

# **EXHIBIT "A"**



UTAH  
NATURAL RESOURCES  
Oil, Gas & Mining

3 Triad Center • Suite 350 • Salt Lake City, UT 84180-1293 • 801-533-5340

NO. N 92-25-1-1

notice of violation

To the following Permittee or Operator:

Name HIDDEN VALLEY COAL CO.

Mine HIDDEN VALLEY

County EMERY

State UTAH

Surface

Underground

Other

Telephone 602-254-8465

Mailing Address 1801 UNIVERSITY DRIVE

State Permit No ACT 1015 1007

Ownership Category 950  State

Federal

Fee

Mixed

Date of inspection 1/22/92

Time of inspection 11:30

a.m.

p.m.

a.m.

p.m.

Operator Name (other than Permittee) LEE EDMONSON

Mailing Address 1801 E UNIVERSITY DRIVE PHOENIX, ARIZ. 85034

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

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

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

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

Date of service/ mailing 1/21/92

Time of service/ mailing 10:35  a.m.  p.m.

Paul D. Knapp  
Permittee/Operator representative

Hy [unclear]  
Title

Paul D. Knapp  
Signature

THOMAS MUNSON  
Division of Oil, Gas & Mining representative

Reclamation Specialist III  
Title

Thomas Munson  
Signature

#25  
Identification Number

SEE REVERSE SIDE

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

DOGMI/NOV.1

an equal opportunity employer



UTAH  
NATURAL RESOURCES  
Oil, Gas & Mining

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

Violation No. 1 of 1

Nature of violation

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

Provisions of act, regulations or permit violated

R645-301-731.610 STREAM BUFFER ZONE

Portion of operation to which notice applies

Pad outslope to Aric Creek

Remedial action required (including any interim steps)

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

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

Abatement time (Including interim steps)

5:00 PM, FEBRUARY 21, 1992

# **EXHIBIT "B"**

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

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IN THE MATTER OF NOTICE OF	:	ORDER GRANTING
VIOLATION N92-25-1-1,	:	HIDDEN VALLEY COAL
HIDDEN VALLEY MINE,	:	COMPANY'S PETITION FOR
EMERY COUNTY, UTAH	:	TEMPORARY RELIEF
	:	
	:	
	:	CAUSE NO. ACT/015/007

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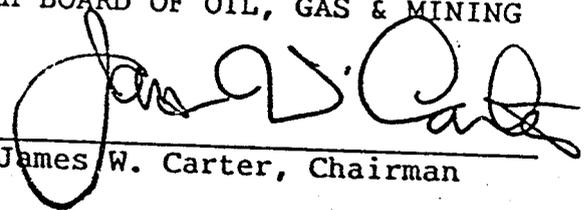
On February 10, 1992, Hidden Valley Coal Company ("Hidden Valley"), by and through its counsel of record, petitioned the Utah Board of Oil, Gas & Mining ("Board") for temporary relief concerning abatement of Notice of Violation N92-25-1-1 ("NOV"). Hidden Valley has appealed the fact of this violation to the Board challenging, among other things, the jurisdiction of the Division of Oil, Gas & Mining ("DOGM") to issue the NOV. A hearing on this matter is set before the Board on March 25, 1992. By conference call between the Chairman of the Board and the parties on Friday, February 14, 1992, counsel for DOGM stipulated to a grant of temporary relief and both parties agreed, on information and belief, that the stay of enforcement of the NOV will not adversely affect the health or safety of the public or cause significant imminent environmental harm to land, air or water resources.

Based upon a review of Hidden Valley's petition for temporary relief, the pleadings filed in this matter, the stipulation of both parties to temporary relief, pursuant to Utah Code Ann. § 40-10-22(3)(c), the Board grants Hidden Valley's petition for temporary relief and will extend the abatement period for the NOV from February 21, 1992 to thirty days following the Board's entry of its written decision in the pending review proceedings.

ORDERED and ISSUED this 14<sup>th</sup> day of February, 1992.

UTAH BOARD OF OIL, GAS & MINING

BY:

  
James W. Carter, Chairman

CERTIFICATE OF SERVICE

I hereby certify that on this 14<sup>th</sup> day of February, 1992, I caused to be mailed first class, postage prepaid, a true and correct copy of the foregoing Order Granting Hidden Valley Coal Company's Petition for Temporary Relief, Cause No.

ACT/015/007, to:

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

Denise A. Drago, Esq.  
Attorney for Hidden Valley Coal Company  
P.O. Box 510210  
Salt Lake City, Utah 84151

*Lynda Jensen*

DAD:021392c

# **EXHIBIT "C"**

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	:	DOCKET NO. 92-005
VALLEY MINE, EMERY COUNTY,	:	CAUSE NO. ACT/015/007
UTAH	:	

---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.

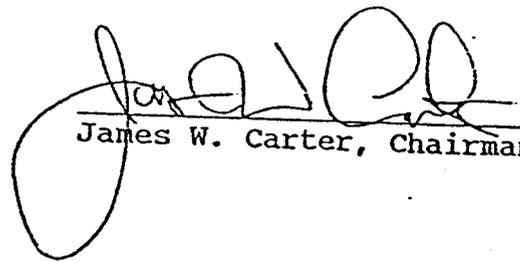
ORDER

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 30<sup>th</sup> 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

Kynda Jensen

# **EXHIBIT "D"**

Received  
9-3-92  
P.E.



STATE OF UTAH  
NATURAL RESOURCES  
Division of Oil, Gas & Mining

3 Third Center • Suite 350 • Salt Lake City, UT 84190-1203 • 801-538-5340

cessation order

NO. C 92-26-1-2

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) 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 074 979 280

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

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

LEE EDMONSON  
Permittee/Operator representative

Title

Signature

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

PERMIT SUPERVISOR  
Title

Signature

#20  
Identification Number

SEE REVERSE SIDE

WHITE-DOGSM YELLOW-OPERATOR PINK-OSM GOLDENROD-NOVFILE

CC: UNITED STATES CORP CO

DOGSM/CO-1



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
- R645-301-742.313

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 OF 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)

SUBMIT A COMPLETE AND ACCURATE PLAN TO REPAIR AND CONTROL EROSION



UTAH  
NATURAL RESOURCES  
DIV. OF OIL & MINING

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

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. N91-26-8-2 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

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

**EXHIBIT "E"**

17-3017043-0013  
SEP 22 1992 12:02 NO.000 P.02

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

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IN THE MATTER OF NOTICE OF : MEMORANDUM DECISION AND  
VIOLATION N91-26-8-2, ORDER  
HIDDEN VALLEY MINE, :  
EMERY COUNTY, UTAH : Cause No. ACT/015/007

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Petitioner Hidden Valley Coal Company seeks an emergency order of the Board staying "all proceedings, including but not limited to the cessation order, NO. C 92-26-1-2, issued by the Division of Oil, Gas and Mining by certified mail on September 1, 1992...", until resolution of a pending civil action in the Third Judicial District Court appealing a Board order issued July 30, 1992. The Board had previously granted a Petition for Temporary Relief on February 14, 1992, extending Petitioner's time for abatement of the underlying Notice of Violation (NOV) to a date 30 days after entry of the Board's July 30th order. On August 31st, the NOV remained unabated and the Division, pursuant to its coal regulatory program rules, issued the subject Cessation Order (CO) on September 1. Petitioner filed a Petition for Review of Administrative Action with the Utah Supreme Court and a Complaint with the Third Judicial District Court on August 28, 1992 seeking reversal of the Board's July 30 order.

The rules governing the issuance of NOV's and CO's are couched in mandatory, rather than discretionary, terms. When the Board's order of Temporary Relief expired without the Board ordered abatement, the Division had no choice but to issue the CO. Rule

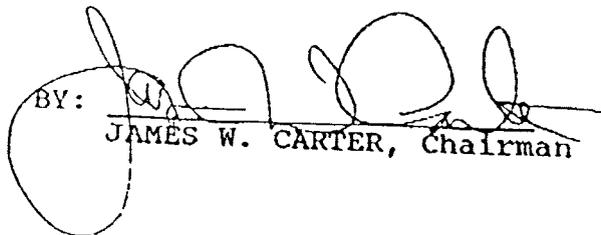
645-400-420 provides that, "a civil penalty of not less than \$750.00 will be assessed for each day during which..." the violation remains unabated. Rule 645-400-421 allows for temporary relief until issuance of a Board order. Rule 645-400-422 provides for Court ordered temporary relief "If the permittee initiates review proceedings under the State Program with respect to the violation,...."

Both the Utah Rules of Civil Procedure and the rules of the coal regulatory program provide the temporary relief Petitioner seeks. Once the Board's order was appealed, the Board could not amend the terms of the order to extend the time for abatement. The Board is loathe to contravene its own rules, but the Petitioner's request is one of first impression and, due to those circumstances, certain equitable considerations have arisen.

Based upon the law and circumstances, it is hereby ordered, adjudged and decreed that the Petitioner's request for Emergency Order staying the proceedings of the Division of Oil, Gas & Mining relating to cessation order C092-26-1-2 and the accrual of penalties under that CO is granted for the period commencing September 1, 1992 and terminating at the close of business September 10, 1992 in order to allow Petitioner to seek appropriate judicial remedies or commence abatement pursuant to the terms of the Board's July 30, 1992 Order.

Dated this 9th day of September, 1992.

BOARD OF OIL, GAS & MINING

BY:   
 JAMES W. CARTER, Chairman

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

PETER STIRBA

RECEIVED

SEP 08 1992  
TELEPHONE (801) 364-8300  
FACSIMILE: (801) 364-8355  
DIVISION OF  
OIL GAS & MINING

September 4, 1992

Via Telefax  
645-5078

Chairman James W. Carter  
BOARD OF OIL, GAS & MINING  
Park City Office  
Park City, Utah

Re: *Hidden Valley Coal Company*

Dear Chairman Carter:

This is to confirm our conversation today about Hidden Valley's application for an emergency order in the above matter.

As we discussed, it is my understanding that you were unable to speak with Bill Richards, counsel for the Division, and therefore felt uncomfortable issuing any order today without having the benefit of hearing both sides on our application. As you know, and I explained to you, Hidden Valley is potentially at risk for penalties of up to \$750 per day until such time as this matter is resolved by the Board. That is why I called you yesterday to request that an emergency order be entered preserving the status quo.

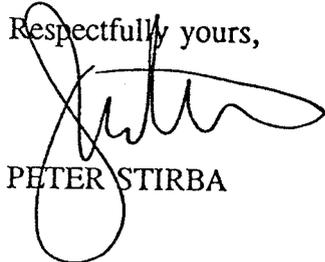
In any event, I will anticipate hearing from you Tuesday morning as we discussed. I will be in a deposition at the offices of Woodbury & Kesler and I can be reached at their phone number which is 364-1100. I will be in a deposition with attorney Nick Hales.

Once again, and I appreciate your comments that Tom Mitchell didn't think the Division was interested in imposing penalties, I want to emphasize the urgency of a resolution of this matter and the importance of an emergency order being entered.

Chairman James W. Carter  
September 4, 1992  
Page 2

Thank you for your efforts.

Respectfully yours,



PETER STIRBA

PS/kg

cc: Thomas A. Mitchell  
William R. Richards

P.S. I will fax you a proposed order as you requested Tuesday morning as I will prepare it over the weekend.

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

PETER STIRBA

RECEIVED

SEP 08 1992

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

September 4, 1992

DIVISION OF  
OIL, GAS & MINING

*Via Telefax*  
645-5078

Chairman James W. Carter  
BOARD OF OIL, GAS & MINING  
Park City Office  
Park City, Utah

**Re: *Hidden Valley Coal Company***

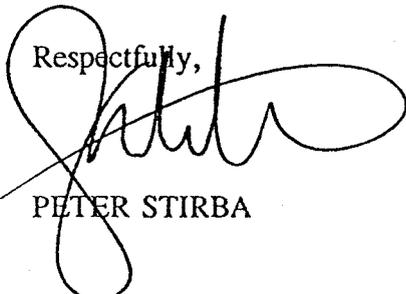
Dear Chairman Carter:

As you know, yesterday I called you and requested that you consider issuing an emergency order preserving the status quo of the parties pending Hidden Valley's appeal filed with the District Court. You indicated that you would get back with me yesterday afternoon and I haven't heard from you as of yet.

I am sure you can appreciate the urgent nature of this request and the fact that a decision from you as Chairman of the Board is an extremely pressing issue, especially insofar as my client is concerned. Accordingly, I would appreciate hearing from you at your earliest convenience concerning the issuance of an emergency order.

Thank you for your consideration of the above.

Respectfully,



PETER STIRBA

PS/kg

cc: Thomas A. Mitchell  
William R. Richards

RECEIVED

Bill

SEP 02 1992

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

DIVISION OF  
OIL GAS & MINING

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

PETER STIRBA

September 2, 1992

**HAND DELIVERY**

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

**Re: *Hidden Valley Coal Company v. Utah Board of Oil, Gas & Mining  
and Utah Division of Oil, Gas & Mining***

Dear Tom and Bill:

Thanks for calling me about the issue of which court should hear the above matter. It is my understanding from our conversation that you both agree with me that the District Court is the appropriate court to review the Board's Order and, accordingly, I will dismiss the Petition that has been filed at the Utah Supreme Court. In the interest of making sure that we are clear on this point, I would appreciate a very short letter from either one of you confirming the fact that neither the Division nor the Board will contest the jurisdiction of the District Court to review the Board's Order.

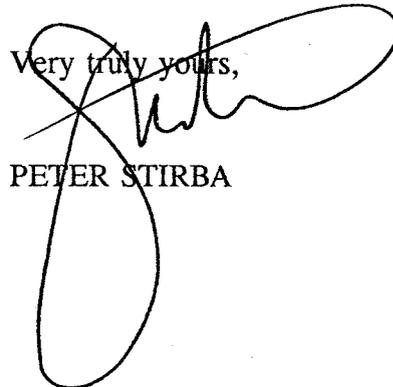
I have also enclosed an Acceptance of Service form for your signature as well as two copies of a Summons and Complaint in the above matter. Would you please return the original Acceptance of Service form to me and I will file it with the Court. The copy is for your file.

After we get through some of these initial logistical matters, I agree with Tom that we should contact Judge Lewis' clerk and think about arranging for a scheduling conference with the Judge.

Thanks for your help in this matter.

Very truly yours,

PETER STIRBA



PS/kg  
Enclosures  
cc: Lee Edmonson

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

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

---

HIDDEN VALLEY COAL COMPANY,	:	
	:	<b>ACCEPTANCE OF SERVICE</b>
Plaintiff,	:	
v.	:	
the UTAH BOARD OF OIL, GAS & MINING	:	Case No. 920904813CV
and the UTAH DIVISION OF OIL, GAS &	:	
MINING,	:	
	:	Judge Leslie A. Lewis
Defendants.	:	

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Defendants UTAH BOARD OF OIL, GAS & MINING and UTAH DIVISION OF OIL, GAS & MINING, without waiving any of their defenses by the acceptance of this service, hereby make their appearance herein by and through attorneys Thomas A. Mitchell or William R. Richards, Assistants Attorney General, acknowledge that they are the named Defendants in the above-entitled action, accept service of process, and acknowledge that they have received a copy of the Summons and Complaint in the above-entitled action.

ACCEPTED this 15 day of September, 1992.

**UTAH ATTORNEY GENERAL'S OFFICE**

By: William R. Richards  
THOMAS A. MITCHELL  
WILLIAM R. RICHARDS  
Assistants Attorney General  
Attorneys for the Utah Board of Oil  
Gas & Mining and the Utah Division  
of Oil, Gas & Mining

k1plhvcc.acc

Bill

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

---

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

---

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

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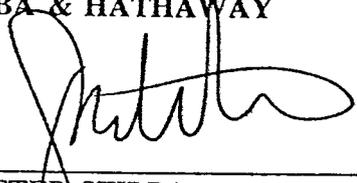
THE STATE OF UTAH TO THE UTAH DIVISION OF OIL, GAS & MINING:

You are hereby summoned and required to file an answer in writing to the attached Complaint with the Clerk of the above-entitled Court at 240 East 400 South, Salt Lake City, Utah 84111, and to serve upon, or mail to Peter Stirba of STIRBA & HATHAWAY, Plaintiff's attorneys, a copy of said answer, within 20 days after service of this Summons upon you.

If you fail to do so, judgment by default will be taken against you for the relief demanded in said Complaint, which has been filed with the Clerk of said Court and a copy of which is hereto annexed and herewith served upon you.

DATED this 2<sup>nd</sup> day of September, 1992.

STIRBA & HATHAWAY

BY: 

\_\_\_\_\_  
PETER STIRBA  
Attorneys for Plaintiff

Defendant's Address:

Division of Oil, Gas & Mining  
3 Triad Center  
355 West North Temple  
Salt Lake City, Utah

k\p\hvcc.sum

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

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

---

HIDDEN VALLEY COAL COMPANY,	:	
Plaintiff,	:	<b>COMPLAINT</b>
v.	:	
the UTAH BOARD OF OIL, GAS & MINING and the UTAH DIVISION OF OIL, GAS & MINING,	:	Case No. <u>920904813CV</u>
Defendants.	:	Judge <u>Leslie A. Lewis</u>

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Plaintiff, Hidden Valley Coal Company, complains of Defendants Utah Board of Oil, Gas & Mining and Utah Division of Oil, Gas & Mining, and alleges as follows:

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. HVCC brings this action pursuant to Utah Code Ann. § 40-10-30 (1986) which provision, among other things, authorizes suit in District Court against the Board of Oil, Gas & Mining (the "Board") for the purpose of obtaining judicial review and appealing an order of

the Board which arises from the application of the Utah Coal Mining and Reclamation Act ("UCMRA"), Utah Code Ann. § 40-10-1 *et. seq.* and the rules promulgated thereunder.

3. Jurisdiction of this Court is also predicated upon the provisions of Utah Code Ann. § 40-10-22(3)(f) (1981) which provide for judicial review in the "appropriate district court" of actions by the Board taken under that section or any other provision of the State Coal Program.

4. On November 20, 1991, the Division of Oil, Gas & Mining (the "Division") issued Notice of Violation ("NOV") 91-26-8-2, Parts 1 and 2, to HVCC regarding Hidden Valley Mine Permit No. ACT/015/007 regarding reclamation activities at the Mine Site.

5. Parts 1 and 2 were issued pursuant to Utah Administrative Code 614-301-742.312.1 (1990) for failure to maintain diversions and minimize erosion of the road out slopes and upslopes to the extent possible. Part 2 of the NOV was issued pursuant to Utah Administrative Code 614-301-521.251 (1990) and 614-301-354 (1990) for failure to clearly mark with perimeter markers and failure to seed and revegetate all disturbed areas of the road and stream out slopes and road upslopes.

6. On December 17, 1991, the Division issued a proposed assessment for the NOV of \$760 for Part 1 and \$460 for Part 2. The NOV and subsequent assessment were informally reviewed by the Division on December 20, 1991, and an informal order upholding the NOV and assessment were issued on January 17, 1992.

7. On February 10, 1992, HVCC petitioned the Board for review of the Division's informal order regarding the NOV and subsequent penalty assessment. HVCC concurrently filed a petition for temporary relief with the Board, which the Board granted on February 14, 1992.

8. On June 30, 1992, an evidentiary hearing was held on HVCC's petition whereby HVCC challenged the factual basis for the issuance of the NOV and penalty assessment as well as the jurisdiction and legal authority of the Division in issuing the NOV and penalty assessment. Evidence and testimony was presented by the Division and HVCC to the Chairman of the Board who was acting in the capacity of a hearing examiner. After considering the evidence and testimony, the examiner had the responsibility to make a recommendation to the Board with the responsibility to make recommended findings of fact and conclusions of law and an order to the Board for its consideration and adoption.

9. On July 30, 1992, the Board, after considering the proposed findings of fact and conclusions of law of the hearing examiner, issued an order upholding the Division with respect to the issuance of the NOV and the assessment pursuant to Part 1 of the NOV. However, the Board reduced the Part 2 assessment from \$460 to \$330 after finding that the negligence points regarding disturbed area boundary markings should be reduced to zero. A copy of the Board's order is attached hereto as Exhibit "A".

10. HVCC now appeals and requests a review of the Board's order attached hereto for the following reasons:

(a) The Board has erroneously interpreted and applied the applicable provisions of the UCMRA and the rules promulgated thereunder in its determination that HVCC intended to mine more than 250 tons of coal in any 12-month period, thus subjecting itself to the jurisdiction of the Board subject to regulation under the UCMRA and the federal Surface Mining Control and Reclamation Act of 1977 ("SMCRA"), 30 U.S.C.A. § 1201 *et seq.*

(b) The Board has erroneously interpreted and applied the applicable statutory provisions and its own rules in applying the Permanent Program Rules to HVCC's 1986 Reclamation Plan as opposed to applying the standards of the Interim Program.

(c) The Board has 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 the issues raised by the NOV.

(d) The Board erroneously interpreted and applied existing law in its finding that the Division established a *prima facie* case supporting its issuance of the NOV, that HVCC failed to rebut the Division's case and that HVCC failed to prove that the Division was estopped from taking its enforcement action.

(e) The Board erroneously interpreted and applied existing law in its finding that the Division was not estopped in the enforcement of its NOV after it had already approved HVCC's reclamation activities for a Phase I bond release.

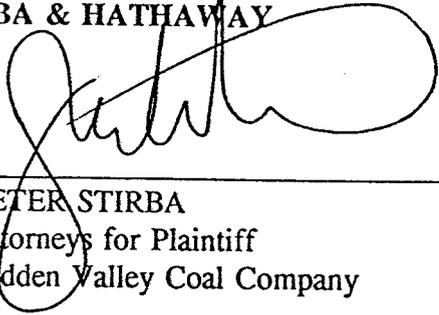
(f) The action taken by the Board and its factual findings upholding the Division's position are not supported by substantial evidence when viewed in light of the whole record, were unreasonable, unjust, arbitrary, capricious or an abuse of discretion.

WHEREFORE, Plaintiff HVCC prays for judgment as follows:

1. That the Court order Defendants Utah Board of Oil, Gas & Mining and the Utah Division of Oil, Gas & Mining to dismiss any pending proceedings in Cause No. ACT/015/007, vacate its July 30, 1992 order and vacate the NOV and penalty assessment.
2. That the Court order Defendants Utah Board of Oil, Gas & Mining and Utah Division of Oil, Gas & Mining to modify and amend its July 30, 1992 order as follows:
  - (a) The order be amended to dismiss and vacate the Division's NOV and penalty assessment on the legal grounds as set forth hereinabove; and/or
  - (b) The order be amended to find that HVCC did not commit any of the alleged violations in the NOV, or there is not substantial evidence to justify the Board's factual findings, or that the Board's factual findings are deficient as a matter of law such that the Division's NOV, penalty assessment and proceedings thereunder are dismissed and vacated.
3. That the Court order Defendant Utah Division of Oil, Gas & Mining to repay to HVCC all amounts paid by HVCC for the penalty assessment.
4. That the Court award Plaintiff costs herein and such other and further relief as the Court deems just and equitable in the premises.

DATED this 27<sup>th</sup> day of August, 1992.

STIRBA & HATHAWAY



BY: \_\_\_\_\_

PETER STIRBA  
Attorneys for Plaintiff  
Hidden Valley Coal Company

Plaintiff's address:  
1801 University Drive  
Phoenix, Arizona 85034

kplhvcc.com

**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	:	DOCKET NO. 92-005
VALLEY MINE, EMERY COUNTY,	:	CAUSE NO. ACT/015/007
UTAH	:	

---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.

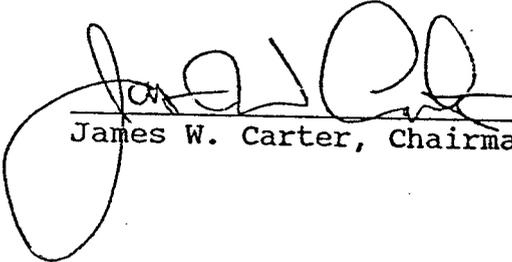
#### ORDER

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 30<sup>th</sup> 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

  
Lynda Jensen

**FILED**

AUG 28 1992

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

SECRETARY, BOARD OF  
OIL, GAS & MINING

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**IN THE UTAH SUPREME COURT**

---

HIDDEN VALLEY COAL COMPANY,	:	Case No. _____
Petitioner,	:	
v.	:	
the UTAH BOARD OF OIL, GAS & MINING	:	<b>PETITION FOR REVIEW OF</b>
and the UTAH DIVISION OF OIL, GAS &	:	<b>ADMINISTRATIVE ACTION</b>
MINING,	:	
Respondents.	:	

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The Petitioner, Hidden Valley Coal Company ("HVCC"), by and through its attorney of record, Peter Stirba, files this Petition for Review pursuant to Utah Code Ann. § 63-46b-16 (1988) and Rule 14 of the Utah Rules of Appellate Procedure and hereby alleges:

1. On November 20, 1991, the Division of Oil, Gas & Mining ("the Division") issued Notice of Violation ("NOV") 91-26-8-2, Parts 1 and 2, to HVCC regarding Hidden Valley Mine Permit No. ACT/015/007. Part 1 of 2 was issued pursuant to Utah Administrative Rule 614-301-742.312.1 for failure to maintain diversions and minimize erosion of the road out slopes and upslopes to the extent possible. Part 2 of the NOV was issued pursuant to Utah Administrative Code 614-301-521.251 and 614-301-354 for failure to clearly mark with

perimeter markers and failure to seed and revegetate all disturbed areas of the road and stream outslopes and road upslopes.

2. On December 17, 1991, the Division issued a proposed assessment for the NOV of \$760.00 for Part 1 and \$460.00 for Part 2. The NOV and the subsequent assessment were informally reviewed by the Division on December 20, 1991 and an Informal Order upholding the NOV and the assessment was issued on January 17, 1992.

3. On February 10, 1992, HVCC petitioned the Utah Board of Oil, Gas & Mining ("the Board") for review of the Division's Informal Order regarding the NOV and the subsequent assessment. HVCC concurrently filed a Petition for Temporary Relief with the Board, which the Board granted on February 14, 1992.

4. On July 30, 1992, the Board, after considering proposed findings of a hearing examiner, issued an Order upholding all aspects of the Division's position in issuing the NOV and the assessment pursuant to Part 1 of the NOV. However, the Board reduced the Part 2 assessment from \$460.00 to \$330.00 after finding that the negligence points regarding disturbed area boundary marked should be reduced to zero.

5. Petitioner HVCC requests a review of the Board's Order in Cause No. ACT/015/007 for the following reasons:

(a) The Board has erroneously interpreted and applied the applicable provisions of the Utah Coal Mining and Reclamation Act and the rules promulgated thereunder in its determination that HVCC intended to mine more than 250 tons of coal in any 12-month

period, thus subjecting itself to the jurisdiction of the Board subject to regulation under Utah's Act and the federal Surface Mining Control and Reclamation Act.

