



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

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April 29, 1993

TO: File

FROM: Pamela Grubaugh-Littig, Permit Supervisor, 

RE: Status of Exploration Within the Permit Area, Trail Mountain Mine, PacifiCorp, ACT/015/009-93B, Folder #2, Emery County, Utah

The above-noted exploration application has a disturbance of about 14 acres. According to the criteria for a permit change, this would be a significant revision, i.e. 10 acres of disturbance in the current permit area as compared to the 14 acres of exploration disturbance.

The regulations for exploration within the permit area refer to an amendment or a revision. However, the criteria for permit change as an amendment or revision are for coal mining and reclamation operations, which by definition exclude exploration (see attached information). Per a directive from Mr. Lowell Braxton, Associate Director, he stated that if the exploration will be reclaimed within a year this would be considered an amendment due to the fact that it is "exploration" in the true sense of the word.

Therefore, per Mr. Braxton's directive, this exploration will be handled as an amendment.

cc: Val Payne, PacifiCorp



40-10-8

Amendment

Notice of Intent  
acc. to statute

R645-201-100

110 : 120

Then to R645-303-220

Then read

permit def.

permit change def.

Coal mining = coal def.

which includes

exploration

Coal exploration def.

(def distinction)

40-10-8 need for perf.

Same def. include 40-10-3  
(18)

Refers to 40-10-8.

"If reclaimed within the  
year, an amendment" 4/27  
per LPB  
on 4/29/93

Lowell —  
(Pacificorp)

Val has submitted an exploration  
application for drilling within the  
Trail Mountain permit area.

They will disturb  $\approx 15$  AC of  
area (of which there are only 10 AC of  
disturbance within the permit area).  
According to the ~~app~~ criteria for  
amendment vs. significant revision.

The question is: ~~that has~~  
Does the permit change criteria  
apply to exploration? within  
the approved permit area?

I told Val I would  
check with you.

I have enclosed appropriate  
information.

If you could let me  
know soon, it would be appreciated  
(especially if they have to publish, etc.)

Thank You.  
JAM

Item 67. R614-201-350, -351, -352 30 CFR 772.12(e)(1)

#### Notice and Hearing on Major Coal Exploration

The proposed State regulation does not require that the Division notify commenters, in writing, of its decision on the application; therefore, it is less effective than the Federal regulation. The amendment must be revised to provide written notification of the Division's decision to commenters.

Item 68. R614-202-230, -231, -236 30 CFR 815.15(a)

Resolved

Item 69. R614-202-240 thru 244,300 30 CFR 815.15(e)

Resolved

Item 70. R614-201-200, -210, -225 30 CFR 772.11(b)(3)

#### Requirements for Major Coal Exploration

Minor Coal Exploration during which 250 tons of coal or less will be removed requires Division approval and issuance of a permit. The counterpart Federal regulation [30 CFR 772.11(a)] requires submittal of a notice of intent, but does not require approval and issuance of a permit by the regulatory authority. The requirement for permitting such exploration is no less effective than the counterpart Federal regulation.

However, the requirement for a narrative or map describing the exploration area was suspended in the Federal regulation by OSMRE in response to a Federal District Court decision. The effect of the suspension was to require a narrative describing the exploration area or a map and a narrative (i.e., in all cases a narrative is required). The proposed State regulation is inconsistent with the Federal regulation, as suspended by the court, in that a narrative describing the exploration area is not required in all cases.

Item 71. R614-201-200, -210, -225 30 CFR 772.11(b)(3)

Item number 70 was erroneously assigned two numbers. Item numbers 70 and 71 are the same issue. Please see the discussion under item number 70 above, and otherwise disregard Item 71.

#### Areas Unsuitable for Coal Surface Mining

Item 72. R614-103-236 30 CFR 761.11(c); 12(f)(1),(2)

OSMRE's regulation specifies how the regulatory authority will review the applications for permits to determine whether the operations are limited or prohibited. Section (f) requires that the regulatory authority, when it determines that proposed operations will adversely affect any publicly owned park or any place included in the National Register of Historic Places, shall transmit applicable parts of the application to the agencies with jurisdiction over the resources, and

Item 14.(a) R614-104-112 including  
112.110 through .500

30 CFR 865.11(a)(2)(i),  
(ii),(iii),(iv),(v)

#### Protection of Employees

The wording of the proposed State rule is nearly identical to the Federal regulation except in 112.400 and 112.500. In each case the word "and" has been added requiring all elements be present before the provisions in 112.100-112.500 would be applicable. Adding "and" at these locations make the State amendment less protective of employees.

