

*min file  
enforce* NOV  
*Bill*

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

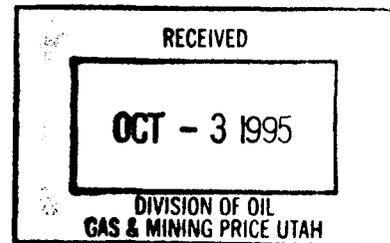
---oo0oo---

IN THE MATTER OF THE APPEAL : FINDINGS, CONCLUSIONS  
OF FACT OF VIOLATION N95-26-2-1, AND ORDER  
HIDDEN VALLEY COAL :  
COMPANY, HIDDEN VALLEY MINE CAUSE NO. ACT/015/007

---oo0oo---

On September 12, 1995, the Division of Oil, Gas and Mining ("Division") held an informal hearing concerning the fact of violation issued to Hidden Valley Coal Company for the above-referenced Notice of Violation ("NOV"). The following individuals attended:

Presiding: James W. Carter  
Director  
  
Petitioner: Lee Edmondson  
Denise Dragoo, Esq.  
  
Division: Joe Helfrich  
Bill Malencik  
Daron Haddock



The Findings, Conclusions, and Order in this matter are based on information provided by the Petitioner in connection with this informal hearing, and on information in the files of the Division.

FINDINGS OF FACT

1. Notice of this hearing was properly given.
2. Violation N95-26-2-1 was written for "Failure to comply with the terms and conditions of Hidden Valley Coal Mine and reclamation plan, permit ACT/015/007."

Specifically, the violation alleges that the permittee failed to reseed certain disturbed areas within the permit area, including the "Road Outslope, Stream Buffer Zone, Ivie Creek Upslope" [sic]. The abatement specified was to "Revegetate all disturbed areas following the revegetation requirements as itemized and discussed in the approved reclamation plan, which, among other items, includes seedbed preparation, fertilization, required seed mix and alfalfa mulch at the rate of 4000 lbs. per acre."

3. On November 22, 1991, the Division issued Notice of Violation N91-26-8-2 to Hidden Valley Coal Company for, among other things, failing to reseed the outslope of the road in question. In an appeal to the Board of Oil, Gas and Mining, Hidden Valley took the position that the road outslope was not within the disturbed area and, therefore, did not need to be reseeded. At the Board hearing on June 30, 1992, a contractor for Hidden Valley testified, under oath, that the road outsoles had not been reseeded.

4. On September 11, 1995, Hidden Valley submitted to the Division a Motion to Vacate Fact of Violation Cause No. ACT/015/007 which included an affidavit by a Mr. Frank Jensen, a contractor for Hidden Valley, stating that he personally supervised the "seeding and mulching of all disturbed areas as described in the MRP [Mining and Reclamation Plan], including the road outslope, stream buffer zone and Ivie Creek outslope." Although the Division's records contain statements by representatives of Hidden Valley that the required reseeded has not been performed, the Division did not offer testimony in rebuttal to the factual statements of the sworn affidavit testimony of Mr. Jensen.

5. Based upon the affidavit testimony of Mr. Jensen, the Division finds that the road outslope, stream buffer zone and Ivie Creek outslope were scarified, seeded, fertilized, mulched and covered in accordance with the requirements for revegetation set forth in the Hidden Valley mining and reclamation plan.

CONCLUSIONS OF LAW

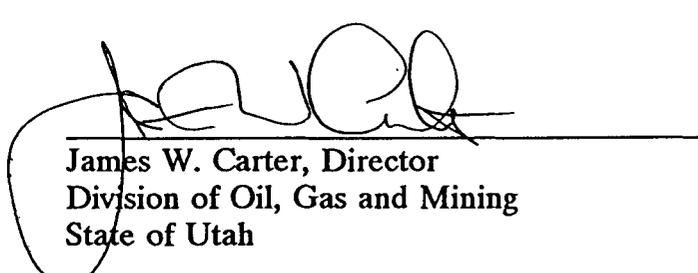
1. Violation N95-26-2-1 should be vacated.

ORDER

NOW THEREFORE, it is ordered that:

1. NOV N95-26-2-1 is vacated.
2. The Petitioner may appeal the determination of fact of violation to the Board of Oil, Gas and Mining by filing said appeal within 30 days of the date of this Order, in accordance with statutory and regulatory requirements.

SO DETERMINED AND ORDERED this 22nd day of September, 1995.



James W. Carter, Director  
Division of Oil, Gas and Mining  
State of Utah

CERTIFICATE OF MAILING

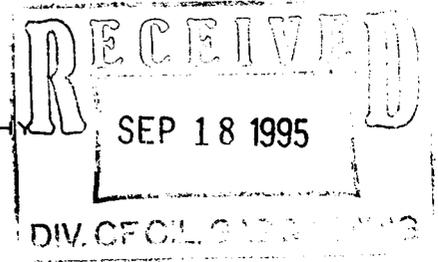
I hereby certify that I caused a true and correct copy of the foregoing FINDINGS, CONCLUSIONS AND ORDER for Cause No. ACT/015/007 to be mailed by first-class, postage prepaid, on the 28 day of September, 1995, to the following:

Denise A. Dragoo, Esq.  
VanCott, Bagley, Cornwall & McCarthy  
50 South Main, Suite 1600  
P.O. Box 45340  
Salt Lake City, Utah 84144-0402

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

  
\_\_\_\_\_

LAW OFFICES OF  
VAN COTT, BAGLEY, CORNWALL & McCARTHY  
A PROFESSIONAL CORPORATION  
SUITE 1600  
50 SOUTH MAIN STREET  
SALT LAKE CITY, UTAH 84144  
TELEPHONE (801) 532-3333  
FACSIMILE (801) 534-0058  
TELEX 453149



DENISE A. DRAGOO

Direct Dial  
(801) 327-0465

ADDRESS ALL CORRESPONDENCE TO  
POST OFFICE BOX 45340  
84145-0450

**HAND DELIVERED**

September 18, 1995

Mr. James Carter  
Director  
UTAH DIVISION OF OIL, GAS & MINING  
355 West North Temple  
3 Triad, Suite 350  
Salt Lake City, Utah 84120-1403

*Copy to Inf. Conf. File  
ACT/10/5/007 #5  
Copy Bill, Susan  
Original to #5  
[Signature]*

RE: Hidden Valley Coal Company  
NOV No. N95-26-2-1; Affidavit of Frank Jensen

Dear Jim:

Enclosed is the original Affidavit of Frank Jensen concerning Hidden Valley Mine, Notice of Violation No. 95-26-2-1 executed on September 13, 1995. We faxed a copy of this Affidavit to you last week following our informal conference. As you will note, paragraph 3 of the Affidavit has been revised per the Division's request to reflect the fact that the Hidden Valley Mine was scarified, seeded, fertilized, mulched and covered consistent with the general requirements of revegetation set forth in the Mining & Reclamation Plan.

Please let me know if you need anything further concerning this matter.

Very truly yours,

Denise A. Dragoo

DAD:jmc:84406  
Enclosure  
cc: Lee Edmonson  
Ed Settle

VAN COTT, BAGLEY, CORNWALL & McCARTHY  
 Denise A. Dragoo, A0908  
 50 South Main, Suite 1600  
 P.O. Box 45340  
 Salt Lake City, Utah 84145-0340  
 Attorneys for Hidden Valley Coal Company  
 Telephone: (801) 532-3333

BEFORE THE DIVISION OF OIL, GAS & MINING  
 355 WEST NORTH TEMPLE  
 3 TRIAD CENTER, SUITE 350  
 SALT LAKE CITY, UTAH 84180-1203

---

IN RE HIDDEN VALLEY MINE	)	AFFIDAVIT OF
NOTICE OF VIOLATION	)	FRANK JENSEN
NO. 95-26-2-1	)	

---

STATE OF UTAH )  
 : ss.  
 COUNTY OF IRON )

The undersigned, Frank Jensen, being first duly sworn, deposes and says that:

1. I am a resident of the State of Utah, am over the age of majority, and am competent in every respect to make this affidavit.
2. I am familiar with the Mining and Reclamation Plan for the Hidden Valley Coal Mine, Permit No. ACT/015/007 ("MRP"). During the period from October, 1986 through December, 1986, I was employed by JBR Consultants to conduct reseeding activities at the Hidden Valley Mine.



