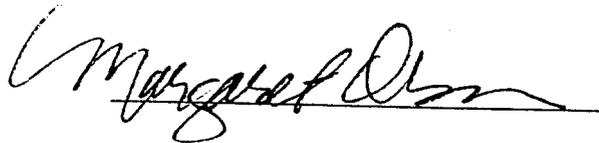
I hereby certify that on this 11th day of September, 1992, a true and correct copy of the foregoing PLAINTIFF HIDDEN VALLEY COAL COMPANY'S MOTION FOR A TEMPORARY RESTRAINING ORDER was hand delivered to the following:

William R. Richards
Thomas A. Mitchell
Assistants 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 Dragoo
FABIAN & CLENDENIN
P.O. Box 510210
Salt Lake City, Utah 84151



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

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

HIDDEN VALLEY COAL COMPANY	:	
Plaintiff,	:	AFFIDAVIT OF LEE
	:	EDMONSON
v.	:	
the UTAH BOARD OF OIL, GAS & MINING and the UTAH DIVISION OF OIL, GAS & MINING,	:	Case No. 920904813CV
Defendants.	:	Judge Leslie A. Lewis

The undersigned, Lee Edmonson, being duly sworn under oath, deposes and states as follows:

1. I am the Manager of Planning and Regulatory Affairs of Hidden Valley Coal Company.
2. I am aware of the operations of Hidden Valley Coal Company's mine site located in Emery County, Utah.

3. On August 27, 1992, Hidden Valley Coal Company filed a Complaint in the Third Judicial District Court for the State of Utah for the purpose of obtaining judicial review and appealing the Order of the Utah Board of Oil, Gas and Mining under Utah Code Ann. § 40-10-30 (1986).

4. On September 1, 1992, the Utah Board of Oil, Gas and Mining issued a Cessation Order to Hidden Valley Coal Company relating to abatement action at the Emery County mine site. *See* Cessation Order, attached hereto as Exhibit "A."

5. I received this Cessation Order on September 3, 1992.

6. The Cessation Order names CalMat of Arizona as the operator/permittee of the Emery County mine site. This is incorrect. Hidden Valley Coal Company is the operator and permittee of the Emery County Mine Site. Nevertheless, the Cessation Order purports to order abatement action at the Emery County mine site.

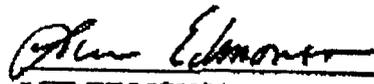
7. On information and belief, Hidden Valley Coal Company will be assessed \$ 750.00 per day in civil penalties for each day after September 10, 1992 that the Cessation Order is not stayed.

8. Hidden Valley Coal Company has appealed the issues which are the subject of the Cessation Order.

9. If a \$ 750.00 per day penalty accrues during the time that Hidden Valley Coal Company pursues its appeal, it will be irreparably harmed.

10. If Hidden Valley Coal Company avoids the \$ 750.00 per day penalty by taking the abatement action, Hidden Valley Coal's appeal of this exact order will be rendered meaningless and inconsequential.
11. The abatement action has already been stayed from the date of issuance of the Notice of Violation in January of this year until the present.
12. A stay of abatement action pending judicial review will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air or water resources.
13. The condition which is the subject of the Notice of Violation and the Cessation Order has existed for years.
14. Hidden Valley Coal Company will be irreparably harmed to the extent of \$ 750.00 per day unless the Cessation Order is stayed pending the outcome of its appeal of the basis on which such abatement action is ordered.

Dated this 10th day of September, 1992.



LEE EDMONSON

CERTIFICATE OF DELIVERY

I hereby certify that on this 11th day of September, 1992, a true and correct copy of the foregoing AFFIDAVIT OF LEE EDMONSON was hand delivered to the following:

William R. Richards
Thomas A. Mitchell
Assistants 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 Dragoo
FABIAN & CLENDENIN
P.O. Box 510210
Salt Lake City, Utah 84151



EXHIBIT "A"



Received
9-3-92
P.E.

NO. C 92-26-1-2

cessation order

To the following Permittee or Operator:

Name CAL MAT CO.