Item 14.(b) R614-104-310

30 CFR 865.13(a)

#### Protection of Employees

The wording of the State rule eliminates the requirement of filing the application for review with the Board (Federal Office of Hearings and Appeals) and notification to the employee and alleged discriminating person that the complaint would be investigated. This omission makes the State rules less effective in the review process than the counterpart Federal regulations. The Federal requirement that "Within 7 days after receipt of any application for review, the Office shall \* \* \* investigate the complaint," must be incorporated into the State rule.

Item 14.(c) R614-104-530

30 CFR 865.15(c)

#### Protection of Employees

The Federal regulations under 865.15(c) state "upon a finding of violation of 865.11 of this part, the Secretary shall order the appropriate affirmative relief including, but not limited to, the rehiring or reinstatement of the employee 'or representative of employees' to his former position with compensation."

State rule R614-104-530 states "upon a finding of violation of R614-104-100, the Board will order the appropriate affirmative relief including, but not limited, to the rehiring or reinstatement of the employee to his or her former position with compensation."

The elimination of the words "or representative of employees" makes the State rules less protective of representatives of employees than the counterpart Federal regulations.

Item 15. R614-200-120 through 123

30 CFR 772.11(a), .12(a)

#### Categories of Coal Exploration

The proposed State rule establishes three categories for coal exploration. "Coal Exploration Within an Approved Permit Area" is coal exploration that substantially disturbs the natural land surface within an approved permit area, and it requires Division designation and approval as a permit change (i.e., permit amendment or significant permit revision). This section of the proposed State rules R614-200-120 has no direct counterpart in the Federal regulations. However, the limiting phrase "that substantially disturbs the natural land surface" as it was used in defining

coal exploration removing 250 tons of coal or less was suspended on November 20, 1986 by 51 FR 41961, in response to a Federal District Court decision. The effect of the suspension was to require regulation of coal exploration regardless of whether or not it substantially disturbs the natural land surface.

The proposed State rule, R614-200-121, is inconsistent with the Federal regulations in that it does not contain provisions for regulating coal exploration that does not substantially disturb the natural land surface within an approved permit area.

"Minor Coal Exploration" is coal exploration that substantially disturbs the natural land surface outside an approved permit area during which 250 tons of coal or less will be removed. Division approval and issuance of a permit is required for this category of exploration. The requirement for permitting such exploration is no less effective than the counterpart Federal regulation. Although the counterpart Federal regulation [30 CFR 772.11(a)] requires submittal of a notice of intent, it does not require approval and issuance of a permit by the regulatory authority. However, the limiting phrase, "that substantially disturbs the natural land surface," was suspended in 30 CFR 772.11 on November 20, 1986, by 51 FR 41961.

The effect of the suspension was to require regulation of coal exploration regardless of whether or not it substantially disturbs the natural land surface. The proposed State rule, R614-200-122, is inconsistent with the Federal regulations in that it does not contain provisions for regulating coal exploration that does not substantially disturb the natural land surface outside an approved permit area.

"Major Coal Exploration" as described in R614-200-123 is coal exploration that substantially disturbs the natural land surface outside an approved permit area during which more than 250 tons of coal will be removed, and it requires DOGM's approval and issuance of a permit. The counterpart Federal regulation [30 CFR 772.11(a)] states that any person who intends to conduct coal exploration outside a permit area during which more than 250 tons of coal will be removed or which will take place on lands designated unsuitable for mining shall submit an application for approval and issuance of a permit by the regulatory authority. The proposed State rule at R614-201-310 is consistent with the language of the Federal regulation. The proposed State rule at R614-200-123, however, is inconsistent with the Federal regulation and is also inconsistent with State rule R614-210-310 and, consequently, is less effective than the Federal regulation.

Item 16.	R614-202-230 including 231 through 236	30 CFR 815.15(a), (b), (d), (f), and (j)
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#### Operational Performance Standards for Coal Exploration

The wording of the proposed State rule is nearly identical to the counterpart Federal regulation except the proposed State rules do not require compliance with certain performance requirement contained in the Federal regulations. The following proposed State rule must be included in the references identified in R614-202-232 for it to be no less effective than the Federal Regulation (R614-301-534.200). The following proposed State rules must be included in the references identified in R614-202-235 for it to be no less effective than the Federal regulation: R614-301-513.600, R614-301-731.800, R614-301-733.225 through 733.240, and R614-301-743.

R645. Natural Resources; Oil, Gas and Mining; Coal.

R645-200. Coal Exploration: Introduction.

R645-200-100. Scope

R645-200-200. Responsibilities

R645-200. Coal Exploration: Introduction.

R645-200-100. Scope.

110. The coal exploration rules, R645-200 through R645-203, apply to the Division and to any person who conducts or seeks to conduct coal exploration.