(b) The Board has erroneously interpreted and applied the applicable statutory provisions and its rules in applying the Permanent Program Rules to HVCC's 1986 Reclamation Plan as opposed to applying the standards of its Interim Program.

(c) The Board has erroneously interpreted and misapplied Utah Code Ann. § 40-8-9(2) (1987) in its determination that this statute of limitations did not apply to the issues litigated pursuant to the NOV.

(d) The Board erroneously interpreted and applied existing law in its finding that the Division established a prima facie case supporting its issuance of the NOV, that HVCC failed to rebut the Division's case and that HVCC failed to prove that the Division was estopped from taking its enforcement action.

(e) The action taken by the Board and its factual findings are not supported by substantial evidence when viewed in light of the whole record, was contrary to the prior practice of the Division, and as a result the Board's Order in applying the facts is arbitrary and capricious.

WHEREFORE, Petitioner prays that this Court:

1. Enter an order reversing the Board's order of July 30, 1992 and the conclusions of law contained therein.

2. Enter an order for any other relief that is just and appropriate.

DATED this 27<sup>th</sup> day of August, 1992.

STIRBA & HATHAWAY

BY: \_\_\_\_\_

PETER STIRBA

Attorneys for Respondent

Hidden Valley Coal Company

k\p\hvcc.pet

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

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IN THE UTAH SUPREME COURT

---

HIDDEN VALLEY COAL COMPANY, :

Petitioner, :

v. :

THE DIVISION OF OIL, GAS & MINING :  
and THE BOARD OF OIL, GAS & MINING, :

Respondents. :

Case No. \_\_\_\_\_

**CERTIFICATE OF SERVICE**

---

I hereby certify that a true and correct copy of the Petitioner's PETITION FOR REVIEW  
OF ADMINISTRATIVE ACTION was mailed, postage prepaid, to the following:

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

Thomas A. Mitchell  
Assistant Attorney General  
BOARD 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

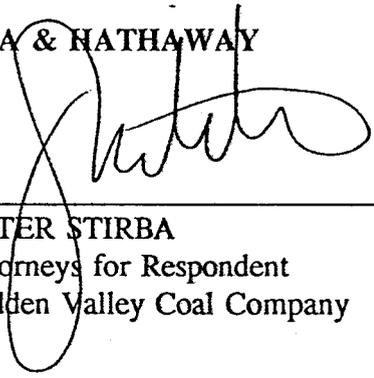
Dr. Dianne R. Nielson, Director  
Utah Division of Oil, Gas & Mining  
3 Triad Center, Suite 350  
355 West North Temple  
Salt Lake City, Utah 84180

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

DATED this 21<sup>st</sup> day of August, 1992.

STIRBA & HATHAWAY

BY: \_\_\_\_\_

  
PETER STIRBA  
Attorneys for Respondent  
Hidden Valley Coal Company

**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**

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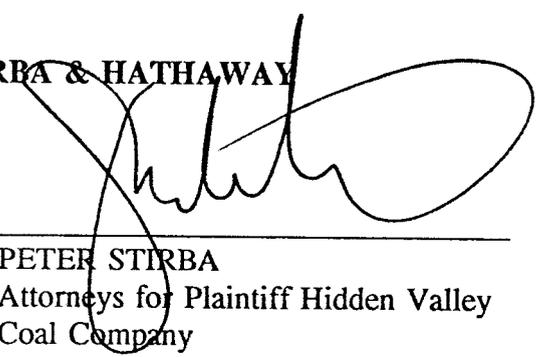
HIDDEN VALLEY COAL COMPANY	:	
Plaintiff,	:	<b>NOTICE OF FILING OF</b>
	:	<b>AFFIDAVIT OF LEE</b>
	:	<b>EDMONSON</b>
v.	:	
the UTAH BOARD OF OIL, GAS &	:	
MINING and the UTAH DIVISION	:	Case No. 920904813CV
OF OIL, GAS & MINING,	:	
Defendants.	:	Judge Glenn Iwasaki

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Notice is hereby given that on this 14th day of September, 1992, the original Affidavit of Lee Edmonson in support of Plaintiff Hidden Valley Coal Company's Motion for a Temporary Restraining Order was filed with the Court.

**STIRBA & HATHAWAY**

BY: \_\_\_\_\_

  
**PETER STIRBA**  
Attorneys for Plaintiff Hidden Valley  
Coal Company

CERTIFICATE OF SERVICE

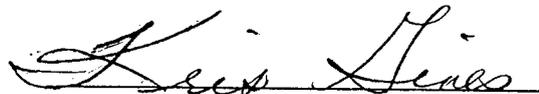
I hereby certify that on this 14th day of September, 1992, a true and correct copy of the foregoing NOTICE OF FILING OF AFFIDAVIT OF LEE EDMONSON was mailed, postage prepaid, to the following:

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

A handwritten signature in cursive script, appearing to read "Kevin Seals", written over a horizontal line.

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

September 11, 1992

**HAND DELIVERY**

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

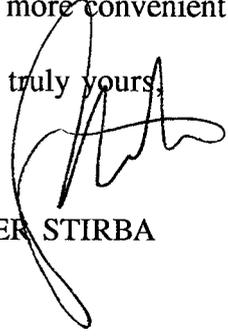
**Re: *Hidden Valley Coal Company***

Gentlemen:

Enclosed is a copy of the Temporary Restraining Order.

Margaret went downstairs and got the first available setting. If September 23 is a problem, please let me know and we can change it to a more convenient time.

Very truly yours,

  
PETER STIRBA

PS/kg  
cc: Lee Edmonson

RECEIVED

SEP 11 1992

DIVISION OF  
OIL GAS & MINING

**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,	:	<b>TEMPORARY RESTRAINING ORDER</b>
v.	:	
the UTAH BOARD OF OIL, GAS & MINING and the UTAH DIVISION OF OIL, GAS & MINING,	:	Case No. 920904813CV
Defendants.	:	Judge Leslie A. Lewis

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Based upon the Motion of the Plaintiff Hidden Valley Coal Company, the Affidavit of Lee Edmonson in support thereof, the arguments of counsel, and good cause appearing before,

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** as follows:

1. The Defendants Board of Oil, Gas and Mining and the State of Utah are prevented from enforcing, implementing or acting upon in any way the Cessation Order, No. C 92-26-1-2, issued by the Defendants on September 1, 1992 or the Notice of Violation issued by Defendants on January 21, 1992. No civil or other penalty of any kind will accrue as a result of Hidden Valley Coal Company's non-compliance with the Cessation Order or Notice of Violation.

2. This Temporary Restraining Order is issued on the basis of a finding of the Court that irreparable injury will be sustained by Hidden Valley Coal Company if the Cessation Order goes into effect. Said injury would be irreparable in that Hidden Valley Coal Company will be assessed \$ 750.00 per day in civil penalties for a 30-day period and will incur other enforcement action pending the resolution of its appeal before this Court, which appeal directly addresses and challenges the Defendants' abatement orders and Notice of Violation at the Emery County mine site. Since the Plaintiff has already commenced an appeal in this Court to challenge the aforementioned abatement orders and Notice of Violation and the jurisdiction that the Defendants have to impose such orders, Plaintiff should not now be placed in the position of having its appeal rendered moot by being forced to either pay extreme penalties or to implement the Defendants' orders. The balance of equities favors preserving the *status quo* until such time as the Court can adjudicate the issues presented in the appeal.

3. The Court is further persuaded that the stay in enforcement will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air or water resources.

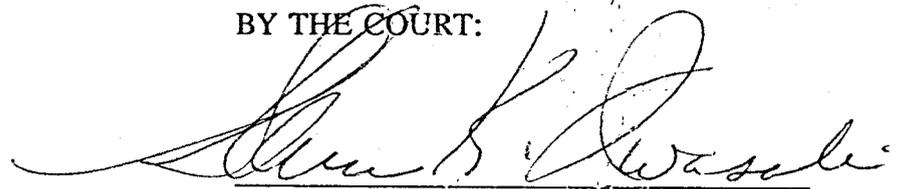
4. This Order shall expire on Monday, the 21<sup>st</sup> day of September, 1992, at the hour of 3<sup>35</sup> P.m.

5. IT IF FURTHER ORDERED, ADJUDGED AND DECREED that Defendants be and appear before this Court on Wed, the 23 day of September, 1992, at the hour of 9:30 A.m., Salt Lake City, Utah, before the Honorable Iwasaki

\_\_\_\_\_, District Judge, and then and there show cause, if any they have, why a preliminary injunction should not be issued, incorporating the terms of the Restraining Order above during the pendency of this action.

ENTERED at Salt Lake City, Utah, this 11<sup>th</sup> day of September, 1992 at the hour of 3<sup>35</sup> P..m.

BY THE COURT:

  
~~JUDGE LESLIE A. LEWIS~~



**Attention:** William Richards

**Fax Number:** 359-3940

**Number of pages including cover sheet:** 3

**From:** James Carter

**Comments:**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Park City Municipal Corporation**  
**P.O. Box 1480 - 445 Marsac Ave.**  
**Park City, UT 84060**  
**Phone (801) 645-5000 - Fax (801) 645-5078**

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

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IN THE MATTER OF NOTICE OF : **MEMORANDUM DECISION AND ORDER**  
VIOLATION N91-26-8-2, :  
HIDDEN VALLEY MINE, : Cause No. ACT/015/007  
EMERY COUNTY, UTAH :

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Petitioner Hidden Valley Coal Company seeks an emergency order of the Board staying "all proceedings, including but not limited to the cessation order, NO. C 92-26-1-2, issued by the Division of Oil, Gas and Mining by certified mail on September 1, 1992...", until resolution of a pending civil action in the Third Judicial District Court appealing a Board order issued July 30, 1992. The Board had previously granted a Petition for Temporary Relief on February 14, 1992, extending Petitioner's time for abatement of the underlying Notice of Violation (NOV) to a date 30 days after entry of the Board's July 30th order. On August 31st, the NOV remained unabated and the Division, pursuant to its coal regulatory program rules, issued the subject Cessation Order (CO) on September 1. Petitioner filed a Petition for Review of Administrative Action with the Utah Supreme Court and a Complaint with the Third Judicial District Court on August 28, 1992 seeking reversal of the Board's July 30 order.

The rules governing the issuance of NOV's and CO's are couched in mandatory, rather than discretionary, terms. When the Board's order of Temporary Relief expired without the Board ordered abatement, the Division had no choice but to issue the CO. Rule

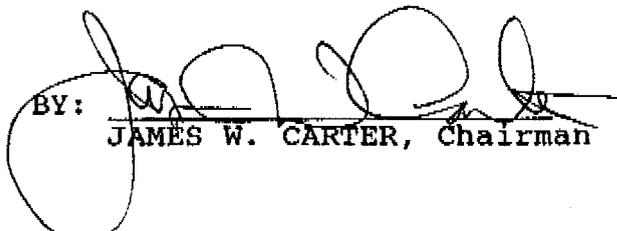
645-400-420 provides that, "a civil penalty of not less than \$750.00 will be assessed for each day during which..." the violation remains unabated. Rule 645-400-421 allows for temporary relief until issuance of a Board order. Rule 645-400-422 provides for Court ordered temporary relief "If the permittee initiates review proceedings under the State Program with respect to the violation,..."

Both the Utah Rules of Civil Procedure and the rules of the coal regulatory program provide the temporary relief Petitioner seeks. Once the Board's order was appealed, the Board could not amend the terms of the order to extend the time for abatement. The Board is loathe to contravene its own rules, but the Petitioner's request is one of first impression and, due to those circumstances, certain equitable considerations have arisen.

Based upon the law and circumstances, it is hereby ordered, adjudged and decreed that the Petitioner's request for Emergency Order staying the proceedings of the Division of Oil, Gas & Mining relating to cessation order C092-26-1-2 and the accrual of penalties under that CO is granted for the period commencing September 1, 1992 and terminating at the close of business September 10, 1992 in order to allow Petitioner to seek appropriate judicial remedies or commence abatement pursuant to the terms of the Board's July 30, 1992 Order.

Dated this 9<sup>th</sup> day of September, 1992.

BOARD OF OIL, GAS & MINING

BY: 

JAMES W. CARTER, Chairman

7/27/92

Bill called  
Peter Sturba 7/27  
re: 30 day.

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

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IN THE MATTER OF NOTICE OF	:	ORDER GRANTING
VIOLATION N91-26-8-2,	:	HIDDEN VALLEY COAL
HIDDEN VALLEY MINE,	:	COMPANY'S PETITION FOR
EMERY COUNTY, UTAH	:	TEMPORARY RELIEF
	:	
	:	CAUSE NO. ACT/015/007

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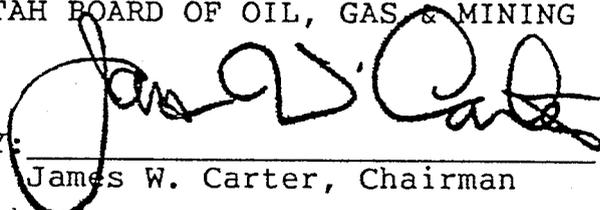
On February 10, 1992, Hidden Valley Coal Company ("Hidden Valley"), by and through its counsel of record, petitioned the Utah Board of Oil, Gas & Mining ("Board") for temporary relief concerning abatement of Notice of Violation N91-26-8-2, parts 1 and 2 ("NOV"). Hidden Valley has appealed the fact of this violation to the Board challenging, among other things, the jurisdiction of the Division of Oil, Gas & Mining ("DOGM") to issue the NOV and the nature of the abatement requested by the NOV. A hearing on this matter is set before the Board on March 25, 1992. By conference call between the Chairman of the Board and the parties on Friday, February 14, 1992, counsel for DOGM stipulated to a grant of temporary relief and both parties agreed, on information and belief, that the stay of enforcement of the NOV will not adversely affect the health or safety of the

public or cause significant imminent environmental harm to land, air or water resources.

Based upon a review of Hidden Valley's petition for temporary relief, the pleadings filed in this matter, the stipulation of both parties to temporary relief, pursuant to Utah Code Ann. § 40-10-22(3)(c), the Board grants Hidden Valley's petition for temporary relief and will extend the abatement period for the NOV from February 17, 1992 to thirty days following the Board's entry of its written decision in the pending review proceedings.

ORDERED and ISSUED this 14<sup>th</sup> day of February, 1992.

UTAH BOARD OF OIL, GAS & MINING

BY: 

James W. Carter, Chairman

CERTIFICATE OF SERVICE

I hereby certify that on this 14<sup>th</sup> day of February 1992, I caused to be mailed first class, postage prepaid, a true and correct copy of the foregoing Order Granting Hidden Valley Coal Company's Petition for Temporary Relief, Cause No.

ACT/015/007, to:

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

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

---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.

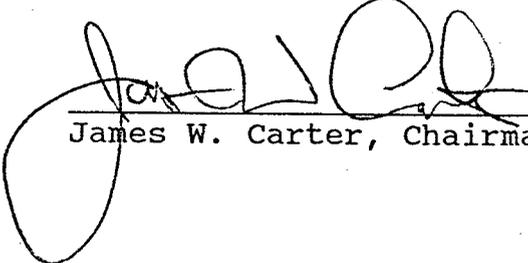
#### ORDER

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 30<sup>th</sup> day of July, 1992.

STATE OF UTAH  
BOARD OF OIL, GAS AND MINING

  
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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:

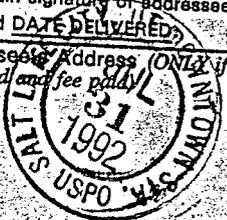
William R. Richards  
 Assistant Attorney General  
 Utah Division of Oil, Gas and Mining  
 3 Triad Center, Suite 350  
 355 West North Temple  
 Salt Lake City, Utah 84180

*Synda Jensen*

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4. Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1.  Show to whom delivered, date, and addressee's address. (Extra charge)  
 2.  Restricted Delivery (Extra charge)

<p>3. Article Addressed to:</p> <p>PETER STIRBA              STIRBA &amp; HATHAWAY              215 SOUTH STATE #1150              SALT LAKE CITY UT 84111</p>	<p>4. Article Number</p> <p>P. 879 596 314</p> <p>Type of Service:</p> <p><input type="checkbox"/> Registered      <input type="checkbox"/> Insured  <input checked="" type="checkbox"/> Certified      <input type="checkbox"/> COD  <input type="checkbox"/> Express Mail      <input type="checkbox"/> Return Receipt for Merchandise</p> <p>Always obtain signature of addressee or agent and DATE DELIVERED?</p>
<p>5. Signature - Address</p> <p>X <i>Shannon Regan</i></p>	<p>8. Addressee's Address (ONLY if requested and fee paid)</p>
<p>6. Signature - Agent</p> <p>X</p>	<p>7. Date of Delivery</p>



- 353.230. Be capable of self-regeneration and plant succession;
- 353.240. Be compatible with the plant and animal species of the area; and
- 353.250. Meet the requirements of applicable Utah and federal seed, poisonous and noxious plant; and introduced species laws or regulations.
- 353.300. The Division may grant exception to the requirements of R645-301-353.220 and R645-301-353.230 when the species are necessary to achieve a quick-growing, temporary, stabilizing cover, and measures to establish permanent vegetation are included in the approved permit and reclamation plan.
- 353.400. When the approved postmining land use is cropland, the Division may grant exceptions to the requirements of R645-301-353.110, R645-301-353.130, R645-301-353.220 and R645-301-353.230. The requirements of R645-302-317 apply to areas identified as prime farmland.
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.
355. **Revegetation: Mulching and Other Soil Stabilizing Practices.** Suitable mulch and other soil stabilizing practices will be used on all areas that have been regraded and covered by topsoil or topsoil substitutes. The Division may waive this requirement if seasonal, soil, or slope factors result in a condition where mulch and other soil stabilizing practices are not necessary to control erosion and to promptly establish an effective vegetative cover.
356. **Revegetation: Standards for Success.**
- 356.100. Success of revegetation will be judged on the effectiveness of the vegetation for the approved postmining land use, the extent of cover compared to the extent of cover of the reference area or other approved success standard, and the general requirements of R645-301-353.
- ~~356.110. Standards for success, statistically valid sampling techniques for measuring success, and approved methods are identified in the Division's "Vegetation Information Guidelines, Appendix A."~~
- 356.120. Standards for success will include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking. Ground cover, production, or stocking will be considered equal to the approved success standard when they are not less than 90 percent of the success standard. The sampling techniques for measuring success will use a 90-percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error).
- 356.200. Standards for success will be applied in accordance with the approved postmining land use and, at a minimum, the following conditions:
- 356.210. For areas developed for use as grazing land or pasture land, the ground cover and production of living plants on the revegetated area will be at least equal to that of a reference area or such other success standards approved by the Division.
- 356.220. For areas developed for use as cropland, crop production on the revegetated area will be at least equal to that of a reference area or such other success standards approved by the Division. The requirements of R645-302-310 through R645-302-317 apply to areas identified as prime farmland.
- 356.230. For areas to be developed for fish and wildlife habitat, recreation, shelter belts, or forest products, success of vegetation will be determined on the basis of tree and shrub stocking and vegetative ground cover. Such parameters are described as follows:
- ~~356.231. Minimum stocking and planting arrangements will be specified by the Division on the basis of local and regional conditions and after consultation with and approval by Utah agencies responsible for the administration of forestry and wildlife programs. Consultation and approval may be on a program-wide basis or on a permit specific basis.~~
- 356.232. Trees and shrubs that will be used in determining the success of stocking and the adequacy of plant arrangement will have utility for the approved postmining land use. At the time of bond release, such trees and shrubs will be healthy, and at least 80 percent will have been in place for at least 60 percent of the applicable minimum period of responsibility. No trees and shrubs in place for less than two growing seasons will be counted in determining stocking adequacy.
- 356.233. Vegetative ground cover will not be less than that required to achieve the approved postmining land use.
- 356.240. For areas to be developed for industrial, commercial, or residential use less than two years after regrading is completed, the vegetative ground cover will not be less than that required to control erosion.
- 356.250. For areas previously disturbed by mining that were not reclaimed to the requirements of R645-200 through R645-203 and R645-301 through R645-302 and that 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.
- 356.300. Siltation structures will be maintained until removal is authorized by the Division and the disturbed area has been stabilized and revegetated. In no case will the structure be removed sooner than two years after the last augmented seeding.
- 356.400. When a siltation structure is removed, the land on which the siltation structure was located will be revegetated in accordance with the reclamation plan and R645-301-353 through R645-301-357.
357. **Revegetation: Extended Responsibility Period.**
- 357.100. The period of extended responsibility for successful vegetation will begin after the last year of augmented seeding, fertilization, irrigation, or other work, excluding husbandry practices that are approved by the Division in accordance with paragraph R645-301-357.300.
- 357.200. Vegetation parameters identified in R645-301-356.200 will equal or exceed the approved success standard during the growing seasons for the last two years of the responsibility

period. The period of extended responsibility will continue for five or ten years based on precipitation data reported pursuant to R645-301-724.411, as follows:

- 357.210. In areas of more than 26.0 inches average annual precipitation, the period of responsibility will continue for a period of not less than five full years.
- 357.220. In areas of 26.0 inches or less average annual precipitation, the period of responsibility will continue for a period of not less than ten full years.
- 357.300. The Division may approve selective husbandry practices, such as weed and brush control, fencing, and water developments or other practices once they have been incorporated into the Utah program, in accordance with 30 CFR 732.17 as being normal husbandry practices, excluding augmented seeding, fertilization, or irrigation, without extending the period of responsibility for revegetation success and bond liability, if such practices can be expected to continue as part of the postmining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success. Approved practices will be normal conservation practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area, including such practices as disease, pest, and vermin control; and any pruning, reseeding and/or transplanting specifically necessitated by such actions.
358. Protection of Fish, Wildlife, and Related Environmental Values. The operator will, to the extent possible using the best technology currently available, minimize disturbances and adverse impacts on fish, wildlife, and related environmental values and will achieve enhancement of such resources where practicable.
- 358.100. No coal mining and reclamation operation will be conducted which is likely to jeopardize the continued existence of endangered or threatened species listed by the Secretary or which is likely to result in the destruction or adverse modification of designated critical habitats of such species in violation of the Endangered Species Act of 1973. The operator will promptly report to the Division any state- or federally-listed endangered or threatened species within the permit area of which the operator becomes aware. Upon notification, the Division will consult with appropriate state and federal fish and wildlife agencies and, after consultation, will identify whether, and under what conditions, the operator may proceed.
- 358.200. No coal mining and reclamation operations will be conducted in a manner which would result in the unlawful taking of a bald or golden eagle, its nest, or any of its eggs. The operator will promptly report to the Division any golden or bald eagle nest within the permit area of which the operator becomes aware. Upon notification, the Division will consult with the U.S. Fish and Wildlife Service and the Utah Division of Wildlife Resources and, after consultation, will identify whether, and under what conditions, the operator may proceed.
- 358.300. Nothing in the R645 Rules will authorize the taking of an endangered or threatened species or a bald or golden eagle, its nest, or any of its eggs in violation of the Endangered Species Act of 1973 or the Bald Eagle Protection Act, as amended, 16 U.S.C. 668 et seq.

- 358.400. The operator conducting coal mining and reclamation operations will avoid disturbances to, enhance where practicable, restore, or replace, wetlands and riparian vegetation along rivers and streams and bordering ponds and lakes. Coal mining and reclamation operations will avoid disturbances to, enhance where practicable, or restore, habitats of unusually high value for fish and wildlife.
- 358.500. Each operator will, to the extent possible using the best technology currently available:
- 358.510. Ensure that electric powerlines and other transmission facilities used for, or incidental to, coal mining and reclamation operations on the permit area are designed and constructed to minimize electrocution hazards to raptors, except where the Division determines that such requirements are unnecessary;
- 358.520. Design fences, overland conveyers, and other potential barriers to permit passage for large mammals, except where the Division determines that such requirements are unnecessary; and
- 358.530. Fence, cover, or use other appropriate methods to exclude wildlife from ponds which contain hazardous concentrations of toxic-forming materials.

approval to use the standards of this Subsection when determining success of revegetation.

The operator will be required to maintain a minimum of 70 percent ground cover for five consecutive years on areas planted to herbaceous species as well as areas planted to herbaceous and woody species. When woody plants are part of the postmining land use, a minimum stocking of 400 woody plants is required per acre. A minimum of 600 woody plants is required per acre on steep slopes. Success of stocking is to be determined at the end of the five year period of responsibility. The basis for the ground cover requirement is discussed in the preamble of Section 816.117. The regulatory authority may set more stringent stocking and ground cover standards if they are required to prevent pollution, protect quality of the environment and health, safety and general welfare of the public. Since local and regional reforestation practices vary in the recommended number of trees per acre, it is believed the minimum of 400 trees and shrubs will provide sufficient flexibility to satisfy most regionally recommended reforestation practices and allow the regulatory authority to increase the number of trees per acre when local reforestation practices warrant.

These regulations will allow for the flexibility required, as a result of the diverse climatic and soil conditions, to properly measure the different vegetative types that are found in the mining areas.

1. Many commenters argued that the reference area concept is not practicable, that other established procedures and proven techniques should be allowed to determine success of revegetation, that measurement techniques should be left to the approval of the regulatory authority and that rewording is needed for clarification. USDA Forest Service and Soil Conservation Service and USDI Bureau of Land Management, Bureau of Indian Affairs, Geological Survey, Bureau of Mines, and Fish and Wildlife Service currently have established technical guides and proven techniques for describing rangeland sites and evaluating the vegetative resource on the lands they administer or serve. The Soil Conservation Service range site guides and evaluation procedures described in the National Range Handbook (1976) are uniformly accepted and used for assessment of the private lands throughout the United States. The National Range Handbook was prepared for use by all rangeland managers interested in resource conservation programs. Other federal agencies cited above have established and proven techniques for evaluating success of vegetation establishment, condition

and trend. These data banks are frequently relied upon when seeking information on vegetation. Therefore, the Office has decided to revise the proposed regulation to allow for use of other technical guides in place of reference areas to measure the success of revegetation.

Section 816.116 has been rewritten to provide an alternate to reference areas. Section 816.116(a) specifies that the Director will approve technical guides from among those published by USDA or USDI which may be used in lieu of approved reference areas, as a basis for determining whether the revegetation is successful under the standards in Section 816.116(b)(3).

Section 816.116(b)(1) was amended to conform with the preceding Section which now allows the regulatory authority to use either reference areas or other technical guides approved by the Director for assessing ground cover and productivity.

2. Several commenters suggested changing the requirements of Sections 816.116(b)(1)(i) and (ii) to maintain vegetation equal to reference areas (or other standards) to periods ranging from two years to 10 or more years. The regulations implement the time periods specified in Section 515(b)(20) of the Act so these requirements cannot be changed.

3. Many commenters objected to the requirement that ground cover and productivity be equal to the standards for each consecutive year of the responsibility period. They argue that annual measurements are unnecessarily expensive and such data from newly established vegetation has little utility. Further, it was requested that the regulations specifically address when the responsibility period begins. Some suggest the only requirement should be to achieve equal ground cover and productivity by the end of the responsibility period. Numerous other time spans were considered both at the beginning and the end of the period. Since vegetative response varies greatly due to a wide array of factors, especially influenced by local climate, several commenters indicated that consecutive year measurement should be required to counteract the effects of an extraordinarily good year.

