

0017

VAN COTT, BAGLEY, CORNWALL & McCARTHY
Denise A. Drago, A0908
50 South Main, Suite 1600
P.O. Box 45340
Salt Lake City, Utah 84145-0340
Attorneys for Hidden Valley Coai 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.

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. In this regard, the entire 6.7 acres of disturbed ground was scarified, seeded, fertilized, mulched and covered consistent with the general requirements for revegetation set forth in the MRP.

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

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

DATED this 13th day of September, 1995.

Frank Jensen

 Frank Jensen

STATE OF UTAH)
) : ss.
 COUNTY OF IRON)

The foregoing instrument was acknowledged before me this 13th day of September, 1995, by Frank Jensen.



Carolyn [Signature]

 NOTARY PUBLIC

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

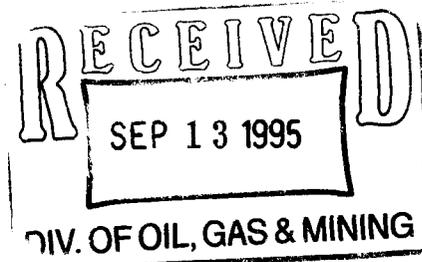
PLEASE DELIVER THE FOLLOWING PAGE(S) TO:

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

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LAW OFFICES OF
VAN COTT, BAGLEY, CORNWALL & MCCARTHY
 A PROFESSIONAL CORPORATION
 SUITE 1600
 50 SOUTH MAIN STREET
 SALT LAKE CITY, UTAH 84144
 TELEPHONE (801) 832-3333
 FACSIMILE (801) 834-0058
 TELEX 453149

ADDRESS ALL CORRESPONDENCE TO
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 84145-0450

DENISE A. DRAGOO

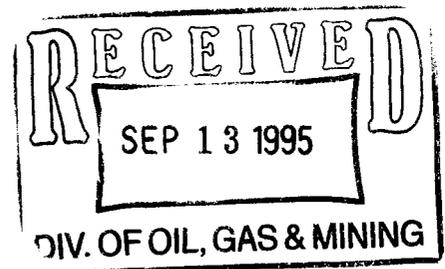
Direct Dial
(801) 327-0465

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 "D. Drago".

Denise A. Drago

DAD:jmc:84406

Enclosure

cc: Lee Edmonson
 Ed Settle

VAN COTT, BAGLEY, CORNWALL & McCARTHY

Denise A. Drago, 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 reseeded activities at the Hidden Valley Mine.

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. In this regard, the entire 6.7 acres of disturbed ground was scarified, seeded, fertilized, mulched and covered consistent with the general requirements for revegetation set forth in the MRP.

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

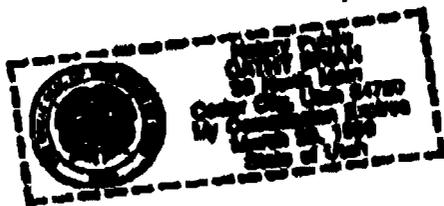
5. I supervised Nielsen Construction, Emery County, Utah, in reseeded and mulching all disturbed areas in accordance with the MRP.

DATED this 13th day of September, 1995.

Frank Jensen
Frank Jensen

STATE OF UTAH)
) ss.
COUNTY OF IRON)

The foregoing instrument was acknowledged before me this 13th day of September, 1995, by Frank Jensen.



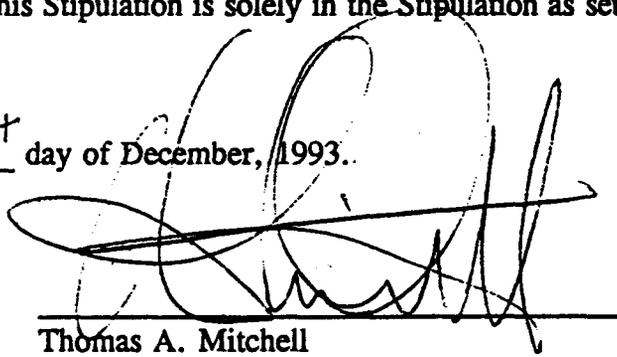
[Signature]
NOTARY PUBLIC

The parties therefore stipulate as follows:

1. NOV N93-35-08-01 is hereby vacated;
2. The Appellant's Emergency Motion to Enforce Order dated November 30, 1993, is withdrawn;
3. There shall be no further appeals as to the fact of violation concerning revegetation success on the road surface as it relates to N91-26-8-2;
4. If Plaintiff Appellants are successful in their appeal of NOV N91-26-8 the Division is not estopped from enforcing revegetation performance standards on the road surface not previously cited in NOV N91-26-8-2 or otherwise argued or raised by Appellants in this proceeding.

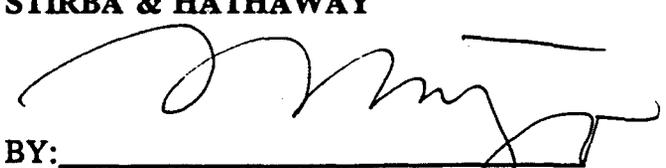
The basis for both parties entering into this Stipulation is solely in the Stipulation as set forth above.

SO STIPULATED this 15th day of December, 1993..



Thomas A. Mitchell
Assistant Attorney General
UTAH DIVISION OF OIL,
GAS & MINING

STIRBA & HATHAWAY



BY: _____
BENSON L. HATHAWAY, JR.
Attorneys for Plaintiff and Appellant
Hidden Valley Coal Company

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 reseeded 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

EXHIBIT D

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 outcrops 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 outcrops. 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 Malencik 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. § 10-10-30(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, 1 (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 *Nyrene v. Industrial Comm'n*, 800 P.2d 330, 335 (Utah App.1990) (citations omitted), cert. denied, 815 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.

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 Malencik 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 outcrops 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, JJ., 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.

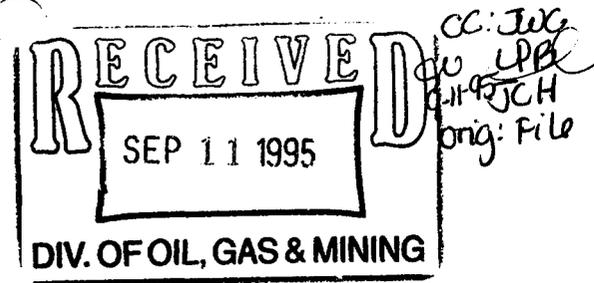
Reversed and remanded.

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.



**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 reseeding 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."

3. The Division issued NOV N91-26-8-2 regarding the Hidden Valley Mine on November 22, 1991. Violation No. 2 of 2 of the NOV was issued by Division Inspector William Malencik for the operator's alleged failure to seed and revegetate all disturbed areas. The remedial action required by the NOV was to seed and revegetate as specified in the MRP. A true and correct copy of NOV N91-26-8-2 is attached as Exhibit "B."

4. By Opinion dated December 1, 1993 in *Hidden Valley Coal Company v. Utah Board and Division of Oil, Gas & Mining*, the Utah Court of Appeals found that the Division had failed to establish a prime facia case as to whether or not HVCC had seeded and revegetated all disturbed areas. Therefore, the Court of Appeals and vacated NOV N91-26-8-2 as it related to reseeding and revegetation. A copy of the Decision in *Hidden Valley Coal Company v. Board and Division of Oil, Gas & Mining*, 866 P.2d 564 (Utah App. 1993) is attached as Exhibit "C."

5. On December 1, 1993, counsel for the Division and HVCC entered into a Stipulation stating *inter alia*:

3. There shall be no further appeals as to the fact of violation concerning revegetation success on the road surface as it relates to N91-26-8-2;

4. If Plaintiff-Appellants are successful in their appeal of NOV N91-26-8-2, the Division is not estopped from enforcing revegetation performance standards on the road surface not previously cited in the NOV N91-26-8-2 or otherwise argued or raised by Appellants in this proceeding.