120. Coal Exploration Categories.

121. Coal Exploration Within an Approved Permit Area. Coal exploration that occurs within an approved permit area will require Division designation and approval as a permit amendment or significant revision.

122. Minor Coal Exploration. Coal exploration that occurs outside an approved permit area during which 250 tons or less of coal will be removed will require Division approval and issuance of a Minor Coal Exploration Permit under the requirements of R645-201-200.

123. Major Coal Exploration. Coal exploration that occurs outside an approved permit area during which more than 250 tons of coal will be removed will require Division approval and issuance of a Major Coal Exploration Permit under the requirements of R645-201-300.

R645-200-200. Responsibilities.

210. It is the responsibility of any person seeking to conduct coal exploration under the State Program to comply with the requirements of R645-200 through R645-203.

220. It is the responsibility of the Division to receive applications or requests for approval of coal exploration, approve or disapprove the applications or requests, and to issue, condition, suspend, revoke and enforce approvals under the State Program. The Division will review and respond to an initial application or request for coal exploration approval within 15 days of receipt of the application.

230. The Division will coordinate review and approval or disapproval of coal exploration applications with other government agencies, as appropriate.

KEY: reclamation, coal mines  
1989

40-10-1 et seq

## R645. Natural Resources; Oil, Gas and Mining; Coal.

*R645-201. Coal Exploration: Requirements for Exploration Approval.**R645-201-100. Exploration Within Permit Areas**R645-201-200. Minor Coal Exploration Permits**R645-201-300. Major Coal Exploration Permits**R645-201-400. Requirements for Commercial Sale*

## R645-201. Coal Exploration: Requirements for Exploration Approval.

## R645-201-100. Coal Exploration Within Permit Areas.

110. Division approval in accordance with the requirements of R645-201-100 and R645-301, as applicable is required for exploration that occurs within an approved permit area.
120. Division approval of exploration within an approved permit area will constitute a permit amendment or significant revision as defined by R645-303-220 and will be processed according to the requirements of R645-303-220.
130. The information required in the request for approval to conduct exploration within an approved permit area will initially include all of the information listed under R645-201-220 but may require more detailed information by the Division for approval under R645-303-220.
140. The request for approval to conduct exploration within an approved permit area will include a detailed estimate, according to the requirements of R645-301-800, of the cost of reclamation of surface disturbance related to the proposed exploration, with supporting calculations for the estimate.

## R645-201-200. Minor Coal Exploration Permits.

210. Applications for Minor Coal Exploration Permits when 250 tons or less of coal will be removed will require written Division approval prior to conducting exploration.
220. Applications for Minor Coal Exploration Permits will include:
221. The name, address and telephone number of the applicant seeking to explore;
222. The name, address and telephone number of the applicant's representative who will be present at, and responsible for conducting the exploration operations;
223. A narrative and map describing the exploration area and indicating where exploration will occur in relation to an approved permit area;
224. A statement of the period of intended exploration; and
225. A description of the method of exploration to be used, the amount of coal to be removed and the practices that will be followed to protect the area from adverse impacts of the exploration activities and to reclaim the area in accordance with the applicable requirements of R645-202.

## R645-201-300. Major Coal Exploration Permits.

310. Any person who intends to conduct coal exploration outside an approved permit area in which more than 250 tons of coal will be removed in the area to be explored or which will take place on lands designated as unsuitable for coal mining and reclamation operations under R645-103, will, prior to conducting the exploration, submit an application for a Major

Coal Exploration Permit and obtain written approval from the Division.

320. Contents of Major Coal Exploration Permit Applications. Each application for a Major Coal Exploration Permit approval will contain, at a minimum, the following information:
321. The name, address, and telephone number of the applicant;
322. The name, address, and telephone number of the representative of the applicant who will be present at and be responsible for conducting the exploration; and
323. An exploration and reclamation operations plan, including:
- 323.100. A narrative description of the proposed exploration area, cross-referenced to the map required under R645-201-325, including information on surface topography; geology, surface water, and other physical features; vegetative cover; the distribution and important habitats of fish, wildlife, and plants, including, but not limited to, any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.); districts, sites, buildings, structures or objects listed on or eligible for listing on the National Register of Historic Places; known archeological resources located within the proposed exploration area; and other information which the Division may require regarding known or unknown historic archeological resources;
- 323.200. A narrative description of the methods to be used to conduct coal exploration and reclamation, including, but not limited to, the types and uses of equipment, drilling, blasting, road or other access route construction, and excavated earth and other debris disposal activities;
- 323.300. An estimated timetable for conducting and completing each phase of the exploration and reclamation;
- 323.400. A description of the measures to be used to comply with the applicable requirements of R645-202;
- 323.500. The estimated amount of coal to be removed and a description of the methods to be used to determine the amount removed; and
- 323.600. A statement of why more than 250 tons of coal are necessary for exploration.
324. The name and address of the owner(s) of record of the surface land and of the subsurface mineral estate of the area to be explored;
325. A map at a scale of 1:24,000 or larger, showing the areas of land to be substantially disturbed by the proposed exploration and reclamation. The map will specifically show existing underground openings, roads, occupied dwellings, and pipelines; proposed location of trenches, roads, and other access routes and structures to be constructed; the location of land excavations to be conducted; water or coal exploratory holes and wells to be drilled or altered; earth or debris disposal areas; existing bodies of surface water; historic, cultural, topographic, and drainage features; and habitats of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);
326. If the surface is owned by a person other than the applicant, a description of the basis upon which the applicant claims the