Section 515(b)(19) of the Act requires establishment of vegetation at least equal in extent of cover to the natural vegetation and Section 515(b)(20) requires five or 10 years of responsibility for at least that amount of cover after the last major work assuring success. The Office interprets this to mean that cover must meet the standards at the start of the responsibility period and cover and productivity must meet the standards at the end of the responsibility period.

Therefore, the regulations were changed to require measurements that show vegetation at least equal to standards for ground cover to initiate the responsibility period and to standards for both ground cover and productivity for two consecutive years at the end of the period. The consecutive years should not immediately follow augmentation practices but occur at the end of the responsibility period to minimize the effects of the augmentation.

4. Several commenters wish to allow seeding, fertilizing or irrigation during the responsibility period. Section 515(b)(20) of the Act specifies that the period of responsibility extends for five (or 10) years after the last year of augmented seeding, fertilizing, irrigation or other work. Therefore, no additional seeding, fertilizing or irrigation can occur after start of the period of responsibility for determining success of revegetation. If such augmentation is necessary, then the period begins to run anew. The augmented seeding, fertilizing and irrigation does not apply to cropland and pastureland that can be expected to have a similar postmining use and which should be managed in accordance with acceptable local agricultural practices.

5. Section 816.116(b)(2) was amended to provide for the use of a wider range of reliable source material when determining annual precipitation. To confine the determination of precipitation to the use of a small scale map would not provide accurate information in areas where precipitation averages are highly variable in short distances, such as mountains, mesas and valleys. The regulations now include a list of example materials that may be used as source documents when making determinations on precipitation.

6. Various commenters suggested either increasing or decreasing the percent of cover and productivity requirements of Subsection 816.116(b)(3). Further, some contended that success should be determined on the basis of annual measurements throughout the period of responsibility while others stated that success should be based on measurements taken the last year of responsibility. It is believed that the 90 percent requirements for ground cover and productivity is an equivalent measure of success since there has to be a basic assumption that productivity will continue to improve with time when the land has been restored to the original productive capacity. The additional increase resulting from time will be due to a combination of factors including microbial activity and increased organic matter content. Further, a two-year minimum time base is required to adequately assess the ability of a perma-

including roads and other uses. This was intended by the proposal.

#### Section 816.116(c)

Final § 816.116(c) describes the period of extended responsibility for successful revegetation under Section 515(b)(20) of the Act to which performance bond release is tied under Section 519(c) of the Act and under 30 CFR Part 800. This provision also implements the requirement imposed by the U.S. District Court in *In re: Permanent Surface Mining Regulatory Litigation*, supra, slip op., p. 61, which had been implemented in part by the suspension of a portion of previous § 816.116(b) on August 4, 1980 (45 FR 51549). A new Paragraph (c)(4) is added describing the husbandry practices that may occur during the period of extended responsibility. The new paragraph is derived from previous § 805.13(b)(3).

#### Section 816.116(c)(1)

Proposed § 816.116(c)(1) would have required the period of responsibility for revegetation success to begin after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding tree and shrub planting, maintenance work, and husbandry practices that could be expected to continue as part of the postmining land use. The final rule is the same as the proposed rule with the exception that tree and shrub planting and maintenance work are not generally permitted during the responsibility period without starting the period anew. As described below, allowable husbandry practices are tied to a specific requirement that they can be expected to continue as part of the postmining land use.

A commenter stated that excluding tree and shrub planting and maintenance work from augmentative practices and allowing interseeding and supplemental fertilization during the first 5 years of the responsibility period in the West, and supplemental irrigation during the first 2 years of the responsibility period, all have significant potential for abuse and increase the likelihood that there will be vegetation failures after the bond is released. Similar concerns were expressed by a second commenter who thought the proposed rules were inconsistent with Section 515 (b)(19) and (b)(20) of the Act by effectively reducing the responsibility period for bonding by one-half for western mined lands. Another commenter was concerned that the responsibility period was shortened for success of revegetation and expressed the view that bond should not be released until a suitable time has

elapsed to be sure the revegetation will be successful.

Other commenters supported the proposed rules. One individual urged the adoption of proposed § 816.116(c) and was pleased that revegetation management and husbandry practices were finally recognized by OSM and would not act as a penalty for operators who used them. A State regulatory authority was specifically pleased with proposed § 816.116(c)(1). Another commenter thought that the use of cultural practices, including irrigation, has merit, especially since it would not involve a restarting of the responsibility period.

The final rules do not reduce the responsibility period. While the use of certain cultural practices, such as interseeding and tree and shrub planting, could be beneficial in establishing diverse plant communities if allowed during the period of responsibility, the Act is clear that any practice that constitutes augmented seeding, fertilizing, or irrigation must be completed prior to the extended period of responsibility. The final rule has been modified accordingly. These changes and a more complete discussion of the comments received are presented below.

*Start of responsibility period:* A commenter supported the proposed changes in § 816.116(c) regarding the start of the responsibility period for reclaimed areas. In contrast, a second commenter felt that the starting of the responsibility period for bond release after the last year of augmented seeding and fertilization rather than at the time vegetation had met the standards for success was unacceptable, especially in the arid West.

In the February 28, 1980, district court decision, cited supra, it was noted that Congress stated that, for areas where precipitation is less than 26 inches per year, "the length of time necessary to reestablish vegetation on mining spoil varies considerably . . . [and] ranges from ten years upward. Thus, the ten year standard of the bill represents a minimum time under the most favorable conditions." (H. Rept. No. 95-218, 95th Cong., 1st Sess. 109, 1977). In the court's opinion, the Act focused not on attaching a 5- or 10-year liability period after successful revegetation occurs, but directed a 5- or 10-year period to enable the coal operator to achieve successful revegetation. The court, therefore, remanded these rules and suggested that the 5- or 10-year liability period begin "after the last year of augmented seeding, fertilizing, [and] irrigation."

In response, OSM suspended the provisions of §§ 816.116(b) and 817.116(b) that started the period of responsibility at the point when the operator met the vegetation success standard (45 FR 51549, August 4, 1980). States were advised that they could permit the period of liability to begin from the point at which the operator completes seeding and fertilizing and that the period of liability would begin again whenever augmented seeding, fertilizing, irrigation, or other work was required or conducted on the site prior to bond release. The final rule is in agreement with the court's decision.

A commenter suggested adding language to proposed § 816.116(c)(1) in order to clarify that the responsibility period is not restarted by supplemental fertilization and interseeding in areas of less than 26.0 inches average annual precipitation. Proposed § 816.116(c)(3) would have allowed these practices during the first 5 years of the responsibility period without starting the period anew. As stated elsewhere in this preamble, Section 515(b)(20) of the Act limits OSM in this regard. Thus, the final rule does not allow such practice during the period of responsibility.

*Third party responsibility:* A commenter suggested adding language to proposed § 816.116(c)(1) to allow responsibility during the 5- or 10-year responsibility period to be transferred to any party, such as the landowner, so long as the bonding requirements of Subchapter J are met. This commenter reasoned that some operator-landowner leases entered into before the enactment of the Act or establishment of OSM rules lack provisions establishing a time frame when landowners are to take over their property following mining and reclamation. In these cases, operators have no legal mechanism for preventing the landowner from reentering his or her property for farming or grazing prior to achievement of the revegetation standards. OSM was urged to consider a modification which would shift the burden of taking action against the landowner from the operator to the regulatory authority in situations where the landowner may use the land in a manner that jeopardizes bond release.

The Act and rules include provisions for the transfer, sale, and assignment of responsibilities under a permit. These provisions may be used to transfer responsibility if certain conditions are met and the transfer is approved by the regulatory authority. Without such an approved transfer, the operator remains responsible for revegetation success and other reclamation requirements.

*Section 816.116(c)(2)*

Proposed § 816.116(c)(2) required the period of responsibility to continue 5 full years where the average annual precipitation is more than 28.0 inches. Vegetation parameters were to equal the approved success standard during the growing season of the last year or, if required by the regulatory authority, during the growing seasons of the last 2 years of the responsibility period. The final rule is the same as the proposed rule except for some minor changes in wording for clarity.

Two State regulatory authorities proposed that additional wording be included in § 816.116 (c)(2) and (c)(3) to indicate that the period of responsibility must be "not less than" the appropriate 5 or 10 years. One of these States also recommended that the words "or exceed" be added to allow the permittee to be in compliance not only when the success standard is equalled, but also when it is exceeded. OSM has adopted these suggestions in the final rules because they appropriately convey the intent of the Act and remove possible differences in interpretation.

*One- or two-year test of success:* A commenter felt that proposed § 816.116(c)(2) should be changed to allow the regulatory authority to accept yield and productivity documentation on either the fourth year or the fifth year in areas of more than 28 inches average annual precipitation since adverse climatic conditions, such as areawide drought, may prevent the operators from meeting success standards during the fifth year.

Section 515(b)(20) of the Act requires operators to assume responsibility for successful revegetation for a period of 5 years. Acceptance of data for proof of reclamation success solely from the fourth year would in effect shorten the responsibility period and be inconsistent with the Act. Furthermore, data from the fourth year is more apt to reflect a carryover effect from fertilization and other practices used to initially establish the vegetative cover. Hence, the rule has been adopted as proposed.

A commenter argued that there is no statutory basis for allowing the regulatory authority the option of requiring that vegetation equal or exceed the success standard for the last 2 years of the responsibility period. The commenter alleged that the statutory obligation has been met if the operator meets the standard in the last year of the period. Another commenter thought the proposal allowing 1 year, unless the regulatory authority requires 2 years, was more practical and less burdensome than the previous rule both

for regulators and operators. Two additional commenters asserted that 2 years should always be required for proof of revegetation success. One of these commenters stated that under normal circumstances there should not be any serious difficulty in attaining a vegetation standard by the fourth year and maintaining it through the fifth. The other commenter asserted that 2 years is necessary, especially where lime is used. Lime was believed to have a superficial neutralizing effect that could result in the recurrence of acid soil.

Ample justification exists for requiring 2 consecutive years of proof of revegetation success in States with pronounced year-to-year variability in climatic conditions and where success is based on crop yields or other parameters that are highly sensitive to such conditions. The decision to require 1 or 2 year's proof of performance should rest with the regulatory authorities in those States where the annual average precipitation exceeds 28 inches. The 2-year provision may be applied selectively according to postmining land use or particular area within a State. In all instances, the last year of responsibility should be part of the 1- or 2-year test period.

A commenter was concerned that failure to meet the required standard during the last year of the responsibility period would be reason to start the responsibility period anew or for forfeiture of bond. Regulatory authorities should understand that the responsibility period continues on a year-to-year basis until the standards are satisfied. Additional language in the rule is not needed to make this clear. However, it should be pointed out that in the event augmented seeding, fertilizing, irrigation, or other work is required to obtain success, the responsibility period will start anew.

A State regulatory authority wanted additional language inserted in § 816.116(c)(2) which would require the operator to supply the regulatory authority with documentation of revegetation success. The State felt this addition would relieve the regulatory authority from measuring every plot and allow the regulatory authority to concentrate on verifying the techniques used by the operator and the operator's results. Regulatory authorities already have the power to require operators to submit documentation of revegetation success in an application for bond release. There is no need to repeat this in the Federal revegetation rules.

*Section 816.116(c)(3)*

Proposed § 816.116(c)(3) required the period of responsibility to continue for

10 full years where the average annual precipitation is equal to or less than 28 inches. Interseeding and supplemental fertilizing would have been allowed during the first 5 years of the responsibility period, and supplemental irrigation would have been allowed during the first 2 years of the responsibility period when needed to establish a diverse, effective, and permanent vegetative cover. Also, vegetation parameters had to equal the approved success standard for at least the last 2 consecutive years of the responsibility period.

A commenter alleged that the Act clearly states that any reseeding or refertilizing automatically restarts the liability period. The commenter pointed out that the proposed rules could result in seeding and fertilization taking place throughout the performance period, with subsequent failure of the vegetation after bond is released.

In proposing to allow tree and shrub planting during the initial portion of the responsibility period, OSM felt it important to provide operators ample time to obtain and plant the desired species and to utilize the best technology available without extending the responsibility period. However, OSM is constrained by Section 515(b)(20) of the Act to require the responsibility period to restart if augmented planting occurs. Thus in the final rule, the use of augmented seeding, fertilizing, or irrigation is not allowed during the responsibility period.

*§ 816.116(c)(4)*

Rather than interspersing in § 816.116 (c)(2) and (c)(3) activities that an operator may engage in during the responsibility period, as was proposed, a new § 816.116(c)(4) allows the use of certain husbandry practices during the responsibility period if approved by the regulatory authority. The purpose of this provision is to help assure revegetation success within the constraints prescribed by the Act. In essence, this is a retention of previous § 805.13(b)(3), with a few modifications. Previous § 805.13(b)(3) required a demonstration that discontinuance of the husbandry practices after the responsibility period expired would not reduce the probability of permanent revegetation success. Under the final rule, husbandry practices may also be approved if such practices can be expected to continue as part of the postmining land use. Such practices cannot include augmented seeding, fertilization, or irrigation without extending the period of revegetation success and bond liability.

The approved measures must be normal conservation practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area. This requirement is taken directly from previous § 805.13(b)(3). The final rule also enumerates examples of practices that may be approved. These include disease, pest, and vermin control; and pruning, reseeding and/or transplanting specifically necessitated by such actions. Disease control was not included in previous § 805.13(b)(3), but is included in the final rule since such actions are commonly associated with normal husbandry. The final rule deletes the reference to rills and gullies from previous § 805.13(b)(3) since this reference could be misleading. Revised § 816.95 (48 FR 1160, January 10, 1983) provides that rills and gullies that would either: (1) Disrupt the approved postmining land use or reestablishment of the vegetative cover, or (2) cause or contribute to a violation of water quality standards for receiving streams, must be filled, regraded or otherwise stabilized; topsoil replaced; and the areas reseeded or replanted. Such rills and gullies may be indicative of a failure in the revegetation, depending on local and site-specific conditions; and may require augmented seeding to ensure revegetation success. For this reason, specific reference to regrading of rills and gullies has been deleted as an example of normal conservation practices under final Paragraph (c)(4). Under the final rule, the regulatory authority could allow repair of rills and gullies as a husbandry practice without restarting the liability period only if the general standards of this section are met after consideration of normal conservation practices within the region.

A number of comments were received on the related provisions in proposed § 816.116(c) that would have allowed particular activities during the responsibility period. These comments are discussed below.

*Tree and shrub planting and maintenance work:* Several commenters expressed the belief that tree and shrub planting and maintenance work should be restricted to the beginning of the responsibility period or identified as activities that would restart the period of responsibility. A State pointed out that the proposed rules required trees and shrubs to be in place only two growing seasons at the time of bond release. This allowed 8 years to complete the planting of trees and shrubs in arid areas and 3 years in areas of heavy rainfall. The commenter thought such periods to be excessive

and stated that 2 years was sufficient time to obtain planting stock and to plant it during the proper season. Another commenter, who also felt the time period provided for tree and shrub planting was excessive, argued that 2 years was inadequate to determine the effect of unfavorable soil conditions which might be present. Older trees with more extensive root systems might come in contact with toxic materials at lower depths and become stunted or die after the release of operator responsibility. The commenter concluded that the Act clearly requires the responsibility period to start over when additional trees are planted and that OSM's rules must not conflict with the Act.

A State regulatory authority felt the replanting of trees and shrubs is not a normal practice where the postmining land use is unmanaged forest, nor is filling and seeding of rills and gullies. It was contended that these practices are augmentative and such work should cause the period of responsibility to begin anew. In contrast, another commenter favored allowing normal husbandry practices for trees and shrubs on reclaimed sites. It was argued that normal husbandry or management practices, including control of competing vegetation, are acceptable in unmined areas and should be available to the reclamation specialist.

To the extent operators are provided the opportunity to do limited replanting without starting the responsibility period anew under § 816.116(c)(4), § 816.116(b)(3)(ii) requires 80 percent of the planting stock to be in place for 3 or 8 years depending on the average annual precipitation and the remaining stock used in determining success to be in place for at least two growing seasons. Thus, this rule will, in effect, limit replanting to a maximum of 20 percent to the required stocking before restarting the responsibility period. Revegetation success will therefore be based on trees and shrubs that are in place an adequate time.

OSM also received several comments concerning the allowance for maintenance work during the responsibility period as provided for in the proposed rules. One commenter said that this had tremendous potential for abuse and should be deleted from § 816.116(c)(1) unless very strict limits were set on the area over which such work could be done. As safeguards, the commenter suggested requiring operators to keep careful records of these practices and limiting the cumulative area treated to 5 percent or less of the total permit area. Where the treated area exceed 5 percent, the

responsibility period should start again for the whole area or the problem area should start again for the whole area or the problem area should be separated from the rest of the permit area for bonding purposes. A State suggested limiting the filling of rills and gullies and reseeding of small spots where vegetation has failed to the first 5 years of the 10-year period of responsibility. This would allow adequate time for the permittee to stabilize and revegetate the area and leave 5 years for the vegetation to develop.

OSM agrees that allowing unlimited areas to be reseeded following the repair of rills and gullies without restarting the period of responsibility could lead to abuse of the revegetation success standards because any failure of revegetation could be accompanied by the creation of rills and gullies requiring repair. To limit the potential abuse, under final § 816.116(c)(4), the repair of rills and gullies including reseeding or transplanting, can occur without extending the period of responsibility for revegetation success only if it is a normal conservation practice in the region, and such actions can be expected to continue as part of the postmining land use or if discontinuance will not reduce the probability of permanent revegetation success. OSM has not adopted the 5 percent standard since any nationwide numerical standard would be unrelated to the normal conservation practices in the different regions of the country.

A commenter asserted that allowing maintenance work throughout the responsibility period defeats the intent of the responsibility period. The provision allowing maintenance work contained in the proposed rule has not been included in the final rule. The proposed term "maintenance work" was too broad in meaning and its use in the rules could have resulted in conflicting interpretations, some of which could be prohibited by the Act. By allowing husbandry practices that can be expected to continue as part of the postmining land use, operators will have sufficient latitude to assure vegetation success.

A State regulatory authority suggested adding language to § 816.116(c)(1) to allow the regulatory authority to determine which husbandry practices are normally practiced in the region for the postmining land use. Under the final rule, the regulatory authority must decide which husbandry practices are acceptable. The rule provides the basis upon which such decision must be made. In the event the husbandry practice cannot be reasonably expected

to continue after bond release or if its discontinuance following bond release will reduce the probability of permanent revegetation success, the regulatory authority must deny approval or restart the period of responsibility for the operator.

A commenter said good husbandry practices would be acceptable if reseeding, refertilizing, and irrigation were clearly excluded. The final rules exclude augmented refertilizing and irrigation, and reseeding is allowed only under limited circumstances.

*Previous Section 816.116(c)*

OSM has removed previous §816.116(c), which required operators to maintain necessary fences, use proper management practices, and conduct periodic measurements of vegetation, soils, and water as prescribed or approved by the regulatory authority for identifying conditions during the period of responsibility.

A commenter felt that the requirements of previous § 816.116(c) should be maintained. Similarly, other commenters contended that requiring the maintenance of fences and the use of proper management practices is appropriate and necessary for ensuring the success of revegetation and that the requirement to monitor vegetation, soils, and water is necessary to make sure that adequate progress is made toward meeting success standards.

Another commenter argued that fence maintenance and proper management practices are needed to ensure that standards generated from reference areas are valid. This commenter viewed the monitoring provisions of previous § 816.116(c)(2) as absolutely essential. This commenter also contended that, since reclamation is more of an art than a science, monitoring is usually the only means of verifying and refining the reclamation plan.

As previously stated in the preamble to the proposed rules (47 FR 12599), these provisions are not specifically required by the Act and can be provided for by the regulatory authority, if appropriate, according to the local conditions. Operators must take the actions necessary to achieve successful reclamation, including the possible maintenance of fences and performance of management practices. That is, if fencing is necessary to avoid destructive grazing or indiscriminate use of recreation vehicles on the revegetated area, then the operator is expected to construct and maintain a fence. If a regulatory authority approves the use of reference areas, then it should include provisions in its rules that address fencing and the use of proper

management practices necessary to assure that reference-area data are valid and appropriate for determining the success of revegetation.

Similarly, regulatory authorities are not precluded from requiring the monitoring of revegetation efforts to assure that the reclamation plan is being followed and that the revegetation effort is progressing in a satisfactory manner. Likewise, operators may do so on their own.

*Previous Sections 816.116(b)(2) and 816.116(d)*

Previous § 816.116(b)(2) listed data sources and specific procedures for determining average annual precipitation. OSM proposed the removal of this section because it was primarily a listing of information sources and not deemed necessary to understanding the regulatory requirement. No specific comments were received on this proposed deletion. Therefore, OSM has omitted these provisions from the final rules.

Previous § 816.116(d) provided an alternative fixed standard for determining the success of revegetation when permit areas are 40 acres or less in size and in locations with an average annual precipitation of more than 26 inches. OSM proposed deleting this section because it believed the flexibility generally provided to regulatory authorities by proposed § 816.116(a) obviated the need for a specific fixed standard for small permit areas. No comments were received on the basic proposal for removing the section; however, one commenter noted the deletion would also remove previous § 816.116(d)(3), which contained the only definition in the rules for ground cover. Ground cover was defined as the area of ground covered by the combined aerial parts of vegetation and litter that is produced naturally onsite, expressed as a percentage of the total area of measurement. This definition is retained in the final rules, but is moved to 30 CFR 701.5, Definitions.

*Previous Section 816.117 Revegetation: Tree and Shrub Stocking for Forest Land*

OSM proposed to remove § 816.117, which established requirements for tree and shrub stocking on forest land. OSM stated that a separate section with revegetation success standards for forest postmining land uses was unnecessary and that the essential requirements of previous § 816.117 could be incorporated into § 816.116. Revegetation: Standards of success. This was proposed in §816.116(b)(3). No comments were received that either

supported or opposed this reorganization of the rules. Therefore, the final rule removes § 816.117 and transfers the essential requirements for tree and shrub stocking to § 816.116(b)(3). Comments received on the proposed language were previously discussed under the heading "Forest, Wildlife Habitat, and Recreation areas."

*Sections 817.111–817.118 Revegetation Performance Standards—Underground Mining*

Proposed §§ 817.111–817.118 establishing revegetation performance standards for underground mining activities. With the exception of § 817.111, these sections were identical to the corresponding sections proposed in Part 816. Proposed §817.111 reflected differences in the statutory language of Section 515(b)(19) of the Act for surface mining activities and Section 516(b)(6) is essentially the same as Section 515(b)(19). However, Section 516(b)(6) does not use the term "effective" in describing the vegetative cover requirements. Also, there is no statutory language restricting the use of introduced species and requiring vegetation of the same seasonal variety.

A State regulatory authority pointed out that proposed § 817.111(a)(1) did not contain the term "effective" and said the word should not be eliminated from the performance standards for underground mining activities. This proposed deletion was also noted by a second commenter who appeared to seek its inclusion in the final rule. Specific reasons were not given for the position taken by the commenters.

A State regulatory authority also noted that the proposed changes to §§ 817.111 (a) and (b) would eliminate the emphasis given in previous § 817.111(b)(1) to native plants of the same seasonal variety. The commenter contended that the use of native, locally adapted plant species was vital to successful revegetation, particularly under arid and semiarid conditions. Accordingly, the commenter believed that this requirement should not be eliminated from the rules.

In considering these comments, OSM has reviewed the Act and its legislative history to determine if the differences in Sections 515(b)(19) and 516(b)(6) were intended to reflect actual or perceived differences in surface and underground mining activities. OSM has not identified any differences that support adopting revegetation rules for surface mining activities that differ from rules adopted for underground mining activities. Therefore, in the final rules

the revegetation performance standards in Part 816 and Part 817 are identical.

### C. References

Technical literature used to develop these final rules was cited in the March 23, 1982, issue of the *Federal Register* (47 FR 12601). The following technical literature, not previously cited, was also used in the preparation of these final rules. All of the reports are on file in OSM's Administrative Record.

Bonham, C. D., Larson, L. L., and Morrison, A., 1980. A survey of techniques for measurement of herbaceous and shrub production, cover, and diversity in the West: Unpublished, report prepared for the Office of Surface Mining, 79 pp.

Farmer, R. E., Jr., Rennie, J. C., Scanlon, D. H., III, and Zarger, T. C., 1981. Technical guides on use of reference areas and technical standards for evaluating surface mine vegetation in OSM Regions I and II. Prepared by the Tennessee Valley Authority for the Office of Surface Mining, Contract J5701442, 82 pp.

Gilley, J. E., Gee, G. W., Bauer, A., Willis, W. O., and Young, R. A., 1977. Runoff and erosion characteristics of surface mined sites in western North Dakota: *Trans., ASAE* 20(4): 697-700, 704.

Larson, L. L., 1980. A statistical evaluation of revegetation success on coal lands in the West: Unpublished, report prepared for the Office of Surface Mining, 19 pp.

National Research Council, 1981. *Surface mining: Soil, coal, and society*: National Academy Press, Washington, D.C.

Oleson, A. L., 1981. Methods for measuring percent ground cover: U.S. Department of Agriculture, Soil Conservation Service, Northeast Technical Service Center, Technical Note, Agronomy No. 17, 4 pp.

Raelson, J. V., and McKee, G. W., 1982. Measurement of plant cover to evaluate revegetation success: The Pennsylvania State University, Dept. of Agronomy, Agronomy Series 67, 45 pp.

Slick, B. M., N. D., (in press). A guide for the use of organic materials as mulches in reclamation of coal minesoils in the Eastern United States: U.S. Department of Agriculture, Forest Service, General Technical Report, 351 pp.

Thornburg, A. A., 1982. Plant materials for use on surface mined lands in arid and semiarid regions: U.S. Department of Agriculture, Soil Conservation Service, SCS-TP-157.

U.S. Department of Agriculture, 1963. Sixteen plants poisonous to livestock in the Western States: *Farmers' Bulletin* 2106.

U.S. Department of Agriculture, 1959. *Techniques and methods of measuring understory vegetation*: Proceedings of a symposium at Tifton, Georgia, October 1958, 174 pp.

U.S. Forest Service, 1937. *Range plant handbook*: U.S. Department of Agriculture.

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### III. Procedural Matters

#### *Executive Order 12291 and the Regulatory Flexibility Act*

The Department of the Interior (DOI) has determined that this rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291. Also, DOI certifies that this rule will not have a significant economic effect on a substantial number of small entities and, therefore, does not require a regulatory flexibility analysis under Pub. L. 95-354. These rules, by emphasizing performance standards instead of design criteria, will allow small coal operators increased flexibility and should especially ease the regulatory burden on small coal operators in Appalachia.