Stipulation , page 2. A true and correct copy of the Stipulation dated December 1, 1993 is attached as Exhibit "D."

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

relative to seeding and mulching all disturbed areas in the permit area, NOV carried No. N95-26-2-1.

Inspection Report, page 2. A true and correct copy of the inspection report of July 31, 1995 is attached as Exhibit "H."

Argument

For the reasons set forth herein, HVCC requests the Division to vacate the NOV.

1. The NOV Was Not Served On HVCC. The NOV improperly names "Cal Mat Company" as the permittee or operator of the Hidden Valley Mine. HVCC is the permittee or operator of the Hidden Valley Mine; therefore, the NOV was improperly served on the wrong corporate entity and must be dismissed.

2. The NOV is Barred by the Doctrine of *Res Judicata*. The NOV alleges that the operator failed to reseed certain disturbed areas in accordance with the MRP. By the inspector's own admission, this NOV relates to the same issue as N91-26-8-2, which was vacated by the Utah Court of Appeals in *Hidden Valley Coal Company v. Board of Oil, Gas & Mining*, 866 P.2d 564 (Utah App. 1993). In that decision, the Court of Appeals determined that the Division had failed to make a prima facie showing of the facts underlying the alleged violation. By Memorandum dated July 20, 1995, William J. Malencik, the Division Inspector who issued the NOV, admits that the Division has no new evidence upon which to base the NOV and that the area of concern is no different than that involved in the N91-26-8-2.

The issue preclusion branch of *res judicata*, sometimes referred to as collateral estoppel, bars relitigation of an issue in a subsequent action. The four requirements of *res judicata* issue preclusion are:

- (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.

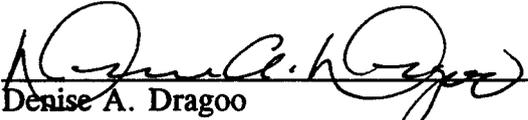
3. **The NOV Violates the Division's Stipulation with HVCC.** The Division and HVCC entered into a Stipulation dated December 1, 1993, which provides that there shall be no further appeals regarding the fact of violation concerning revegetation performance standards on the road surface as raised by NOV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

mulched all disturbed areas, including the road out slopes, stream buffer zone and Ivie Creek out slope. Affidavit of Frank Jensen. Therefore, the NOV must be vacated.

For the above-stated reasons, HVCC respectfully requests that the Division vacate the fact of violation.

RESPECTFULLY submitted this 11th day of September, 1995.


Denise A. Dragoo
VAN COTT, BAGLEY, CORNWALL &
McCARTHY
50 South Main, Suite 1600
Salt Lake City, Utah 84144-0402
Telephone: (801) 532-3333
Attorneys for Hidden Valley Coal
Company

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of September, 1995, I caused to be hand delivered a true and correct copy of the foregoing Motion to Vacate to:

James M. Carter
Director
UTAH DIVISION OF OIL, GAS & MINING
355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203



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 8th 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

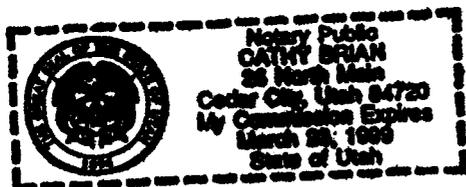


EXHIBIT B

EXHIBIT "A"		62028
Co. <u>Sub</u>		
Dept. <u>12th Floor</u>	Phone # <u>472 8770</u>	
Fax # <u>596 2314</u>	Fax # <u>472 8770</u>	

NO. N 41-26-B-2

notice of violation

To the following Permittee or Operator:

Name Cal Chat Co.