**R645. Natural Resources; Oil, Gas and Mining; Coal****R645-303. Coal Mine Permitting: Change, Renewal, and Transfer, Assignment, or Sale of Permit Rights.****R645-303-100. General Information on the Change, Renewal Assignment or Sale of Permit Rights****110. Objectives****120. Responsibilities of the Division****R645-303-200. Permit Review, Change and Renewal****210. Division Review of Permits****220. Permit Changes****230. Permit Renewals****R645-303-300. Transfer, Assignment, or Sale of Permit Rights****310. General Information****320. Application Requirements****330. Public Participation****340. Criteria for Approval****350. Notification****360. Continued Operation Under Existing Permit****R645-303-100. General Information on the Change, Renewal, Assignment or Sale of Permit Rights.****110. Objectives.** The objectives of R645-303 are to:

111. Provide procedures for the Division to review, change, and renew permits under the regulatory program; and

112. Provide procedures for transfer, sale, or assignment of rights granted in permits under the State Program.

**120. Responsibilities of the Division.** The Division will:

121. Ensure that permits are revised prior to changes in coal mining and reclamation operations;

122. Ensure that all permits are regularly reviewed to determine that coal mining and reclamation operations under these permits are conducted in compliance with the State Program;

123. Effectively review and act on applications to renew existing permits in a timely manner, to ensure that coal mining and reclamation operations continue, if they comply with the State Program; and

124. Ensure that no person conducts coal mining and reclamation operations, through the transfer, sale, or assignment of rights granted under permits, without the prior approval of the Division.

**R645-303-200. Permit Review, Change and Renewal****210. Division Review of Permits.**

211. The Division will review each permit issued and outstanding under the State Program during the term of the permit. This review will occur not later than the middle of each permit term and as follows:

211.100. Permits with a term longer than five years will be reviewed no less frequently than the permit midterm or every five years, whichever is more frequent;

211.200. Permits with variances granted in accordance with R645-302-220 and R645-302-280 will be reviewed no later than three years from the date of issuance of the permit unless,

for variances issued in accordance with R645-302-220, the permittee affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the permit; and

211.300. Permits containing experimental practices issued in accordance with R645-302-210 and permits with a variance from approximate original contour requirements in accordance with R645-302-270 will be reviewed as set forth in the permit or at least every two and one-half years from the date of issuance as required by the Division in accordance with R645-302-217 and R645-302-273, respectively.

212. After the review required by R645-303-211, or at any time, the Division may, by order, require reasonable permit change in accordance with R645-303-220 to ensure compliance with the State Program.

213. Any order of the Division requiring permit change will be based upon written findings and will be subject to the provisions for administrative and judicial review under R645-300-200. Copies of the order will be sent to the permittee.

214. Permits may be suspended or revoked in accordance with R645-400.

**220. Permit Changes.**

221. At any time during the term of a permit, the permittee may submit to the Division, pursuant to R645-303-220, an Application for Permit Change. The Division will review and respond to an initial Application for a Permit Change within 15 days of receipt of the application.

222. The operator will obtain approval of a permit change by making application in accordance with R645-303-220 for changes in the method of conduct of mining or reclamation operations or in the conditions authorized or required under the approved permit; provided, however, that any extensions to the approved permit area, except for Incidental Boundary Changes, must be processed and approved through application for a new permit and may not be approved under R645-303-221 through R645-303-228.

223. The Application for Permit Change will identify the proposed change, or changes, and include the information required under, R645-301, and R645-302 to the extent applicable to the proposed change or changes. The Application for Permit Change will be categorized as a Significant Permit Revision if it involves any of the changes or circumstances set forth in R645-303-224. All other Applications for Permit Change, including Incidental Boundary Changes, will be categorized as Permit Amendments.