**VAN COTT, BAGLEY, CORNWALL & McCARTHY**

A Professional Corporation  
50 South Main Street, Suite 1600  
P.O. Box 45340  
Salt Lake City, Utah 84145  
Telephone: (801) 532-3333

DATE: \_\_\_\_\_

TIME: \_\_\_\_\_

OPERATOR: \_\_\_\_\_

Teletype No. (801) 534-0058

**TELECOPIER COVER LETTER**

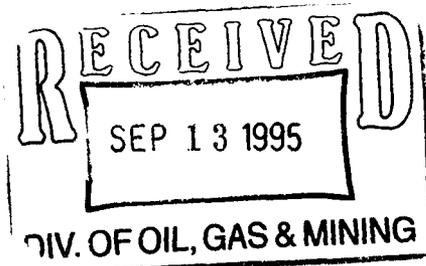
**PLEASE DELIVER THE FOLLOWING PAGE(S) TO:**

**NAME: JAMES CARTER**

**CITY/STATE: SLC, UT**

**TELECOPY NO: (801) 359-3940**

**CONFIRMATION NO: (801) 538-5340**



**FROM:**

**NAME: Denise A. Drago**

**CITY/STATE: Salt Lake City, Utah**

**RE: AFFIDAVIT OF FRANK JENSEN**

**COMMENT:**

**TOTAL NUMBER OF PAGES: 4 (INCLUDING COVER LETTER)**

**DATE: SEPTEMBER 13, 1995**

**TIME: 4:00 p.m.**

**ORIGINAL WILL FOLLOW**

**IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL BACK AS SOON AS POSSIBLE**

**PHONE: (801) 532-3333, Ext. 495, Julie McKenzie**

**Client Name: Van Cott, Bagley, Cornwall & McCarthy**

**Client No.: 00025863**

**Matter No.: 0000055636**

The information transmitted by this Facsimile is considered **Attorney Privileged and Confidential** and is intended only for the use of the individual or entity named. If the reader of this message is not the intended recipient, you should be aware that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and destroy this Facsimile. Thank you.

LAW OFFICES OF  
**VAN COTT, BAGLEY, CORNWALL & MCCARTHY**  
 A PROFESSIONAL CORPORATION  
 SUITE 1600  
 50 SOUTH MAIN STREET  
 SALT LAKE CITY, UTAH 84144  
 TELEPHONE (801) 532-3333  
 FACSIMILE (801) 534-0058  
 TELEX 453148

DENISE A. DRAGOO

Direct Dial  
(801) 327-0465

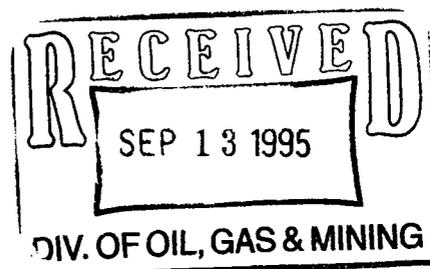
ADDRESS ALL CORRESPONDENCE TO  
 POST OFFICE BOX 48340  
 84145-0450

VIA FACSIMILE

September 13, 1995

(801) 359-3940

Mr. James Carter  
 Director  
 UTAH DIVISION OF OIL, GAS & MINING  
 355 West North Temple  
 3 Triad, Suite 350  
 Salt Lake City, Utah 84120-1403



RE: Hidden Valley Coal Company  
 NOV No. N95-26-2-1; Affidavit of Frank Jensen

Dear Jim:

Enclosed as you requested is the Affidavit of Frank Jensen concerning Hidden Valley Mine, Notice of Violation No. 95-26-2-1.

Please let me know if you need anything further concerning this matter.

Very truly yours,

A handwritten signature in black ink, appearing to be "Denise A. Dragoo".

Denise A. Dragoo

DAD:jmc:84406

Enclosure

cc: Lee Edmonson  
 Ed Settle

**VAN COTT, BAGLEY, CORNWALL & McCARTHY**

Denise A. Dragoo, A0908

50 South Main, Suite 1600

P.O. Box 45340

Salt Lake City, Utah 84145-0340

Attorneys for Hidden Valley Coal Company

Telephone: (801) 532-3333

**BEFORE THE DIVISION OF OIL, GAS & MINING  
355 WEST NORTH TEMPLE  
3 TRIAD CENTER, SUITE 350  
SALT LAKE CITY, UTAH 84180-1203**

IN RE HIDDEN VALLEY MINE  
NOTICE OF VIOLATION  
NO. 95-26-2-1

) AFFIDAVIT OF  
) FRANK JENSEN  
)

STATE OF UTAH

)

: ss.

COUNTY OF IRON

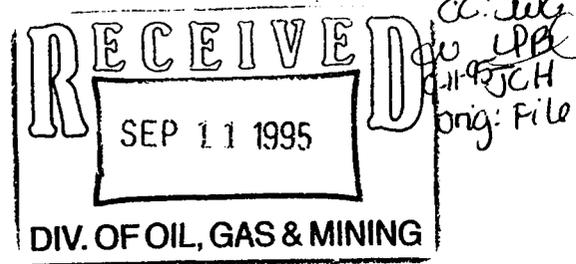
)

The undersigned, Frank Jensen, being first duly sworn, deposes and says that:

1. I am a resident of the State of Utah, am over the age of majority, and am competent in every respect to make this affidavit.

2. I am familiar with the Mining and Reclamation Plan for the Hidden Valley Coal Mine, Permit No. ACT/015/007 ("MRP"). During the period from October, 1986 through December, 1986, I was employed by JBR Consultants to conduct reseeded activities at the Hidden Valley Mine.





BEFORE THE DIVISION OF OIL, GAS & MINING  
DEPARTMENT OF NATURAL RESOURCES  
STATE OF UTAH  
3 TRIAD CENTER, SUITE 355  
355 WEST NORTH TEMPLE  
SALT LAKE CITY, UTAH 84108-1203

---

IN THE MATTER OF THE APPEAL OF	)	HIDDEN VALLEY COAL
FACT OF VIOLATION NO. N95-26-2-1,	)	COMPANY'S MOTION TO
HIDDEN VALLEY MINE, EMERY COUNTY,	)	VACATE FACT OF VIOLATION
UTAH	)	CAUSE NO. ACT/015/007

---

Hidden Valley Coal Company ("HVCC"), by and through its counsel of record, moves to vacate the Division of Oil, Gas & Mining's ("Division's") Notice of Violation No. N95-26-2-1 ("NOV"). The NOV was issued due to the alleged failure of the operator to reseed certain disturbed areas in accordance with HVCC's Mining & Reclamation Plan ("MRP"). HVCC hereby contests the fact of violation of the NOV.

**STATEMENT OF FACTS**

1. The MRP was submitted by JBR Consultants Group ("JBR") in May of 1986 and approved by the Division.
2. During the period from October 1986 through December 1986, JBR conducted reseedling activities at the Hidden Valley Mine consistent with the MRP for Permit No. ACT/015/007. Affidavit of Frank Jensen dated September 8, 1995, attached as Exhibit "A."

6. By letter dated July 5, 1995 from the Division to Lee Edmonson, Cal Mat Company," the Division cited violation N91-26-8-2 and requested reseeding in accordance with the abatement plan for that NOV. A copy of the July 5, 1995 letter and the Division's Inspection Report dated June 14, 1995 are attached as Exhibit "E."

7. NOV N95-26-2-1 was issued by the Division to "Cal Mat Company" on July 20, 1995. The NOV was issued by Division Inspector William Malencik for the alleged failure to comply with the terms and conditions of the MRP due to failure to reseed certain disturbed areas. The Division requires the operator to revegetate all disturbed areas consistent with the approved MRP by no later than September 29, 1995. A true and correct copy of the NOV is attached as Exhibit "F."

8. By Memorandum dated July 20, 1995, Division Inspector William Malencik indicated:

1. I executed an NOV on the same issue in 1991 and the Utah Court of Appeals in substance did not uphold the District Court decision, even though the District court upheld the administrative decision.

2. I did not have any new evidence. Further, in my opinion, the vegetation on the area of concern is no different than in 1991.

A true and correct copy of Mr. Malencik's Memorandum of July 20, 1995 is attached as Exhibit "G."