Mine HIDDEN VALLEY Surface Underground Other

County EMERY State UT Telephone (602) 254-8465

Mailing Address 1801 EAST UNIVERSITY DRIVE, PHOENIX AZ 85034

State Permit No. ACT/015/007

Ownership Category State Federal Fee Mixed

Date of Inspection NOVEMBER 20, 1991

Time of Inspection 8 a.m. p.m. to 3 a.m. p.m.

Operator Name (other than Permittee) LEK EDMONSON

Mailing Address 1801 E UNIVERSITY DR PHOENIX AZ 85034

Under authority of the Utah Coal Mining & 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 that a Cessation Order must be issued with respect to each of the conditions, practices or violations listed in the attachment(s). This order constitutes a separate Cessation Order for each condition, practice or violation listed.

In accordance with Section 40-10-22, Utah Code Annotated, you are ordered to cease immediately the operations described in the attachment(s) and to perform the affirmative obligations described in the attachment(s) within the designated time for abatement. Reclamation operations not directly the subject of this order shall continue while this order is in effect. You are responsible for doing all work in a safe and workmanlike manner.

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

This order 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 Division of Oil, Gas & Mining.

CERTIFIED RETURN RECEIPT P 074 979 280

Date of ~~RECEIPT~~/mailing SEPTEMBER 1, 1992

Time of ~~RECEIPT~~/mailing 3:00 a.m. p.m.

LEK EDMONSON
Permittee/Operator representative

Title

Signature

PAMELA GRUBAUGH-LITTIG
Division of Oil, Gas & Mining representative

PERMIT SUPERVISOR

Pamela Grubaug-Littig
Signature

Title

#20
Identification Number

SEE REVERSE SIDE

WHITE-DOGSM YELLOW-OPERATOR PINK-OGM GOLDENROD-NOV FILE
CC: UNITED STATES CORP CO

DOGSM/CO-1

an equal opportunity employer

Rev. 5/92



CESSATION ORDER NO. C 92-26-1-2

Violation No. 1 of 2

Nature of condition, practice or violation

FAILURE TO ABATE AFOREMENTIONED VIOLATION
FAILURE TO MAINTAIN DIVERSIONS TO BE STABLE
FAILURE TO MINIMIZE EROSION TO THE EXTENT POSSIBLE

Provisions of act, regulations or permit violated

DCA et sec 40-10-20 (8)
R645-400-314
R645-301-742.312.1
R645-301-742.113

Check appropriate box

- Condition, practice or violation is creating an imminent danger to health or safety of the public.
- Permittee/Operator is/has been conducting mining activities without a permit.
- Condition, practice or violation is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.
- Permittee or Operator has failed to abate Violation(s) No. 1 DE included in Notice of Violation No. N91-26-8-2 within time for abatement originally fixed or subsequently extended.

Operation(s) to be ceased immediately N/A

MINE IS IN A RECLAMATION STAGE, COVERED BY BOND, AND NO MINING IS TAKING PLACE AT THIS MINE.

Affirmative obligation(s) and abatement time (if applicable)

SUBMIT A COMPLETE AND ACCURATE PLAN TO REPAIR AND CONTROL EROSION



CESSATION ORDER NO. C 97-26-1-2

Violation No. 2 of 2

Nature of condition, practice or violation

FAILURE TO ABATE AFOREMENTIONED VIOLATION

FAILURE TO CLEARLY MARK WITH PERIMETER MARKERS ALL DISTURBED AREAS

FAILURE TO SEED AND REVEGETATE ALL DISTURBED AREAS

Provisions of act, regulations or permit violated

UCA et sec 40-10-20 (8)

R645-301-521, 251

R645-301-354

Check appropriate box

- Condition, practice or violation is creating an imminent danger to health or safety of the public.
- Permittee/Operator is/has been conducting mining activities without a permit.
- Condition, practice or violation is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.
- Permittee or Operator has failed to abate Violation(s) No. 2 OF 2 included in Notice of Violation No. N91-26-B-2 within time for abatement originally fixed or subsequently extended.