224. An Application for Permit Change must be categorized and processed as a Significant Permit Revision for any of the following changes or circumstances:

224.100. An increase in the size of the surface or subsurface disturbed area in an amount of 15 percent, or greater, than the disturbed area under the approved permit;

224.200. Engaging in operations outside of the cumulative impact area as defined in the Cumulative Hydrologic Impact Assessment (CHIA);

224.300. Engaging in operations in hydrologic basins other than those authorized in the approved permit;

- 224.400. When required by an order issued under R645-303-212 and R645-303-213;
- 224.500. In order to continue operation after the cancellation or material reduction of the liability insurance policy, capability of self-insurance, performance bond, or other equivalent guarantee upon which the original permit was issued; or
- 224.600. As otherwise required under applicable law or regulation.
225. Applications for Significant Permit revisions and Permit Amendments will be submitted to the Division at least 120 days and 60 days, respectively, before the change in operations is expected to be implemented.
226. Significant Permit Revisions as provided in R645-303-224 will be reviewed and processed by the Division in accordance with the requirements of R645-300-100 and R645-300-200, and the information requirements of R645-301 and R645-302, including requirements for notice, public participation, and notice of decision.
227. Permit Amendments will be processed in accordance with the requirements of R645-300-100 and R645-300-200, and the information requirements of R645-301 and R645-302, except that permit amendments will not be subject to requirements for notice, public participation, or notice of decision of R645-300-100.
228. The Division will approve or disapprove the Application for Significant Permit Revisions and Permit Amendments, within 120 days and 60 days, respectively, of receipt by the Division of the Administratively Complete Application for Permit Change. The Director may extend the designated time period if it is determined that due to weather conditions, or other considerations, it is physically impossible to perform the review of the Application for Permit Change within that time period.
230. Permit Renewals.
231. General. A valid permit, issued pursuant to the State Program, will carry with it the right of successive renewal, within the approved boundaries of the existing permit, upon expiration of the term of the permit.
232. Application Requirements and Procedures.
- 232.100. An application for renewal of a permit will be filed with the Division at least 120 days before expiration of the existing permit term.
- 232.200. An application for renewal of a permit will be in the form required by the Division and will include at a minimum:
- 232.220. Evidence that a liability insurance policy or adequate self-insurance under R645-301-800 will be provided by the applicant for the proposed period of renewal;
- 232.230. Evidence that the performance bond in effect for the operation will continue in full force and effect for any renewal requested, as well as any additional bond required by the Division pursuant to R645-301-800;
- 232.240. A copy of the proposed newspaper notice and proof of publication of same, as required by R645-300-121.100; and
- 232.250. Additional, revised, or updated information required by the Division.
- 232.300. Applications for renewal will be subject to the requirements of public notification and public participation contained in R645-300-120 and R645-300-152.
- 232.400. If an application for renewal includes any proposed revisions to the permit, such revisions will be identified and subject to the requirements of R645-303-220.
- 232.500. Irrespective of any other R645 rule requirements for permitting coal mining and reclamation operations, a permittee may renew a permit for the purpose of reclamation only if solely reclamation activities remain to be done and no coal will be extracted, processed, or handled. Obligations established under a permit will continue regardless of whether the authorization to extract, process, or handle coal has expired or has been terminated, revoked, or suspended.
233. Approval Process.
- 233.100. Criteria for approval. The Division will approve a complete and accurate application for permit renewal, unless it finds, in writing that:
- 233.110. The terms and conditions of the existing permit are not being satisfactorily met;
- 233.120. The present coal mining and reclamation operations are not in compliance with the environmental protection standards of the State Program;
- 233.130. The requested renewal substantially jeopardizes the operator's continuing ability to comply with the State Program on existing permit areas;
- 233.140. The operator has not provided evidence of having liability insurance or self-insurance as required in R645-301-890;
- 233.150. The operator has not provided evidence that any performance bond required to be in effect for the operation will continue in full force and effect for the proposed period of renewal, as well as any additional bond the Division might require pursuant to R645-301-800; or
- 233.160. Additional, revised, or updated information required by the Division under R645-303-232.250 has not been provided by the applicant.
- 233.200. Burden of Proof. In the determination of whether to approve or deny a renewal of a permit, the burden of proof will be on the opponents of renewal.
- 233.300. Alluvial Valley Floor Variance. If the coal mining and reclamation operation authorized by the original permit was not subject to the standards contained in sections 40-10-11(2)(e)(i) and (ii) of the Act and R645-302-320, because the permittee complied with the exceptions in the proviso to section 40-10-11(2)(e)(ii) of the Act, the portion of the application for renewal of the permit that addresses new land areas previously identified in the reclamation plan for the original permit will not be subject to the standards contained in sections 40-10-11(2)(e)(i) and (ii) of the Act and R645-302-320.
234. Renewal Term. Any permit renewal will be for a term not to exceed the period of the original permit established under R645-300-150.