9. By Inspection Report dated July 31, 1995, Division Inspector William Malencik indicated that the NOV was mailed to the permittee by Mr. Malencik. The Inspector indicated that:

The foundation for the NOV was alluded to in the inspection report of 6/14/95 and, moreover, concerning an outstanding matter in the MRP

- (1) the issue in both cases must be identical
- (2) the judgment must be final with respect to the issue
- (3) the issue must be fully, fairly, and competently litigated in the first action
- (4) the party precluded from relitigating the issue must be a party or privy to the first action

*Madsen v. Borthick*, 769 P.2d 245, 250 (Utah 1988). "Although initially developed with respect to the judgments of courts, the same basic policies, including the need for finality in administrative decisions, support application of the doctrine of res judicata to administrative agency determinations." *Salt Lake Citizens v. Mountain States*, 846 P.2d 1245, 1251 (Utah 1992).

Hidden Valley fits neatly under the requirements of *res judicata*: the identical issue was fully, fairly, and competently litigated, and received a final judgement in the *Hidden Valley Coal* case. Further, the Division was a party in the *Hidden Valley Coal* case. Consistent with the Court of Appeals' ruling in *Hidden Valley Coal* and the doctrine of *res judicata*, the Division must vacate NOV N95-26-2-1.

3. **The NOV Violates the Division's Stipulation with HVCC.** The Division and HVCC entered into a Stipulation dated December 1, 1993, which provides that there shall be no further appeals regarding the fact of violation concerning revegetation performance standards on the road surface as raised by NOV N91-26-8-2. The NOV is inconsistent with the Division's stipulation and, therefore, must be vacated.

4. **HVCC Has Performed Seeding in Accordance with the MRP.** Contrary to the allegations of the NOV, the previous operator seeded all disturbed areas within Permit No. ACT/015/007 consistent with the MRP. In 1986, JBR seeded and

***EXHIBIT A***

3. I personally supervised the seeding and mulching of all disturbed areas as described in the MRP, including road outslope, stream buffer zone and Ivie Creek outslope.

4. I personally reseeded the road consistent with the MRP.

5. I supervised Nielsen Construction, Emery County, Utah, in reseeding and mulching all disturbed areas in accordance with the MRP.

DATED this 8<sup>th</sup> day of September, 1995.

*Frank Jensen*  
Frank Jensen

STATE OF UTAH )  
COUNTY OF Iron ) : ss.

The foregoing instrument was acknowledged before me this 8 day of September, 1995, by Frank Jensen.

*Cathy Brian*  
NOTARY PUBLIC

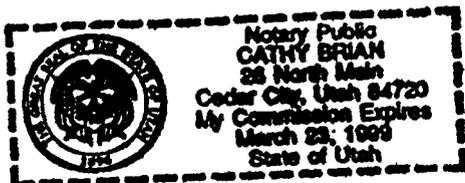


EXHIBIT "A"		1	2020
Case #	7-96	80	
Dept.	12th Floor	Phone #	472 8770
Fax #	596 2314	Fax #	472 8770

NO. N 41-26-8-2

notice of violation

To the following Permittee or Operator:

Name Cal Chat Co.

Mine Hidden Valley  Surface  Underground  Other

County Emery State Ut Telephone \_\_\_\_\_

Mailing Address 1801 University Drive, Phoenix, Arizona 85054

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 \_\_\_\_\_  a.m.  p.m.

Operator Name (other than Permittee) Lee Edmonson

Mailing Address Same As Above

Under authority of the Utah Coal Mining and Reclamation Act, Section 40-10-1 et seq., Utah Code Annotated, 1953, the undersigned authorized representative of the Division of Oil, Gas & Mining has conducted an inspection of above mine on above acre 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/mailling Nov 22, 1991 Time of service/mailling 4  a.m.  p.m.

Lee Edmonson  
Permittee/Operator representative  
llched  
Signature

Environmental Engineer  
Title

Wm. J. Malencik  
Division of Oil, Gas & Mining representative  
Wm. J. Malencik  
Signature  
11/21/91

Rec. Spec.  
Title  
# 26  
Identification Number

SEE REVERSE SIDE  
WHITE-CO/M YELLOW-CO/M PINK-PERMITTEE/OPERATOR GOLDEN-CO/M NOV FILE

0044/NOV-1

an equal opportunity employer

11/

cc: Ms. Karla Knoop.

h

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

Violation No 2 of 2

Nature of violation

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

Provisions of act, regulations or permit violated

R-614-301-521.251

R-614-301-554

Portion of operation to which notice applies

- Road and stream disturbed outcrops
- Road up slopes

Remedial action required (Including any interim steps)

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

Abatement time (Including interim steps)

5pm December 25, 1991

## CONCLUSION

The trial court has not set forth factual findings in sufficient detail for this court to conduct a meaningful review of the validity of the warrantless bodily search and seizure of defendant. We therefore remand for factual findings concerning whether Garcia cut off defendant's air or blood supply or merely prevented him from swallowing. If the trial court concludes that defendant was impermissibly choked, he is entitled to a new trial at which the evidence must be suppressed. Defendant's second claim of unreasonable search and seizure, based upon the use of a gun in an attempt to obtain evidence, fails given the factual circumstances of this case.

BILLINGS and GARFF, JJ., concur.



HIDDEN VALLEY COAL COMPANY,  
Plaintiff and Appellant,

v.

UTAH BOARD OF OIL, GAS & MINING  
and the Utah Division of Oil, Gas &  
Mining, Defendants and Appellees.

No. 930073-CA.

Court of Appeals of Utah.

Dec. 1, 1993.

Mining company sought review of notice of violation issued by the Board of Oil, Gas and Mining. The Third District Court, Salt Lake County, Glenn K. Iwasaki, J., upheld the Board, and mining company appealed. The Court of Appeals, Bench, J., held that: (1) Board had burden of establishing prima facie showing of violation under the Utah Coal Mining Reclamation Act (UCMRA), and (2) where Division of Oil, Gas and Mining had certified that mining company was in full compliance with reclamation plan on November 1, Division was required to establish that some intervening event or condition occurred

between November 1 and November 19 in order to establish prima facie showing that company was not in full compliance on November 19.

Reversed and vacated.

#### 1. Mines and Minerals §92.21

Court of Appeals reviews actions of the Board of Oil, Gas and Mining, not the action of the district court on administrative appeal. U.C.A.1953, 40-10-30.

#### 2. Mines and Minerals §92.10, 92.21

Appeal from order of the Board of Oil, Gas and Mining was not rendered moot even though mining company complied with notice of violation by submitting an abatement plan where the underlying purpose of the notice of violation was physical abatement of the violations, not merely the filing of an abatement plan.

#### 3. Mines and Minerals §92.10

Provisions of Utah Coal Mining and Reclamation Act (UCMRA) relating to agency adjudicative proceedings before the Utah Division of Oil, Gas and Mining or the Board supersede procedures and requirements of the Utah Administrative Procedure Act (UAPA). U.C.A.1953, 40-10-30, 63-10b-0.5 et seq.

#### 4. Mines and Minerals §92.21

Under pre-Administrative Procedure Act law, which governs review of actions of the Utah Board of Oil, Gas and Mining, findings of fact are granted considerable deference and will not be disturbed on appeal if supported by substantial evidence. U.C.A. 1953, 40-10-30.

#### 5. Mines and Minerals §92.11

Division of Oil, Gas and Mining bears burden of establishing prima facie showing of violation under the Utah Coal Mining Reclamation Act (UCMRA). U.C.A.1953, 40-10-1 to 40-10-31.

#### 6. Mines and Minerals §92.11

Where Division of Oil, Gas and Mining certified that mining company was in full compliance with reclamation plan on Novem-

Cite as 866 P.2d 564 (Utah App. 1993)

ber 1, Division was required to establish that some intervening event or condition occurred between November 1 and November 19 inspections in order to establish prima facie showing that it was not in full compliance on November 19.

#### 7. Mines and Minerals §92.21

In reviewing action of the Board of Oil, Gas and Mining, court may not assume that undisclosed finding was in fact made.

#### 8. Administrative Law and Procedure §750

Party defending agency's action bears burden of showing that undisclosed finding was actually made.

Denise A. Drago (Argued), Fabian & Clendenin, Peter Stirba (Argued), Benson L. Hathaway, Jr., Margaret H. Olson, Stirba & Hathaway, Salt Lake City, for plaintiff and appellant.