Operation(s) to be ceased immediately N/A

MINE IS IN A RECLAMATION STAGE COVERED BY BOND AND NO MINING IS TAKING PLACE AT THIS MINE.

Affirmative obligation(s) and abatement time (if applicable)

INSTALL PERIMETER MARKERS TO CLEARLY MARK ALL THE DISTURBED AREAS.

SEED THE SPECIFIED DISTURBED AREAS NOT PREVIOUSLY SEEDED

RESEED THE ROAD

SEEDING AND RESEEDING TO BE COMPLETED AS SPECIFIED IN THE MINING AND RECLAMATION PLAN

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IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

HIDDEN VALLEY COAL COMPANY	:	
Plaintiff,	:	PLAINTIFF HIDDEN VALLEY
v.	:	COAL COMPANY'S
the UTAH BOARD OF OIL, GAS &	:	MEMORANDUM IN SUPPORT
MINING and the UTAH DIVISION	:	OF ITS MOTION FOR A
OF OIL, GAS & MINING,	:	TEMPORARY RESTRAINING
Defendants.	:	ORDER
	:	Case No. 920904813CV
	:	Judge Leslie A. Lewis

Pursuant to Utah Code of Judicial Administration Rule 4-501 and Utah R. Civ. P. 65A(b), the Plaintiff Hidden Valley Coal Company, by and through its attorney of record Peter Stirba, respectfully submits its Memorandum in Support of its Motion for a Temporary Restraining Order.

STATEMENT OF FACTS

1. Plaintiff Hidden Valley Coal Company ("HVCC") is a Utah corporation which owns a coal property in Emery County, Utah, hereinafter referred to as the "Mine Site."

2. Defendants the Utah Board of Oil Gas and Mining and the Utah Division of Oil, Gas & Mining are departments of the Utah Department of Natural Resources, created and authorized under Utah Code Ann. § 40-6-1 *et. seq.*

3. On January 21, 1992, the Defendants issued a Notice of Violation to Plaintiff HVCC, ordering certain abatement action to be taken at the Mine Site. *See* Notice of Violation, attached hereto as Exhibit "A."

4. On February 12, 1992, the Plaintiff HVCC petitioned the Defendants for temporary relief from taking the abatement action ordered in the Notice of Violation pending an administrative appeal.

5. On February 14, 1992, the Defendants granted the Petition, extending the time for abatement to thirty days following the Board's entry of its written decision in the pending review proceedings. *See* Order #1, attached hereto as Exhibit "B."

6. On July 30, 1992, the Defendant Board of Oil, Gas and Mining issued an order upholding the Division with respect to the issuance of the Notice of Violation. *See* Order #2, attached hereto as Exhibit "C."

7. Under the terms of the first Order, the deadline for Plaintiff HVCC to take abatement action became thirty days after the entry of the second Order, or August 31, 1992.

8. On August 27, 1992, the Plaintiff HVCC filed this appeal for the purpose of obtaining judicial review and appealing the second order of the Defendants under Utah Code Ann. § 40-10-30 (1986).

9. On September 1, 1992, the Defendant Board of Oil, Gas and Mining issued a Cessation Order to Plaintiff HVCC relating to abatement action at the Mine Site. *See* Cessation Order, attached hereto as Exhibit "D." This Cessation Order was received by Plaintiff HVCC on September 3, 1992.

10. The Cessation Order is flawed on its face because it fails to name the correct permittee or operator and does not give a time for compliance as required by Utah Code Ann. § 40-10-22(1)(e) (1981). *See* Affidavit of Lee Edmonson, filed and served herewith. Nevertheless, the Cessation Order purports to order abatement action at the Mine Site.

11. On September 3, 1992, the Plaintiff HVCC contacted the Defendant Board of Oil, Gas and Mining asking the Chairman James W. Carter to issue an emergency order preserving the *status quo* of the parties pending Hidden Valley's appeal with the district court.