Division determines to contain information addressing each application requirement of the State Program and to contain all information necessary to initiate processing and public review.

**"Affected Area"** means any land or water surface area which is used to facilitate, or is physically altered by, coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from coal mining and reclamation operations; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property material on the surface resulting from, or incidental to, coal mining and reclamation operations; and the area located above underground workings.

**"Agricultural Use"** means the use of any tract of land for the production of animal or vegetable life. The uses include, but are not limited to, the pasturing, grazing, and watering of livestock, and the cropping, cultivation, and harvesting of plants.

**"Alluvial Valley Floors"** means the unconsolidated stream-laid deposits holding streams with water availability sufficient for subirrigation or flood irrigation agricultural activities, but does not include upland areas which are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits formed by unconcentrated runoff or slope wash, together with talus, or other mass-movement accumulations, and windblown deposits.

**"Applicant"** means any person seeking a permit, permit change, and permit renewal, transfer, assignment, or sale of permit rights from the Division to conduct coal mining and reclamation operations or, where required, seeking approval for coal exploration.

**"Application"** means the documents and other information filed with the Division under the R645 Rules for the issuance of permits; permit changes; permit renewals; and transfer, assignment, or sale of permit rights for coal mining and reclamation operations or, where required, for coal exploration.

**"Approximate Original Contour"** means that surface configuration achieved by backfilling and grading of the mined areas so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain with all highwalls, spoil piles, and coal refuse piles having a design approved under the R645 Rules and prepared for abandonment. Permanent water impoundments may be permitted where the Division has determined that they comply with R645-301-413.100 through R645-301-413.334, R645-301-512.240, R645-301-514.300, R645-301-515.200, R645-301-533.100 through R645-301-533.600, R645-301-542.400, R645-301-733.220 through R645-301-733.224, R645-301-743, R645-302-270 through R645-302-271.400, R645-302-271.600, R645-302-271.800, and R645-302-271.900.

**"Aquifer"** means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for a specific use.

**"Arid and Semiarid Area"** means, in the context of ALLUVIAL VALLEY FLOORS, an area where water use by native vegetation equals or exceeds that supplied by precipitation. All coalfields in Utah are in arid and semiarid areas.

**"Auger Mining"** means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface.

**"Best Technology Currently Available"** means equipment, devices, systems, methods, or techniques which will (a) prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area, but in no event result in contributions of suspended solids in excess of requirements set by applicable state or federal laws; and (b) minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife, and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the Director, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetation selection and planting requirements, animal stocking requirements, scheduling of activities, and design of sedimentation ponds in accordance with R645-301 and R645-302. Within the constraints of the State Program, the Division will have the discretion to determine the best technology currently available on a case-by-case basis, considering among other things the economic feasibility of the equipment, devices, systems, methods or techniques, as authorized by the Act and the R645 Rules.

**"Blaster"** means a person who is directly responsible for the use of explosives in connection with surface blasting operations incidental to UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES or SURFACE COAL MINING AND RECLAMATION ACTIVITIES, and who holds a valid certificate issued by the Division in accordance with the statutes and regulations administered by the Division governing training, examination, and certification of persons responsible for the use of explosives in connection with surface blasting operations incidental to coal mining and reclamation operations.

**"Board"** means the Board of Oil, Gas and Mining for the state of Utah, or the Board's delegated representative.

**"Cemetery"** means any area of land where human bodies are interred.

**"Coal"** means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D388-77.

**"Coal Exploration"** means the field gathering of: (a) surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or (b) the gathering of environmental data to establish the conditions of an area before beginning coal mining and reclamation operations under the requirements of the R645 Rules.

**"Coal Mine Waste"** means coal processing waste and underground development waste.

**"Coal Mining and Reclamation Operations"** means (a) activities conducted on the surface of lands in connection with a surface coal mine or, subject to the requirements of section 40-10-18 of the Act, surface coal mining and reclamation operations and surface impacts incidental to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include all activities necessary and incidental to the reclamation of the operations, excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining; the use of explosives and blasting; in-situ distillation; or retorting, leaching, or other chemical or physical processing; and the cleaning, concentrating, or other processing or preparation of coal. Such activities also include the loading of coal for interstate

commerce at or near the mine site. Provided, these activities do not include the extraction of coal incidental to the extraction of other minerals, where coal does not exceed 16-2/3 percent of the tonnage of minerals removed for purposes of commercial use or sale, or coal exploration subject to section 40-10-8 of the Act; and, provided further, that excavation for the purpose of obtaining coal includes extraction of coal from coal refuse piles; and (b) the areas upon which the activities described under part (a) of this definition occur or where such activities disturb the natural land surface. These areas will also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of those activities and for haulage and excavation, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or material on the surface, resulting from or incident to those activities.