Jan Graham, State Atty. Gen., William R. Richards, and Thomas A. Mitchell (Argued), Asst. Atty. Gen., Div. of Oil, Gas & Min., Salt Lake City, for defendants and appellees;

Before BENCH, JACKSON and ORME, JJ.

#### OPINION

BENCH, Judge:

Hidden Valley Coal Company (Hidden Valley) appeals from the decision of the district court upholding in part the decision of the Utah Board of Oil, Gas & Mining (Board), holding Hidden Valley in violation of certain reclamation standards and imposing civil penalties. We reverse.

#### FACTS

In 1978, Hidden Valley's affiliate, Soldier Creek Coal Company (Soldier Creek), purchased a mine site located in Emery County, Utah. In late 1978, Soldier Creek approached the Utah Division of Oil, Gas &

Mining (Division) to obtain a permit to mine coal from the mine site. In September 1979, Soldier Creek submitted a mining and reclamation plan detailing its proposal for development and operation of the mine site. In April 1980, the Division approved the mining and reclamation plan, and shortly thereafter, Soldier Creek began mining operations.

Over the next few months, Soldier Creek cut two large pad areas, exposed a coal seam, established drainage ditches, constructed culverts that altered natural runoff and stream flows, installed sediment ponds, and constructed more than three miles of access roads. However, by August 1980, Soldier Creek determined that commercial development of the mine site was not economically feasible and ceased development.

In October 1985, Hidden Valley notified the Division that it had sold its Soldier Creek affiliate and had assumed control of the mine site. Shortly after assuming control, Hidden Valley notified the Division that it planned to reclaim the mine site. In May 1986, Hidden Valley submitted a reclamation plan for Division review. Hidden Valley's reclamation plan required that the mine site be regraded, scarified, and reseeded. In December 1986, the Division approved Hidden Valley's reclamation plan.

After the Division approved the reclamation plan, Hidden Valley began reclamation activities. Between the commencement of reclamation activities and late 1991, the Division inspected the mine site at least fifty-nine times. The Division noted after each inspection that Hidden Valley was in full compliance with all its reclamation permits and standards. In June 1988, the Division approved a Phase I bond release for the mine site, indicating that as a result of its latest inspection "the backfilling, grading, topsoil placement and drainage controls were determined complete."<sup>1</sup>

On November 1, 1991, Division inspector Jess W. Kelley conducted a five and one-half hour inspection of the mine site. Mr. Kelley

if it complied with the permit and other reclamation requirements, was allowed to reduce the bond amount.

1. Hidden Valley was required to provide a bond for the reclamation work at the mine site. The reclamation was divided into separate phases. At the completion of each phase, Hidden Valley

November 19 inspections in order to establish a prima facie showing that Hidden Valley was not in full compliance. The Division could also try to establish that its prior inspections were somehow deficient such that noncompliance actually occurred prior to November 1, 1991.

#### Failure to Maintain Stable Diversions

The Board found that Hidden Valley "failed to comply with the Permanent Program standards and the approved Reclamation Plan by failing to adequately construct and maintain erosion control structures on the out slopes of the access haul road." Based on this finding, the Board upheld the portion of the Division's NOV that cited Hidden Valley for failing to maintain stable diversions. At the formal hearing before the Board, the Division presented no evidence to indicate that in the eighteen days prior to the inspection giving rise to the NOV, there had been any change in conditions or circumstances with regard to the stability of the diversions on the road out slopes. Neither did the Division present any evidence that it had previously notified Hidden Valley that it was close to a violation with respect to the diversions. While inspector Maleneik did testify that during the inspection he conducted in April 1991 he considered several areas of the mine site, apparently including the diversions, to be close calls, he also testified that he only indicated that they should be watched because they had the potential to become problems. His report from that inspection indicated that Hidden Valley was in full compliance. Consequently, the Division has not supported this portion of its NOV with substantial evidence on the record. See *Morton Int'l*, 814 P.2d at 585; Utah Code Ann. § 40-10-30(1)(f) (1988) (court will set aside Board's action if an adjudicative proceeding is "unsupported by substantial evidence on the record"). The Division has not established a prima facie showing that Hidden Valley had, between November 1 and November 19, failed to maintain stable diversions at the mine site. In light of the lack of record evidence supporting the Division's position, the Board's decision to uphold this portion of the NOV was arbitrary and capri-

cious. We therefore conclude that the Board erred in upholding this portion of the NOV.

#### Failure to Minimize Erosion

[7,8] The Board made no findings with regard to Hidden Valley's alleged failure to "minimize erosion to the extent possible." This court has reiterated that an administrative agency must make findings of fact that are sufficiently detailed so as to permit meaningful appellate review. *Adams v. Board of Review of Indus. Comm'n*, 821 P.2d 1, 4 (Utah App.1991).

In order for us to meaningfully review the findings of the [Board], the findings must be "sufficiently detailed and include enough subsidiary facts to disclose the steps taken by which the ultimate conclusion on each factual issue was reached. . . ." [T]he failure of an agency to make adequate findings of fact in material issues renders its findings "arbitrary and capricious" unless the evidence is "clear and uncontroverted and capable of only one conclusion."

*Id.* at 4-5 (quoting *Nyrchev v. Industrial Comm'n*, 500 P.2d 330, 335 (Utah App.1990) (citations omitted), cert. denied, 515 P.2d 241 (Utah 1991)). We may not, however, assume that an undisclosed finding was in fact made. *Id.* at 5. The party defending the agency's action bears the burden of showing that the undisclosed finding was actually made. *Id.*

For this Court to sustain an order, the findings must be sufficiently detailed to demonstrate that the [Board] has properly arrived at the ultimate factual findings and has properly applied the governing rules of law to those findings. . . . It is not the prerogative of this Court to search the record to determine whether findings could have been made by the [Board] to support its order, for to do so would be to usurp the function with which the [Board] is charged.

*Id.* (quoting *Mountain States Legal Found. v. Public Serv. Comm'n*, 636 P.2d 1047, 1052 (Utah 1981)).

Our review of the record reveals no evidence indicating that Hidden Valley failed to take adequate steps to minimize erosion between the November 1 and November 19

inspections. Inspector Maleneik testified that, in his opinion, there were several additional steps Hidden Valley could have taken to minimize erosion, but did not identify any specific steps that Hidden Valley had apparently failed to take during that eighteen-day period. The Board made no findings with respect to Hidden Valley's alleged failure to minimize erosion, and there was no evidence presented that would have supported such a finding. In light of the absence of evidence, the Board could not have found that Hidden Valley had, between November 1 and November 19, failed to take all reasonable steps to minimize erosion. We therefore conclude that the Board erred in upholding this portion of the NOV.

#### Failure to Seed and Revegetate Disturbed Areas

The Board found that Hidden Valley "failed to comply with the Permanent Program standards and the approved Reclamation Plan by having failed to seed the disturbed area constituting the out slopes of the access road." Based on this finding, the Board upheld that portion of the Division's NOV that cited Hidden Valley for failing to seed and revegetate disturbed areas.

There is some dispute in the record as to whether Hidden Valley failed to seed and revegetate the disturbed areas. However, the Division did not introduce any evidence that Hidden Valley had failed to meet seeding and revegetating requirements between November 1 and November 19. Consequently, the Division has not supported this portion of the NOV with substantial evidence on the record. The Division has not established a prima facie showing that Hidden Valley had, between November 1 and November 19, failed to seed and revegetate all disturbed areas at the mine site. In light of the lack of record evidence supporting the Division's position, the Board's decision to uphold this portion of the NOV was arbitrary and capricious. We therefore conclude that the Board erred in upholding this portion of the NOV.

#### CONCLUSION

The Division failed to establish a prima facie showing of the facts underlying the

violations charged in the NOV. We therefore reverse the Board's decision upholding the Division's issuance of the NOV and vacate the Division's penalty assessment against Hidden Valley.

JACKSON and ORME, J.J., concur.



FALULA FARMS, INC., Plaintiff  
and Appellee,

v.

Bonnie B. LUDLOW, Defendant  
and Appellant.

No. 930050-CA.

Court of Appeals of Utah.

Dec. 2, 1993.