Mine Hidden Valley Surface Underground Other

County Emery State Ut Telephone _____

Mailing Address 1801 University Drive, Phoenix, Arizona 85034

State Permit No. Act/015/007

Ownership Category State Federal Fee Mixed

Date of inspection November 20, 1991 19__

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

Operator Name (other than Permittee) Lee Edmonson

Mailing Address Same As Above

Under authority of the Utah Coal Mining and Reclamation Act, Section 40-10-1 et seq., Utah Code Annotated, 1953, the undersigned authorized representative of the Division of Oil, Gas & Mining has conducted an inspection of above mine on above 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

Environmental Engineer
Title

Chaired
Signature

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

Rec. Spec.
Title

Wm. J. Malencik
Signature

#26
Identification Number

11/21/91

SEE REVERSE SIDE

WHITE-COGM YELLOW-COGM PINK-PERMITTEE/OPERATOR GOLDENROCK-NOV FILE

COGM/NOV-1

an equal opportunity employer

cc: Ms. Karla Knoop.

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

Violation No. 1 of 2

Nature of violation

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

Provisions of act, regulations or permit violated

PR-614-301-742.312.1

PR-614-301-742.113

Portion of operation to which notice applies

Road outslope and upslope in disturbed areas

Remedial action required (including any interim steps)

- Submit a plan to stabilize ditches and minimize erosion
- Coordinate with Tom Murray

Abatement time (including interim steps)

5pm December 20, 1991

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

DOCM/NOV?

an equal opportunity employer

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

Violation No. 2 of 2

Nature of violation

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

Provisions of act, regulations or permit violated

R-614-301-521.251

R-614-301-354

Portion of operation to which notice applies

- Road and stream disturbed out slopes
- Road up slopes

Remedial action required (Including any interim steps)

- Seed the specified disturbed areas not previously seeded.
- 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 27, 1991

EXHIBIT C

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 \S 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 \S 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 \S 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, 63-16b-0.5 et seq.

4. Mines and Minerals \S 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 \S 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 \S 92.11

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

(file 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 \S 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
 \S 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 &

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,

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."¹

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.

found Hidden Valley to be in compliance with all permits and performance standards. Mr. Kelley noted that the diversions and revegetation efforts, as well as the placement of markers and signs, were in full compliance. Specifically, Mr. Kelley stated that "[t]he large rip-rap diversions between the 'A' and 'B' seam fill areas is [sic] in good condition and free from obstruction" and "[o]ther Sediment Control Measures—Silt fences at the base of the 'A' seam fill and parallel to the large main diversion are in good repair and have not captured runoff since they were last maintained." Mr. Kelley also found Hidden Valley's drainage controls on the roads to be in good condition and in compliance with all permits and performance standards. Mr. Kelley also noted, "[w]ater bars and diversions on the main reclaimed road are functioning well and are in good condition."²

On November 19, eighteen days after the previous inspection, inspector Bill Malencik conducted an inspection of the mine site. Mr. Malencik found Hidden Valley to be in violation of several permit and performance standards. Shortly thereafter, the Division issued a Notice of Violation (NOV) stating that Hidden Valley had failed to: (1) "maintain diversions to be stable" and "minimize erosion to the extent possible" on the road upslope and upslope; and (2) "clearly mark with perimeter markers all disturbed areas" and "seed and revegetate all disturbed areas" on the road and stream upslopes and the road upslopes. Hidden Valley was required to abate all violations found in the NOV. In December, the Division issued a proposed penalty assessment for the NOV totaling \$1,220.

After the Division issued the NOV, Hidden Valley petitioned the Division for an informal hearing. On December 20, the Division director held an informal hearing to review

2. Mr. Kelley also conducted a partial inspection on October 8, 1991, finding Hidden Valley to be in compliance with all permits and performance standards. Mr. Kelley stated that the "haul road diversion, including water bars, was in good condition and contained a good cover of vegetation," and "[u]p to this time, vegetation has been very sparse because of the lack of moisture. Now, happily, due to recent rains, reseeded areas on both 'A' and 'B' seam fills are sustaining a fairly thick growth of vegetation."

Hidden Valley's contentions. In January 1992, the director issued an order upholding the NOV in its entirety. Hidden Valley appealed the decision of the director to the Board.