"Coal Mining and Reclamation Operations Which Exist on the Date of Enactment" means all coal mining and reclamation operations which were being conducted on August 3, 1977.

"Coal Preparation or Coal Processing" means the chemical and physical processing and the cleaning, concentrating, or other processing or preparation of coal.

"Coal Processing Plant" means a facility where coal is subjected to chemical or physical processing or the cleaning, concentrating, or other processing or preparation. Coal processing plant includes facilities associated with coal processing activities, such as, but not limited to, the following: loading facilities; storage and stockpile facilities; sheds, shops, and other buildings; water-treatment and water-storage facilities; settling basins and impoundments; and coal processing and other waste disposal areas.

"Coal Processing Waste" means earth materials which are separated from the product coal during cleaning, concentrating, or the processing or preparation of coal.

"Collateral Bond" means an indemnity agreement in a sum certain executed by the permittee as principal which is supported by the deposit with the Division of: (a) a cash account, which will be the deposit of cash in one or more federally-insured or equivalently protected accounts, payable only to the Division upon demand, or the deposit of cash directly with the Division; (b) negotiable bonds of the United States, a State, or a municipality, endorsed to the order of, and placed in the possession of, the Division; (c) negotiable certificates of deposit, made payable or assigned to the Division and placed in its possession, or held by a federally insured bank; (d) an irrevocable letter of credit of any bank organized or authorized to transact business in the United States payable only to the Division upon presentation; (e) a perfected, first lien security interest in real property in favor of the Division; or (f) other investment grade rated securities having a rating of AAA or AA or A, or an equivalent rating issued by a nationally recognized securities rating service, endorsed to the order of, and placed in the possession of, the Division.

"Combustible Material" means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

"Community or Institutional Building" means any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings or functions of local civic organizations or other community groups; functions including, but not limited to educational, cultural, historic, religious, scientific, correctional, mental-health or physical-health care facility; or is used for public

services, including, but not limited to, water supply, power generation, or sewage treatment.

"Compaction" means increasing the density of a material by reducing the voids between the particles, and is generally accomplished by controlled placement and mechanical effort such as from repeated application of wheel, track, or roller loads from heavy equipment.

"Complete and Accurate Application" means an application for permit approval or approval for coal exploration, where required, which the Division determines to contain all information required under the Act, the R645 Rules, and the State Program that is necessary to make a decision on permit issuance.

"Cooperative Agreement" means the agreement between the Governor of the State of Utah and the Secretary of the Department of the Interior as published at 30 CFR 944.30.

"Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops.

"Cumulative Impact Area" means the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface and groundwater systems. Anticipated mining will include, at a minimum, the entire projected lives through bond releases of: (a) the proposed operation, (b) all existing operations, (c) any operation for which a permit application has been submitted to the Division, and (d) all operations required to meet diligent development requirements for leased federal coal for which there is actual mine development information available.

"Cumulative measurement period" means, for the purpose of R645-106, the period of time over which both cumulative production and cumulative revenue are measured.

- (a) For purposes of determining the beginning of the cumulative measurement period, subject to Division approval, the operator must select and consistently use one of the following:
  - (i) For mining areas where coal or other minerals were extracted prior to August 3, 1977, the date extraction of coal or other minerals commenced at that mining area or August 3, 1977, or
  - (ii) For mining areas where extraction of coal or other minerals commenced on or after August 3, 1977, the date extraction of coal or other minerals commenced at that mining area, whichever is earlier.
- (b) For annual reporting purposes pursuant to R645-106-900, the end of the period for which cumulative production and revenue is calculated is either
  - (i) For mining areas where coal or other minerals were extracted prior to July 1, 1992, June 30, 1992, and every June 30 thereafter; or
  - (ii) For mining areas where extraction of coal or other minerals commenced on or after July 1, 1992, the last day of the calendar quarter during which coal extraction commenced, and each anniversary of that day thereafter.

"Cumulative production" means, for the purpose of R645-106, the total tonnage of coal or other minerals extracted from a mining area during the cumulative measurement period. The inclusion of stockpiled coal and other mineral tonnages in this total is governed by R645-106-700.

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underground or surface coal mining operation. Whoever knowingly violates the provisions of this subsection shall, upon conviction, be punished by a fine of not more than \$2,500, or by imprisonment of not more than one year, or by both. The division shall adopt regulations to establish methods by which the provisions of this subsection will be monitored and enforced by the division, including appropriate provisions for filing by these employees and the review of statements and supplements to same concerning any financial interest which may be affected by this section.