Grantee of deed from county purporting to convey fee title in vacated county highway brought quiet title action against abutting landowner. The First District Court, Rich County, Clint S. Judkins, J., entered judgment quieting title in grantee. Abutting landowner appealed. The Court of Appeals, Greenwood, J., held that: (1) county obtained defeasible fee simple title in roadway dedicated as part of subdivision map, but (2) county lost its fee interest by vacating part of roadway.

Reversed and remanded.

#### 1. Quieting Title ⇐1

Quiet title action involves ultimate conclusion of law as to who owns disputed piece of property.

#### 2. Appeal and Error ⇐842(2)

In reviewing trial court's conclusions of law, appellate court accords it no particular deference, but reviews it for correctness.

Thomas A. Mitchell (3737)  
William R. Richards (4398)  
3 Triad, Suite 350  
355 West North Temple  
Salt Lake City, UT 84180-1203  
Telephone: (801) 538-5340

---

IN THE UTAH COURT OF APPEALS

---

HIDDEN VALLEY COAL COMPANY,	:	STIPULATION
Plaintiff and Appellant,	:	
v.	:	Case No. 930073-CA
The UTAH BOARD OF OIL, GAS & MINING and the UTAH DIVISION OF OIL, GAS & MINING,	:	Priority 15
Defendants and Appellants.	:	

---

Appellant and Appellee through counsel of record enter into this Stipulation concerning the following Notice of Violations ("NOVs").

NOV N91-26-8-2 required as a condition of abatement reseeding of the road surface referenced in the NOV. The terms of the 1991 NOV's abatement and the approved abatement plan itself, specifically addressed revegetation for the road surface. NOV N93-35-08-01 was written only for failure to attain perennial vegetation on the road surface, a previously uncited regulation. This failure to meet this performance standard is nonetheless addressed within the scope of the approved abatement plan submitted by Appellant.

62.5

FABIAN & CLENDENIN

BY:

  
DENISE DRAGOO

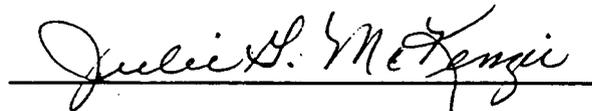
Attorneys for Plaintiff and Appellant  
Hidden Valley Coal Company

CERTIFICATE OF DELIVERY

I hereby certify that on this 3<sup>rd</sup> day of December, 1993, a true and correct copy of the foregoing STIPULATION was hand delivered to the following:

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

k\hvcc\stipulation

  
Julie D. McKenzie

***EXHIBIT E***

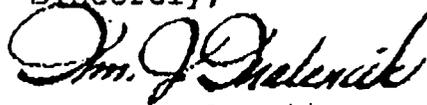
Page 2  
L. Edmonson  
Seeding  
July 5, 1995

Issue (1) and (3) have been resolved with the cooperation of Mr. Edmonson and others. Further, it is in the best interest among all the concerned as discussed in our July 1994, meeting to rely on overall bond release requirements on the total site rather than on compliance to move toward long range common objectives.

It is in this spirit that I write you to explore how we may resolve the seeding issue without the necessity of relying on compliance and/or further litigation to resolve this matter.

It is my sincere opinion that we can do together what we cannot do alone. Would be amenable to utilize the seeding abatement plan you submitted in response to N91-26-8-2 as a starting point to resolve this matter.

Sincerely,



Wm. J. Malencik  
Reclamation Specialist

sd  
cc: Ed Settle, Consol



UTAH  
NATURAL RESOURCES  
Oil, Gas & Mining

INSPECTION REPORT COMMENTS

Permit No. Act 015/007

Inspection Date 6/14/95

Please number comments to correspond with topics on previous page.

General Comments Completed a partial inspection of the reclaimed Hidden Valley mine areas that were observed in the instant inspection included the sealed well/dry hole adjacent to a road and above mine equipment, borrow area, reclaimed road and A & B Deam reclaimed areas.

Permit Have been advised by the Division that a Deam permit transfer application has been submitted. The proposed transfer involves Chelatt and Consolidated Coal Company.

Director Carter phoned Mr. Edmanson, Hidden Valley Coal Company concerning an outstanding commitment in the Hidden Valley mining and reclamation plan. The commitment concerns seeding and mulching all disturbed areas. The record shows the reclaimed road outslope below the gate and the stream buffer zone, Svie Creek up slope, have not been seeded or mulched. The permittee submitted an amendment on this item; however the Division in substance advised the permittee the amendment was deficient and

Copy of report mailed to \_\_\_\_\_

Copy of report given to \_\_\_\_\_

Inspector's signature \_\_\_\_\_ No. \_\_\_\_\_

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



UTAH NATURAL RESOURCES  
Oil, Gas & Mining

INSPECTION REPORT COMMENTS

Permit No. Act 015/007

Inspection Date 6/14/95

Please number comments to correspond with topics on previous page.

with both Messrs. Edmonson and Settle concerned the proposed DOGM permits transfer when an outstanding commitment in the mining and reclamation plan has not been met. It follows a notice of violation may be issued by the Division if this issue is not resolved.

While the inspection was conducted on 6/14/95, most of the contacts and details noted above took place after 6/14/95; however, because of proposed transfer and allied matters I believe it is necessary to reduce to writing these matters should the foregoing not reflect your conclusions, please notify the undersigned.

Signs & Markers The required T.D sign, disturbed markers, and buffer zone markers were observed.

The County had placed road signs where the road conditions in certain areas required, some signs to alert the driver of caution in driving on these road areas.

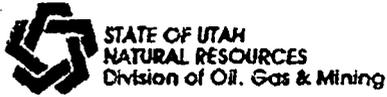
Copy of report mailed to Cal Mat (Mr. Edmonson), OSM/Donna Griffin, DOGM/Use Helbreich

Copy of report given to Filed PFO  
cc: Ed Settle, Consolidated Coal Co.

Inspector's signature [Signature] No. 26

WHITE - DOGM YELLOW - OSM PINK - PERMITS OPERATOR GOLDENROD - NOV FILE

7/3/95



3 Triad Center • Suite 350 • Salt Lake City, UT 84160-1203 • 801-538-5040

NO. N 95-26-2-1

notice of violation

To the following Permittee or Operator  
 Name Cal Mat Company  
 Mine Hidden Valley Mine  Surface  Underground  Other  
 County Emery State Utah Telephone (602) 254-9465  
 Mailing Address 1801 East University Drive, Phoenix, AZ 85034  
 State Permit No. ACT/015/007  
 Ownership Category  State  Federal  Fee  Mixed  
 Date of inspection June 14, 1995  
 Time of inspection 1:00  a.m.  p.m. to 4:00  a.m.  p.m.  
 Operator Name (other than Permittee) \_\_\_\_\_  
 Mailing Address \_\_\_\_\_

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.

Certified Z 254 438 027

Date of ~~service~~/mailing July 20, 1995

Time of ~~service~~/mailing 3:30  a.m.  p.m.

Lee Edmonson

Manager

Permittee/Operator representative

Title

Signature

Wm J. Malencik

Reclamation Specialist

Division of Oil, Gas & Mining representative

Title

Signature

#26

Identification Number

SEE REVERSE SIDE

WHITE-DOG M YELLOW-OPERATOR PINK-GSM GOLDENROD-NOV HLE

***EXHIBIT G***

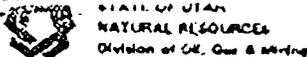
Page 2  
James W. Carter  
ACT/015/007  
July 20, 1995

2. I do not have any new evidence. Further in my opinion, the vegetation on the area of concern is no different than in 1991.
3. Executed stipulation between DOGM and Hidden Valley Coal Company provides there shall be no further appeals as to the facts of violation concerning vegetation as related to the NOV I executed in 1991, i.e., N91-26-8-2.
4. The Division stipulated that it would not appeal the Appellate Court decision. Issuing an NOV at this time is contrary to the stipulation signed by the Assistant Attorney General for the Division.

