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

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OK

May 3, 2002

CERTIFIED RETURN RECEIPT
7099 3400 0016 8895 9659

Tim Kirshbaum, Environmental Engineer
Consolidation Coal Company
P.O. Box 566
Sesser, Illinois 62884

Re: Division Order for 4th East Portal Development, Consolidation Coal Company, Emery Deep Mine, C/015/015-DO02A, Outgoing File

Dear Mr. Kirshbaum:

The Division has received your letter of April 21, 2002 and appreciates meeting with you, Jim Noyes, Seth McCourt and Patrick Collins on April 22nd about your 4th East Portal plans. We also met with Jim Noyes and Seth McCourt on Friday April 26th to further discuss the plans and conduct a visit to the 4th East Portal site.

Considering the fact that this amendment to construct facilities on 22 acres was approved in 1990, there are several issues that must be addressed prior to any work on the ground being undertaken. Some of the surveys and studies upon which the original permit was based have become outdated and are now found deficient.

Pursuant to R645-301-212, the Division has prepared the attached order to correct the deficiencies. Please note that you have 45 days to complete the order. We would be happy to help you with any questions that may arise. Should you desire further discussion or clarification please call Pamela Grubaugh-Littig at (801) 538-5268 or Daron Haddock at (801) 538-5325.

Sincerely,

A handwritten signature in black ink that reads "Lowell P. Braxton".

Lowell P. Braxton
Director

SJD/sd

Enclosure:

cc Daron Haddock
Mary Ann Wright
Seth McCourt, Consol
Price Field Office

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SALT LAKE CITY UT 84114-5801

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MAY 15 2002

DIVISION OF
OIL, GAS AND MINING

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1. Article Addressed to:

TIM KIRSCHBAUM
CONSOLIDATION COAL COMPANY
P O BOX 566
SESSER IL 62884

2. Article Number (Copy from service label)

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PS Form 3811, July 1999

Domestic Return Receipt

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Division Order C/015/015-~~D~~02A

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C. Signature *x Charles T. Clark* Agent Addressee

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STATE OF UTAH
DIVISION OF OIL, GAS AND MINING

PERMITTEE

Consolidation Coal Company

Tim Kirschbaum, Environmental Eng.
P.O. Box 566
Sesser, Illinois 62884

PERMIT NUMBER C/015/015
DIVISION ORDER # 02A

ORDER & FINDINGS
OF
PERMIT DEFICIENCY

PURSUANT to R645-303-212, the DIVISION ORDERS the PERMITTEE, Consolidation Coal Company, to make the requisite permit changes enumerated in the findings of Permit Deficiency in order to be in compliance with the State Coal Program. These findings are to be remedied in accordance with R645-303-220.

FINDINGS OF PERMIT DEFICIENCY

A review of the current Mining and Reclamation Plan (MRP) and field investigations have revealed that certain planned activities associated with the 4th East Portal amendment are not adequately addressed. Conditions at the minesite may have varied from when the original plans were approved in 1990. Many of the surveys and studies upon which the original approval was based, were conducted over 12 years ago and must be updated or validated prior to proceeding with surface disturbing activities.

INFORMATION REQUIRED TO BE SUBMITTED BY REGULATION CITED

1. **R645-301-411.140** - A cultural resource (historical/archeological) survey must be done by a SHPO (State Historic Preservation Officer) approved consultant of the entire proposed 22 acre disturbance. The survey must be performed as required for SHPO clearance. You should contact Jim Dykman (801) 533-3555 when contracting with a consultant for this project. You can look for contractors at: <http://www.utah.org/history/Services/arcontracts.html>. Your completed report will be sent by OGM to the SHPO for review and determination of effect.
2. **R645-300-121.320 & R645-301-322** - The Division must contact the USFWS (U.S. Fish & Wildlife Service) for a list of species present within the area. Usually the list is the

same as that found at [http://www.utahcdc.usu.edu/ucdc/ViewReports/te cnty.pdf](http://www.utahcdc.usu.edu/ucdc/ViewReports/te_cnty.pdf). All species on this list will need to be addressed, but most likely the Wright fishhook cactus, last chance townsendia, and the Despain footcactus will require a site-specific survey. With this information the Division will continue Section 7 Consultation with the USFWS. All state listed sensitive species, and those birds protected by the Migratory Bird Treaty Act must be addressed with a site-specific survey likely required for the burrowing owl.

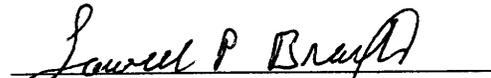
3. **R645-300-121.320 & R645-301-322** - The wetland delineation must follow a designated process. A person who has completed the U.S. Army Corps of Engineers (ACE) training must do a wetland delineation of the proposed disturbance. That person then fills out and the permittee submits an application for Nationwide Permit 21 to ACE. A determination by ACE is made and mitigation or other action then determined. This information and copies of the application should be included in an appendix to the MRP.
4. **R645-103-234** - Mining activities are planned to be conducted within 100 feet of a public road (Emery County Road #915). Approvals for this activity from the authority with the jurisdiction over the public road must be submitted to the Division. A notice also needs to be published in a local newspaper of general circulation which provides the public an opportunity to comment and hold a hearing. Copies of the notice must be supplied to the Division.
5. **R645-300-112.400** - The proposed road between the two permit area disturbances must be evaluated to determine whether or not it is required to be permitted under the Utah Coal rules. In order for the road to not be permitted it must be demonstrated that the particular road is not included in the definition of "surface coal mining operations". To make the determination, the Division must have the following information.
 - A legal description of the road right-of-way.
 - Name or numerical designation for the road.
 - Land ownership for the road/right-of-way.
 - Name of the entity responsible for the alignment, construction, maintenance and liability for the road.
 - Name of the entity responsible for environmental permitting of the road.
 - Construction standard for the road, and the entity responsible for attaining this standard.
 - Maintenance schedule for the road.
 - Source of funds for construction and/or maintenance of the road.
 - Examples of similar roads in Carbon and Emery Counties.
 - Will Consolidation Coal Company have the ability to deny use of the road? If yes, please provide a legal description for the portions of the road that are subject to exclusive use by Consolidation Coal Company. Also, please provide the basis for the exclusive use.

No surface disturbance for this road may occur until this issue is resolved.

ORDER

Consolidation Coal Company is ordered to make the requisite permit submittal, in accordance with R645-303-220 and to submit a complete and adequate application for permit change to address this findings of permit deficiency within 45 days of the date of receipt of this Order.

Ordered this 3rd day of May, 2002, by the Division of Oil, Gas, and Mining.



Lowell P. Braxton, Director
Division of Oil, Gas and Mining