The chairman of the Board, acting as a hearing examiner, conducted a formal evidentiary hearing on Hidden Valley's contentions. The Board, after considering the chairman's proposed findings of fact and conclusions of law, issued an order upholding the Division's issuance of the NOV. The Board did, however, reduce the total amount of the penalty assessment to \$1,090.

[1] Hidden Valley filed an appeal in district court seeking judicial review of the Board's order pursuant to Utah Code Ann. § 40-10-30 (1993). The district court heard oral argument and later entered an order upholding in part the Board's decision. The court upheld the Board's decision with respect to the allegations that Hidden Valley had failed to maintain stable diversions, minimize erosion to the extent possible, and seed and revegetate disturbed areas. However, the court overturned the Board's decision with respect to the allegation that Hidden Valley had failed to place perimeter markers on all disturbed areas.³ Hidden Valley now appeals the Board's order to this court pursuant to section 40-10-30.

ISSUE

[2] Hidden Valley argues that the Board erroneously interpreted and applied the Utah Coal Mining and Reclamation Act (UCMRA), Utah Code Ann. § 40-10-1 to -31 (1993), in concluding that the Division established a prima facie case supported by substantial evidence for its issuance of the NOV and that

3. While we are required to review the actions of the Board and not the district court, see *Cowling v. Board of Oil, Gas & Mining*, 830 P.2d 220, 223 (Utah 1991), the issue of placement of perimeter markers was reversed by the district court and was not appealed to this court by the Division. Therefore, Hidden Valley's alleged failure to properly place perimeter markers is not before this court on appeal.

Hidden Valley failed to rebut the Division's case.⁴

STANDARD OF REVIEW

[3] Our review of the Division's actions under UCMRA is not governed by the Utah Administrative Procedures Act (UAPA). Utah Code Ann. § 40-10-31 (1993). The provisions of UCMRA relating to agency adjudicative proceedings before the Division or Board supersede the procedures and requirements of UAPA. *Id.* Therefore, the standard of review for this appeal is governed by Utah Code Ann. § 40-10-30 (1993) and pre-UCAPA case law.

Section 40-10-30 provides, in pertinent part:

(1) An appeal from a rule or order of the board shall be a trial on the record and is not a trial de novo. The court shall set aside the board action if it is found to be:

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

For cases decided outside the confines of UAPA, "[w]hen a lower court reviews an

4. Hidden Valley raises two additional issues on appeal: (1) whether the Board erroneously interpreted and applied UCMRA and Utah law in concluding that the Division was not estopped from enforcing its NOV after it had repeatedly found the mine site to be in compliance with the reclamation plan and applicable law; and (2) whether the Board erred in concluding that the statute of limitations did not bar issuance of the NOV. Because of our holding on Hidden Valley's prima facie case argument, we need not reach Hidden Valley's additional issues.

The Division argues that this appeal is moot because Hidden Valley complied with the NOV by submitting an abatement plan. However, the underlying purpose of the NOV was physical abatement of the alleged violations found in the

order of an administrative agency and we exercise appellate review of the lower court's judgment, we act as if we were reviewing the administrative agency decision directly." *Cowling v. Board of Oil, Gas & Mining*, 830 P.2d 220, 223 (Utah 1991) (citing *Bennion v. Utah State Board of Oil, Gas & Mining*, 675 P.2d 1135, 1139 (Utah 1983)).

[4] Prior to the adoption of UAPA, agencies' findings of fact were "granted considerable deference and would not be disturbed on appeal if supported by substantial evidence." *Morton Int'l, Inc. v. State Tax Comm'n*, 814 P.2d 581, 585 (Utah 1991). Substantial evidence has been defined to be "such relevant evidence as reasonable minds might accept as adequate to support a conclusion." *Johnson v. Board of Review*, 842 P.2d 910, 911 (Utah App. 1992) (quoting *Grace Drilling Co. v. Board of Review*, 776 P.2d 63, 68 (Utah App. 1989)).