Pros

1. Mr. Edmonson did perform the required field work on two other issues that were involved in the N91-26-8-2 violation when compliance action was discussed as a final course of action.
2. Pending permit transfer to Consolidated Coal Company.

jbe  
H:\USERS\COAL\WPH\HIDDVALL.MEM



3 Tired Center - Suite 350 - Salt Lake City, UT 84106-1203 - (801) 538-6340

gph  
Page 1 of 2

- Partial
- Complete
- Exploration

Inspection Date: July 31, 1995  
 Time: 9:00  AM 2:00  PM  
 Date of Last Inspection: 6-26-95

Mine Name: Hidden Valley County: Emery Permit Number: Act 0151007

Permittee and/or Operator's Name: Calmet Co

Business Address: 1801 University Drive, Phoenix, Arizona, 85034

Type of Mining Activity:  Underground  Surface  Prep. Plant  Other

State Official(s): Bill Malenick

Company Official(s): None

Federal Official(s): N/A

Weather Conditions: Hot

Existing Acreage: Permitted-950 Disturbed-7 Regraded-7 Seeded-7 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 1996 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 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 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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. OTHER SEDIMENT CONTROL MEASURES	<input checked="" 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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. DISPOSAL OF EXCESS SPOIL/FILLS/BENCHES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. COAL MINE WASTE/REFUSE PILES/IMPOUNDMENTS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. NONCOAL WASTE	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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 checked="" 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 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 checked="" 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

# EXHIBIT I

## 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 to

# EXHIBIT II

September 5, 1995

Mr. William Malencik, Reclamation Specialist  
Division of Oil, Gas, and Mining  
451 East 400 North  
CEU Box 156  
Price, UT 84501-2699

Re: Hidden Valley Mine

Dear Bill,

This letter is to clarify my position with regard to the inspection you and I conducted on the Hidden Valley Mine on November 19, 1991, and the inspection conducted with Jess Kelly on October 8, 1991.

The October inspection was conducted with one concern; to determine whether or not the remaining highwall on the "A" seam side of the mine was required to be eliminated under the Utah program. We walked the mine and surrounding areas to view the topography, aspect, etc., solely to help us in this determination. I did not conduct a compliance inspection, what you would consider an oversight inspection of the mine. I identified as a concern the access road cut and fill slopes, however, I did not investigate and issue a Ten-Day Notice as would have been required if I was conducting a complete inspection. The access road to which I refer is the unpaved road from the end of the blacktop to the pad area.

The November inspection was conducted as a complete inspection. We discussed the access road cut and fill slopes and the pad outslopes immediately above Ivie Creek with the consultant. ~~I cannot recall what her exact response was, but in effect the company did not believe it was responsible for revegetating those slopes. To her knowledge those slopes had never been seeded.~~ I believed this to be a violation because the company is responsible for the slopes. You addressed the issue in a manner that satisfied my concerns, so no Federal action was taken.

If you have any questions, please call me at 505-248-5070. This is the new AFO telephone number.

Sincerely,

Mitchell S. Rollings, Reclamation Specialist  
Albuquerque Field Office



# State of Utah

DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL, GAS AND MINING

*EXHIBIT III*

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

355 West North Temple  
3 Triad Center, Suite 350  
Salt Lake City, Utah 84100-1203  
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: )  
N92-26-8-2, 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 307 East • Murray, Utah 84107

Certified Shorthand Reporters •



OUR FILE NO 603092

**ORIGINAL**

REPORTED BY

INTERMOUNTAIN COURT REPORTERS

DANA MORSE, CSR, RPR

263-1396

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 out slopes 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 out slope?

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 out slope?

25 A. Yes.

# EXHIBIT I

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

---

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

---

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.

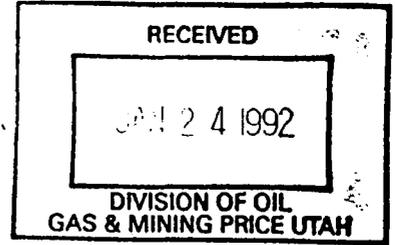
HIDDEN VALLEY COAL COMPANY

BY: 

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

**EXHIBIT II**

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



*Mine File-Enf.*

---00000---

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

---00000---

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

EXHIBIT III

Correspondence

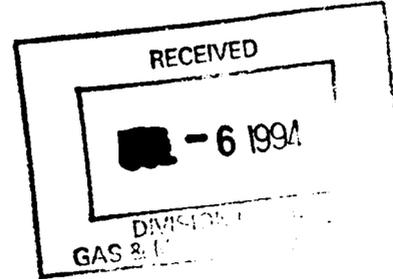


State of Utah  
DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL, GAS AND MINING

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

355 West North Temple  
3 Triad Center, Suite 350  
Salt Lake City, Utah 84100-1203  
801-538-5340  
801-359-3940 (Fax)  
801-538-5319 (TDD)

July 1, 1994



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

Re: Hidden Valley Coal Company, Hidden Valley Mine, Emery County, Utah Folder #2.

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  
Director

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.



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

Michael O. Leavitt  
Governor

Tod Stewart  
Executive Director

James W. Carter  
Division Director

355 West North Temple  
3 Third Center, Suite 350  
Salt Lake City, Utah 84100-1203  
801-538-6340  
801-538-3940 (Fax)  
801-538-8319 (TDD)

July 29, 1994

Lee Edmonson, Properties Division  
Cal Mat Company  
1801 University Drive  
Phoenix, Arizona 84034

Re: [REDACTED], July 21, 1994 Meeting Follow-Up, [REDACTED] Folder #5,  
Emery County, Utah

Dear Mr. Edmonson:

I am writing to follow up on our meeting on the Hidden Valley Mine held July 21, 1994. I want to thank you for inviting Ed Settle of Consolidated Coal Company to the meeting, and appreciate the comments and contributions he made to the success of the meeting.

I appreciate your agreeing in principle to the 18 issues discussed and noted in the attached minutes. I also appreciate your willingness to jointly commit to an action plan on issues including back-filling and grading, roads and wells, signs and markers, vegetation, and updating the mining and reclamation plan on some pending items. While issues concerning runoff control, erosion and sediment control, and bond clock were discussed, the first two will need to be revisited from time to time to determine if control measures are meeting our joint goals of bond release and are meeting compliance requirements. Further, a technical meeting of the minds on practical methods for collecting defensible data on the sediment control component of Phase II bond release needs to be reached. Please consult with Daron Haddock and Tom Munson of my staff for their suggestions and assistance in that regard.

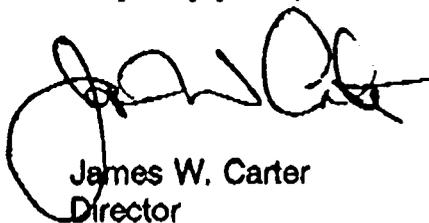
While the bond clock remains an issue, this action plan and other new initiatives, if approved, together with the husbandry practice rules now in the process of approval, will provide a better understanding of where and how this issue may evolve.

Page 2  
Lee Edmonson  
July 29, 1994

It is my opinion we all left the meeting with a better appreciation of the constraints which face us. It is important that we collectively recognize the adverse implications of conflicting technical data. In this instance, because of the nature of some issues, I believe we cannot do alone what we can do together. We are committed to a joint endeavor if we are to resolve some of the more difficult issues. However, with our limited staff and budget, this cannot be our normal style of operation or we could not fulfill our main mission. I encourage you to take care of the paperwork and the field work on those items listed in the minutes. The urgency of those items is related to compliance. Based on our discussions, we anticipate that you will be able to complete these items by August 15, 1994.

As we discussed, I believe our discussions and the conclusions reached at the meeting will pave the way for taking care of less complex issues that are potential compliance issues, and refining and carrying out an action plan for the more complex technical issues. Thanks for your participation and your willingness to explore new initiatives in order to achieve successful reclamation at the Hidden Valley Mine. As noted below, I am providing a copy of this letter and attachments to Mr. Settle.

Very truly yours,



James W. Carter  
Director

vb  
Attachments  
cc: E. Settle  
HIDDENVA.HID

## **ATTACHMENT I**

### **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**

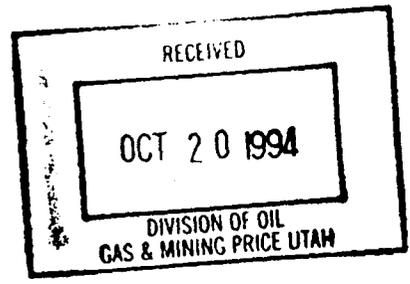


DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL, GAS AND MINING

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

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

October 17, 1994



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

Re: Proposed Changes to Hidden Valley Plan, Cal Mat Company, Hidden Valley, Utah  
A-33113-4A, Folder #3, Emery County, Utah

Dear Mr. Edmonson:

The Division has completed a review of your submittal dated August 15, 1994 which was made by JBR Environmental Consultants. For the most part the amended plans are acceptable. However, there are some problems with some of the terminology. Meetings and discussions have been held between the Division and JBR to describe the problems and work out a solution. The amendment describes installing sediment control measures which in reality may better be described as erosion control devices. The August 15, 1994 amendment should be revised to reflect this.

