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

**EXHIBIT III**

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

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

January 13, 1992

TO: Pamela Grubaugh-Littig and Dianne Nielson  
FROM: Wm. J. Malencik, Reclamation Specialist  
RE: Response to Hidden Valley Coal Co. Request to Vacate  
NOV N91-26-8-2 Hidden Valley Mine, ACT/O15/O07

On December 30, 1991, Ms. Denise A. Dragoo submitted a memorandum to the Director, DOGM to identify points and authorities in support of vacating the Notice of Violation N91-26-8-2.

The undersigned reviewed the memorandum and supporting information. Responses are attached. To augment responses appropriate portions of the reclamation plan and regulatory performance standards are attached as exhibits.

The NOV was based on the failure of the permittee to meet Utah Coal Mining Regulation performance standards. Some of the performance standards items were identified as commitment items in the Reclamation Plan. The NOV did not cite the failure to meet plan commitments, but relied on performance standards.

Photos clearly show the interface of the disturbed areas with the undisturbed areas and the erosion.

Allegation #5

NOV is barred under the statute of limitations [UMCRA, S40-8-9(2)].

Response #5

A corporate guarantee of \$152,500 was posted to cover reclamation obligations which clearly provides a continued liability on the part of HVCC until final bond release.

Allegation #6

Areas cited in the violation were not included in the reclamation plan approved by the Division in 1986.

Response #6

Not factual. The road outslope was specifically covered in the plan. The plan was silent on the upslope. Both areas must comply with the Utah Regulation Performance Standards with respect to erosion and diversions.

The reclamation plan states that the road fill slopes would be seeded, mulched and fertilized. This would further substantiate that the road outsoles would be reclaimed, and are part of the plan.

Stabilizing rills and gullies are committed to and identified in the plan. Rills and gullies during post reclamation will be stabilized by filling with soil and rocks. Chronic sites will be stabilized with gabions or rock check dams. (Refer to Exhibit II, PUMC 817.106.)

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

UMC 817.111 Revegetation: General Requirements

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

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

Irrigation is not planned.

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

Cattle grazing during the revegetation process will be limited by

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

IN THE MATTER OF NOTICES OF )  
VIOLATION: )  
N91-26-9-2, AND N92-25-1-1 )  
HIDDEN VALLEY MINE, EMERY )  
COUNTY, UTAH )

DOCKET NO. 92-005  
CAUSE NO. ACT/015/007

HEARING HELD JUNE 30, 1992

CLOSING ARGUMENT HELD: JULY 7, 1992

5980 South 300 East • Murray, Utah 84107

Certified Shorthand Reporters •

OUR FILE NO 603092



**ORIGINAL**

REPORTED BY  
DANA MORSE, CSR, RPR

INTERMOUNTAIN COURT REPORTERS  
263-1396

962

1 stream bed that had been modified previously by  
2 construction was it will be accepted as it is now,  
3 modified and reclamation based upon that and that was  
4 not changed either.

5 BY MR. RICHARDS:

6 Q. Are you aware of a regulation that requires  
7 the seeding and revegetation of all disturbed areas?

8 A. Yes.

9 Q. Were the outsoles which you have testified as  
10 disturbed areas, have they ever been seeded and have  
11 they been revegetated?

12 A. They're not seeded, they're not revegetated.

13 Q. Did you help design the erosion runoff system  
14 that we've heard testified today on the road?

15 A. No. I'm sorry, that's not in my expertise.

16 Q. Were you -- would you be aware of the fact  
17 that water bars were constructed on the road which would  
18 direct the water off the road over the outslope?

19 A. Yes, I'm aware of that.

20 Q. But you didn't construct --

21 A. No.

22 Q. You weren't involved in the construction of  
23 that, but you were aware that water would be coming out  
24 of the bars down over the outslope?

25 A. Yes.

# EXHIBIT V

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

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

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Pursuant to Utah Code Ann. S 40-10-22(3), Applicant, Hidden Valley Coal Company, a Utah corporation ("Hidden Valley"), by and through its counsel of record, hereby petitions the Board of Oil, Gas & Mining ("Board") for temporary relief concerning abatement of Notice of Violations N91-26-8-2 ("NOV"). This NOV was issued by the Utah Division of Oil, Gas & Mining ("DOG M") on November 22, 1991, concerning reclamation of the Hidden Valley Mine ("Mine"), Permit No. ACT/015/007. A copy is attached as Exhibit "A." Hidden Valley has appealed the fact of this violation to the DOGM to challenge, among other things, the nature of the abatement requested by the NOV. The Mine has been reclaimed and revegetated in accordance with a reclamation plan approved by DOGM. Under the terms of the NOVs, DOGM is now requesting that new areas, not formerly identified in the reclamation plan, be reseeded and revegetated. (NOV Part 2 of 2). Hidden Valley is objecting to this abatement action due to its concern that the

reseeding and revegetation will disturb the reclaimed area and cause erosion of slopes. In addition, the reseeding and revegetation activities will extend the period of liability under Hidden Valley's reclamation bond. Hidden Valley also objects to abatement action required under Part 1 of the NOV concerning submission of an erosion control plan. If the NOV is vacated, this plan will not be required. It is an unnecessary waste of resources to require such a plan until the fact of the violation is reviewed.

