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APR 19 2004

**SECRETARY, BOARD OF
OIL, GAS & MINING**

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April 19, 2004

BY HAND DELIVERY

State of Utah
Board of Oil, Gas & Mining
c/o Mary Potter, Secretary to the Board
1594 West North Temple, Suite 1210
Salt Lake City, Utah 84111-5801

*McCombs
c/015/0015*

**Re: Consolidation Coal Company - Request for Agency Action, Request for Hearing,
and Notice of Appeal – Mine Permit No. C/015/0015**

Docket No. _____

Cause No. _____

Dear Mary:

Enclosed for filing please find a bond original, plus 14 additional copies of a document entitled Request for Agency Action, Request for Hearing and Notice of Appeal in connection with Utah Division of Oil, Gas & Mining, Mine Permit No. C/015/0015.

Pursuant to the requirements of UCA 40-10-14 and the provisions of R645-300-211 and 212.100, it would appear that a Hearing on this matter must be held within 30 days of the Board's receipt of this Request. I would appreciate it if you would have the appropriate member of the Board's staff contact me with regard to the scheduling of that Hearing.

Oregon
Washington
California
Utah
Idaho



State of Utah
April 19, 2004
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If you have any questions or concerns with regard to this filing, please do not hesitate to call.

Very truly yours,

John S. Kirkham

JSK/jse

cc: John Gefferth

Jonathan M. Pachter

Division of Oil, Gas & Mining (Certified Mail, Return Receipt Requested)

c/o Mr. Lowell P. Braxton

Department of Oil, Gas & Mining

P.O. Box 145801

Salt Lake City, UT 84114-5801

FILED

APR 19 2004

BEFORE THE BOARD OF OIL, GAS AND MINING

SECRETARY, BOARD OF
OIL, GAS & MINING

DEPARTMENT OF NATURAL RESOURCES

STATE OF UTAH

IN THE MATTER OF THE REQUEST
FOR AGENCY ACTION OF
CONSOLIDATION COAL COMPANY
INVALIDATING CERTAIN PROVISIONS
OF THE 4TH EAST PORTAL
AMENDMENT APPROVED BY THE
DIVISION OF OIL, GAS AND MINING,
PERMIT NO. C/015/0015

**REQUEST FOR AGENCY ACTION,
REQUEST FOR HEARING
AND
NOTICE OF APPEAL**

Docket No. _____

Cause No. _____

CONSOLIDATION COAL COMPANY ("Petitioner"), by and through its attorneys John S. Kirkham and Richard R. Hall of Steel Rives LLP, hereby files a notice of appeal, requests a hearing and petitions the Board of Oil, Gas and Mining ("Board") in accordance with Utah Administrative Rule R641-104-100, for an Order invalidating certain provisions of the amendment to the Emery Deep Mine Mining and Reclamation Plan (Permit No. C/015/0015) approved by notification letter dated March 18, 2004 ("Approval Letter") requiring the implementation of certain air quality control measures.

OPENING STATEMENT

Certain air quality control measure requirements mandated by the Division of Oil, Gas and Mining (the "Division") in the 4th East Portal Extension Amendment to the Emery Deep Mine Mining and Reclamation Plan (the "Amendment") exceed the jurisdictional authority of the

Division under UCA 40-10-1 et seq. and therefore should be invalidated. Air quality and the regulation and implementation of air quality control measures such as those mandated by the Division in the Amendment fall under the jurisdiction of the Utah Department of Air Quality (“UDAQ”), not the Division.

Petitioner alleges on information and belief that the Division, knowing that Petitioner was under pressure to obtain approval of the Amendment, willfully attempted to expand its jurisdiction and impose air quality requirements on Petitioner that are beyond the legal requirements imposed by the statutes and regulations of either the Division or UDAQ. Petitioner requests that the Board take action to rescind such action by the Division.

REQUEST

In support of the Request for Agency Action (sometimes “Petition” or “Request”), Petitioner alleges as follows:

1. The Board has jurisdiction over the subject matter of this Petition pursuant to the provisions of Sections 40-10-6; 40-10-6.7 and 40-10-14, Utah Code Annotated, and has jurisdiction over all parties interested therein.
2. Petitioner is a corporation duly authorized to transact business in the State of Utah.
3. The land covered by this Petition, the 4th East portal facility (“4th East portal”), is located in Section 27, Township 22 South, Range 6 East, Salt Lake Meridian. The bonded area associated with the 4th East portal is approximately 16.5 acres. The 4th East portal is part of the Emery Deep Mine operation in Emery County, Utah.
4. The Division derives its authority from the Surface Mining Control and Reclamation Act of 1977 (“SMRCA”), and its Utah counterpart found at UCA 40-10-1 et seq.

5. Regulation of air quality matters is assigned to the Utah Division of Air Quality under UCA 19-2-101 et seq. UDAQ regulation R307-205-5 specifically authorizes the agency to regulate mining activities and the associated fugitive dust.

6. The Division approved Petitioner's request for construction of the 4th East portal escapeway in 1990. A subsequent amendment allowing for a loadout facility was submitted and approved in 2002. The anticipated facility on the property was not constructed by Petitioner until 2002.