The Division anticipates receiving the revised amendment, by November 11, 1994. Please call if you have any questions.

Sincerely,

Daron R. Haddock  
Permit Supervisor

cc: P. Grubaugh-Littig  
B. Malencik, PFO  
T. Munson  
S. White

EROSION.HID



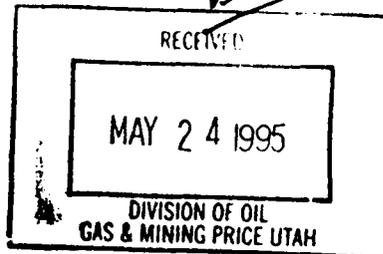


**State of Utah**  
 DEPARTMENT OF NATURAL RESOURCES  
 DIVISION OF OIL, GAS AND MINING

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

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

April 11, 1995



TO: Daron Haddock, Permit Supervisor

FROM: Susan M. White, Senior Reclamation Biologist *SMW*

RE: Amendment 94A Received 3/2/95, Hidden Valley Coal Company  
Folder #2, Emery County, Utah

**SYNOPSIS**

Amendment 94A, Received by the Division on March 2, 1995 was reviewed in a Technical Analysis type format. The amendment may not be approved for reasons discussed below.

**RECLAMATION PLAN**

**TOPSOIL AND SUBSOIL**

Regulatory Reference: R645-301-232, -301-234, -301-242, -301-243

**Analysis:**

The proposed amendment (page 56-B) states that "portions of the slopes do not have adequate growth medium or water retention to produce vegetation". No plans for amending, locating or importing adequate growth medium is discussed in the amendment. Regulations R645-301-232.720 and R645-301-233.100 outline the requirements of using substitute material in order to fulfill the revegetation requirements of R645-301-356, when no available material can be located on site.

**Finding**

The permittee must provide the following, prior to approval, in accordance with the requirements of:



R645-301-232.200, the amendment must demonstrate how an adequate growth medium will be obtained on the road fill slopes and pad out slopes in order to achieve the revegetation standards of R645-301-356.

## REVEGETATION

Regulatory Reference: R645-301-244, -301-353, -301-354, -301-355, -301-356

### *Revegetation: Timing.*

#### **Analysis:**

The permittee states in the amendment that "seed was apparently applied to the road fill slopes during original reclamation in 1986". Testimony given by Frank Jensen (an employee of JBR Environmental Consultants, Inc.) under oath and whom was present at the time of reclamation, is contrary to this statement. This statement must be verified or otherwise removed from the amendment.

The pad out slopes near Ivie Creek and the road fill slopes were not seeded. The amendment states that the revegetation method used on the road fill slopes and the pad out slopes is natural regeneration. No site specific data is presented to verify that natural regeneration is a viable revegetation method for this mine site. The out slopes and fill slopes have been in the current condition for at least nine years. If regeneration is occurring at a reasonable rate for bond release then the data should be provided to the Division in support of this method.

#### **Finding:**

The permittee must provide the following, prior to approval in accordance with the requirements of:

R645-301-354, all disturbed areas must be planted during the first normal period for favorable planting conditions. The amendment must discuss when the road fill slopes and the pad out slopes will be seeded. An alternative may be to provide statistical data which will verify that the natural regeneration method of revegetation will achieve the success standard of R645-301-356. The statement that the road fill slopes were seed must be deleted.

### *Revegetation: Mulching and other soil stabilizing practices.*

#### **Analysis:**

The amendment states that "redisturbance of these areas - either by simply accessing them, or by mechanically disturbing the soil crusts - will likely result in destabilization, increased erosion, and loss of the existing vegetation". No discussion is provided as to how the permittee will stabilize the slopes after seeding.

**Finding:**

The permittee must provide the following, prior to approval, in accordance with the requirements of:

**R645-301-355**, the amendment must address how a suitable mulch and other soil stabilizing practices will be used on all areas that have been regraded.

*Revegetation: Standards for success.*

**Analysis:**

The amendment states that natural regeneration will be used to revegetate, however the success standard for the road fill slopes and the pad out slopes near Ivie Creek may not be met. The permit describes the reference area (page 60) as steep rocky slopes. This reference site appears to favorably compare to the out slopes of the road and pad. No site specific site data is presented in the amendment that would indicate otherwise.

R645-301-353 only exempts the surface areas of roads and water areas from the establishment of a vegetative cover that is in accordance with the approved permit. Therefore, no exemption may be approved and the permittee must delete the reference to not meeting the vegetation standard.

**Findings:**

The permittee must provide the following, prior to approval, in accordance with the requirements of:

**R645-301-356**, success of the revegetation must be compared to the approved success standard, a variance to this performance standard is not allowed. Therefore, the reference to not meeting the standard must be deleted from the amendment.

**RECOMMENDATION**

Page 4  
ACT/015/007  
April 11, 1995

The permittee must address those deficiencies as found within this Draft Technical Analysis and provide the following, prior to approval, in accordance with the requirements of:

**R645-301-232.200**, the amendment must demonstrate how an adequate growth medium will be obtained on the road fill slopes and pad outslopes in order to achieve the revegetation standards of R645-301-356.

**R645-301-354**, all disturbed areas must be planted during the first normal period for favorable planting conditions. The amendment must discuss when the road fill slopes and the pad outslopes will be seeded. An alternative may be to provide statistical data which will verify that the natural regeneration method of revegetation will achieve the success standard of R645-301-356. The statement that the road fill slopes were seeded must be deleted.

**R645-301-355**, the amendment must address how a suitable mulch and other soil stabilizing practices will be used on all areas that have been regraded.

**R645-301-356**, success of the revegetation must be compared to the approved success standard, a variance to this performance standard is not allowed. Therefore, the reference to not meeting the standard must be deleted.

cc: **Bill Malencik**  
hidden.apr

NO. N 95-26-2-1

To the following Permittee or Operator:

Name Cal Mat Company  
 Mine Hidden Valley Mine  Surface  Underground  Other  
 County Emery State Utah 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 June 14, 1995, 19\_\_\_\_  
 Time of Inspection 1:00  a.m.  p.m. to 4:00  a.m.  p.m.  
 Operator Name (other than Permittee) \_\_\_\_\_  
 Mailing Address \_\_\_\_\_

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.

Certified Z 254 438 027

Date of ~~service~~/mailing July 20, 1995 Time of ~~service~~/mailing \_\_\_\_\_  a.m.  p.m.

Lee Edmonson  
Permittee/Operator representative

\_\_\_\_\_  
Manager  
Title

Signature

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

Reclamation Specialist  
Title  
#26  
Identification Number

SEE REVERSE SIDE

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

notice of violation



**NOTICE OF VIOLATION NO. N 95-26-2-1**

Violation No. 1 of 1

Nature of violation

Failure to comply with the terms and conditions of Hidden Valley Coal Mine  
and reclamation plan, permit ACT/015/007.

Provisions of act, regulations or permit violated

UCA, Title 40, Chapter 10, Paragraph 40-10-22  
R645-300-140 and -143

Portion of operation to which notice applies

Hidden Valley Coal Mine approved reclamation plan

-Page 46, Section 5.1, Item 5

-Page 56, UMC 817.111, Revegetation: General Requirements

Certain Disturbed Areas not Seeded, to-wit:

-Road Outslope

-Stream Buffer Zone, Ivie Creek Upslope

Remedial action required (including any interim steps)

Revegetate all disturbed areas following the revegetation requirements as  
itemized and discussed in the approved reclamation plan, which among other items  
includes seedbed preparation, fertilization, required seed mix, and alfalfa hay  
mulch at the rate of 4000 lbs per acre.

Abatement time (including interim steps)

September 29, 1995

inspection report

- Partial
- Complete
- Exploration

Inspection Date: June 14, 1995  
 Time: 1 : 00  am  pm to 4 : 00  am  pm  
 Date of Last Inspection: 5/23/95 & 6/5-6-12/95

Mine Name: [Redacted] County: Emery Permit Number: [Redacted]

Permittee and/or Operator's Name: Calchat Co.