Under the terms of the NOV, reseeding and revegetation must occur no later than December 20, 1991. Hidden Valley respectfully requests an extension in the abatement period pending review the fact of the violation by DOGM. During a recent reinspection of the Mine conducted last week, DOGM inspectors disagreed on the abatement action required. DOGM inspector Tom Munson agrees with Hidden Valley's consultant that the required abatement may cause environmental damage to reclaimed areas. A hearing before DOGM is required to resolve these conflicting opinions.

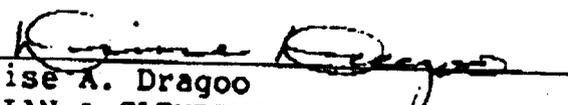
In addition, abatement of the NOV prior to hearing essentially deprives Hidden Valley of its opportunity for hearing in violation of Utah Code Ann. § 40-10-22(3) and the due process provisions of the federal and state Constitutions. U.S. Const.

Amend. V and XIV; Utah Const. Art. I, Section 7. Finally, if Hidden Valley is successful in its appeal and the DOGM vacates the NOVs, the abatement action required in the NOV will no longer be necessary.

For the above-stated reasons, Hidden Valley respectfully requests that the Board extend the abatement period for both Part 2 and 2 of the NOV for a period from December 20, 1991 until the DOGM enters its written determination regarding the fact of the violation. If the NOV is upheld, Hidden Valley requests a reasonable period of time following the hearing in which to conduct the abatement activity required by DOGM.

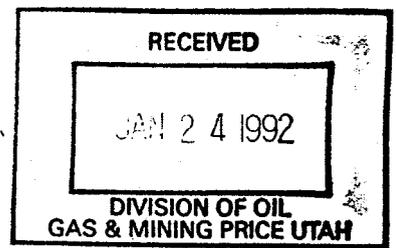
SUBMITTED this 12<sup>th</sup> day of December, 1991.

HIDDEN VALLEY COAL COMPANY

BY:   
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a Professional Corporation  
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Telephone: (801) 531-8900

# EXHIBIT IV

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



*Mine File-Enf.*

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IN THE MATTER OF THE APPEAL	:	FINDINGS, CONCLUSIONS
OF FACT OF VIOLATION	:	AND ORDER
#N91-26-8-2, HIDDEN VALLEY	:	
COAL COMPANY, [REDACTED]	:	INFORMAL HEARING
[REDACTED], EMERY COUNTY, UTAH	:	CAUSE NO. [REDACTED]

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On December 20, 1991, the Division of Oil, Gas and Mining ("Division") held an informal hearing concerning the fact of violation for the above-referenced Notice of Violation ("NOV").

The following individuals attended:

Presiding:	Dianne R. Nielson, Director Division of Oil, Gas and Mining
Petitioner:	Lee Edmonson Hidden Valley Coal Company ("Hidden Valley")  Denise Dragoo Fabian and Clendenin Counsel for Hidden Valley Coal Company  Joe Jarvis JBR Consultants Consultant to Hidden Valley Coal Company  Karla Knoop JBR Consultants Consultant to Hidden Valley Coal Company
Division:	Lowell Braxton Associate Director for Mining  Pamela Grubaugh-Littig Permit Supervisor  Susan White Reclamation Specialist

disturbed area. There is no map in the plan which delineates the disturbed area boundary. However, failure by Hidden Valley to properly designate the fill slopes as disturbed area or failure to include the area in the reclamation calculation does not obviate the responsibility of Hidden Valley to reclaim the fill slopes, as described in the plan.

7. The Division has not waived and hence is not estopped from taking enforcement action.

8. The statute of limitation does not apply.

9. Hidden Valley's consultant has indicated that they did not seed the fill slopes of the road or the subject fill slopes associated with the pads. There is no information to indicate that the Division was aware of those facts at the time of phase I bond release. The success of erosion mitigation measures, including prevention of rills and gullies and reestablishment of vegetation is ongoing during the reclamation period. The reclamation plan and the performance standards require mitigation when problems are noted by the operator or the Division. Because that monitoring and preventative action is an ongoing responsibility, it cannot be stayed by any statute of limitations.

ORDER

NOW THEREFORE, it is ordered that:

1. NOV N91-26-8-2 parts 1 of 2 and 2 of 2 are upheld, except with ~~\_\_\_\_\_~~ of the road