ANALYSIS

[5] Hidden Valley argues that the Division has not established a prima facie showing of the facts supporting its NOV. The Division has the burden of establishing a prima facie case as to the fact of a violation under UCMRA.⁵

[6] The evidence is uncontroverted that up until November 1, 1991, Hidden Valley was in full compliance with the reclamation plan. Because the Division certified that Hidden Valley was in full compliance on November 1, the Division was required to establish that some intervening event or condition occurred between the November 1 and No-

NOV, not merely the filing of an abatement plan. Hidden Valley has not undertaken any physical abatement under the NOV. This appeal is therefore not moot and the Division's argument to the contrary is without merit.

5. UCMRA is virtually identical to its federal counterpart, the Surface Mining Control and Reclamation Act (SMCRA). See 30 U.S.C. §§ 1201 to 1328 (1977). Under SMCRA, the Office of the Secretary of the Interior carries the burden of establishing a prima facie showing of a violation. See 43 C.F.R. § 4.1171(a). Based on this model, we likewise conclude that the Division bears the initial burden of establishing a prima facie showing of a violation under UCMRA.

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 VI

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 out slopes 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

Michael O. Leavitt
Governor

Tod Stewart
Executive Director

James W. Carter
Division Director

355 West North Temple
3rd Flad Center, Suite 350
Salt Lake City, Utah 84103-1203
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 *LPB*

THRU: Joseph C. Helfrich, Permit Supervisor *JCH*

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.

EXHIBIT G



UTAH
NATURAL RESOURCES
Oil, Gas & Mining

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

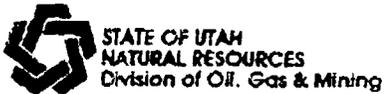
Remedial action required (including any interim steps)

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

Opt



3 Triad Center • Suite 350 • Salt Lake City, UT 84150-1203 • 801-538-5040

notice of violation

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) 254-3465

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
Permittee/Operator representative

Manager
Title

Signature _____

Reclamation Specialist

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

Title

Jan J. Malencik
Signature 7/20/95

#26

Identification Number

SEE REVERSE SIDE
WHITE-DOGGM YELLOW-OPERATOR PINK-GSM GOLDENROD-NOV FILE

EXHIBIT F



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 DOGUE 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); ASM/Dan Griffin; DOGMA/Don Halbreich

Copy of report filed to PEO Ed Settle, Consolidated Coal Co.

Inspector's signature [Signature] No. 26

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

7/3/95



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-B-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



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 oblique areas that were observed in the instant inspection. Included the sealed well/dry hole adjacent to a road and above mine encampment, borrow area, reclaimed road and A & B Draw reclaimed areas.

Permit Have been advised by the Division that a Draw permit transfer application has been submitted. The proposed transfer involves Oil Mat 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, Dove 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

inspection report

- Partial
- Complete
- Exploration

Inspection Date: June 14, 1995
 Time: 1:00 am pm to 4:00 am pm
 Date of Last Inspection: 5/28/95 & 6/15-12/95

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

Permittee and/or Operator's Name: Orlomat 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°

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/ENE
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 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 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 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"/>



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

265 West North Temple
 3 Triad Center, Suite 350
 Salt Lake City, Utah 84180-1203
 801-538-5340
 801-538-3840 (Fax)
 801-538-5918 (TDD)

July 5, 1995

7-5-95

Post-It™ brand fax transmittal memo 7871		# of pages > 6
To: Lee Edmonson	From: Bill Malencik	
Co: HVCC - Calmat	Co: DOGM	
Dept: Properties DIV	Phone #: 801-637-5806	
Fax #: 602-253-1226	Fax #: 801-637-8603	

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.