Business Address: 1801 University Drive, Phoenix, Arizona 85034

Type of Mining Activity:  Underground  Surface  Prep. Plant  Other

State Official(s): Bill Malencik

Company Official(s): N/A

Federal Official(s): N/A

Weather Conditions: Pt. Cloudy, Temp 70's

Existing Acreage: Permitted-950 Disturbed-7 Regraded-7 Seeded-7 <sup>has been</sup> 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 1996 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 checked="" type="checkbox"/>	<input type="checkbox"/>
3. TOPSOIL	<input type="checkbox"/>	<input checked="" 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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. OTHER SEDIMENT CONTROL MEASURES	<input checked="" 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 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 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 checked="" 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 COMMENTS

Permit No. Act 015/007

Inspection Date 6/14/95

Please number comments to correspond with topics on previous page.

General Comments. Completed a partial inspection of the reclaimed Hidden Valley mine. Areas that were observed in the instant inspection included the sealed well/dry hole adjacent to a road and above mine escarpment, borrow area, reclaimed road and A & B Seam reclaimed areas.

Permit. Have been advised by the Division that a DOGM permit transfer application has been submitted. The proposed transfer involves Calhat and Consolidated Coal Company.

Director Carter phoned Mr. Edmonson, Hidden Valley Coal Company concerning an outstanding commitment in the Hidden Valley mining and reclamation plan. The commitment concerns seeding and mulching all disturbed areas. The record shows the reclaimed road outslope below the gate and the stream buffer zone, Svie Creek upslope, have not been seeded or mulched. The permittee submitted an amendment on this item; however the Division in substance advised the permittee the amendment was deficient and

Copy of report mailed to \_\_\_\_\_

Copy of report given to \_\_\_\_\_

Inspector's signature \_\_\_\_\_ No. \_\_\_\_\_

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

INSPECTION REPORT COMMENTS

Permit No. Act 015/007

Inspection Date 6/14/95

Please number comments to correspond with topics on previous page.

not approvable,

The failure to seed disturbed areas was a matter before the Utah Court of Appeals in regard to notice of violation N91-26-8-2, wherein the court found some dispute in the record as to whether Hidden Valley failed to seed all the disturbed areas. As a result thereof the court held the Division did not introduce any evidence, finding that the disturbed areas had not been seeded between November 1 and November 19.

Prior to the foregoing litigation Hidden Valley submitted a seeding abatement plan to address and seed those areas that had not been previously seeded. Before such work could be undertaken, the Division notified Mr. Edmonson that seeding would restart the bond clock, resulting in litigation.

Director Carter pursuant to a discussion with Mr. Edmonson phoned Ed Settle, Consolidated Coal Co.

It is my understanding the discussions

Copy of report mailed to \_\_\_\_\_

Copy of report given to \_\_\_\_\_

Inspector's signature \_\_\_\_\_ No. \_\_\_\_\_

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

INSPECTION REPORT COMMENTS

Permit No. Act 015/007

Inspection Date 6/14/95

Please number comments to correspond with topics on previous page.

with both Messrs. Edmonson and Settle concerned the proposed DOGM permits transfer when an outstanding commitment in the mining and reclamation plan has not been met. It follows a notice of violation may be issued by the Division, if this issue is not resolved.

While the inspection was conducted on 6/14/95, most of the contacts and details noted above took place after 6/14/95; however, because of proposed transfer and allied matters, I believe it is necessary to reduce to writing these matters. Should the foregoing not reflect your conclusions, please notify the undersigned.

Signs & Markers. The required, T.D sign, disturbed markers, and buffer zone markers were observed.

The County had placed road signs where the road conditions in certain areas required some signs to alert the driver of caution in driving on these road areas.

Copy of report mailed to Cal Hat/ Mr. Edmonson; OSM/ Donna Guttin; DOGM/ Vae Helfrich

Copy of report: <sup>Filed</sup> given to PRO  
cc: Ed Settle Consolidated Coal Co.

Inspector's signature Tom J. [Signature] No. 26

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

7/3/95.



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

Michael O. Leavitt  
Governor

Ted Stewart  
Executive Director

James W. Carter  
Division Director

355 West North Temple  
3 Triad Center, Suite 350  
Salt Lake City, Utah 84180-1203  
801-538-5340  
801-359-3940 (Fax)  
801-538-5318 (TDD)

July 5, 1995

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

RE: Mining and Reclamation Seeding Commitment, Hidden Valley Mine, Cal Mat Company, ACT/015/007, Emery County, Utah

Dear Mr. Edmonson:

I am writing about disturbed areas that have not been seeded at the Hidden Valley Mine. Attached is a copy of my June inspection report. It highlights certain phone discussions and moreover, conclusions from Director Carter, as a result of phone discussions that were outlined to me on June 29, 1995. The phone discussions alluded to are those among Director Carter, Messrs. Edmonson, and Settle.

This matter was discussed further at the Division meeting on June 29, 1995. Personnel attending the meeting included Carter, Braxton, Helfrich, and the undersigned. Also, Mr. Carter consulted with Tom Mitchell of the Attorney General's office prior to the meeting.

Before considering and taking suggested enforcement action, proposed to DOGM management that I am allowed 10 days to try to resolve this issue without the necessity of writing a violation to Cal Mat Company.

Violation N91-26-8-2 concerned these issues:

- (1) Erosion road outslope on the reclaimed road,
- (2) Not seeding and mulching all disturbed areas as committed to in the Mining and Reclamation plan, and
- (3) Disturbed markers not properly located on a portion of the reclaimed road.

Page 2  
L. Edmonson  
Seeding  
July 5, 1995

Issue (1) and (3) have been resolved with the cooperation of Mr. Edmonson and others. Further, it is in the best interest among all the concerned as discussed in our July 1994, meeting to rely on overall bond release requirements on the total site rather than on compliance to move toward long range common objectives.

It is in this spirit that I write you to explore how we may resolve the seeding issue without the necessity of relying on compliance and/or further litigation to resolve this matter.

It is my sincere opinion that we can do together what we cannot do alone. Would be amenable to utilize the seeding abatement plan you submitted in response to N91-26-8-2 as a starting point to resolve this matter.

Sincerely,



Wm. J. Malencik  
Reclamation Specialist

sd  
cc: Ed Settle, Consol



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

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

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

July 20, 1995

TO: James W. Carter, Director

THRU: Lowell P. Braxton, Associate Director, Mining

THRU: Joseph C. Helfrich, Permit Supervisor

FROM: William J. Malencik, Reclamation Specialist *WJM*

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

This memorandum has reference to our meeting of June 29, 1995, regarding the issuance of a Notice of Violation ("NOV"). I was provided a 10-day window to ascertain if the necessary on-the-ground work could be accomplished without the necessity of taking formal compliance action.

Since our meeting of the 29th, I have not received any information from Mr. Edmonson. On the other hand, I have received a letter from his attorney, Denise Dragoo. From the tone of her letter, it appears that getting the environmental work done without formal compliance action will not be possible.

I telephoned Mr. Edmonson to fully understand his position. He is in Los Angeles. Talked to Carol, his secretary, and she said she would try to get Mr. Edmonson to phone me. In his absence tried to contact Mrs. Dragoo, but she is out until July 25th.

Again, reviewing the pros and cons in my own mind, the following key points come to the forefront:

Cons

1. I executed an NOV on the same issue in 1991 and the Utah Court of Appeals in substance did not uphold the District Court decision, even though the District Court upheld the administrative decision.

Page 2  
James W. Carter  
ACT/015/007  
July 20, 1995

2. I do not have any new evidence. Further in my opinion, the vegetation on the area of concern is no different than in 1991.
3. Executed stipulation between DOGM and Hidden Valley Coal Company provides there shall be no further appeals as to the facts of violation concerning vegetation as related to the NOV I executed in 1991, i.e., N91-26-8-2.
4. The Division stipulated that it would not appeal the Appellate Court decision. Issuing an NOV at this time is contrary to the stipulation signed by the Assistant Attorney General for the Division.

**Pros**

1. Mr. Edmonson did perform the required field work on two other issues that were involved in the N91-26-8-2 violation when compliance action was discussed as a final course of action.
2. Pending permit transfer to Consolidated Coal Company.

jbe  
H:\USERS\COAL\WP\HIDDVALL.MEM