7. On January 9, 2003, the Emery Mine was issued Notice of Violation N03-39-1-1 ("NOV") for allowing coal fines to blow onto undisturbed areas in and around the 4th East portal. Petitioner submitted a dust control plan to the Division in April 2003 setting forth certain mitigation measures to control the airborne coal fines. The Division determined the mitigation measures set forth in Petitioner's April 2003 dust control plan to be ineffective.

8. To address the issues cited in the NOV, the Division prepared three Technical Analysis (the "TAs") dated October 10, 2003 ("TA #1692"), December 10, 2003 (TA #1762") and February 18, 2004 ("TA #1819") directing Petitioner to undertake certain corrective actions. (Respectively Exhibits A, B and C). The TAs reference the regulation section that purportedly provided the Division the authority to require the actions. Among the mandated actions, the Division required Petitioner implement fugitive dust measures.

9. Under the direction of the Division, Petitioner developed and submitted a second dust control plan in accordance with the TAs and as part of the Amendment on September 12, 2003. Appendix X.C-3 to the Amendment describes Phase 1 of the engineering controls and other measures to be implemented at the 4th East portal. The dust control plan includes wind fences, watering devices, crusher replacement, operation enclosures, and maintenance plans. Appendix

X.C-3 indicates that an additional control strategy, Phase 2, would be implemented should Phase 1 be deemed unsuccessful.

10. On or before July 22, 2003, the Division became aware that Petitioner had entered into an agreement regarding the potential sale of the Emery Mine, including the area of the 4th East portal. The Division was also aware of the necessity on the part of the Petitioner that the NOV be abated before any sale of the Emery Mine could be completed.

11. As a condition of approval of the Amendment and the included second dust control plan, the Division required Petitioner include those air quality control measures in the plan as set forth in Appendix X.C-3. In addition, the Division required Petitioner install and operate a weather station, the data from which would be submitted in Petitioner's annual report to the Division.

12. Prior to approval of the Amendment, Petitioner verbally contested the Division's inclusion of the air quality control measures set forth in Appendix X.C-3, as well as the requirement that Petitioner install and operate a weather station on-site.

13. Aware that a failure to abate the NOV would adversely affect Petitioner's ability to sell the Emery Mine, the Division refused to redact those provisions of the Amendment that mandated air quality control measures.

14. In light of the prospective sale of the Emery Mine, and the need to expeditiously abate the NOV, Petitioner submitted the required air quality measures to the Division in the Amendment. The contested Approval Letter requires the implementation of those air quality control measures. Among the air quality control measures contested by Petitioner are those described in Exhibit "D". Petitioner reserves the right at the hearing to introduce other air quality control measures that should be redacted from the Amendment.

15. The Division conditionally accepted the Amendment on February 20, 2004.

Petitioner received Final Approval of the Amendment by letter dated March 18, 2004.

16. Petitioner has attempted to identify all parties potentially interested in this action.

Upon information and belief, the Division is the only entity known to have a direct interest in the requested agency action.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this matter be set for hearing, that due notice be given as required by law, and that following said hearing, this Board enter its Order:

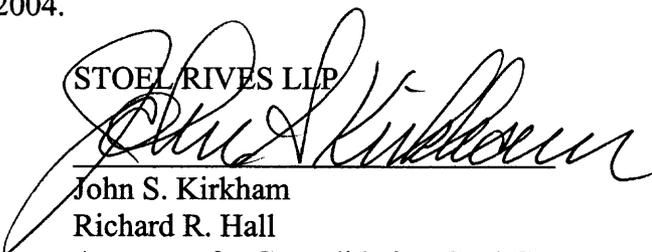
(a) invalidating the provisions of the Amendment to the Emery Deep Mine Mining and Reclamation Plan, including but not limited to Appendix X.C-3, the air quality control measures identified on Exhibit "D" and any and all other requirements contained in the Amendment that mandate air quality control measures on the grounds that the mandated air quality control provisions exceed the authority and jurisdiction of the Division and were obtained through improper coercive means on the part of the Division.

(b) confirm the approval the remaining portions of the Amendment to the Emery Deep Mine Mining and Reclamation Plan as approved by notification letter dated March 18, 2004.

Petitioner requests that the Board grant such other relief as it may deem proper.

DATED this 19th day of April, 2004.

STOEL RIVES LLP


John S. Kirkham

Richard R. Hall

Attorneys for Consolidation Coal Company

201 S. Main Street, Suite 1100

Salt Lake City, Utah 84111

Telephone: (801) 328-3131

Address of Petitioner:

John Gefferth, Permit Coordinator
Consolidation Coal Company
P.O. Box 566
Sesser, Illinois 62884

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Request for Agency Action, Request for Hearing and Notice of Appeal upon all parties of record in this proceeding by mailing a copy thereof, properly addressed, via certified mail, postage prepaid, to:

Mr. Lowell P. Braxton, Director
State of Utah
Department of Natural Resources
Division of Oil, Gas and Mining
1594 West North Temple, Suite 1210
P.O. Box 145801
Salt Lake City, Utah 84114-5801

DATED this 19th day of April, 2004.

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