#### *Paperwork Reduction Act*

OSM has received approval from the Office of Management and Budget under 44 U.S.C. 3507 for the information collection requirements in Parts, 816 and 817 and have been assigned clearances Nos. 1029-0047 and 1029-0048. These approvals have been codified under §§ 816.10 and 817.10. However, there are no information collection requirements in the revegetation rules, §§ 816.111-816.116 and 817.111-817.116.

#### *National Environmental Policy Act*

OSM has analyzed the impacts of these final rules in its "Final Environmental Impact Statement OSM-EIS-1: Supplement" (FEIS) according to Section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(2)(C)). The FEIS is available in OSM's Administrative Record, Room 5315, 1100 L Street, NW., Washington, D.C., or by mail request to Mark Boster, Chief, Branch of Environmental Analysis, Office of Surface Mining, Department of the Interior, Room 134, Interior South Building, U.S., 1951 Constitution Ave., NW., Washington, D.C. 20240. This preamble serves as the record of decision under NEPA. The final rules are different from those contained in Volume III of the FEIS in the following respects:

- Final §§ 816.111(a) and 817.111(a) apply to "disturbed areas" rather than "affected lands." For the reasons described earlier in this preamble, this change does not affect the FEIS analysis.
- Final §§ 816.116(c) and 817.117(c) do not allow tree and shrub planting during the first 2 years of the period of responsibility in areas of more than 26 inches average annual precipitation and do not allow interseeding, tree and shrub planting, fertilizing, or irrigation during the first 2 years of the period of

responsibility in areas of 26 inches or less average annual precipitation. In this respect, the final rules are consistent with the no action/minimum action Alternative B in the FEIS.

3. The final rules add a provision allowing regulatory approval of certain husbandry practices. These would have been allowed under draft final § 816.116(c)(1) and thus are considered within the FEIS analysis.

#### *Agency Approval*

Section 516(a) of the Act requires that, with regard to rules directed toward the surface effects of underground mining, OSM must obtain written concurrence from the head of the department which administers the Federal Mine Safety and Health Act of 1977, the successor to the Federal Coal Mine Health and Safety Act of 1969. OSM has obtained the written concurrence of the Assistant Secretary for Mine Safety and Health, U.S. Department of Labor.

#### *List of Subjects*

##### *30 CFR Part 701*

Coal mining, Law enforcement, Surface mining, Underground mining.

##### *30 CFR Part 816*

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Surface mining.

##### *30 CFR Part 817*

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Underground mining.

Accordingly, 30 CFR Parts 701, 816, and 817 are amended as set forth herein

Dated: August 29, 1983.

William P. Pendley,

Deputy Assistant Secretary, Energy and Minerals.

### PART 701—PERMANENT REGULATORY PROGRAM

1. Section 701.5 is amended by adding a definition of "ground cover" in alphabetical order to read as follows:

#### § 701.5 Definitions.

*Ground cover* means the area of ground covered by the combined aerial parts of vegetation and the litter that is produced naturally onsite, expressed as a percentage of the total area of measurement.

One commenter suggested that the word "healthy" be dropped since there is no definition provided in the rules. The commenter suggested that there could be difficulty in establishing what is a healthy tree. OSMRE did not accept the suggested deletion since to do so could give the impression that unhealthy, sickly or badly damaged trees could be counted in measuring revegetation success. Obviously, trees that are not healthy, i.e., characterized to a significant degree by dieback of growing tips, abnormal leaf or needle drop, necrosis, severe mechanical damage to stems or branches, abnormal yellowing or other discoloration of green parts, presence of disease organisms, stunted growth, etc., should not be counted. However, OSMRE recognizes that there are varying degrees of health and notes that State regulatory authorities, in consultation with State forestry agencies, may find it appropriate to establish guidelines for distinguishing healthy trees and shrubs from unhealthy ones. Such guidelines must be based on local and regional conditions. OSMRE does not believe that a definition of the term "healthy" in this context is necessary in the Federal rules.

One commenter suggested that the criterion that trees and shrubs must have been in place at least two growing seasons to be counted seems irrelevant in light of the 80/60 rule. The commenter apparently assumed that the proposed rule would have prohibited an operator from counting a tree or shrub if it had been in place less than 60 percent of the responsibility period. Another commenter opposed the minimum-of-two-years-in-place standard on the basis of research that the commenter believed suggests a two-year establishment period is inadequate. This commenter recommended that the final rule require trees or shrubs to have been in place for three or more years to be counted, particularly in Western States. OSMRE did not accept these comments. The two-year requirement will be applicable at most to only 20 percent of the trees used to determine the success of stocking. The 80/60 rule requires a minimum of 80 percent to be in place for a longer time, either three or six years depending on annual average precipitation. OSMRE disagrees that the two-years-in-place criterion is irrelevant or inadequate. Allowing an operator to include in the number of trees used to determine success some trees (up to 20 percent of the success standard) in place less than 60 percent of the responsibility period, but more than two years, encourages selective replanting of trees

to ensure full stocking without significantly weakening the basic requirement that reforestation success be based on the survival of the majority of the trees in the initial planting.

One commenter questioned why the preamble to the proposed rule contained the statement, "Under this proposed rule, the initial planting must occur prior to the start of the responsibility period" (52 FR 28015). In the opinion of the commenter, the statement may be counterproductive to reclamation by precluding an operator from establishing a ground cover to stabilize the site and then re-entering to plant trees within the period of responsibility. The commenter also indicated that, "As long as viable trees and/or shrubs are in place prior to the start of the 60 percent period, timing for their establishment should not penalize an operator or be a factor in determining success." Another commenter recommended that the regulation, not just the preamble, should state that the initial planting of trees or shrubs must occur prior to the start of the liability period. OSMRE did not accept either of these two comments. First, section 515(b)(20) of SMCRA requires the operator to assume responsibility for successful revegetation for five (or ten in drier areas) years after the last year of augmented seeding, fertilization, irrigation or other work necessary to establish the vegetative cover. OSMRE considers the initial planting of trees and shrubs, as well as planting that is in addition to normal husbandry practices, to be augmentative work. Thus, the period of responsibility must start after the initial tree or shrub planting, even if the operator plants a stabilizing ground cover prior to re-entering the site to plant trees. Second, § 816.116(c)(1) of the permanent program rules contains the requirement that the period of responsibility shall begin after the last year in which augmentative work was performed. Thus, it is not necessary to repeat the requirement.

Two commenters suggested that the difficulty in accurately determining how long a woody plant has been in place on reclaimed land renders the 80/60 rule impractical to implement. OSMRE disagrees because the age of plantations or naturally regenerated stands can be established through photographic documentation, by tagging or marking with paint, by inspection reports, by preservation of sales receipts from nurseries and by other means. State regulatory authorities have the flexibility under the final rule to establish guidelines and procedures governing age determinations and

necessary documentation that are appropriate to regional and local conditions.

One commenter opposed the change in the time-in-place standard from eight to six years for areas where the minimum responsibility period is ten years based on climatic conditions in his State. Based on the literature cited in the preamble to the proposed rule, OSMRE believes that six years generally provides an adequate period of time to establish trees on a site in areas where the annual average precipitation is less than 28 inches. As stated in the proposed rule preamble, the re-asserted here, States are free to impose more stringent requirements if appropriate based on local conditions. Therefore, OSMRE did not change the proposal in response to this comment.

One commenter urged re-evaluation of the 80/60 rule because of a belief that the rule requires even-aged stands on reclaimed areas, which the commenter believed "discourages natural succession processes and leads to increased potential for catastrophic community failure in the event of disease, infestation, fire or other event." OSMRE did not accept the commenter's suggestion because the issue is addressed in other portions of the revegetation rules. For example, the requirement in § 816.116(b)(3)(i) that minimum stocking and planting arrangements shall be specified on the basis of local and regional conditions will take into account factors such as species diversity and disease control. Section 816.111 requires an evaluation by the regulatory authority of species diversity, regenerative capacity and seasonal characteristics of growth. Finally, § 816.118(c)(4) allows disease, pest and vermin control measures without restarting the operator's period of responsibility.

Concerning the 80/60 rule, one commenter asserted that neither consideration of 80 percent of trees as sufficient to demonstrate revegetation success nor the deviation from the 90 percent standard of § 816.116(a)(2) were supported by the cited literature. Based on the literature used to develop the rules, OSMRE believes that reforestation normally requires a continuing effort beyond the initial planting. Seven of the commenters specifically stated that they shared this belief based on their experience with reforestation and/or their familiarity with the literature. The final rule represents a reasonable compromise that will allow some replanting if approved as a normal husbandry practice under § 816.116(c)(4). Eighty

always be measured in order to take into account the effects of any latent acid or toxic subsoil constituents, the commenter may be confusing the requirement to demonstrate revegetation success through measurement of productivity with the general revegetation requirements. Although the rule allows measurement of productivity prior to the end of the responsibility period, it does not state, and is not intended to imply, that bond will be released on an area where reclamation has not been fully achieved. As provided in 30 CFR 800.40(c)(3), "no bond shall be fully released . . . until the reclamation requirements of [SMCRA] and the permit are fully met." The final bond release inspection will evaluate achievement of the general revegetation requirements of 30 CFR 816.111 in addition to the success standards of § 816.118.

The measurement of productivity for cropland is accomplished using data provided by the permittee. When the productivity of cropland has been measured earlier and success standards were met, the regulatory authority is not required to measure crop production during the final bond release inspection. Rather, such an inspection is a check to see whether the past demonstration of productivity success appears to be continuing.

Seven commenters supported the proposal that revegetation success for postmining land uses other than grazing land, pasture land and cropland be measured during the last year of the operator's responsibility period. One commenter suggested that revegetation success be measured in any one of the last two years of the responsibility period, and one commenter suggested measurement over both of the last two years. One commenter challenged the literature cited in the preamble to the proposal as supporting the one-year period for measuring revegetation success and pointed out that the Washington State forestry practices rules, concerned with replanting trees in clearcut areas, may have little applicability to reforestation of severely disturbed mined areas. In addition, the commenter asserted that acceptable practices in the moist, fertile ecosystems of the Pacific Northwest may not be appropriate for application to the coal regions of the eastern United States.

The final rule retains the requirement that vegetative success be measured during the last year of the responsibility period for the postmining land uses other than grazing land, pasture land and cropland. In areas of annual average precipitation exceeding 28

inches, the forest ecosystem, once disturbed, reinitiates the process of vegetative succession. The first few years of the emergent successional pattern are prolific with respect to species density and diversity. Vegetative diversity and density increase with time during the five-year responsibility period. Indigenous species invade and become established. Therefore, given the positive relationship between time and vegetative cover, OSMRE believes that the last year of the responsibility period will provide an accurate measurement of revegetation success. It should be noted in response to the comment suggesting significant climatic differences between Washington State and the coal regions of the Eastern United States that the coal-producing regions of Washington State receive annual average precipitation that ranges from 20 to more than 60 inches, a range that coincides with the annual average precipitation in the coal-producing regions of the East.

#### *Sections 816.116(c)(4) and 817.116(c)(4) Normal Husbandry Practices*

Proposed § 816.116(c)(4) allowed certain husbandry practices during the responsibility period if approved by the regulatory authority and if the husbandry practice can be expected to continue as part of the postmining land use or if discontinuance of the husbandry practice after the release of permittee responsibility will not reduce the probability of continued revegetative success. The approved practices cannot include augmented seeding, fertilization, or irrigation without extending the period of responsibility. However, seeding, fertilization, or irrigation performed at levels that do not exceed those normally applied in maintaining comparable unmined land in the surrounding area would not be considered prohibited augmentative activities. The proposed minor change from the existing rule was to substitute the phrase "normal husbandry practices" for the phrase "normal conservation practices." This change was intended to avoid restricting approvable practices to manipulation of the soil alone.

In the preamble to the proposal, OSMRE stated, "Rather than proposing a national rule which would universally allow repair and reseeded of rills and gullies to be considered a normal husbandry practice, OSMRE will evaluate such practices if submitted by a State as a program amendment. Therefore, under the provisions of 30 CFR 732.17 governing State program amendments, OSMRE would consider,

on a practice-by-practice basis, the administrative record supporting each practice proposed by a regulatory authority as normal husbandry practice. The regulatory authority would be expected to demonstrate (1) that the practice is the usual or expected state, form, amount or degree of management performed habitually or customarily to prevent exploitation, destruction or neglect of the resource and maintain a prescribed level of use or productivity of similar unmined lands and (2) that the proposed practice is not an augmentative practice prohibited by section 515(b)(20) of [SMCRA]" (52 FR 28016).

Final § 816.116(c)(4) is the same as the proposed rule with the exception of the addition of the requirement for approval by OSMRE of proposed husbandry practices according to the State program amendment process. Two commenters suggested that this addition would clarify the rule by making explicit the requirement for prior approval by OSMRE of practices proposed by the State regulatory authority as normal husbandry practices.

One State regulatory authority was concerned that it would have to rejustify husbandry practices, such as the repair of rills and gullies, that already a part of the approved State regulatory program. If OSMRE has given specific approval to a State regulatory program provision that allows a particular practice to occur without restarting the operator's responsibility period, then there would be no need for resubmission of the record supporting that practice to OSMRE for approval. However, to the extent that OSMRE's approval of a State regulatory program does not address normal husbandry practices, the State would have to obtain OSMRE's approval under § 816.116(c)(4) to allow specific normal husbandry practices to occur without restarting the responsibility period.

One commenter suggested that normal husbandry practices be approved at the State regulatory authority level, without having to seek OSMRE's approval, through the issuance of State policy guidance or the approval of individual reclamation plans. This would be tantamount to a reinstatement of the 1983 rule. As stated in the proposed rule preamble, OSMRE has reconsidered the 1983 rule and concluded it granted flexibility that is inappropriate in a national performance standard. Therefore, the final rule establishes the requirement that OSMRE approval must be obtained before husbandry practice can be allowed to occur under a State

regulatory program without restating the responsibility period.

Six commenters supported allowing the repair of rills and gullies as a normal husbandry practice, and one commenter urged that the phrase "repair of rills and gullies" be added to the list of approved practices found in the last sentence of proposed § 816.116(c)(4). Because OSMRE is convinced that the cited literature supports the repair of rills and gullies in some situations, the final rule establishes a framework within which a State regulatory authority may demonstrate that such repair is a normal husbandry practice. However, since it is also true that repair of rills and gullies is not always simply good husbandry, the final rule does not include the suggested addition to the list of approved practices.

One commenter suggested that the proposed rule did not mention the role of Federal land-managing agencies in approving normal husbandry practices on Federal lands. OSMRE believes that the Federal lands regulations, particularly 30 CFR 740.11(d), which allows Federal land-managing agencies "to include in any lease, license, permit, contract, or other instrument such conditions as may be appropriate to regulate [mining]," adequately recognize the authority of Federal land-managing agencies to regulate surface coal mining and reclamation operations under provisions of law other than OSMRE on lands under their jurisdiction.

One commenter recommended that the final rule provide minimum standards for the State regulatory authorities to use when determining when tree planting, repair of rills and gullies, and other practices are to be considered augmentative versus normal husbandry. The commenter was concerned that the lack of such minimum standards would allow "major gully repair or replanting a large percentage of the trees or shrubs" within the responsibility period under the guise of normal husbandry. The commenter suggested that an example of a minimum standard would be to establish a ceiling, such as five percent of the permit area, that would be subject to a normal husbandry practice without restarting the operator's period of responsibility.

OSMRE's position is that the primary responsibility for regulating surface coal mining and reclamation operations should rest with the States. Federal rules must be capable of nationwide application. The absence of minimum standards in portions of the Federal rules is not a weakening of revegetation requirements but reflects that the rules are designed to account for regional

diversity in terrain, climate, soils and other conditions under which mining occurs. The requirements for OSMRE approval of normal husbandry practices proposed by State regulatory authorities based upon State-specific documentation of local husbandry practices will ensure that augmentative practices are not allowed to occur without restarting the operator's period of responsibility.

*Effect in Federal Program States and on Indian Lands*

This rule applies through cross-referencing in those States with Federal programs. They are Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for these States appear at 30 CFR Parts 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947 respectively. The rules will apply in California if the Federal program for that State, which was proposed on October 22, 1987 (52 FR 39594), is adopted. The rules also apply through cross-referencing to Indian lands under Federal programs for Indian lands as provided in 30 CFR Part 750. No comments were received concerning unique conditions that exist in any of these States or on Indian lands that would have required changes to the national rule.

**III. Procedural Matters**

*Federal Paperwork Reduction Act*

The revegetation rules affected by the changes approved today, §§ 816.116 and 817.116, do not contain new information collection requirements requiring approval from the Office of Management and Budget under 44 U.S.C. 3507.

*Executive Order 12291 and Regulatory Flexibility Act*

The DOI has determined that this rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291 (February 17, 1981). Also, DOI certifies that this rule will not have a significant economic effect on a substantial number of small entities and, therefore, does not require a regulatory flexibility analysis under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

*National Environmental Policy Act*

OSMRE has prepared an environmental assessment and has made a finding that the final rules will not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). The environmental assessment is on file

in the OSMRE Administrative Record, Room 5315, 1100 L Street, NW., Washington, DC.

*Agency Approval*

Section 516(a) of SMCRA requires that, with regard to rules directed to the surface effects of underground mining, OSMRE must obtain the written concurrence from the head of the department which administers the Federal Mine Safety and Health Act of 1977, the successor to the Federal Coal Mine Health and Safety Act of 1969. OSMRE has obtained the written concurrence of the Assistant Secretary for Mine Safety and Health, U.S. Department of Labor.

*Author*

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**List of Subjects**

*30 CFR Part 816*

Environmental protection, Reporting and recordkeeping requirements, Surface mining.

*30 CFR Part 817*

Environmental protection, Reporting and recordkeeping requirements, Underground mining.

Accordingly, 30 CFR Parts 816 and 817 are amended as set forth herein.

Dated: July 20, 1988.

James E. Cason,

*Acting Assistant Secretary—Land and Minerals Management.*

**PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS—SURFACE MINING ACTIVITIES**

1. The authority citation for Part 816 is revised to read as follows and the authority citations following the sections in Part 816 are removed:

Authority: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*, and Pub. L. 100-34.

2. Section 816.116 is amended by revising paragraphs (b)(3)(i), (b)(3)(ii), (c)(2), and (c)(4) to read as follows and the suspension for those paragraphs, as noted in the editorial note immediately following the section in the Code of Federal Regulations, is lifted:

§ 816.116 **Revegetation: Standards for success.**

- • • • •
- (b) • • •
- (3) • • •

(i) Minimum stocking and planting arrangements shall be specified by the regulatory authority on the basis of local

- 353.230. Be capable of self-regeneration and plant succession;
- 353.240. Be compatible with the plant and animal species of the area; and
- 353.250. Meet the requirements of applicable Utah and federal seed, poisonous and noxious plant; and introduced species laws or regulations.
- 353.300. The Division may grant exception to the requirements of R645-301-353.220 and R645-301-353.230 when the species are necessary to achieve a quick-growing, temporary, stabilizing cover, and measures to establish permanent vegetation are included in the approved permit and reclamation plan.
- 353.400. When the approved postmining land use is cropland, the Division may grant exceptions to the requirements of R645-301-353.110, R645-301-353.130, R645-301-353.220 and R645-301-353.230. The requirements of R645-302-317 apply to areas identified as prime farmland.
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.
355. Revegetation: Mulching and Other Soil Stabilizing Practices. Suitable mulch and other soil stabilizing practices will be used on all areas that have been regraded and covered by topsoil or topsoil substitutes. The Division may waive this requirement if seasonal, soil, or slope factors result in a condition where mulch and other soil stabilizing practices are not necessary to control erosion and to promptly establish an effective vegetative cover.
356. Revegetation: Standards for Success.
- 356.100. Success of revegetation will be judged on the effectiveness of the vegetation for the approved postmining land use, the extent of cover compared to the extent of cover of the reference area or other approved success standard, and the general requirements of R645-301-353.
- ~~356.110. Standards for success, statistically valid sampling techniques for measuring success, and approved methods are identified in the Division's "Vegetation Information Guidelines, Appendix A."~~
- 356.120. Standards for success will include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking. Ground cover, production, or stocking will be considered equal to the approved success standard when they are not less than 90 percent of the success standard. The sampling techniques for measuring success will use a 90-percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error).
- 356.200. Standards for success will be applied in accordance with the approved postmining land use and, at a minimum, the following conditions:
- 356.210. For areas developed for use as grazing land or pasture land, the ground cover and production of living plants on the revegetated area will be at least equal to that of a reference area or such other success standards approved by the Division.
- 356.220. For areas developed for use as cropland, crop production on the revegetated area will be at least equal to that of a reference area or such other success standards approved by the Division. The requirements of R645-302-310 through R645-302-317 apply to areas identified as prime farmland.
- 356.230. For areas to be developed for fish and wildlife habitat, recreation, shelter belts, or forest products, success of vegetation will be determined on the basis of tree and shrub stocking and vegetative ground cover. Such parameters are described as follows:
- ~~356.231. Minimum stocking and planting arrangements will be specified by the Division on the basis of local and regional conditions and after consultation with and approval by Utah agencies responsible for the administration of forestry and wildlife programs. Consultation and approval may be on a program-wide basis or on a permit-specific basis.~~
- 356.232. Trees and shrubs that will be used in determining the success of stocking and the adequacy of plant arrangement will have utility for the approved postmining land use. At the time of bond release, such trees and shrubs will be healthy, and at least 80 percent will have been in place for at least 60 percent of the applicable minimum period of responsibility. No trees and shrubs in place for less than two growing seasons will be counted in determining stocking adequacy.
- 356.233. Vegetative ground cover will not be less than that required to achieve the approved postmining land use.
- 356.240. For areas to be developed for industrial, commercial, or residential use less than two years after regrading is completed, the vegetative ground cover will not be less than that required to control erosion.
- 356.250. For areas previously disturbed by mining that were not reclaimed to the requirements of R645-200 through R645-203 and R645-301 through R645-302 and that are mined 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.
- 356.300. Siltation structures will be maintained until removal is authorized by the Division and the disturbed area has been stabilized and revegetated. In no case will the structure be removed sooner than two years after the last augmented seeding.
- 356.400. When a siltation structure is removed, the land on which the siltation structure was located will be revegetated in accordance with the reclamation plan and R645-301-353 through R645-301-357.
357. Revegetation: Extended Responsibility Period.
- 357.100. The period of extended responsibility for successful vegetation will begin after the last year of augmented seeding, fertilization, irrigation, or other work, excluding husbandry practices that are approved by the Division in accordance with paragraph R645-301-357.300.
- 357.200. Vegetation parameters identified in R645-301-356.200 will equal or exceed the approved success standard during the growing seasons for the last two years of the responsibility

- period. The period of extended responsibility will continue for five or ten years based on precipitation data reported pursuant to R645-301-724.411, as follows:
- 357.210. In areas of more than 26.0 inches average annual precipitation, the period of responsibility will continue for a period of not less than five full years.
- 357.220. In areas of 26.0 inches or less average annual precipitation, the period of responsibility will continue for a period of not less than ten full years.
- 357.300. The Division may approve selective husbandry practices, such as weed and brush control, fencing, and water developments or other practices once they have been incorporated into the Utah program, in accordance with 30 CFR 732.17 as being normal husbandry practices, excluding augmented seeding, fertilization, or irrigation, without extending the period of responsibility for revegetation success and bond liability, if such practices can be expected to continue as part of the postmining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success. Approved practices will be normal conservation practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area, including such practices as disease, pest, and vermin control; and any pruning, reseeding and/or transplanting specifically necessitated by such actions.
358. Protection of Fish, Wildlife, and Related Environmental Values. The operator will, to the extent possible using the best technology currently available, minimize disturbances and adverse impacts on fish, wildlife, and related environmental values and will achieve enhancement of such resources where practicable.
- 358.100. No coal mining and reclamation operation will be conducted which is likely to jeopardize the continued existence of endangered or threatened species listed by the Secretary or which is likely to result in the destruction or adverse modification of designated critical habitats of such species in violation of the Endangered Species Act of 1973. The operator will promptly report to the Division any state- or federally-listed endangered or threatened species within the permit area of which the operator becomes aware. Upon notification, the Division will consult with appropriate state and federal fish and wildlife agencies and, after consultation, will identify whether, and under what conditions, the operator may proceed.
- 358.200. No coal mining and reclamation operations will be conducted in a manner which would result in the unlawful taking of a bald or golden eagle, its nest, or any of its eggs. The operator will promptly report to the Division any golden or bald eagle nest within the permit area of which the operator becomes aware. Upon notification, the Division will consult with the U.S. Fish and Wildlife Service and the Utah Division of Wildlife Resources and, after consultation, will identify whether, and under what conditions, the operator may proceed.
- 358.300. Nothing in the R645 Rules will authorize the taking of an endangered or threatened species or a bald or golden eagle, its nest, or any of its eggs in violation of the Endangered Species Act of 1973 or the Bald Eagle Protection Act, as amended, 16 U.S.C. 668 et seq.
- 358.400. The operator conducting coal mining and reclamation operations will avoid disturbances to, enhance where practicable, restore, or replace, wetlands and riparian vegetation along rivers and streams and bordering ponds and lakes. Coal mining and reclamation operations will avoid disturbances to, enhance where practicable, or restore, habitats of unusually high value for fish and wildlife.
- 358.500. Each operator will, to the extent possible using the best technology currently available:
- 358.510. Ensure that electric powerlines and other transmission facilities used for, or incidental to, coal mining and reclamation operations on the permit area are designed and constructed to minimize electrocution hazards to raptors, except where the Division determines that such requirements are unnecessary;
- 358.520. Design fences, overland conveyers, and other potential barriers to permit passage for large mammals, except where the Division determines that such requirements are unnecessary; and
- 358.530. Fence, cover, or use other appropriate methods to exclude wildlife from ponds which contain hazardous concentrations of toxic-forming materials.

approval to use the standards of this Subsection when determining success of revegetation.

The operator will be required to maintain a minimum of 70 percent ground cover for five consecutive years on areas planted to herbaceous species as well as areas planted to herbaceous and woody species. When woody plants are part of the postmining land use, a minimum stocking of 400 woody plants is required per acre. A minimum of 600 woody plants is required per acre on steep slopes. Success of stocking is to be determined at the end of the five year period of responsibility. The basis for the ground cover requirement is discussed in the preamble of Section 816.117. The regulatory authority may set more stringent stocking and ground cover standards if they are required to prevent pollution, protect quality of the environment and health, safety and general welfare of the public. Since local and regional reforestation practices vary in the recommended number of trees per acre, it is believed the minimum of 400 trees and shrubs will provide sufficient flexibility to satisfy most regionally recommended reforestation practices and allow the regulatory authority to increase the number of trees per acre when local reforestation practices warrant.

These regulations will allow for the flexibility required, as a result of the diverse climatic and soil conditions, to properly measure the different vegetative types that are found in the mining areas.