(2) For the purpose of holding hearings under this chapter, a quorum of the board shall consist of those members or member who has no conflict of interest as set out in Public Law 95-87 and the rules and regulations adopted under it.

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40-10-8. Exploration regulations issued by division - Contents - Confidential information not to be publicly available - Penalty for violation - Division approval required for removal of excess coal.

(1) Coal exploration operations which substantially disturb the natural land surface shall be conducted in accordance with exploration regulations issued by the division. The regulations shall include, at a minimum:

(a) The requirement that prior to conducting any exploration under this section, any person must file with the division notice of intention to explore, and the notice shall include a description of the exploration area and the period of proposed exploration; and

(b) Provisions for reclamation in accordance with performance standards in section 40-10-17 of all lands disturbed in exploration, including excavations, roads, drill holes, and the removal of necessary facilities and equipment.

(2) Information submitted to the division pursuant to this section as confidential concerning trade secrets or privileged commercial or financial information which relates to the competitive rights of the person or entity intending to explore the described area shall not be available for public examination.

(3) Any person who conducts any coal exploration activities which substantially disturb the natural land surface in violation of this section or regulations issued pursuant to it shall be subject to the provisions of section 40-10-20.

(4) No person shall remove more than 250 tons of coal pursuant to an exploration permit without the specific written approval of the division.

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40-10-9. Permit required for surface coal mining operations - Exemptions - Expiration of permit - Maximum time for commencement of mining operations - Renewal of permit.

(1) No person shall engage in or carry out surface coal mining operations within the state unless that person has first obtained a permit issued by the division pursuant to an approved mining and reclamation program, but the permit will not be required if the operations are exempt as provided in section 40-10-5.

(2) All permits issued pursuant to the requirements of this chapter shall be issued for a term not to exceed five years; but if the applicant demonstrates that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and the opening of the operation, and if the application is full and complete for the specified longer term, the division may grant a permit for the longer term. A successor in interest to a permittee who applies for a new permit within 30 days after succeeding to the interest and who is able to obtain the bond

coverage of the original permittee may continue surface coal mining and reclamation operations according to the approved mining and reclamation plan of the original permittee until the successor's application is granted or denied.

(3) A permit shall terminate if the permittee has not commenced the surface coal mining operations covered by the permit within three years after the issuance of the permit; but the division may grant reasonable extensions of time upon a showing that the extensions are necessary by reason of litigation precluding this commencement or threatening substantial economic loss to the permittee, or by reason of conditions beyond the control and without the fault or negligence of the permittee. With respect to coal to be mined for use in a synthetic fuel facility or specific major electric generating facility, the permittee shall be deemed to have commenced surface mining operations at such time as the construction of the synthetic fuel or generating facility is initiated.

(4)(a) Any valid permit issued pursuant to this chapter shall carry with it the right of successive renewal upon expiration with respect to areas within the boundaries of the existing permit. The holders of the permit may apply for renewal, and the renewal shall be issued (but on application for renewal the burden shall be upon the opponents of renewal), subsequent to fulfillment of the public notice requirements of sections 40-10-13 and 40-10-14 unless it is established that and written findings by the division are made that:

(i) The terms and conditions of the existing permit are not being satisfactorily met;

(ii) The present surface coal mining and reclamation operation is not in compliance with the approved plan;

(iii) The renewal requested substantially jeopardizes the operator's continuing responsibility on existing permit areas;

(iv) The operator has not provided evidence that the performance bond in effect for the operation will continue in full force and effect for any renewal requested in the application as well as any additional bond the division might require pursuant to section 40-10-15; or

(v) Any additional revised or updated information required by the division has not been provided. Prior to the approval of any renewal of any permit, the division shall provide notice to the appropriate public authorities.

(b) If an application for renewal of a valid permit includes a proposal to extend the mining operation beyond the boundaries authorized in the existing permit, the portion of the application for renewal of a valid permit which addresses any new land areas shall be subject to the full standards applicable to new applications under this chapter; but if the surface coal mining operations authorized by a permit issued pursuant to this chapter were not subject to the standards contained in subsections 40-10-11(2)(e)(i) and 40-10-11(2)(e)(ii) by reason of complying with the provisions of subsection 40-10-11(2)(e), then the portion of the application for renewal of the permit which addresses any new land areas previously identified in the reclamation plan submitted pursuant to section 40-10-10 shall not be subject to the standards contained in subsections 40-10-11(2)(e)(i) and 40-10-11(2)(e)(ii).

(c) Any permit renewal shall be for a term not to exceed the period of the original permit established by this chapter. Application for permit renewal shall be made at least 120 days prior to the expiration of the valid permit.

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