12. On September 9, 1992, after a lengthy deliberation period, the Defendant Board of Oil, Gas and Mining issued a Memorandum Decision and Order granting Plaintiff HVCC's request to stay the cessation order until September 10, 1992 "in order to allow [Plaintiff HVCC] to seek appropriate judicial remedies or commence abatement . . ." *See* Memorandum Decision and Order, attached hereto as Exhibit "E."

13. Plaintiff HVCC has given notice of its Motion for a Temporary Restraining Order to Defendants.

14. The Plaintiff HVCC will be assessed \$ 750.00 per day in civil penalties for each day after September 10, 1992 that the Cessation Order is not stayed. *See* Memorandum Decision and Order, attached hereto as Exhibit "E," and Utah Admin. Code 645-400-420.

15. The Plaintiff HVCC is appealing the issues which are the subject of the Cessation Order. If a \$ 750.00 per day penalty accrues during the time that Plaintiff HVCC pursues its appeal, it will be irreparably harmed. *See* Affidavit of Lee Edmonson, filed and served herewith.

16. If Plaintiff HVCC avoids the \$ 750.00 per day penalty by taking the abatement action, this appeal will be rendered substantively moot. The subject matter of the appeal is the exact subject matter of the Cessation Order.

17. The injury to the Defendants will be insignificant. The abatement action has already been stayed from the date of the Notice of Violation in January of this year until the present. *See* Order #1, attached hereto as Exhibit "B." The stay will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air or water resources. *See* Affidavit of Lee Edmonson, filed and served herewith.

18. Furthermore, on February 14, 1992, counsel for Defendants stipulated that no adverse effects to the health or safety of the public and no significant imminent environmental harm to land, air or water resources is present or likely at the Mine Site. *See* Order #1, attached hereto as Exhibit "B."

19. In fact, no emergency situation of any kind is present at the Mine Site. The condition which is the subject of the Notice of Violation and the Cessation Order has existed for years. *See* Affidavit of Lee Edmonson, filed and served herewith.

20. The Plaintiff HVCC will be irreparably harmed to the extent of \$ 750.00 per day unless the Cessation Order is stayed pending the outcome of its appeal of the basis on which such abatement action is ordered. *See* Affidavit of Lee Edmonson, filed and served herewith.

ARGUMENT

A restraining order or preliminary injunction may issue only upon a showing by the applicant that:

- (1) The applicant will suffer irreparable harm unless the order or injunction issues;
- (2) The threatened injury to the applicant outweighs whatever damage the proposed order or injunction may cause the party restrained or enjoined;
- (3) The order or injunction, if issued, would not be adverse to the public interest; and
- (4) There is a substantial likelihood that the applicant will prevail on the merits of the underlying claim, or the case presents serious issues on the merits which should be the subject of further litigation.

Utah R. Civ. P. 65A(e). A temporary restraining order should issue in this case because Plaintiff HVCC has made the necessary showing and will be substantially and irreparably harmed by the action Defendants threaten to take against them.

A. The Plaintiff Hidden Valley Coal Company Will Suffer Substantial and Irreparable Harm if the Cessation Order is Not Stayed.

The Plaintiff HVCC will be assessed \$ 750.00 per day in civil penalties for each after September 10, 1992 that the Cessation Order is not stayed for a 30-day period and such other action which the Defendants may take to enforce the Cessation Order. See Memorandum Decision and Order, attached hereto as Exhibit "F," and Utah Admin. Code 645-401-420, 430. Plaintiff HVCC should not have to take the abatement action which is the subject of its pending appeal before the appeal is resolved. Otherwise, the entire appeal is rendered moot because the abatement action would be required *now* instead of *after* HVCC has exercised its right to judicial review under Utah Code Ann. § 40-10-30 (1986). A civil penalty of \$750.00 per day and action by the Defendants to enforce the Cessation Order under Utah Admin. Code 645-401-430 will cause Plaintiff HVCC irreparable harm. See Affidavit of Lee Edmonson, filed and served herewith. Furthermore, because of certain immunities of the Defendants, Plaintiff HVCC will be unable to recoup these penalties if it ultimately prevails in its appeal.