1. Many commenters argued that the reference area concept is not practicable, that other established procedures and proven techniques should be allowed to determine success of revegetation, that measurement techniques should be left to the approval of the regulatory authority and that rewording is needed for clarification. USDA Forest Service and Soil Conservation Service and USDI Bureau of Land Management, Bureau of Indian Affairs, Geological Survey, Bureau of Mines, and Fish and Wildlife Service currently have established technical guides and proven techniques for describing rangeland sites and evaluating the vegetative resource on the lands they administer or serve. The Soil Conservation Service range site guides and evaluation procedures described in the National Range Handbook (1976) are informally accepted and used for assessment of the private lands throughout the United States. The National Range Handbook was prepared for use by all rangeland managers interested in resource conservation programs. Other federal agencies cited above have established and proven techniques for evaluating success of vegetation establishment, condition

and trend. These data banks are frequently relied upon when seeking information on vegetation. Therefore, the Office has decided to revise the proposed regulation to allow for use of other technical guides in place of reference areas to measure the success of revegetation.

Section 816.116 has been rewritten to provide an alternate to reference areas. Section 816.116(a) specifies that the Director will approve technical guides from among those published by USDA or USDI which may be used in lieu of approved reference areas, as a basis for determining whether the revegetation is successful under the standards in Section 816.116(b)(3).

Section 816.116(b)(1) was amended to conform with the preceding Section which now allows the regulatory authority to use either reference areas or other technical guides approved by the Director for assessing ground cover and productivity.

2. Several commenters suggested changing the requirements of Sections 816.116(b)(1)(i) and (ii) to maintain vegetation equal to reference areas (or other standards) to periods ranging from two years to 10 or more years. The regulations implement the time periods specified in Section 515(b)(20) of the Act so these requirements cannot be changed.

3. Many commenters objected to the requirement that ground cover and productivity be equal to the standards for each consecutive year of the responsibility period. They argue that annual measurements are unnecessarily expensive and such data from newly established vegetation has little utility. Further, it was requested that the regulations specifically address when the responsibility period begins. Some suggest the only requirement should be to achieve equal ground cover and productivity by the end of the responsibility period. Numerous other time spans were considered both at the beginning and the end of the period. Since vegetative response varies greatly due to a wide array of factors, especially influenced by local climate, several commenters indicated that consecutive year measurement should be required to counteract the effects of an extraordinarily good year.

Section 515(b)(19) of the Act requires establishment of vegetation at least equal in extent of cover to the natural vegetation and Section 515(b)(20) requires five or 10 years of responsibility for at least that amount of cover after the last major work assuring success. The Office interprets this to mean that cover must meet the standards at the start of the responsibility period and cover and productivity must meet the standards at the end of the responsibility period.

Therefore, the regulations were changed to require measurements that show vegetation at least equal to standards for ground cover to initiate the responsibility period and to standards for both ground cover and productivity for two consecutive years at the end of the period. The consecutive years should not immediately follow augmentation practices but occur at the end of the responsibility period to minimize the effects of the augmentation.

4. Several commenters wish to allow seeding, fertilizing or irrigation during the responsibility period. Section 515(b)(20) of the Act specifies that the period of responsibility extends for five (or 10) years after the last year of augmented seeding, fertilizing, irrigation or other work. Therefore, no additional seeding, fertilizing or irrigation can occur after start of the period of responsibility for determining success of revegetation. If such augmentation is necessary, then the period begins to run anew. The augmented seeding, fertilizing and irrigation does not apply to cropland and pastureland that can be expected to have a similar postmining use and which should be managed in accordance with acceptable local agricultural practices.

5. Section 816.116(b)(2) was amended to provide for the use of a wider range of reliable source material when determining annual precipitation. To confine the determination of precipitation to the use of a small scale map would not provide accurate information in areas where precipitation averages are highly variable in short distances, such as mountains, mesas and valleys. The regulations now include a list of example materials that may be used as source documents when making determinations on precipitation.

6. Various commenters suggested either increasing or decreasing the percent of cover and productivity requirements of Subsection 816.116(b)(3). Further, some contended that success should be determined on the basis of annual measurements throughout the period of responsibility while others stated that success should be based on measurements taken the last year of responsibility. It is believed that the 90 percent requirements for ground cover and production is an equivalent measure of success since there has to be a basic assumption that productivity will continue to improve with time when the land has been restored to the original productive capacity. The additional increase resulting from time will be due to a combination of factors including microbial activity and increased organic matter content. Further, a two-year minimum time base is required to adequately assess the ability of a perma-

including roads and other uses. This was intended by the proposal.

#### Section 816.116(c)

Final § 816.116(c) describes the period of extended responsibility for successful revegetation under Section 515(b)(20) of the Act to which performance bond release is tied under Section 519(c) of the Act and under 30 CFR Part 800. This provision also implements the requirement imposed by the U.S. District Court in *In re: Permanent Surface Mining Regulatory Litigation*, *supra*, slip op., p. 61, which had been implemented in part by the suspension of a portion of previous § 816.116(b) on August 4, 1980 (45 FR 51549). A new Paragraph (c)(4) is added describing the husbandry practices that may occur during the period of extended responsibility. The new paragraph is derived from previous § 805.13(b)(3).

#### Section 816.116(c)(1)

Proposed § 816.116(c)(1) would have required the period of responsibility for revegetation success to begin after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding tree and shrub planting, maintenance work, and husbandry practices that could be expected to continue as part of the postmining land use. The final rule is the same as the proposed rule with the exception that tree and shrub planting and maintenance work are not generally permitted during the responsibility period without starting the period anew. As described below, allowable husbandry practices are tied to a specific requirement that they can be expected to continue as part of the postmining land use.

A commenter stated that excluding tree and shrub planting and maintenance work from augmentative practices and allowing interseeding and supplemental fertilization during the first 5 years of the responsibility period in the West, and supplemental irrigation during the first 2 years of the responsibility period, all have significant potential for abuse and increase the likelihood that there will be vegetation failures after the bond is released. Similar concerns were expressed by a second commenter who thought the proposed rules were inconsistent with Section 515 (b)(19) and (b)(20) of the Act by effectively reducing the responsibility period for bonding by one-half for western mined lands. Another commenter was concerned that the responsibility period was shortened for success of revegetation and expressed the view that bond should not be released until a suitable time has

elapsed to be sure the revegetation will be successful.

Other commenters supported the proposed rules. One individual urged the adoption of proposed § 816.116(c) and was pleased that revegetation management and husbandry practices were finally recognized by OSM and would not act as a penalty for operators who used them. A State regulatory authority was specifically pleased with proposed § 816.116(c)(1). Another commenter thought that the use of cultural practices, including irrigation, has merit, especially since it would not involve a restarting of the responsibility period.

The final rules do not reduce the responsibility period. While the use of certain cultural practices, such as interseeding and tree and shrub planting, could be beneficial in establishing diverse plant communities if allowed during the period of responsibility, the Act is clear that any practice that constitutes augmented seeding, fertilizing, or irrigation must be completed prior to the extended period of responsibility. The final rule has been modified accordingly. These changes and a more complete discussion of the comments received are presented below.

*Start of responsibility period:* A commenter supported the proposed changes in § 816.116(c) regarding the start of the responsibility period for reclaimed areas. In contrast, a second commenter felt that the starting of the responsibility period for bond release after the last year of augmented seeding and fertilization rather than at the time vegetation had met the standards for success was unacceptable, especially in the arid West.

In the February 28, 1980, district court decision, cited *supra*, it was noted that Congress stated that, for areas where precipitation is less than 28 inches per year, "the length of time necessary to reestablish vegetation on mining spoil varies considerably \* \* \* [and] ranges from ten years upward. Thus, the ten year standard of the bill represents a minimum time under the most favorable conditions." (H. Rept. No. 95-218, 95th Cong., 1st Sess. 109, 1977). In the court's opinion, the Act focused not on attaching a 5- or 10-year liability period after successful revegetation occurs, but directed a 5- or 10-year period to enable the coal operator to achieve successful revegetation. The court, therefore, remanded these rules and suggested that the 5- or 10-year liability period begin "after the last year of augmented seeding, fertilizing, [and] irrigation."

In response, OSM suspended the provisions of §§ 816.116(b) and 817.116(b) that started the period of responsibility at the point when the operator met the vegetation success standard (45 FR 51549, August 4, 1980). States were advised that they could permit the period of liability to begin from the point at which the operator completes seeding and fertilizing and that the period of liability would begin again whenever augmented seeding, fertilizing, irrigation, or other work was required or conducted on the site prior to bond release. The final rule is in agreement with the court's decision.

A commenter suggested adding language to proposed § 816.116(c)(1) in order to clarify that the responsibility period is not restarted by supplemental fertilization and interseeding in areas of less than 28.0 inches average annual precipitation. Proposed § 816.116(c)(3) would have allowed these practices during the first 5 years of the responsibility period without starting the period anew. As stated elsewhere in this preamble, Section 515(b)(20) of the Act limits OSM in this regard. Thus, the final rule does not allow such practice during the period of responsibility.

*Third party responsibility:* A commenter suggested adding language to proposed § 816.116(c)(1) to allow responsibility during the 5- or 10-year responsibility period to be transferred to any party, such as the landowner, so long as the bonding requirements of Subchapter J are met. This commenter reasoned that some operator-landowner leases entered into before the enactment of the Act or establishment of OSM rules lack provisions establishing a time frame when landowners are to take over their property following mining and reclamation. In these cases, operators have no legal mechanism for preventing the landowner from reentering his or her property for farming or grazing prior to achievement of the revegetation standards. OSM was urged to consider a modification which would shift the burden of taking action against the landowner from the operator to the regulatory authority in situations where the landowner may use the land in a manner that jeopardizes bond release.

The Act and rules include provisions for the transfer, sale, and assignment of responsibilities under a permit. These provisions may be used to transfer responsibility if certain conditions are met and the transfer is approved by the regulatory authority. Without such an approved transfer, the operator remains responsible for revegetation success and other reclamation requirements.

*Section 816.116(c)(2)*

Proposed § 816.116(c)(2) required the period of responsibility to continue 5 full years where the average annual precipitation is more than 26.0 inches. Vegetation parameters were to equal the approved success standard during the growing season of the last year or, if required by the regulatory authority, during the growing seasons of the last 2 years of the responsibility period. The final rule is the same as the proposed rule except for some minor changes in wording for clarity.

Two State regulatory authorities proposed that additional wording be included in § 816.116 (c)(2) and (c)(3) to indicate that the period of responsibility must be "not less than" the appropriate 5 or 10 years. One of these States also recommended that the words "or exceed" be added to allow the permittee to be in compliance not only when the success standard is equalled, but also when it is exceeded. OSM has adopted these suggestions in the final rules because they appropriately convey the intent of the Act and remove possible differences in interpretation.

*One- or two-year test of success:* A commenter felt that proposed § 816.116(c)(2) should be changed to allow the regulatory authority to accept yield and productivity documentation on either the fourth year or the fifth year in areas of more than 26 inches average annual precipitation since adverse climatic conditions, such as areawide drought, may prevent the operators from meeting success standards during the fifth year.

Section 515(b)(20) of the Act requires operators to assume responsibility for successful revegetation for a period of 5 years. Acceptance of data for proof of reclamation success solely from the fourth year would in effect shorten the responsibility period and be inconsistent with the Act. Furthermore, data from the fourth year is more apt to reflect a carryover effect from fertilization and other practices used to initially establish the vegetative cover. Hence, the rule has been adopted as proposed.

A commenter argued that there is no statutory basis for allowing the regulatory authority the option of requiring that vegetation equal or exceed the success standard for the last 2 years of the responsibility period. The commenter alleged that the statutory obligation has been met if the operator meets the standard in the last year of the period. Another commenter thought the proposal allowing 1 year, unless the regulatory authority requires 2 years, was more practical and less burdensome than the previous rule both

for regulators and operators. Two additional commenters asserted that 2 years should always be required for proof of revegetation success. One of these commenters stated that under normal circumstances there should not be any serious difficulty in attaining a vegetation standard by the fourth year and maintaining it through the fifth. The other commenter asserted that 2 years is necessary, especially where lime is used. Lime was believed to have a superficial neutralizing effect that could result in the recurrence of acid soil.

Ample justification exists for requiring 2 consecutive years of proof of revegetation success in States with pronounced year-to-year variability in climatic conditions and where success is based on crop yields or other parameters that are highly sensitive to such conditions. The decision to require 1 or 2 year's proof of performance should rest with the regulatory authorities in those States where the annual average precipitation exceeds 26 inches. The 2-year provision may be applied selectively according to postmining land use or particular area within a State. In all instances, the last year of responsibility should be part of the 1- or 2-year test period.

A commenter was concerned that failure to meet the required standard during the last year of the responsibility period would be reason to start the responsibility period anew or for forfeiture of bond. Regulatory authorities should understand that the responsibility period continues on a year-to-year basis until the standards are satisfied. Additional language in the rule is not needed to make this clear. However, it should be pointed out that in the event augmented seeding, fertilizing, irrigation, or other work is required to obtain success, the responsibility period will start anew.

A State regulatory authority wanted additional language inserted in § 816.116(c)(2) which would require the operator to supply the regulatory authority with documentation of revegetation success. The State felt this addition would relieve the regulatory authority from measuring every plot and allow the regulatory authority to concentrate on verifying the techniques used by the operator and the operator's results. Regulatory authorities already have the power to require operators to submit documentation of revegetation success in an application for bond release. There is no need to repeat this in the Federal revegetation rules.

*Section 816.116(c)(3)*

Proposed § 816.116(c)(3) required the period of responsibility to continue for

10 full years where the average annual precipitation is equal to or less than 26 inches. Interseeding and supplemental fertilizing would have been allowed during the first 5 years of the responsibility period, and supplemental irrigation would have been allowed during the first 2 years of the responsibility period when needed to establish a diverse, effective, and permanent vegetative cover. Also, vegetation parameters had to equal the approved success standard for at least the last 2 consecutive years of the responsibility period.

A commenter alleged that the Act clearly states that any reseeding or refertilizing automatically restarts the liability period. The commenter pointed out that the proposed rules could result in seeding and fertilization taking place throughout the performance period, with subsequent failure of the vegetation after bond is released.

In proposing to allow tree and shrub planting during the initial portion of the responsibility period, OSM felt it important to provide operators ample time to obtain and plant the desired species and to utilize the best technology available without extending the responsibility period. However, OSM is constrained by Section 515(b)(20) of the Act to require the responsibility period to restart if augmented planting occurs. Thus in the final rule, the use of augmented seeding, fertilizing, or irrigation is not allowed during the responsibility period.

*§ 816.116(c)(4)*

Rather than interspersing in § 816.116 (c)(2) and (c)(3) activities that an operator may engage in during the responsibility period, as was proposed, a new § 816.116(c)(4) allows the use of certain husbandry practices during the responsibility period if approved by the regulatory authority. The purpose of this provision is to help assure revegetation success within the constraints prescribed by the Act. In essence, this is a retention of previous § 805.13(b)(3), with a few modifications. Previous § 805.13(b)(3) required a demonstration that discontinuance of the husbandry practices after the responsibility period expired would not reduce the probability of permanent revegetation success. Under the final rule, husbandry practices may also be approved if such practices can be expected to continue as part of the postmining land use. Such practices cannot include augmented seeding, fertilization, or irrigation without extending the period of revegetation success and bond liability.

The approved measures must be normal conservation practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area. This requirement is taken directly from previous § 805.13(b)(3). The final rule also enumerates examples of practices that may be approved. These include disease, pest, and vermin control; and pruning, reseeding and/or transplanting specifically necessitated by such actions. Disease control was not included in previous § 805.13(b)(3), but is included in the final rule since such actions are commonly associated with normal husbandry. The final rule deletes the reference to rills and gullies from previous § 805.13(b)(3) since this reference could be misleading. Revised § 816.95 (48 FR 1160, January 10, 1983) provides that rills and gullies that would either: (1) Disrupt the approved postmining land use or reestablishment of the vegetative cover, or (2) cause or contribute to a violation of water quality standards for receiving streams, must be filled, regraded or otherwise stabilized; topsoil replaced; and the areas reseeded or replanted. Such rills and gullies may be indicative of a failure in the revegetation, depending on local and site-specific conditions; and may require augmented seeding to ensure revegetation success. For this reason, specific reference to regrading of rills and gullies has been deleted as an example of normal conservation practices under final Paragraph (c)(4). Under the final rule, the regulatory authority could allow repair of rills and gullies as a husbandry practice without restarting the liability period only if the general standards of this section are met after consideration of normal conservation practices within the region.

A number of comments were received on the related provisions in proposed § 816.116(c) that would have allowed particular activities during the responsibility period. These comments are discussed below.

*Tree and shrub planting and maintenance work:* Several commenters expressed the belief that tree and shrub planting and maintenance work should be restricted to the beginning of the responsibility period or identified as activities that would restart the period of responsibility. A State pointed out that the proposed rules required trees and shrubs to be in place only two growing seasons at the time of bond release. This allowed 8 years to complete the planting of trees and shrubs in arid areas and 3 years in areas of heavy rainfall. The commenter thought such periods to be excessive

and stated that 2 years was sufficient time to obtain planting stock and to plant it during the proper season. Another commenter, who also felt the time period provided for tree and shrub planting was excessive, argued that 2 years was inadequate to determine the effect of unfavorable soil conditions which might be present. Older trees with more extensive root systems might come in contact with toxic materials at lower depths and become stunted or die after the release of operator responsibility. The commenter concluded that the Act clearly requires the responsibility period to start over when additional trees are planted and that OSM's rules must not conflict with the Act.

A State regulatory authority felt the replanting of trees and shrubs is not a normal practice where the postmining land use is unmanaged forest, nor is filling and seeding of rills and gullies. It was contended that these practices are augmentative and such work should cause the period of responsibility to begin anew. In contrast, another commenter favored allowing normal husbandry practices for trees and shrubs on reclaimed sites. It was argued that normal husbandry or management practices, including control of competing vegetation, are acceptable in unmined areas and should be available to the reclamation specialist.

To the extent operators are provided the opportunity to do limited replanting without starting the responsibility period anew under § 816.116(c)(4), § 816.116(b)(3)(ii) requires 80 percent of the planting stock to be in place for 3 or 8 years depending on the average annual precipitation and the remaining stock used in determining success to be in place for at least two growing seasons. Thus, this rule will, in effect, limit replanting to a maximum of 20 percent to the required stocking before restarting the responsibility period. Revegetation success will therefore be based on trees and shrubs that are in place an adequate time.

OSM also received several comments concerning the allowance for maintenance work during the responsibility period as provided for in the proposed rules. One commenter said that this had tremendous potential for abuse and should be deleted from § 816.116(c)(1) unless very strict limits were set on the area over which such work could be done. As safeguards, the commenter suggested requiring operators to keep careful records of these practices and limiting the cumulative area treated to 5 percent or less of the total permit area. Where the treated area exceed 5 percent, the

responsibility period should start again for the whole area or the problem area should start again for the whole area or the problem area should be separated from the rest of the permit area for bonding purposes. A State suggested limiting the filling of rills and gullies and reseeding of small spots where vegetation has failed to the first 5 years of the 10-year period of responsibility. This would allow adequate time for the permittee to stabilize and revegetate the area and leave 5 years for the vegetation to develop.

OSM agrees that allowing unlimited areas to be reseeded following the repair of rills and gullies without restarting the period of responsibility could lead to abuse of the revegetation success standards because any failure of revegetation could be accompanied by the creation of rills and gullies requiring repair. To limit the potential abuse, under final § 816.116(c)(4), the repair of rills and gullies including reseeding or transplanting, can occur without extending the period of responsibility for revegetation success only if it is a normal conservation practice in the region, and such actions can be expected to continue as part of the postmining land use or if discontinuance will not reduce the probability of permanent revegetation success. OSM has not adopted the 5 percent standard since any nationwide numerical standard would be unrelated to the normal conservation practices in the different regions of the country.

A commenter asserted that allowing maintenance work throughout the responsibility period defeats the intent of the responsibility period. The provision allowing maintenance work contained in the proposed rule has not been included in the final rule. The proposed term "maintenance work" was too broad in meaning and its use in the rules could have resulted in conflicting interpretations, some of which could be prohibited by the Act. By allowing husbandry practices that can be expected to continue as part of the postmining land use, operators will have sufficient latitude to assure vegetation success.

A State regulatory authority suggested adding language to § 816.116(c)(1) to allow the regulatory authority to determine which husbandry practices are normally practiced in the region for the postmining land use. Under the final rule, the regulatory authority must decide which husbandry practices are acceptable. The rule provides the basis upon which such decision must be made. In the event the husbandry practice cannot be reasonably expected

to continue after bond release or if its discontinuance following bond release will reduce the probability of permanent revegetation success, the regulatory authority must deny approval or restart the period of responsibility for the operator.

A commenter said good husbandry practices would be acceptable if reseeded, refertilizing, and irrigation were clearly excluded. The final rules exclude augmented refertilizing and irrigation, and reseeded is allowed only under limited circumstances.

*Previous Section 816.116(c)*

OSM has removed previous §816.116(c), which required operators to maintain necessary fences, use proper management practices, and conduct periodic measurements of vegetation, soils, and water as prescribed or approved by the regulatory authority for identifying conditions during the period of responsibility.

A commenter felt that the requirements of previous § 816.116(c) should be maintained. Similarly, other commenters contended that requiring the maintenance of fences and the use of proper management practices is appropriate and necessary for ensuring the success of revegetation and that the requirement to monitor vegetation, soils, and water is necessary to make sure that adequate progress is made toward meeting success standards.

Another commenter argued that fence maintenance and proper management practices are needed to ensure that standards generated from reference areas are valid. This commenter viewed the monitoring provisions of previous § 816.116(c)(2) as absolutely essential. This commenter also contended that, since reclamation is more of an art than a science, monitoring is usually the only means of verifying and refining the reclamation plan.

As previously stated in the preamble to the proposed rules (47 FR 12599), these provisions are not specifically required by the Act and can be provided for by the regulatory authority, if appropriate, according to the local conditions. Operators must take the actions necessary to achieve successful reclamation, including the possible maintenance of fences and performance of management practices. That is, if fencing is necessary to avoid destructive grazing or indiscriminate use of recreation vehicles on the revegetated area, then the operator is expected to construct and maintain a fence. If a regulatory authority approves the use of reference areas, then it should include provisions in its rules that address fencing and the use of proper

management practices necessary to assure that reference-area data are valid and appropriate for determining the success of revegetation.

Similarly, regulatory authorities are not precluded from requiring the monitoring of revegetation efforts to assure that the reclamation plan is being followed and that the revegetation effort is progressing in a satisfactory manner. Likewise, operators may do so on their own.

*Previous Sections 816.116(b)(2) and 816.116(d)*

Previous § 816.116(b)(2) listed data sources and specific procedures for determining average annual precipitation. OSM proposed the removal of this section because it was primarily a listing of information sources and not deemed necessary to understanding the regulatory requirement. No specific comments were received on this proposed deletion. Therefore, OSM has omitted these provisions from the final rules.

Previous § 816.116(d) provided an alternative fixed standard for determining the success of revegetation when permit areas are 40 acres or less in size and in locations with an average annual precipitation of more than 28 inches. OSM proposed deleting this section because it believed the flexibility generally provided to regulatory authorities by proposed § 816.116(a) obviated the need for a specific fixed standard for small permit areas. No comments were received on the basic proposal for removing the section; however, one commenter noted the deletion would also remove previous § 816.116(d)(3), which contained the only definition in the rules for ground cover. Ground cover was defined as the area of ground covered by the combined aerial parts of vegetation and litter that is produced naturally onsite, expressed as a percentage of the total area of measurement. This definition is retained in the final rules, but is moved to 30 CFR 701.5, Definitions.

*Previous Section 816.117 Revegetation: Tree and Shrub Stocking for Forest Land*

OSM proposed to remove § 816.117, which established requirements for tree and shrub stocking on forest land. OSM stated that a separate section with revegetation success standards for forest postmining land uses was unnecessary and that the essential requirements of previous § 816.117 could be incorporated into § 816.116. *Revegetation: Standards of success.* This was proposed in §816.116(b)(3). No comments were received that either

supported or opposed this reorganization of the rules. Therefore, the final rule removes § 816.117 and transfers the essential requirements for tree and shrub stocking to § 816.116(b)(3). Comments received on the proposed language were previously discussed under the heading "Forest, Wildlife Habitat, and Recreation areas."

*Sections 817.111-817.118 Revegetation Performance Standards—Underground Mining*

Proposed §§ 817.111-817.118 establishing revegetation performance standards for underground mining activities. With the exception of § 817.111, these sections were identical to the corresponding sections proposed in Part 816. Proposed §§ 817.111 reflected differences in the statutory language of Section 515(b)(19) of the Act for surface mining activities and Section 516(b)(6) essentially the same as Section 515(b)(19). However, Section 516(b)(6) does not use the term "effective" in describing the vegetative cover requirements. Also, there is no statutory language restricting the use of introduced species and requiring vegetation of the same seasonal variety.

A State regulatory authority pointed out that proposed § 817.111(a)(1) did not contain the term "effective" and said the word should not be eliminated from the performance standards for underground mining activities. This proposed deletion was also noted by a second commenter who appeared to seek its inclusion in the final rule. Specific reasons were not given for the position taken by the commenters.

A State regulatory authority also noted that the proposed changes to §§ 817.111 (a) and (b) would eliminate the emphasis given in previous § 817.111(b)(1) to native plants of the same seasonal variety. The commenter contended that the use of native, locally adapted plant species was vital to successful revegetation, particularly under arid and semiarid conditions. Accordingly, the commenter believed that this requirement should not be eliminated from the rules.

In considering these comments, OSM has reviewed the Act and its legislative history to determine if the differences in Sections 515(b)(19) and 516(b)(6) were intended to reflect actual or perceived differences in surface and underground mining activities. OSM has not identified any differences that support adopting revegetation rules for surface mining activities that differ from rules adopted for underground mining activities. Therefore, in the final rules

the revegetation performance standards in Part 816 and Part 817 are identical.

### C. References

Technical literature used to develop these final rules was cited in the March 23, 1982, issue of the *Federal Register* (47 FR 12601). The following technical literature, not previously cited, was also used in the preparation of these final rules. All of the reports are on file in OSM's Administrative Record.

Bonham, C. D., Larson, L. L., and Morrison, A., 1980. A survey of techniques for measurement of herbaceous and shrub production, cover, and diversity in the West: Unpublished, report prepared for the Office of Surface Mining, 79 pp.

Farmer, R. E., Jr., Rennie, J. C., Scanlon, D. H., III, and Zarger, T. G., 1981. Technical guides on use of reference areas and technical standards for evaluating surface mine vegetation in OSM Regions I and II. Prepared by the Tennessee Valley Authority for the Office of Surface Mining, Contract J5701442, 82 pp.

Gilley, J. E., Gee, C. W., Bauer, A., Willis, W. O., and Young, R. A., 1977. Runoff and erosion characteristics of surface mined sites in western North Dakota: *Trans., ASAE* 20(4): 697-700, 704.

Larson, L. L., 1980. A statistical evaluation of revegetation success on coal lands in the West: Unpublished, report prepared for the Office of Surface Mining, 19 pp.