EXHIBIT E

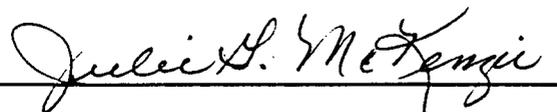
FABIAN & CLENDENIN

BY: 
DENISE DRAGOO
Attorneys for Plaintiff and Appellant
Hidden Valley Coal Company

CERTIFICATE OF DELIVERY

I hereby certify that on this 3rd 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



klhvccstipulation

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

EXHIBIT H

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 Drago, 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 reseeding 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

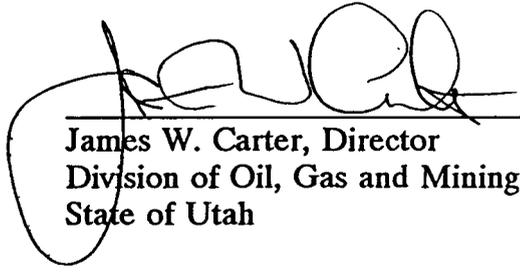
- 1. Violation N95-26-2-1 should be vacated.

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



Janear Bunt



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

gph

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

- Partial
- Complete
- Exploration

Inspection Date: July 31, 1995
 Time: 9:00 ~~am~~ pm to 2:00 am pm
 Date of Last Inspection: 6-26-95

Mine Name: Hidden Valley County: Emery Permit Number: Act 0151007
 Permittee and/or Operator's Name: Calabot 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 ^{has had} 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 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 checked="" type="checkbox"/>
14. SUBSIDENCE CONTROL	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
15. CESSATION OF OPERATIONS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
16. ROADS:				
a. CONSTRUCTION/MAINTENANCE/SURFACING	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. DRAINAGE CONTROLS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
17. OTHER TRANSPORTATION FACILITIES	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
18. SUPPORT FACILITIES/UTILITY INSTALLATIONS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
19. AVS CHECK (4th Quarter-April, May, June) _____ (date)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
20. AIR QUALITY PERMIT	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
21. BONDING & INSURANCE	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

inspection report



INSPECTION REPORT COMMENTS

Permit No. Act 015/007
 Inspection Date 7/31/95

Please number comments to correspond with topics on previous page.

General Comment - Conducted a partial inspection. Karla Knoop who at times represented the permittee is not associated with OBR. Therefore by copy of this inspection report request that the permittee advise me who will be Hidden Valley Coal Co field contact.

Signs & Markers: Required signs and markers were observed. If the permit transfer is approved, the ID sign will have to be changed to provide the required information pertinent to the transferee permittee.

Diversions: Observed diversions and did not note any areas where runoff overtopped the ditch.

Vegetation: Noted an increase in annual vegetation which I would judge as a slight increase, but not reflected in the perennial vegetation.

Compliance: NOV was mailed to the permittee by the undersigned. 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 relative to seeding and mulching all disturbed areas in the permit area. NOV carried # N.95-26-9-1.

Copy of report mailed to Sal Chhat Office Edmonson; OSM/Donna Griffin; DOGM/ Joe Heltuch

Copy of report given to filed RFO

Inspector's signature Tom J. Pralnik No. 26

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

8/1/95



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)
801-538-5319 (TDD)

September 7, 1995

TO: Daron Haddock, Permit Supervisor

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

RE: Permit Transfer, Hidden Valley Coal Company, Hidden Valley Mine, ACT/015/007-95A, Folder #2, Emery County, Utah

SYNOPSIS

Hidden Valley Coal Company, current permittee, and owner of Hidden Valley Coal Company submitted an application for approval of transfer to Consolidation Coal Company dated received by the Division June 14, 1995. In a letter from the Division to the permittee, dated August 23, 1995 the application was not considered complete. The permittee responded to the issues detailed in the August 23 letter with additional information on August 31, 1995. This memo reviews the additional information.

ANALYSIS

The application can not be approved until the below listed items are clarified.

1. R645-303-321.300, R645-301-113.300. The application fails provide a complete list of any and all violations pertaining to air or water environmental protection in connection with any coal mining and reclamation operation owned or controlled by the applicant.
2. R645-303-323. The application must provide a performance bond in an amount sufficient to cover the remaining reclamation obligations.

RECOMMENDATION

The Division cannot make a finding in accordance with R645-303-340 for approval of permit transfer until the above list deficiencies are clarified.

cc: Pam Grubaugh-Littig