B. The Substantial Economic Injury to Plaintiff Hidden Valley Coal Company Outweighs Any Negligible Injury to the State.

The threatened injury to Plaintiff HVCC far outweighs any insignificant intangible damage to the Defendants. The Defendants will not be damaged at all. The Notice of Violation has already been stayed since January 21 of this year. The Defendants' counsel stipulated that no public health or safety issues are implicated and no environmental harm to land, air or water

will occur. *See* Order #1, attached hereto as Exhibit "B." The condition Defendants want abated has existed for years. *See* Affidavit of Lee Edmonson, filed and served herewith.

In light of the immediate, substantial and irreparable damage which Plaintiff HVCC will incur, the harm to the Defendants is negligible. The only way this harm can be prevented is if the Court issues a temporary restraining order preventing the Defendants from enforcing, implementing or acting upon in any way the Cessation Order issued by the Defendants on September 1, 1992 until the resolution of the appeal currently pending before this Court.

C. The Public Interest is Unaffected by a Temporary Restraining Order in This Case.

There are no issues of public policy implicated in this case. There have been no dangerous environmental conditions ever reported or alleged. *See* Affidavit of Lee Edmonson, filed and served herewith. As established above, the Defendants stipulated to this fact. *See* Section "B," *supra* and Order #1, attached hereto as Exhibit "B." The Mine Site has existed in its present state at least since January, 1992 when the Defendants issued their Notice of Violation. A ten day temporary restraining order will not cause or worsen any condition that has not been present all year.

D. Hidden Valley Coal Company Presented Serious Issues in Its Appeal Which Should Be the Subject of Further Litigation.

Plaintiff HVCC filed its appeal on August 27, 1992, three days before the Board's Order extending the time for abatement ran out. Plaintiff HVCC has a statutory right to judicial review of the Defendants' finding that it is subject to the jurisdiction of the statutes and must take the

abatement action ordered. *See* Utah Code Ann. § 40-10-30 (1986). This appeal is proper, in good faith and should be given full consideration by the Court. At this date, Plaintiff HVCC should not be forced to go ahead and make the changes which are the subject of a pending good faith appeal. Utah Admin. Code 645-401-422 contemplates that once penalty review proceedings are initiated and the Court suspends abatement obligations, daily assessments will not be made until entry of a final order by the Court. In order to preserve the integrity of Plaintiff HVCC's appeal, the Court should stay the Cessation Order of September 1, 1992 until the resolution of this appeal. These are all issues which deserve the full attention of the Court. Given this showing, the fourth requirement for a temporary restraining order is satisfied.

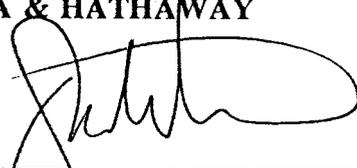
CONCLUSION

Plaintiff Hidden Valley Coal Company meets all statutory requirements for the issuance of a temporary restraining order. It has demonstrated immediate, irreparable economic harm to itself, along with a lack of harm to the Defendants and a lack of public policy concerns. In addition, the Plaintiff made a preliminary showing sufficient to establish a substantial likelihood that it will prevail on its appeal, and that the Court will find as a matter of law that the Notice of Violation and Cessation Order were improperly and illegally issued.

Dated this 17th day of September, 1992.

STIRBA & HATHAWAY

BY: _____


PETER STIRBA
Attorneys for Plaintiff Hidden Valley
Coal Company

CERTIFICATE OF DELIVERY

I hereby certify that on this 17th day of September, 1992, a true and correct copy of the foregoing PLAINTIFF HIDDEN VALLEY COAL COMPANY'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR A TEMPORARY RESTRAINING ORDER was hand delivered to the following:

William R. Richards
Thomas A. Mitchell
Assistants Attorney General
UTAH DIVISION OF OIL, GAS & MINING
3 Triad Center, Suite 350
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Jan Brown, Docket Secretary
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A handwritten signature in cursive script, reading "Margaret Olson", written over a horizontal line.

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