National Research Council, 1981. *Surface mining: Soil, coal, and society*: National Academy Press, Washington, D.C.

Oleson, A. L., 1981. Methods for measuring percent ground cover: U.S. Department of Agriculture, Soil Conservation Service, Northeast Technical Service Center, Technical Note, Agronomy No. 17, 4 pp.

Raelson, J. V., and McKee, G. W., 1982. Measurement of plant cover to evaluate revegetation success: The Pennsylvania State University, Dept. of Agronomy, Agronomy Series 67, 45 pp.

Slick, B. M., N. D., (in press). A guide for the use of organic materials as mulches in reclamation of coal minesoils in the Eastern United States: U.S. Department of Agriculture, Forest Service, General Technical Report, 351 pp.

Thornburg, A. A., 1982. Plant materials for use on surface mined lands in arid and semiarid regions: U.S. Department of Agriculture, Soil Conservation Service, SCS-TP-157.

U.S. Department of Agriculture, 1963. Sixteen plants poisonous to livestock in the Western States: *Farmers' Bulletin* 2106.

U.S. Department of Agriculture, 1959. Techniques and methods of measuring understory vegetation: Proceedings of a symposium at Tifton, Georgia, October 1958, 174 pp.

U.S. Forest Service, 1937. Range plant handbook: U.S. Department of Agriculture.

Vogel, W. C., 1981. A guide for revegetating coal minesoils in the Eastern United States. U.S. Department of Agriculture, Forest Service, General Technical Report NE-68.

### III. Procedural Matters

#### *Executive Order 12291 and the Regulatory Flexibility Act*

The Department of the Interior (DOI) has determined that this rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291. Also, DOI certifies that this rule will not have a significant economic effect on a substantial number of small entities and, therefore, does not require a regulatory flexibility analysis under Pub. L. 95-354. These rules, by emphasizing performance standards instead of design criteria, will allow small coal operators increased flexibility and should especially ease the regulatory burden on small coal operators in Appalachia.

#### *Paperwork Reduction Act*

OSM has received approval from the Office of Management and Budget under 44 U.S.C. 3507 for the information collection requirements in Parts, 816 and 817 and have been assigned clearances Nos. 1029-0047 and 1029-0048. These approvals have been codified under §§ 816.10 and 817.10. However, there are no information collection requirements in the revegetation rules, §§ 816.111-816.116 and 817.111-817.116.

#### *National Environmental Policy Act*

OSM has analyzed the impacts of these final rules in its "Final Environmental Impact Statement OSM-EIS-1: Supplement" (FEIS) according to Section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(2)(C)). The FEIS is available in OSM's Administrative Record, Room 5315, 1100 L Street, NW., Washington, D.C., or by mail request to Mark Boster, Chief, Branch of Environmental Analysis, Office of Surface Mining, Department of the Interior, Room 134, Interior South Building, U.S., 1951 Constitution Ave., NW., Washington, D.C. 20240. This preamble serves as the record of decision under NEPA. The final rules are different from those contained in Volume III of the FEIS in the following respects:

1. Final §§ 816.111(a) and 817.111(a) apply to "disturbed areas" rather than "affected lands." For the reasons described earlier in this preamble, this change does not affect the FEIS analysis.

2. Final §§ 816.116(c) and 817.117(c) do not allow tree and shrub planting during the first 2 years of the period of responsibility in areas of more than 26 inches average annual precipitation and do not allow interseeding, tree and shrub planting, fertilizing, or irrigation during the first 2 years of the period of

responsibility in areas of 26 inches or less average annual precipitation. In this respect, the final rules are consistent with the no action/minimum action Alternative B in the FEIS.

3. The final rules add a provision allowing regulatory approval of certain husbandry practices. These would have been allowed under draft final § 816.116(c)(1) and thus are considered within the FEIS analysis.

#### *Agency Approval*

Section 516(a) of the Act requires that, with regard to rules directed toward the surface effects of underground mining, OSM must obtain written concurrence from the head of the department which administers the Federal Mine Safety and Health Act of 1977, the successor to the Federal Coal Mine Health and Safety Act of 1969. OSM has obtained the written concurrence of the Assistant Secretary for Mine Safety and Health, U.S. Department of Labor.

#### *List of Subjects*

##### *30 CFR Part 701*

Coal mining, Law enforcement, Surface mining, Underground mining.

##### *30 CFR Part 816*

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Surface mining.

##### *30 CFR Part 817*

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Underground mining.

Accordingly, 30 CFR Parts 701, 816, and 817 are amended as set forth herein.

Dated: August 29, 1983.

William P. Pendley,

Deputy Assistant Secretary, Energy and Minerals.

### **PART 701—PERMANENT REGULATORY PROGRAM**

1. Section 701.5 is amended by adding a definition of "ground cover" in alphabetical order to read as follows:

#### **§ 701.5 Definitions.**

*Ground cover* means the area of ground covered by the combined aerial parts of vegetation and the litter that is produced naturally onsite, expressed as a percentage of the total area of measurement.

One commenter suggested that the word "healthy" be dropped since there is no definition provided in the rules. The commenter suggested that there could be difficulty in establishing what is a healthy tree. OSMRE did not accept the suggested deletion since to do so could give the impression that unhealthy, sickly or badly damaged trees could be counted in measuring revegetation success. Obviously, trees that are not healthy, i.e., characterized to a significant degree by dieback of growing tips, abnormal leaf or needle drop, necrosis, severe mechanical damage to stems or branches, abnormal yellowing or other discoloration of green parts, presence of disease organisms, stunted growth, etc., should not be counted. However, OSMRE recognizes that there are varying degrees of health and notes that State regulatory authorities, in consultation with State forestry agencies, may find it appropriate to establish guidelines for distinguishing healthy trees and shrubs from unhealthy ones. Such guidelines must be based on local and regional conditions. OSMRE does not believe that a definition of the term "healthy" in this context is necessary in the Federal rules.

One commenter suggested that the criterion that trees and shrubs must have been in place at least two growing seasons to be counted seems irrelevant in light of the 80/60 rule. The commenter apparently assumed that the proposed rule would have prohibited an operator from counting a tree or shrub if it had been in place less than 60 percent of the responsibility period. Another commenter opposed the minimum-of-two-years-in-place standard on the basis of research that the commenter believed suggests a two-year establishment period is inadequate. This commenter recommended that the final rule require trees or shrubs to have been in place for three or more years to be counted, particularly in Western States. OSMRE did not accept these comments. The two-year requirement will be applicable at most to only 20 percent of the trees used to determine the success of stocking. The 80/60 rule requires a minimum of 80 percent to be in place for a longer time, either three or six years depending on annual average precipitation. OSMRE disagrees that the two-years-in-place criterion is irrelevant or inadequate. Allowing an operator to include in the number of trees used to determine success some trees (up to 20 percent of the success standard) in place less than 60 percent of the responsibility period, but more than two years, encourages selective replanting of trees

to ensure full stocking without significantly weakening the basic requirement that reforestation success be based on the survival of the majority of the trees in the initial planting.

One commenter questioned why the preamble to the proposed rule contained the statement, "Under this proposed rule, the initial planting must occur prior to the start of the responsibility period" (52 FR 28015). In the opinion of the commenter, the statement may be counterproductive to reclamation by precluding an operator from establishing a ground cover to stabilize the site and then re-entering to plant trees within the period of responsibility. The commenter also indicated that, "As long as viable trees and/or shrubs are in place prior to the start of the 60 percent period, timing for their establishment should not penalize an operator or be a factor in determining success." Another commenter recommended that the regulation, not just the preamble, should state that the initial planting of trees or shrubs must occur prior to the start of the liability period. OSMRE did not accept either of these two comments. First, section 515(b)(20) of SM CRA requires the operator to assume responsibility for successful revegetation for five (or ten in drier areas) years after the last year of augmented seeding, fertilization, irrigation or other work necessary to establish the vegetative cover. OSMRE considers the initial planting of trees and shrubs, as well as planting that is in addition to normal husbandry practices, to be augmentative work. Thus, the period of responsibility must start after the initial tree or shrub planting, even if the operator plants a stabilizing ground cover prior to re-entering the site to plant trees. Second, § 816.116(c)(1) of the permanent program rules contains the requirement that the period of responsibility shall begin after the last year in which augmentative work was performed. Thus, it is not necessary to repeat the requirement.

Two commenters suggested that the difficulty in accurately determining how long a woody plant has been in place on reclaimed land renders the 80/60 rule impractical to implement. OSMRE disagrees because the age of plantations or naturally regenerated stands can be established through photographic documentation, by tagging or marking with paint, by inspection reports, by preservation of sales receipts from nurseries and by other means. State regulatory authorities have the flexibility under the final rule to establish guidelines and procedures governing age determinations and

necessary documentation that are appropriate to regional and local conditions.

One commenter opposed the change in the time-in-place standard from eight to six years for areas where the minimum responsibility period is ten years based on climatic conditions in his State. Based on the literature cited in the preamble to the proposed rule, OSMRE believes that six years generally provides an adequate period of time to establish trees on a site in areas where the annual average precipitation is less than 28 inches. As stated in the proposed rule preamble, the re-asserted here, States are free to impose more stringent requirements if appropriate based on local conditions. Therefore, OSMRE did not change the proposal in response to this comment.

One commenter urged re-evaluation of the 80/60 rule because of a belief that the rule requires even-aged stands on reclaimed areas, which the commenter believed "discourages natural succession processes and leads to increased potential for catastrophic community failure in the event of disease, infestation, fire or other event." OSMRE did not accept the commenter's suggestion because the issue is addressed in other portions of the revegetation rules. For example, the requirement in § 816.116(b)(3)(i) that minimum stocking and planting arrangements shall be specified on the basis of local and regional conditions will take into account factors such as species diversity and disease control. Section 816.111 requires an evaluation by the regulatory authority of species diversity, regenerative capacity and seasonal characteristics of growth. Finally, § 816.116(c)(4) allows disease, pest and vermin control measures without restarting the operator's period of responsibility.

Concerning the 80/60 rule, one commenter asserted that neither consideration of 80 percent of trees as sufficient to demonstrate revegetation success nor the deviation from the 90 percent standard of § 816.116(a)(2) were supported by the cited literature. Based on the literature used to develop the rules, OSMRE believes that reforestation normally requires a continuing effort beyond the initial planting. Seven of the commenters specifically stated that they shared this belief based on their experience with reforestation and/or their familiarity with the literature. The final rule represents a reasonable compromise that will allow some replanting if approved as a normal husbandry practice under § 816.116(c)(4). Eighty

always be measured in order to take into account the effects of any latent acid or toxic subsoil constituents, the commenter may be confusing the requirement to demonstrate revegetation success through measurement of productivity with the general revegetation requirements. Although the rule allows measurement of productivity prior to the end of the responsibility period, it does not state, and is not intended to imply, that bond will be released on an area where reclamation has not been fully achieved. As provided in 30 CFR 800.40(c)(3), "no bond shall be fully released . . . until the reclamation requirements of [SMCRA] and the permit are fully met." The final bond release inspection will evaluate achievement of the general revegetation requirements of 30 CFR 816.111 in addition to the success standards of § 816.116.

The measurement of productivity for cropland is accomplished using data provided by the permittee. When the productivity of cropland has been measured earlier and success standards were met, the regulatory authority is not required to measure crop production during the final bond release inspection. Rather, such an inspection is a check to see whether the past demonstration of productivity success appears to be continuing.

Seven commenters supported the proposal that revegetation success for postmining land uses other than grazing land, pasture land and cropland be measured during the last year of the operator's responsibility period. One commenter suggested that revegetation success be measured in any one of the last two years of the responsibility period, and one commenter suggested measurement over both of the last two years. One commenter challenged the literature cited in the preamble to the proposal as supporting the one-year period for measuring revegetation success and pointed out that the Washington State forestry practices rules, concerned with replanting trees in clearcut areas, may have little applicability to reforestation of severely disturbed mined areas. In addition, the commenter asserted that acceptable practices in the moist, fertile ecosystems of the Pacific Northwest may not be appropriate for application to the coal regions of the eastern United States.

The final rule retains the requirement that vegetative success be measured during the last year of the responsibility period for the postmining land uses other than grazing land, pasture land and cropland. In areas of annual average precipitation exceeding 28

inches, the forest ecosystem, once disturbed, reinitiates the process of vegetative succession. The first few years of the emergent successional pattern are prolific with respect to species density and diversity. Vegetative diversity and density increase with time during the five-year responsibility period. Indigenous species invade and become established. Therefore, given the positive relationship between time and vegetative cover, OSMRE believes that the last year of the responsibility period will provide an accurate measurement of revegetation success. It should be noted in response to the comment suggesting significant climatic differences between Washington State and the coal regions of the Eastern United States that the coal-producing regions of Washington State receive annual average precipitation that ranges from 20 to more than 60 inches, a range that coincides with the annual average precipitation in the coal-producing regions of the East.

*Sections 816.116(c)(4) and 817.116(c)(4)  
Normal Husbandry Practices*

Proposed § 816.116(c)(4) allowed certain husbandry practices during the responsibility period if approved by the regulatory authority and if the husbandry practice can be expected to continue as part of the postmining land use or if discontinuance of the husbandry practice after the release of permittee responsibility will not reduce the probability of continued revegetative success. The approved practices cannot include augmented seeding, fertilization, or irrigation without extending the period of responsibility. However, seeding, fertilization, or irrigation performed at levels that do not exceed those normally applied in maintaining comparable unmined land in the surrounding area would not be considered prohibited augmentative activities. The proposed minor change from the existing rule was to substitute the phrase "normal husbandry practices" for the phrase "normal conservation practices." This change was intended to avoid restricting approvable practices to manipulation of the soil alone.

In the preamble to the proposal, OSMRE stated, "Rather than proposing a national rule which would universally allow repair and reseeded of rills and gullies to be considered a normal husbandry practice, OSMRE will evaluate such practices if submitted by a State as a program amendment. Therefore, under the provisions of 30 CFR 732.17 governing State program amendments, OSMRE would consider,

on a practice-by-practice basis, the administrative record supporting each practice proposed by a regulatory authority as normal husbandry practice. The regulatory authority would be expected to demonstrate (1) that the practice is the usual or expected state, form, amount or degree of management performed habitually or customarily to prevent exploitation, destruction or neglect of the resource and maintain a prescribed level of use or productivity of similar unmined lands and (2) that the proposed practice is not an augmentative practice prohibited by section 515(b)(20) of [SMCRA]" (52 FR 28016).

Final § 816.116(c)(4) is the same as the proposed rule with the exception of the addition of the requirement for approval by OSMRE of proposed husbandry practices according to the State program amendment process. Two commenters suggested that this addition would clarify the rule by making explicit the requirement for prior approval by OSMRE of practices proposed by the State regulatory authority as normal husbandry practices.

One State regulatory authority was concerned that it would have to rejustify husbandry practices, such as the repair of rills and gullies, that already a part of the approved State regulatory program. If OSMRE has given specific approval to a State regulatory program provision that allows a particular practice to occur without restarting the operator's responsibility period, then there would be no need for resubmission of the record supporting that practice to OSMRE for approval. However, to the extent that OSMRE's approval of a State regulatory program does not address normal husbandry practices, the State would have to obtain OSMRE's approval under § 816.116(c)(4) to allow specific normal husbandry practices to occur without restarting the responsibility period.

One commenter suggested that normal husbandry practices be approved at the State regulatory authority level, without having to seek OSMRE's approval, through the issuance of State policy guidance or the approval of individual reclamation plans. This would be tantamount to a reinstatement of the 1983 rule. As stated in the proposed rule preamble, OSMRE has reconsidered the 1983 rule and concluded it granted flexibility that is inappropriate in a national performance standard. Therefore, the final rule establishes the requirement that OSMRE approval must be obtained before husbandry practice can be allowed to occur under a State

regulatory program without restating the responsibility period.

Six commenters supported allowing the repair of rills and gullies as a normal husbandry practice, and one commenter urged that the phrase "repair of rills and gullies" be added to the list of approved practices found in the last sentence of proposed § 816.116(c)(4). Because OSMRE is convinced that the cited literature supports the repair of rills and gullies in some situations, the final rule establishes a framework within which a State regulatory authority may demonstrate that such repair is a normal husbandry practice. However, since it is also true that repair of rills and gullies is not always simply good husbandry, the final rule does not include the suggested addition to the list of approved practices.

One commenter suggested that the proposed rule did not mention the role of Federal land-managing agencies in approving normal husbandry practices on Federal lands. OSMRE believes that the Federal lands regulations, particularly 30 CFR 740.11(d), which allows Federal land-managing agencies "to include in any lease, license, permit, contract, or other instrument such conditions as may be appropriate to regulate [mining]," adequately recognize the authority of Federal land-managing agencies to regulate surface coal mining and reclamation operations under provisions of law other than OSMRE on lands under their jurisdiction.

One commenter recommended that the final rule provide minimum standards for the State regulatory authorities to use when determining when tree planting, repair of rills and gullies, and other practices are to be considered augmentative versus normal husbandry. The commenter was concerned that the lack of such minimum standards would allow "major gully repair or replanting a large percentage of the trees or shrubs" within the responsibility period under the guise of normal husbandry. The commenter suggested that an example of a minimum standard would be to establish a ceiling, such as five percent of the permit area, that would be subject to a normal husbandry practice without restarting the operator's period of responsibility.

OSMRE's position is that the primary responsibility for regulating surface coal mining and reclamation operations should rest with the States. Federal rules must be capable of nationwide application. The absence of minimum standards in portions of the Federal rules is not a weakening of revegetation requirements but reflects that the rules are designed to account for regional

diversity in terrain, climate, soils and other conditions under which mining occurs. The requirements for OSMRE approval of normal husbandry practices proposed by State regulatory authorities based upon State-specific documentation of local husbandry practices will ensure that augmentative practices are not allowed to occur without restarting the operator's period of responsibility.

*Effect in Federal Program States and on Indian Lands*

This rule applies through cross-referencing in those States with Federal programs. They are Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for these States appear at 30 CFR Parts 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947 respectively. The rules will apply in California if the Federal program for that State, which was proposed on October 22, 1987 (52 FR 39594), is adopted. The rules also apply through cross-referencing to Indian lands under Federal programs for Indian lands as provided in 30 CFR Part 750. No comments were received concerning unique conditions that exist in any of these States or on Indian lands that would have required changes to the national rule.

**III. Procedural Matters**

*Federal Paperwork Reduction Act*

The revegetation rules affected by the changes approved today, §§ 816.116 and 817.116, do not contain new information collection requirements requiring approval from the Office of Management and Budget under 44 U.S.C. 3507.

*Executive Order 12291 and Regulatory Flexibility Act*

The DOI has determined that this rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291 (February 17, 1981). Also, DOI certifies that this rule will not have a significant economic effect on a substantial number of small entities and, therefore, does not require a regulatory flexibility analysis under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

*National Environmental Policy Act*

OSMRE has prepared an environmental assessment and has made a finding that the final rules will not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). The environmental assessment is on file

in the OSMRE Administrative Record, Room 5315, 1100 L Street, NW., Washington, DC.

*Agency Approval*

Section 516(a) of SMCRA requires that, with regard to rules directed to the surface effects of underground mining, OSMRE must obtain the written concurrence from the head of the department which administers the Federal Mine Safety and Health Act of 1977, the successor to the Federal Coal Mine Health and Safety Act of 1969. OSMRE has obtained the written concurrence of the Assistant Secretary for Mine Safety and Health, U.S. Department of Labor.

*Author*

The principal author of this rule is Patrick W. Boyd, OSMRE, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: (202) 343-1864.

*List of Subjects*

*30 CFR Part 816*

Environmental protection, Reporting and recordkeeping requirements, Surface mining.

*30 CFR Part 817*

Environmental protection, Reporting and recordkeeping requirements, Underground mining.

Accordingly, 30 CFR Parts 816 and 817 are amended as set forth herein.

Dated: July 20, 1988.

James E. Cason,

*Acting Assistant Secretary—Land and Minerals Management.*

**PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS—SURFACE MINING ACTIVITIES**

1. The authority citation for Part 816 is revised to read as follows and the authority citations following the sections in Part 816 are removed:

Authority: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*, and Pub. L. 100-34.

2. Section 816.116 is amended by revising paragraphs (b)(3)(i), (b)(3)(ii), (c)(2), and (c)(4) to read as follows and the suspension for those paragraphs, as noted in the editorial note immediately following the section in the Code of Federal Regulations, is lifted:

**§ 816.116 Revegetation: Standards for success.**

- • • • •
- (b) • • •
- (3) • • •

(i) Minimum stocking and planting arrangements shall be specified by the regulatory authority on the basis of local



Hidden Valley Susan

ZVI

**NORMAL HUSBANDRY PRACTICES**

#10

**Federal Regulations at 30 CFR 816.116(c)(4) and 817.116(c)(4)  
Promulgated on September 7, 1988 (see 53 FR 34636)**

30 CFR 816.116(c)(4) - (paraphrased) The regulatory authority may approve selective husbandry practices (excluding augmented seeding, fertilization, or irrigation), without extending the period of responsibility for revegetation success and bond liability, provided it obtains prior approval from the Director of OSM in accordance with 30 CFR 732.17 that the practices are normal husbandry practices. Such practices can be expected to continue as part of the postmining land use, or, discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success. Approved practices shall be normal husbandry practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area, including such practices as disease, pest, and vermin control; and any pruning, reseeding, and transplanting specifically necessitated by such actions.

**Court Litigation of the September 7, 1988 regulations.  
National Wildlife Federation (NWF) v. Interior Department U.S.  
District Court in the District of Columbia, 31 ERC 1617  
June 8, 1990**

NWF challenged the regulation because there was no new evidence in the administrative record that rill and gully repair is a normal husbandry practice and OSM avoided this issue by requiring OSM approval on a case-by-case basis sometime in the future.

Industry challenged the requirement that OSM approve a State RA's decision that an activity is a normal husbandry practice.

The Court upheld OSM's regulation regarding normal husbandry practices on both issues.

Regarding NWF's challenge, the court stated, "The Administrative Record now has such evidence. See Comment of Pennsylvania Department of Environmental Resources, Revegetation Ad. Rec. at 151; Comment of Wyoming Department Environmental Quality, Revegetation Ad. Rec. at 159... The Secretary has the power and discretion to sort through conflicting comments and then decide among them. It is not the role of the Court to second-guess the choice, provided it is not inherently irrational nor devoid of support in the record... Equally important, the Secretary has exercised his discretion soundly. He has not, after all, decreed that all rill and gully repair everywhere, without exception is a normal husbandry practice. He has decided on that some repairs, somewhere, might be. Further, he has required that before these repairs can be deemed a normal husbandry practice, the states must prove that the repairs are not augmentative."

Regarding industry's challenge, the court stated, "It is clear

that Congress wanted to accommodate local and regional differences, but it also wanted to ensure that there was a floor beneath which standards could not drop. The Secretary's decision to require his approval of normal husbandry practices strikes the Court as a sound way to blend the need to accommodate local differences with the mandate to ensure that minimum nation standards are met throughout the country."

### **Historical References**

OSM's March 13, 1979, regulations regarding revegetation. See 44 FR 14902.

Lawsuits challenging the 1979 regulations. See In Re: Permanent Surface Mining Regulation Litigation, No. 79-1144 (D.D.C. 1980).

OSM's August 4, 1990, suspension of the regulations insofar as they extended the period of responsibility from the point at which the operators meet the revegetation standards of section 515(b)(19) of SMCRA. See 45 FR 51549.

OSM's September 2, 1983, regulations regarding normal husbandry practices. See 48 FR 40140.

Lawsuits challenging the 1983 regulations. See In Re: Permanent Surface Mining Regulation Litigation (II), No. 79-1144 (D.D.C. 1984).

OSM's November 20, 1986, suspension, to various extent, of those portions of the revegetation regulations concerning the repair of rills and gullies, the replanting of trees, and the period for measuring revegetation success. See 51 FR 41952.

OSM's current September 7, 1988, revegetation regulations used the phrase "normal husbandry practices" rather than "normal conservation practices," and required OSM's approval of any normal husbandry practice proposed by a regulatory authority based on the administrative record for the decision at that time. See 53 FR 34636.

### **What Documentation is Necessary for OSM's approval of Normal Husbandry Practices?**

Under the provisions of 30 CFR 732.17 governing State program amendments, OSM will consider on a practice-by-practice basis, the administrative record supporting each practice proposed by a regulatory authority as a normal husbandry practice. The regulatory authority will be expected to demonstrate (1) that the practice is the usual or expected state, form, amount, or degree of management performed habitually or customarily to prevent exploitation, destruction or neglect of the resource and maintain a prescribed level of use or productivity of similar unmined lands and (2) that the proposed practice is not an augmentative practice prohibited by section 515(b)(20) of SMCRA. See 52 FR 28016, July 27, 1987; OSM's proposed rule Federal Register notice for the September 7, 1988, regulations.

JW



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

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

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

12/27/95

July 1, 1994

*Lowell, Daron, Joe -  
Bill*

Lee Edmonson  
Cal Mat Company  
Properties Division  
1801 East University Drive  
Phoenix, Arizona 85034

*Here's a list of  
outstanding issues.  
Bill resolved 5, 6, 7,  
15 & 17. Tabled 1, 2, & 3 -*

Re: Hidden Valley Coal Company, Hidden Valley Mine, ACT/015/007, Folder #2,  
Emery County, Utah

Dear Mr. Edmonson:

I am writing about our upcoming meeting regarding the Hidden Valley Mine. The Division would like to discuss some new initiatives directed at long-term resolution of the reclamation issues at the mine.

I have attached a meeting notice and a draft agenda. The agenda is issue-driven, and, we hope, will pave the way for discussing approaches that are goal-related. Also attached is a listing of issues we have identified. We batched the eighteen issues into several broad categories. Should you have any issues that concern you, please send me your list.

I appreciate your willingness to come to Salt Lake City. We had planned to come to Phoenix, but this should be better for all attendees, except perhaps for you. Let me know what your travel schedule will be, so that we can set an appropriate meeting time.

Very truly yours,

*James W. Carter*  
James W. Carter  
Director

*Still Outstanding  
issues as of 12/27/95  
4, 8, 9, 10, 11,  
12, 13, 14 & 16*

jbe  
Enclosure (3)  
cc/enc: W. Malencik  
H:HIDVALME.LTR

## Meeting Notice

What: Hidden Valley Mine Meeting

When: July 21, 1994

Where: Salt Lake City, Utah, Division of Oil, Gas and Mining Office,  
#3 Triad Center, Suite 350

Why:

1. Discuss Goals
2. Discuss pending issues relating to compliance and Phase II bond release
3. Identify consensus issues and nonconsensus issues
4. Explore and arrive at a process to resolve nonconsensus issues

Who To Attend: DOGM: James W. Carter, Lowell P. Braxton, and  
William J. Malencik  
Hidden Valley Mine: Lee Edmonson and Karla Knoop

Estimated Length: 3 Hours

Meeting Preparation: Exchange before meeting a written list of issues from each party in order to expedite preparation, discussions, and conclusions.

## Agenda

1. Introduction and Goals of Meeting . . . James W. Carter and Lee Edmonson
2. Overview of Issues . . . . . William J. Malencik and Lee Edmonson
3. Classification of Issues . . . . . William J. Malencik
4. Issue Analysis . . . . . William J. Malencik and Lee Edmonson  
    Consensus  
    Nonconsensus/Process and Assignments to Resolve Nonconsensus
5. Meeting Summary . . . . . William J. Malencik

Division of Oil, Gas and Mining  
Hidden Valley Mine Issues Relating to Compliance and/or Bond Release Matters

- I. Backfilling and Grading
  - 1) Highwalls, A & B Seams
  - 2) Approximate Original Contour, Cutslope Road
  - 3) Reclaimed Road Bed
  
- II. Roads/Wells
  - 4) Roads to Seven Wells/Wells
  - 5) Public Vehicle Encroachment on Reclaimed Road
  
- III. Signs and Markers
  - 6) All Disturbed Areas Not Properly Marked, Maps Do Not Properly Depict Disturbed Areas
  - 7) Buffer Zone Areas Not Properly Marked
  
- IV. Vegetation
  - 8) All Disturbed Areas Not Seeded and Mulched
  - 9) Seeded Areas Show Poor Vegetal Establishment
  - 10) Division Provide Policy to Permittee in Writing Prior to Joint Meeting on How Vegetation Parameters Will be Measured and Quantified as Related to Phase II Bond Release and Compliance
  - 11) Poisonous Plant Establishment on Reclaimed Site
  - 12) With Xerophytic Environment, et al., Will Vegetation Provide Adequate Erosion Control/Sediment Control, Phase II Bond Release Parameters? If Not, Then What?
  
- V. Runoff Control
  - 13) Undisturbed Runoff Interfacing With Disturbed Runoff
  - 14) Water Bars
  
- VI. Erosion and Sediment Control
  - 15) Road Outslope
  - 16) A & B Seam
  - 17) Borrow/Staging Area
  
- VII. Bond Clock
  - ★ 18) Further Reclamation Work That Will Start Bond Clock

→ Task force

---

Jim, Susan, Tom, Paul, Dan - 7/20 - mtg.

---



# State of Utah

DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL, GAS AND MINING

## INSPECTION REPORT

Michael O. Leavitt  
Governor  
Ted Stewart  
Executive Director  
Lowell P. Braxton  
Division Director

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

Partial:  Complete:  Exploration:   
Inspection Date & Time: 12/22/97 9 to 11  
Date of Last Inspection: 11/12/97

Mine Name: Hidden Valley County: Emery Permit Number: ACT/015/007

Permittee and/or Operator's Name: Consolidated Coal Co.

Business Address: P.O. Box 566, Sesseu, Illinois 62884

Type of Mining Activity: Underground  Surface  Prep. Plant  Other

State Official(s): Susan White

Company Official(s): Stephen Behling

Federal Official(s): \_\_\_\_\_

Weather Conditions: Clear and cold

Existing Acreage: Permitted-950 Disturbed-7 Regraded-     Seeded-     Bonded-7

Increased/Decreased: Permitted-     Disturbed-     Regraded-     Seeded-     Bonded-    

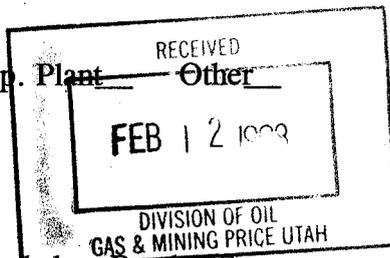
Status: Exploration/ Active/ Inactive/ Temporary Cessation/ Bond Forfeiture

Reclamation (Phase I/ Phase II/ Final Bond Release/ Liability      Year)

### REVIEW OF PERMIT, PERFORMANCE STANDARDS & PERMIT CONDITION REQUIREMENTS

#### Instructions

- Substantiate the elements on this inspection by checking the appropriate performance standard.
  - For complete inspections provide narrative justification for any elements not fully inspected unless element is not appropriate to the site, in which case check N/A.
  - For partial inspections check only the elements evaluated.
- Document any noncompliance situation by referencing the NOV issued at the appropriate performance standard listed below.
- Reference any narratives written in conjunction with this inspection at the appropriate performance standard listed below.
- Provide a brief status report for all pending enforcement actions, permit conditions, Division Orders, and amendments.



	EVALUATED	N/A	COMMENTS	NOV/ENF
1. PERMITS, CHANGE, TRANSFER, RENEWAL, SALE	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. SIGNS AND MARKERS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. TOPSOIL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. HYDROLOGIC BALANCE:				
a. DIVERSIONS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. SEDIMENT PONDS AND IMPOUNDMENTS	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. OTHER SEDIMENT CONTROL MEASURES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. WATER MONITORING	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
e. EFFLUENT LIMITATIONS	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. EXPLOSIVES	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. DISPOSAL OF EXCESS SPOIL/FILLS/BENCHES	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. COAL MINE WASTE/REFUSE PILES/IMPOUNDMENTS	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. NONCOAL WASTE	<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"/>
10. SLIDES AND OTHER DAMAGE	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. CONTEMPORANEOUS RECLAMATION	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12. BACKFILLING AND GRADING	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
13. REVEGETATION	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
14. SUBSIDENCE CONTROL	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
15. CESSATION OF OPERATIONS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
16. ROADS:				
a. CONSTRUCTION/MAINTENANCE/SURFACING	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. DRAINAGE CONTROLS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
17. OTHER TRANSPORTATION FACILITIES	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
18. SUPPORT FACILITIES/UTILITY INSTALLATIONS	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
19. AVS CHECK (4th Quarter-April, May, June) _____ (date)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
20. AIR QUALITY PERMIT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
21. BONDING & INSURANCE	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

## INSPECTION REPORT

(Continuation sheet)

Page 2 of 3

PERMIT NUMBER: ACT/015/007

DATE OF INSPECTION: 12/22/97

(Comments are Numbered to Correspond with Topics Listed Above)

### 1. PERMITS, CHANGE, TRANSFER, RENEWAL, SALE

The reclamation permit will expire January 30, 2002. One condition was attached to the permit which requires Consol to comply with the KY, WV, and OSM settlement agreements. The 1997 insurance documentation is in order. Policy 5YL 945 444-01 is held by Lumbermens Mutual Casualty and expires 1/1/97. No copy of the insurance policy could be found in the Division's office.

Surety Performance Bond No. 331474 written by Seaboard Surety Company in the amount of \$90,758 was increased to \$95,501 thru an executed rider, effective January 3, 1997.

### 2. SIGNS AND MARKERS

The permit entry had been repainted.

### 4. HYDROLOGIC BALANCE:

c. **Other Sediment Control Measures** Sediment control measures for the B seam were discussed.

d. **Water Monitoring** No water quality reports for 1997 could be located at the Division office. The permit requires May and September monitoring.

### 12. BACKFILLING AND GRADING

Backfilling and grading work was completed on the B Seam November 30. At this time it is hard to evaluate the amount of rock actually put on the surface. The surface did not appear to have a lot of smaller rock but it is expected that after several rains the rock will become more apparent.

### 13. REVEGETATION

The regraded area was seeded with half the seed mixture. The remaining seed will be spread after some moisture has settled the soil. The regraded seedbed was too light and powdery.

**INSPECTION REPORT**

(Continuation sheet)

Page 2 of 3

PERMIT NUMBER: ACT/015/007

DATE OF INSPECTION: 12/22/97

Some seed may have settled to deep for germination, so half will be seeded later this winter. The interim seed mixture needs to be seeded on the road and the rock borrow.

Copy of this Report:

Mailed to: OSM, Tim Kirschbaum, CCC

Given to: Joe Helfrich (DOGM)

Inspector's Signature: Susan M. White #35 Date: 1/13/98



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

**INSPECTION REPORT**

*gh*

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

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

Partial: X Complete:\_\_\_ Exploration:\_\_\_  
Inspection Date & Time: 11/12/97 10 to 1  
Date of Last Inspection: 10/29/97

Mine Name: Hidden Valley County: Emery Permit Number: ACT/015/007  
Permittee and/or Operator's Name: Consolidated Coal Co.  
Business Address: P.O. Box 566, Sesseu, Illinois 62884  
Type of Mining Activity: Underground X Surface \_\_\_ Prep. Plant \_\_\_  
State Officials(s): Susan White, Bob Davidson, Sharon Falvey  
Company Official(s): Steve Behling, Brain Butts, Jay Cumingham (Minchey  
Federal Official(s): \_\_\_  
Weather Conditions: Cloudy and cool  
Existing Acreage: Permitted-950 Disturbed-7 Regraded-\_\_\_ Seeded-\_\_\_ Bonded-7  
Increased/Decreased: Permitted-\_\_\_ Disturbed-\_\_\_ Regraded-\_\_\_ Seeded-\_\_\_ Bonded-\_\_\_  
Status: \_\_\_ Exploration/\_\_\_ Active/\_\_\_ Inactive/\_\_\_ Temporary Cessation/\_\_\_ Bond Forfeiture  
Reclamation (\_\_\_ Phase I/\_\_\_ Phase II/\_\_\_ Final Bond Release/\_\_\_ Liability \_\_\_ Year)  
REVIEW OF PERMIT, PERFORMANCE STANDARDS & PERMIT CONDITION REQUIREMENTS

RECEIVED

Other  
JAN 20 1998  
Construction

DIVISION OF OIL  
GAS & MINING PRICE UTAH

**Instructions**

1. Substantiate the elements on this inspection by checking the appropriate performance standard.
  - a. For complete inspections provide narrative justification for any elements not fully inspected unless element is not appropriate to the site, in which case check N/A.
  - b. For partial inspections check only the elements evaluated.
2. Document any noncompliance situation by referencing the NOV issued at the appropriate performance standard listed below.
3. Reference any narratives written in conjunction with this inspection at the appropriate performance standard listed below.
4. Provide a brief status report for all pending enforcement actions, permit conditions, Division Orders, and amendments.

	EVALUATED	N/A	COMMENTS	NOVENE
1. PERMITS, CHANGE, TRANSFER, RENEWAL, SALE	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. SIGNS AND MARKERS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. TOPSOIL	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. HYDROLOGIC BALANCE:				
a. DIVERSIONS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. SEDIMENT PONDS AND IMPOUNDMENTS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. OTHER SEDIMENT CONTROL MEASURES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. WATER MONITORING	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. EFFLUENT LIMITATIONS	<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"/>
6. DISPOSAL OF EXCESS SPOIL/FILLS/BENCHES	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. COAL MINE WASTE/REFUSE PILES/IMPOUNDMENTS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. NONCOAL WASTE	<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"/>
10. SLIDES AND OTHER DAMAGE	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. CONTEMPORANEOUS RECLAMATION	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12. BACKFILLING AND GRADING	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
13. REVEGETATION	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
14. SUBSIDENCE CONTROL	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
15. CESSATION OF OPERATIONS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
16. ROADS:				
a. CONSTRUCTION/MAINTENANCE/SURFACING	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. DRAINAGE CONTROLS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
17. OTHER TRANSPORTATION FACILITIES	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
18. SUPPORT FACILITIES/UTILITY INSTALLATIONS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
19. AVS CHECK (4th Quarter-April, May, June) _____(date)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
20. AIR QUALITY PERMIT	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
21. BONDING & INSURANCE	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

## INSPECTION REPORT

(Continuation sheet)

Page 2 of 2

PERMIT NUMBER: ACT/0157/007

DATE OF INSPECTION: 11/12/97

(Comments are Numbered to Correspond with Topics Listed Above)

### 4. HYDROLOGIC BALANCE

Interim methods of sediment control were discussed for use during the construction process.

### 12. BACKFILLING AND GRADING

Regrading of the "B" seam was begun. Soil on top was removed and salvaged prior to reshaping. The contractor had a trackhoe and a bull dozer on site for the work. When rock is placed on the surface a loader will be brought to the site.

### 13. REVEGETATION

An interim seed mixture will be used to seed the road and other areas to be redisturbed in future construction work.

Copy of this Report:

Mailed to: OSM, Tim Kirschbaum, CCC

Given to: Joe Helfrich (DOGM)

Inspector's Signature: Susan M. White

#35 Date: 12/1/97



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

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

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

**INSPECTION REPORT**

*JK for Joe Helfrich*

Partial: X Complete:     Exploration:      
Inspection Date & Time: 10/29/97 10 to 1  
Date of Last Inspection: 9/25/97

Mine Name: Hidden Valley County: Emery Permit Number: ACT/015/007

Permittee and/or Operator's Name: Consolidated Coal Co.

Business Address: P.O. Box 566, Sesseu, Illinois 62884

Type of Mining Activity: Underground X Surface     Prep. Plan    

State Official(s): Susan White

Company Official(s): Steve Behling

Federal Official(s):                                           

Weather Conditions: High clouds and cool

Existing Acreage: Permitted-950 Disturbed-7 Regraded-    Seeded-    Bonded-7

Increased/Decreased: Permitted-    Disturbed-    Regraded-    Seeded-    Bonded-   

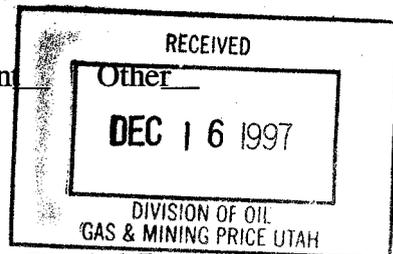
Status:     Exploration/    Active/    Inactive/    Temporary Cessation/    Bond Forfeiture

Reclamation (    Phase I/    Phase II/    Final Bond Release/    Liability     Year)

REVIEW OF PERMIT PERFORMANCE STANDARDS & PERMIT CONDITION REQUIREMENTS

Instructions

- Substantiate the elements on this inspection by checking the appropriate performance standard.
  - For complete inspections provide narrative justification for any elements not fully inspected unless element is not appropriate to the site, in which case check N/A.
  - For partial inspections check only the elements evaluated.
- Document any noncompliance situation by referencing the NOV issued at the appropriate performance standard listed below.
- Reference any narratives written in conjunction with this inspection at the appropriate performance standard listed below.
- Provide a brief status report for all pending enforcement actions, permit conditions, Division Orders, and amendments.



	EVALUATED	N/A	COMMENTS	NOV/ENE
1. PERMITS, CHANGE, TRANSFER, RENEWAL, SALE	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. SIGNS AND MARKERS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. TOPSOIL	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. HYDROLOGIC BALANCE:				
a. DIVERSIONS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. SEDIMENT PONDS AND IMPOUNDMENTS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. OTHER SEDIMENT CONTROL MEASURES	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. WATER MONITORING	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. EFFLUENT LIMITATIONS	<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"/>
6. DISPOSAL OF EXCESS SPOIL/FILLS/BENCHES	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. COAL MINE WASTE/REFUSE PILES/IMPOUNDMENTS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. NONCOAL WASTE	<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"/>
10. SLIDES AND OTHER DAMAGE	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. CONTEMPORANEOUS RECLAMATION	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12. BACKFILLING AND GRADING	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13. REVEGETATION	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
14. SUBSIDENCE CONTROL	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
15. CESSATION OF OPERATIONS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
16. ROADS:				
a. CONSTRUCTION/MAINTENANCE/SURFACING	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. DRAINAGE CONTROLS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
17. OTHER TRANSPORTATION FACILITIES	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
18. SUPPORT FACILITIES/UTILITY INSTALLATIONS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
19. AVS CHECK (4th Quarter-April, May, June)_____ (date)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
20. AIR QUALITY PERMIT	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
21. BONDING & INSURANCE	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

## INSPECTION REPORT

(Continuation sheet)

Page 2 of 2

PERMIT NUMBER: ACT/0157/007

DATE OF INSPECTION: 10/29/97

(Comments are Numbered to Correspond with Topics Listed Above)

### 2. SIGNS AND MARKERS

Mr. Behling painted the permit sign at the end of this inspection.

### 4. HYDROLOGIC BALANCE

Discussed with Mr. Behling several possible areas of concentrated flow from above the B seam. These areas should be considered when reshaping the area this fall.

Work on the area should begin in November. This area in the past has remained open throughout most of the winter for work.

### 13. REVEGETATION

Buckwheat and herbaceous sage seed was collect for seeding after regrading is completed. The seeding window should remain open for most of the winter in this area.

The fence along Ive Creek should be repaired prior to cattle coming on the range this winter. It was also suggested to Mr. Behling that the upper road and borrow area be fenced.

Copy of this Report:

Mailed to: OSM, Tim Kirschbaum, CCC

Given to: Joe Helfrich (DOGM)

Inspector's Signature: *Jessica M. White*

#35 Date: 11/6/97



# State of Utah

DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL, GAS AND MINING

## INSPECTION REPORT

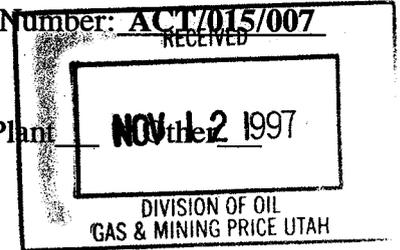
*gh*

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

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

Partial:  Complete:  Exploration:   
Inspection Date & Time: 9/25/97 1 to 3  
Date of Last Inspection: 8/27/97

Mine Name: Hidden Valley County: Emery Permit Number: ACT/015/007  
Permittee and/or Operator's Name: Consolidated Coal Co.  
Business Address: P.O. Box 566, Sesseu, Illinois 62884  
Type of Mining Activity: Underground  Surface  Prep. Plant   
State Official(s): Joe Helfrich and Susan White  
Company Official(s): Stephen Behling  
Federal Official(s): \_\_\_\_\_



Weather Conditions: Cloudy  
Existing Acreage: Permitted-950 Disturbed-7 Regraded-    Seeded-    Bonded-7  
Increased/Decreased: Permitted-    Disturbed-    Regraded-    Seeded-    Bonded-     
Status:     Exploration/     Active/     Inactive/     Temporary Cessation/     Bond Forfeiture  
Reclamation (     Phase I/     Phase II/     Final Bond Release/     Liability     Year)  
**REVIEW OF PERMIT, PERFORMANCE STANDARDS & PERMIT CONDITION REQUIREMENTS**

**Instructions**

1. Substantiate the elements on this inspection by checking the appropriate performance standard.
  - a. For complete inspections provide narrative justification for any elements not fully inspected unless element is not appropriate to the site, in which case check N/A.
  - b. For partial inspections check only the elements evaluated.
2. Document any noncompliance situation by referencing the NOV issued at the appropriate performance standard listed below.
3. Reference any narratives written in conjunction with this inspection at the appropriate performance standard listed below.
4. Provide a brief status report for all pending enforcement actions, permit conditions, Division Orders, and amendments.

	EVALUATED	N/A	COMMENTS	NOV/ENF
1. PERMITS, CHANGE, TRANSFER, RENEWAL, SALE	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. SIGNS AND MARKERS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. TOPSOIL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. HYDROLOGIC BALANCE:				
a. DIVERSIONS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. SEDIMENT PONDS AND IMPOUNDMENTS	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. OTHER SEDIMENT CONTROL MEASURES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. WATER MONITORING	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e. EFFLUENT LIMITATIONS	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. EXPLOSIVES	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. DISPOSAL OF EXCESS SPOIL/FILLS/BENCHES	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. COAL MINE WASTE/REFUSE PILES/IMPOUNDMENTS	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. NONCOAL WASTE	<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"/>
10. SLIDES AND OTHER DAMAGE	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. CONTEMPORANEOUS RECLAMATION	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12. BACKFILLING AND GRADING	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
13. REVEGETATION	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
14. SUBSIDENCE CONTROL	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
15. CESSATION OF OPERATIONS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
16. ROADS:				
a. CONSTRUCTION/MAINTENANCE/SURFACING	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. DRAINAGE CONTROLS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
17. OTHER TRANSPORTATION FACILITIES	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
18. SUPPORT FACILITIES/UTILITY INSTALLATIONS	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
19. AVS CHECK (4th Quarter-April, May, June) _____ (date)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
20. AIR QUALITY PERMIT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
21. BONDING & INSURANCE	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

## INSPECTION REPORT

(Continuation sheet)

Page 2 of 2

PERMIT NUMBER: ACT/015/007

DATE OF INSPECTION: 9/25/97

(Comments are Numbered to Correspond with Topics Listed Above)

### 1. PERMITS, CHANGE, TRANSFER, RENEWAL, SALE

The reclamation permit will expire January 30, 2002. One condition was attached to the permit which requires Consol to comply with the KY, WV, and OSM settlement agreements. The 1997 insurance documentation was observed. Policy 5YL 945 444-01 is held by Lumbermens Mutual Casualty.

Surety Performance Bond No. 331474 written by Seaboard Surety Company in the amount of \$90,758 was increased to \$95,501 thru an executed rider. The bond became effective October 13, 1995.

The amendment to redesign the B Seam has been submitted to the Division and approved.

### 2. SIGNS AND MARKERS

The permit entry sign is fading and may need repainting soon.

### 4. HYDROLOGIC BALANCE:

**c. Other Sediment Control Measures** The silt fence along the B seam was breached from recent water and sediment flows. Silt fence is a poor sediment control measure at this site.

**d. Water Monitoring** The second quarter water monitoring was done on May 27, 1997. Flow was high in Ivy Creek, 1.25 ft<sup>3</sup>/sec.

### 13. REVEGETATION

Numerous seedlings were observed. Numerous weedy species were observed. Numerous rills and gullies were observed. The Operator was instructed to do no maintenance on the rills and gullies. Gully development may provide future insight for drainage design.

Copy of this Report:

Mailed to: OSM, Tim Kirschbaum, CCC

Given to: Joe Helfrich (DOGM)

Inspector's Signature: Susan M. White

#35 Date: 10/14/97



# State of Utah

DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL, GAS AND MINING

## INSPECTION REPORT

*gh*

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

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

Partial: X Complete: \_\_\_ Exploration: \_\_\_  
Inspection Date & Time: 8/27/97 4 to 5  
Date of Last Inspection: 7/22/97

Mine Name: Hidden Valley County: Emery Permit Number: ACT/015/007

Permittee and/or Operator's Name: Consolidated Coal Co.

Business Address: P.O. Box 566, Sesseu, Illinois 62884

Type of Mining Activity: Underground X Surface \_\_\_ Prep. Plant \_\_\_

State Officials(s): Susan White

Company Official(s): \_\_\_\_\_

Federal Official(s): \_\_\_\_\_

Weather Conditions: warm and occasional light showers

Existing Acreage: Permitted-950 Disturbed-7 Regraded-\_\_\_ Seeded-\_\_\_ Bonded-7

Increased/Decreased: Permitted-\_\_\_ Disturbed-\_\_\_ Regraded-\_\_\_ Seeded-\_\_\_ Bonded-\_\_\_

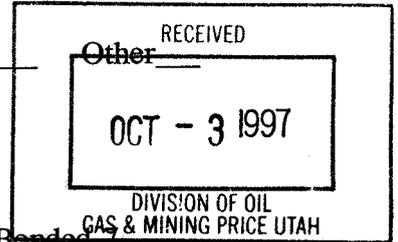
Status: \_\_\_ Exploration/ \_\_\_ Active/ \_\_\_ Inactive/ \_\_\_ Temporary Cessation/ \_\_\_ Bond Forfeiture

Reclamation ( \_\_\_ Phase I/ \_\_\_ Phase II/ \_\_\_ Final Bond Release/ \_\_\_ Liability \_\_\_ Year)

**REVIEW OF PERMIT, PERFORMANCE STANDARDS & PERMIT CONDITION REQUIREMENTS**

**Instructions**

- Substantiate the elements on this inspection by checking the appropriate performance standard.
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- Provide a brief status report for all pending enforcement actions, permit conditions, Division Orders, and amendments.



	EVALUATED	N/A	COMMENTS	NOV/ENF
1. PERMITS, CHANGE, TRANSFER, RENEWAL, SALE	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. SIGNS AND MARKERS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. TOPSOIL	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. HYDROLOGIC BALANCE:				
a. DIVERSIONS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. SEDIMENT PONDS AND IMPOUNDMENTS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. OTHER SEDIMENT CONTROL MEASURES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. WATER MONITORING	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. EFFLUENT LIMITATIONS	<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"/>
6. DISPOSAL OF EXCESS SPOIL/FILLS/BENCHES	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. COAL MINE WASTE/REFUSE PILES/IMPOUNDMENTS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. NONCOAL WASTE	<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"/>
10. SLIDES AND OTHER DAMAGE	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. CONTEMPORANEOUS RECLAMATION	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12. BACKFILLING AND GRADING	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13. REVEGETATION	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
14. SUBSIDENCE CONTROL	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
15. CESSATION OF OPERATIONS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
16. ROADS:				
a. CONSTRUCTION/MAINTENANCE/SURFACING	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. DRAINAGE CONTROLS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
17. OTHER TRANSPORTATION FACILITIES	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
18. SUPPORT FACILITIES/UTILITY INSTALLATIONS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
19. AVS CHECK (4th Quarter-April, May, June) _____ (date)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
20. AIR QUALITY PERMIT	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
21. BONDING & INSURANCE	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

## INSPECTION REPORT

(Continuation sheet)

Page 2 of 2

PERMIT NUMBER: ACT/0157/007

DATE OF INSPECTION: 8/27/97

(Comments are Numbered to Correspond with Topics Listed Above)

Vehicle tracks were observed to the first water bar. Four wheeler tracks were observed to the gate.

#### 4. HYDROLOGIC BALANCE

The silt fence on the "B" seam was full of sediment. Silt fences at this site have not been very effective. The fences usually get piping holes or load with sediment. This inspector suggests that with the up coming construction work a different sediment control measure be installed.

A monsoon type weather pattern has been in the region for most of July and August. Moderate rains have fallen. Evidence of low to moderate flows were apparent in the diversions and undisturbed channel.

#### 13. REVEGETATION

The site appears in better vegetative condition than this inspector has observed in previous inspections. Halogeton and Kochia were vigorous.

Buckwheat and herbaceous sage were in flower. The seed will be collected as soon as ready to be used in the revegetation work this fall.

Copy of this Report:

Mailed to: OSM, Tim Kirschbaum, CCC

Given to: Joe Helfrich (DOGM)

Inspector's Signature: Susan M. White

#~~30~~ Date: 9/2/97



# State of Utah

DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL, GAS AND MINING

## INSPECTION REPORT

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

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

Partial: X Complete: \_\_\_ Exploration: \_\_\_  
Inspection Date & Time: 7/22/97 1 to 3  
Date of Last Inspection: 6/24/97

Mine Name: Hidden Valley County: Emery Permit Number: ACT/015/007

Permittee and/or Operator's Name: Consolidated Coal Co.

Business Address: P.O. Box 566, Sesseu, Illinois 62884

Type of Mining Activity: Underground X Surface \_\_\_ Prep. Plant \_\_\_ Other \_\_\_

State Officials(s): Susan White, Sharon Falvey, Robert Davidson

Company Official(s): Steve Behling, Tim Kirschbaum, Gary Rains, Brian Butts

Federal Official(s): \_\_\_\_\_

Weather Conditions: Fair and hot

Existing Acreage: Permitted-950 Disturbed-7 Regraded-\_\_\_ Seeded-\_\_\_ Bonded-\_\_\_

Increased/Decreased: Permitted-\_\_\_ Disturbed-\_\_\_ Regraded-\_\_\_ Seeded-\_\_\_ Bonded-\_\_\_

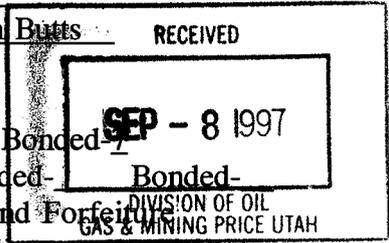
Status: \_\_\_ Exploration/\_\_\_ Active/\_\_\_ Inactive/\_\_\_ Temporary Cessation/\_\_\_ Bond Forfeiture

Reclamation ( \_\_\_ Phase I/ \_\_\_ Phase II/ \_\_\_ Final Bond Release/ \_\_\_ Liability \_\_\_ Year)

### REVIEW OF PERMIT, PERFORMANCE STANDARDS & PERMIT CONDITION REQUIREMENTS

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1. PERMITS, CHANGE, TRANSFER, RENEWAL, SALE	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. SIGNS AND MARKERS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. TOPSOIL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. HYDROLOGIC BALANCE:				
a. DIVERSIONS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. SEDIMENT PONDS AND IMPOUNDMENTS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. OTHER SEDIMENT CONTROL MEASURES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. WATER MONITORING	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. EFFLUENT LIMITATIONS	<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"/>
6. DISPOSAL OF EXCESS SPOIL/FILLS/BENCHES	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. COAL MINE WASTE/REFUSE PILES/IMPOUNDMENTS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. NONCOAL WASTE	<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"/>
10. SLIDES AND OTHER DAMAGE	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. CONTEMPORANEOUS RECLAMATION	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12. BACKFILLING AND GRADING	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13. REVEGETATION	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
14. SUBSIDENCE CONTROL	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
15. CESSATION OF OPERATIONS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
16. ROADS:				
a. CONSTRUCTION/MAINTENANCE/SURFACING	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. DRAINAGE CONTROLS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
17. OTHER TRANSPORTATION FACILITIES	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
18. SUPPORT FACILITIES/UTILITY INSTALLATIONS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
19. AVS CHECK (4th Quarter-April, May, June) _____ (date)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
20. AIR QUALITY PERMIT	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
21. BONDING & INSURANCE	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

## INSPECTION REPORT

(Continuation sheet)

Page 2 of 2

PERMIT NUMBER: ACT/0157/007

DATE OF INSPECTION: 7/22/97

(Comments are Numbered to Correspond with Topics Listed Above)

Consolidation Coal Company personnel were present to discuss the submittal of 97B, Amendment to Reclamation Plan. The work on the "B" seam is proposed for early September, 1997. Future work will include the "A" seam and perhaps reducing the width of the reclaimed road.

#### 4. HYDROLOGIC BALANCE

The silt fence on the "B" seam was almost full. Construction work will begin soon, this inspector sees no reason to do maintenance on the fence since it will be replaced.

The purpose of redoing the reclamation work is to provide stability to the soil surface by armoring the surface with rock and shortening and flattening the slopes. Slope shortening will be achieved by steepening the slope.

#### 13. REVEGETATION

The site appears in better vegetative condition than this inspector has observed in previous inspection.

The operator was shown a buckwheat and herbaceous sage for seed collection to be used in the reclamation work this fall.

Copy of this Report:

Mailed to: OSM, Tim Kirschbaum, CCC

Given to: Joe Helfrich (DOGM)

Inspector's Signature:

Susan White

#35

Date: 7/31/97



# State of Utah

DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL, GAS AND MINING

PFO

INSPECTION REPORT

gh

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

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

Partial: \_\_\_ Complete: X Exploration: \_\_\_  
Inspection Date & Time: 6/24/97 1 to 3  
Date of Last Inspection: 5/15/97

Mine Name: Hidden Valley County: Emery Permit Number: ACT/015/007

Permittee and/or Operator's Name: Consolidated Coal Co.

Business Address: P.O. Box 566, Sesseu, Illinois 62884

Type of Mining Activity: Underground X Surface \_\_\_

State Officials(s): Susan White

Company Official(s): Stephen Behling

Federal Official(s): \_\_\_\_\_

Weather Conditions: Fair and cool

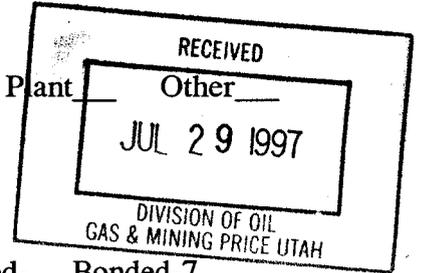
Existing Acreage: Permitted-950 Disturbed-7 Regraded-\_\_\_ Seeded-\_\_\_ Bonded-7

Increased/Decreased: Permitted-\_\_\_ Disturbed-\_\_\_ Regraded-\_\_\_ Seeded-\_\_\_ Bonded-\_\_\_

Status: \_\_\_ Exploration/ \_\_\_ Active/ \_\_\_ Inactive/ \_\_\_ Temporary Cessation/ \_\_\_ Bond Forfeiture

Reclamation ( \_\_\_ Phase I/ \_\_\_ Phase II/ \_\_\_ Final Bond Release/ \_\_\_ Liability \_\_\_ Year)

REVIEW OF PERMIT, PERFORMANCE STANDARDS & PERMIT CONDITION REQUIREMENTS



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2. SIGNS AND MARKERS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. TOPSOIL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. HYDROLOGIC BALANCE:				
a. DIVERSIONS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. SEDIMENT PONDS AND IMPOUNDMENTS	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. OTHER SEDIMENT CONTROL MEASURES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. WATER MONITORING	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e. EFFLUENT LIMITATIONS	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. EXPLOSIVES	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. DISPOSAL OF EXCESS SPOIL/FILLS/BENCHES	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. COAL MINE WASTE/REFUSE PILES/IMPOUNDMENTS	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. NONCOAL WASTE	<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"/>
10. SLIDES AND OTHER DAMAGE	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. CONTEMPORANEOUS RECLAMATION	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12. BACKFILLING AND GRADING	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
13. REVEGETATION	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
14. SUBSIDENCE CONTROL	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
15. CESSATION OF OPERATIONS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
16. ROADS:				
a. CONSTRUCTION/MAINTENANCE/SURFACING	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. DRAINAGE CONTROLS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
17. OTHER TRANSPORTATION FACILITIES	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
18. SUPPORT FACILITIES/UTILITY INSTALLATIONS	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
19. AVS CHECK (4th Quarter-April, May, June) _____ (date)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
20. AIR QUALITY PERMIT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
21. BONDING & INSURANCE	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

## INSPECTION REPORT

(Continuation sheet)

Page 2 of 2

PERMIT NUMBER: ACT/015/007

DATE OF INSPECTION: 6/24/97

(Comments are Numbered to Correspond with Topics Listed Above)

### 1. PERMITS, CHANGE, TRANSFER, RENEWAL, SALE

The reclamation permit will expire January 30, 2002. One condition was attached to the permit which requires Consol to comply with the KY, WV, and OSM settlement agreements. The 1997 insurance documentation was observed. Policy 5YL 945 444-01 is held by Lumbermens Mutual Casualty.

Surety Performance Bond No. 331474 written by Seaboard Surety Company in the amount of \$90,758 was increased to \$95,501 thru an executed rider. The bond became effective October 13, 1995.

The amendment to redesign the B Seam has been submitted to the Division.

The annual report was submitted as required. Only the water and vegetation is required reporting for this mine. The vegetation report was submitted September 1996. Average perennial vegetative cover for the reclaimed site was 6.6%. The vegetation reference area had 16.5% perennial cover.

### 4. HYDROLOGIC BALANCE:

**c. Other Sediment Control Measures** The silt fence along the B seam was breached from recent water and sediment flows. Silt fence is a poor sediment control measure at this site.

**d. Water Monitoring** The second quarter water monitoring was done on May 27, 1997. Flow was high in Ivy Creek, 1.25 ft<sup>3</sup>/sec.

### 13. REVEGETATION

Numerous seedlings were observed. Numerous weedy species were observed.

Copy of this Report:

Mailed to: OSM, Tim Kirschbaum, CCC

Given to: Joe Helfrich (DOGM)

Inspector's Signature:

Susan M. White

#35 Date: 6/24/97



# State of Utah

DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL, GAS AND MINING

## INSPECTION REPORT

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

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

Partial:  Complete:  Exploration:   
Inspection Date & Time: 5/15/97 1 to 3  
Date of Last Inspection: 4/24/97

Mine Name: Hidden Valley County: Emery Permit Number: ACT/015/007

Permittee and/or Operator's Name: Consolidated Coal Co.

Business Address: P.O. Box 566, Sesseu, Illinois 62884

Type of Mining Activity: Underground  Surface

State Official(s): Susan White

Company Official(s): \_\_\_\_\_

Federal Official(s): \_\_\_\_\_

Weather Conditions: Warm, partly cloudy, brief rain shower

Existing Acreage: Permitted-950 Disturbed-7 Regraded-\_\_\_\_ Seeded-\_\_\_\_ Bonded-7

Increased/Decreased: Permitted-\_\_\_\_ Disturbed-\_\_\_\_ Regraded-\_\_\_\_ Seeded-\_\_\_\_ Bonded-\_\_\_\_

Status:  Exploration/  Active/  Inactive/  Temporary Cessation/  Bond Forfeiture

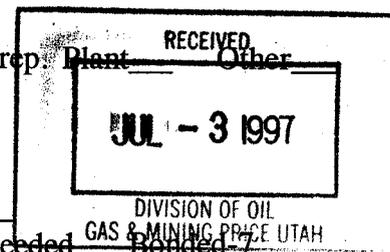
Reclamation (  Phase I/  Phase II/  Final Bond Release/  Liability \_\_\_\_\_ Year)

### REVIEW OF PERMIT, PERFORMANCE STANDARDS & PERMIT CONDITION REQUIREMENTS

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2. SIGNS AND MARKERS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. TOPSOIL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. HYDROLOGIC BALANCE:				
a. DIVERSIONS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. SEDIMENT PONDS AND IMPOUNDMENTS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. OTHER SEDIMENT CONTROL MEASURES	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. WATER MONITORING	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. EFFLUENT LIMITATIONS	<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"/>
6. DISPOSAL OF EXCESS SPOIL/FILLS/BENCHES	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. COAL MINE WASTE/REFUSE PILES/IMPOUNDMENTS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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10. SLIDES AND OTHER DAMAGE	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. CONTEMPORANEOUS RECLAMATION	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12. BACKFILLING AND GRADING	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13. REVEGETATION	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
14. SUBSIDENCE CONTROL	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
15. CESSATION OF OPERATIONS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
16. ROADS:				
a. CONSTRUCTION/MAINTENANCE/SURFACING	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. DRAINAGE CONTROLS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
17. OTHER TRANSPORTATION FACILITIES	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
18. SUPPORT FACILITIES/UTILITY INSTALLATIONS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
19. AVS CHECK (4th Quarter-April, May, June) _____ (date)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
20. AIR QUALITY PERMIT	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
21. BONDING & INSURANCE	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



PFO

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## INSPECTION REPORT

(Continuation sheet)

Page 2 of 2

PERMIT NUMBER: ACT/0157/007

DATE OF INSPECTION: 5/22/97

(Comments are Numbered to Correspond with Topics Listed Above)

The site appeared very dry.

### 2. SIGNS AND MARKERS

The permit entry sign had been replaced.

### 4. HYDROLOGIC BALANCE

Ivy Creek was running very full.

### 9. PROTECTION OF FISH, WILDLIFE AND RELATED ENVIRONMENTAL VALUES

No prairie falcons were observed. The area in which they were found last year was observed.

### 13. REVEGETATION

Some greening of the vegetation and annual weeds was observed. Some new growth on the upper portion of road and the alluvium of the B Seam was observed.

Copy of this Report:

Mailed to: OSM, Tim Kirschbaum, CCC

Given to: Joe Helfrich (DOGM)

Inspector's Signature: Susan M. White

#35

Date: 6/5/97



## INSPECTION REPORT

(Continuation sheet)

Page 2 of 2

PERMIT NUMBER: ACT/0157/007

DATE OF INSPECTION: 4/24/97

(Comments are Numbered to Correspond with Topics Listed Above)

### 2. SIGNS AND MARKERS

The permit entry sign was gone. The Operator stated that it had been apparently stolen. The Operator will replace the sign soon.

### 13. REVEGETATION

Some greening of the vegetation and annual weeds was observed. Soil moisture was still near the soil surface.

Copy of this Report:

Mailed to: OSM, Tim Kirschbaum, CCC

Given to: Joe Helfrich (DOGM)

Inspector's Signature: Susan White

#35 Date: 5/27/97



# State of Utah

DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL, GAS AND MINING

## INSPECTION REPORT

*gh*

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

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

Partial: \_\_\_ Complete: X Exploration: \_\_\_  
Inspection Date & Time: 3/18/97 9 to 3  
Date of Last Inspection: 2/13/97

Mine Name: Hidden Valley County: Emery Permit Number: ACT/015/007

Permittee and/or Operator's Name: Consolidated Coal Co.

Business Address: P.O. Box 566, Sesseu, Illinois 62884

Type of Mining Activity: Underground X Surface \_\_\_ Prep. Plan: \_\_\_

State Official(s): Susan White and Robert Davidson

Company Official(s): Stephen Behling, Gary Rains, Bruce Ware (consultant) and Louis Monk  
(consultant)

Federal Official(s): \_\_\_\_\_

Weather Conditions: Fair and cool

Existing Acreage: Permitted-950 Disturbed-7 Regraded-\_\_\_ Seeded-\_\_\_ Bonded-7

Increased/Decreased: Permitted-\_\_\_ Disturbed-\_\_\_ Regraded-\_\_\_ Seeded-\_\_\_ Bonded-\_\_\_

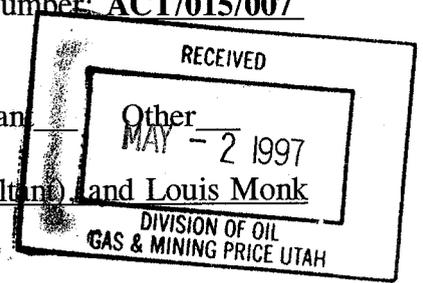
Status: \_\_\_ Exploration/\_\_\_ Active/\_\_\_ Inactive/\_\_\_ Temporary Cessation/\_\_\_ Bond Forfeiture

Reclamation (\_\_\_ Phase I/\_\_\_ Phase II/\_\_\_ Final Bond Release/\_\_\_ Liability \_\_\_ Year)

### REVIEW OF PERMIT, PERFORMANCE STANDARDS & PERMIT CONDITION REQUIREMENTS

#### Instructions

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4. Provide a brief status report for all pending enforcement actions, permit conditions, Division Orders, and amendments.



	EVALUATED	N/A	COMMENTS	NOV/ENF
1. PERMITS, CHANGE, TRANSFER, RENEWAL, SALE	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. SIGNS AND MARKERS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. TOPSOIL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. HYDROLOGIC BALANCE:				
a. DIVERSIONS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. SEDIMENT PONDS AND IMPOUNDMENTS	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. OTHER SEDIMENT CONTROL MEASURES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. WATER MONITORING	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e. EFFLUENT LIMITATIONS	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. EXPLOSIVES	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. DISPOSAL OF EXCESS SPOIL/FILLS/BENCHES	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. COAL MINE WASTE/REFUSE PILES/IMPOUNDMENTS	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. NONCOAL WASTE	<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"/>
10. SLIDES AND OTHER DAMAGE	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. CONTEMPORANEOUS RECLAMATION	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12. BACKFILLING AND GRADING	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
13. REVEGETATION	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
14. SUBSIDENCE CONTROL	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
15. CESSATION OF OPERATIONS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
16. ROADS:				
a. CONSTRUCTION/MAINTENANCE/SURFACING	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. DRAINAGE CONTROLS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
17. OTHER TRANSPORTATION FACILITIES	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
18. SUPPORT FACILITIES/UTILITY INSTALLATIONS	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
19. AVS CHECK (4th Quarter-April, May, June) _____ (date)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
20. AIR QUALITY PERMIT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
21. BONDING & INSURANCE	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

## INSPECTION REPORT

(Continuation sheet)

Page 2 of 2

PERMIT NUMBER: ACT/0157/007

DATE OF INSPECTION: 3/18/97

(Comments are Numbered to Correspond with Topics Listed Above)

### 1. PERMITS, CHANGE, TRANSFER, RENEWAL, SALE

The reclamation permit will expire January 30, 2002. One condition was attached to the permit which requires Consol to comply with the KY, WV, and OSM settlement agreements. The 1997 insurance documentation was observed. Policy 5YL 945 444-01 is held by Lumbermens Mutual Casualty.

Surety Performance Bond No. 331474 written by Seaboard Surety Company in the amount of \$90,758 was increased to \$95,501 thru an executed rider. The bond became effective October 13, 1995.

Bruce Ware, Surveyor, was on site to determine survey detail. The site will be surveyed for map detail at the 2 foot contour interval. The map would be available on autocad.

Discussion which Consol and Mr. Monk was how to determine B seam success. B seam success will determine when the A seam will be redone. It was suggested that several goals be determined prior to reclamation activities. Some success standard would need to be a vegetation density and erosion condition.

The discussion also centered around using rock as a grade and erosion control structure. The need to shorten slope length by dishing or "terracing" and using rock as an energy dissipator was discussed.

### 3. TOPSOIL

Louis Monk, Soils Consultant, took samples on mainly the B seam to determine depth of soil salvage when recontouring activities take place this fall.

### 4. HYDROLOGIC BALANCE:

c. **Other Sediment Control Measures** The silt fence along both sides of the undisturbed drainage at the south end was extended and was backed with a wire mesh.

d. **Water Monitoring** No water monitoring was required for the fourth quarter.

INSPECTION REPORT

(Continuation sheet)

Page 2 of 2

PERMIT NUMBER: ACT/0157/007

DATE OF INSPECTION: 3/18/97

Copy of this Report:

Mailed to: OSM, Tim Kirschbaum, CCC

Given to: Joe Helfrich (DOGM)

Inspector's Signature: *Susan M. White* #35 Date: 4/2/97



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

**INSPECTION REPORT**

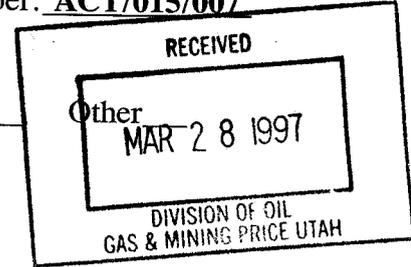
*gpl*

Michael O. Leavitt  
 Governor  
 Ted Stewart  
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 Division Director

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

Partial: X Complete:      Exploration:       
 Inspection Date & Time: 2/13/97 10 to 11  
 Date of Last Inspection: 1/30/97

Mine Name: Hidden Valley County: Emery Permit Number: ACT/015/007  
 Permittee and/or Operator's Name: Consolidated Coal Co.  
 Business Address: P.O. Box 566, Sesseu, Illinois 62884  
 Type of Mining Activity: Underground X Surface      Prep. Plant       
 State Officials(s): Susan White  
 Company Official(s): Stephen Behling  
 Federal Official(s):                     



Weather Conditions: Fair and cold  
 Existing Acreage: Permitted-950 Disturbed-7 Regraded-     Seeded-     Bonded-7  
 Increased/Decreased: Permitted-     Disturbed-     Regraded-     Seeded-     Bonded-      
 Status: Exploration/ Active/ Inactive/ Temporary Cessation/ Bond Forfeiture  
Reclamation ( Phase I/ Phase II/ Final Bond Release/ Liability      Year)  
REVIEW OF PERMIT, PERFORMANCE STANDARDS & PERMIT CONDITION REQUIREMENTS

Instructions

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1. PERMITS, CHANGE, TRANSFER, RENEWAL, SALE	<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"/>
3. TOPSOIL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. HYDROLOGIC BALANCE:				
a. DIVERSIONS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. SEDIMENT PONDS AND IMPOUNDMENTS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. OTHER SEDIMENT CONTROL MEASURES	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. WATER MONITORING	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. EFFLUENT LIMITATIONS	<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"/>
6. DISPOSAL OF EXCESS SPOIL/FILLS/BENCHES	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. COAL MINE WASTE/REFUSE PILES/IMPOUNDMENTS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. NONCOAL WASTE	<input 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 checked="" type="checkbox"/>	<input type="checkbox"/>
10. SLIDES AND OTHER DAMAGE	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. CONTEMPORANEOUS RECLAMATION	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12. BACKFILLING AND GRADING	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13. REVEGETATION	<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"/>
15. CESSATION OF OPERATIONS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
16. ROADS:				
a. CONSTRUCTION/MAINTENANCE/SURFACING	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. DRAINAGE CONTROLS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
17. OTHER TRANSPORTATION FACILITIES	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
18. SUPPORT FACILITIES/UTILITY INSTALLATIONS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
19. AVS CHECK (4th Quarter-April, May, June) (date)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
20. AIR QUALITY PERMIT	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
21. BONDING & INSURANCE	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**INSPECTION REPORT**

(Continuation sheet)

Page 2 of 2

PERMIT NUMBER: ACT/0157/007

DATE OF INSPECTION: 2/13/97

(Comments are Numbered to Correspond with Topics Listed Above)

The site had a partial snow cover and appeared unchanged from the previous site visit.

The Prairie falcons observed last year were not seen yet. Mr. Behling was reminded about the potential of this pair to nest very near to the disturbed area. Minimum activities should be scheduled between now and early July if the birds nest near the site.

Copy of this Report:

Mailed to: OSM, Tim Kirschbaum, CCC

Given to: Joe Helfrich (DOGM)

Inspector's Signature:

Susan White

#35 Date: 2/23/97



# State of Utah

DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL, GAS AND MINING

## INSPECTION REPORT

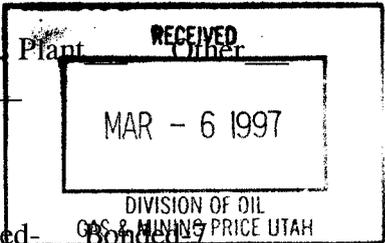
*gh*

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

Partial: X Complete:      Exploration:       
Inspection Date & Time: 1/30/97 9 to 11  
Date of Last Inspection: 12/12/96

Mine Name: Hidden Valley County: Emery Permit Number: ACT/015/007  
Permittee and/or Operator's Name: Consolidated Coal Co.  
Business Address: P.O. Box 566, Sesseu, Illinois 62884  
Type of Mining Activity: Underground X Surface      Prep. Plant     



State Officials(s): Susan White and Robert Davidson  
Company Official(s): Stephen Behling  
Federal Official(s):     

Weather Conditions: Fair and cold, 30's warming to 40's  
Existing Acreage: Permitted-950 Disturbed-7 Regraded-     Seeded-     Bonded-      
Increased/Decreased: Permitted-     Disturbed-     Regraded-     Seeded-     Bonded-    

Status:      Exploration/      Active/      Inactive/      Temporary Cessation/      Bond Forfeiture  
Reclamation (     Phase I/      Phase II/      Final Bond Release/      Liability      Year)

**REVIEW OF PERMIT, PERFORMANCE STANDARDS & PERMIT CONDITION REQUIREMENTS**

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3. TOPSOIL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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c. OTHER SEDIMENT CONTROL MEASURES	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. WATER MONITORING	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. EFFLUENT LIMITATIONS	<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"/>
6. DISPOSAL OF EXCESS SPOIL/FILLS/BENCHES	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. COAL MINE WASTE/REFUSE PILES/IMPOUNDMENTS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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11. CONTEMPORANEOUS RECLAMATION	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12. BACKFILLING AND GRADING	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13. REVEGETATION	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
14. SUBSIDENCE CONTROL	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
15. CESSATION OF OPERATIONS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
16. ROADS:				
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b. DRAINAGE CONTROLS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
17. OTHER TRANSPORTATION FACILITIES	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
18. SUPPORT FACILITIES/UTILITY INSTALLATIONS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
19. AVS CHECK (4th Quarter-April, May, June) _____ (date)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
20. AIR QUALITY PERMIT	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
21. BONDING & INSURANCE	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

## INSPECTION REPORT

(Continuation sheet)

Page 2 of 2

PERMIT NUMBER: ACT/0157/007

DATE OF INSPECTION: 1/30/97

(Comments are Numbered to Correspond with Topics Listed Above)

Most of the site was snow covered, south facing slopes lacked snow. Evidence of a lot of moisture (considering this is a very dry site). Water ponding and frozen where melting had occurred.

### 2. Signs and Markers

Mr. Behling repainted some of the letter on the permit sign at the end of this inspection.

### 3. TOPSOIL

Soil samples had been taken by the operator, although the analytical lab may have lost some of the samples. A soils consultant has been hired by the permittee for the pending on site work. The consultant may retake samples.

### 13. REVEGETATION

Vegetation was scarce. The elk had heavily browsed some shrubs while total overlooking other shrubs of the same species. Only a few fresh solitary elk tracks were observed.

Copy of this Report:

Mailed to: OSM, Tim Kirschbaum, CCC

Given to: Joe Helfrich (DOGM)

Inspector's Signature:

Susan M. White

#35 Date: 2/16/97

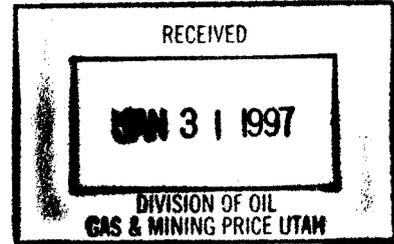


State of Utah  
DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL, GAS AND MINING

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

January 29, 1997



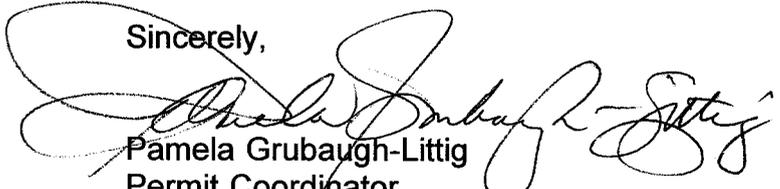
Price Field Office  
Division of Oil, Gas, and Mining  
451 East 400 North  
Price, UT 84501-2699

RE: Updated Information - Permit Renewal, Hidden Valley Mine, Consolidation Coal Company, ACT/015/007, Folder #2, Emery County, Utah

I am enclosing the information to be incorporated into the Hidden Valley Mine mining and reclamation plan which was updated as a result of the permit renewal, effective January 29, 1997.

If you have any questions, please call me.

Sincerely,

  
Pamela Grubaugh-Littig  
Permit Coordinator

Enclosure

