

# TECHNICAL MEMORANDUM

## Utah Coal Regulatory Program

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January 22, 2009

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TO: Internal File

THRU: Joe Helfrich, Lead 

FROM: Priscilla Burton, Environmental Scientist, III/Soils. *pbm/sos*

RE: Transfer of Permit, CO-OP Mining Company, Bear Canyon Mine, C/015/025, Task ID # 3083, Outgoing File

### SUMMARY:

On August 4, 2008, the Division received a permit transfer application from Mark Reynolds of CO-OP Mining Company, which was returned with deficiencies (Task 3022). On October 3, 2008 a second application for permit transfer was received and returned deficient (Task 3070). On November 19, 2008 a third transfer of permit application was received and is being reviewed as Task 3083. Ultimately, the Division's approval of permit transfer from the current Permittee CO-OP Mining Co. (also known as C.W. Mining Co, federal identification # 87-0399230) to Hiawatha Coal Company, Inc. (federal ID #841418097) is subject to the bankruptcy court trustee's consent. This application was reviewed using the Utah Coal Rules for Transfer, Assignment, or Sale of Permit Rights, R645-303-300 and in accordance with OSM AVS System Advisory Memorandums #4, #6, and #7 which can be found at [http://www.avs.osmre.gov/Index\\_of\\_Documents.htm](http://www.avs.osmre.gov/Index_of_Documents.htm).

The following deficiencies were noted with the permit transfer application:

- R645-303-321.300 and R645-301-114.400**, The November 17, 2008 document certifying the departure date for C. Gustafson from Hiawatha Coal Co., Inc. must be signed.
- Provide the end date for Luana Kingston as Director of C.O.P. Coal Development Co. and the end date for J.D. Kinston as President of C.O.P. Coal Development Co. along with Secretary signature certifying the changes.
  - Is J.D. Kingston Jr. is the same as Joseph D. Kingston who was previously listed in the AVS database as President of C.O.P. Development Co?.
  - Is J.O. Kingston the

same J.O. Kingston who is listed in the AVS database as an officer with ANR Company? Is any connection between C.O.P. Coal Develop Co. and ANR Company? • Provide the end date for Carl E. Kingston who is listed in the AVS database as a Member of C.O.P. Coal Development Co. along with Secretary signature certifying the change.

**R645-303-321.300 and R645-301-121.200**, Chapter 1 makes several references to Co-Op Mining Co. and C.W.Mining with regards to surface ownership, right of entry, violation information, and insurance information. Please complete a word search on these sections of the MRP, Chapter 1 and replace all incorrect references with Hiawatha Coal Co. Inc.

**R645-303-321.300 and R645-301-133.300 et seq**, The application must include a list of all violation notices pertaining to air or water environmental protection or for any violation of a provision of SMCRA received by the Permittee during the three year period preceding the transfer application date. The violation list must include the information required by R645-301-113.310 through R645-301-113.350, as appropriate.

The following deficiencies are noted with the existing MRP and are written here to give the Applicant notification of the required changes to the MRP, but are not intended to delay the permit transfer:

**R645-303-321.300 and R645-112.800**, Section R645-301-112.500 and 112.600 of the MRP contains a legal description of the current lease area. The legal description of the lease area should be checked for accuracy. The Division notes that it does not include the NE1/4 of the NE1/4 of section 24, T. 16 S., R. 7 E, which was added to the permit area in 2002 with lease U-38727.

**R645-303-300 and R645-301-121.200**, Please clarify whether there are 10,920.54 acres as stated on Plate 1-1 or 10,991.83 acres within the permit/lease area (as stated in Sec. R645-301-112.500 and R645-301-112.600, page 1-6).

**TECHNICAL ANALYSIS:**

## **GENERAL CONTENTS**

### **IDENTIFICATION OF INTERESTS**

Regulatory Reference: 30 CFR 773.22; 30 CFR 778.13; R645-301-112

**Analysis:**

Chapter 1 provides information ownership and control of the Bear Canyon Mine. This permit transfer would change the Permittee from CO-OP Mining Co. (also known as C.W. Mining Co, federal identification # 87-0399230) to Hiawatha Coal Company, Inc. (a Utah corporation with federal ID #841418097) and is subject to the bankruptcy court trustee's consent.

The Hiawatha coal Company address, phone number, and a list of officers and directors are provided in Section R645-301-112 of the MRP. By definition, the owner of the coal lease is presumed to have ownership or control over the Lessee (see R645-100-200. Definitions) and therefore the officers and directors of C.O.P. Coal Development Co. have been provided.

The contact information is provided for the resident agent, Elliot Finley.

The application states that Hiawatha Coal Co. Inc. also holds the permit for the Hiawatha Mine Utah permit C/007/011.

**Findings:**

The information provided does not meet the requirements for identification of interests requirements of the Regulations. Prior to approval, the Permittee must provide the following information in accordance with:

**R645-303-321.300 and R645-301-114.400**, The November 17, 2008 document certifying the departure date for C. Gustafson from Hiawatha Coal Co., Inc. must be signed. •Provide the end date for Luana Kingston as Director of C.O.P. Coal Development Co. and the end date for J.D. Kinston as President of C.O.P. Coal Development Co. along with Secretary signature certifying the changes. •Is J.D. Kingston Jr. is the same as Joseph D. Kingston who was previously listed in the AVS database as President of C.O.P. Development Co?. •Is J.O. Kingston the same J.O. Kingston who is listed in the AVS database as an officer with ANR

**TECHNICAL MEMO**

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Company? Is there any connection between C.O.P. Coal Develop Co. and ANR Company? Provide the end date for Carl E. Kingston who is listed in the AVS database as a Member of C.O.P. Coal Development Co. along with Secretary signature certifying the change.

**R645-303-321.300 and R645-301-121.200**, Chapter 1 makes several references to Co-Op Mining Co. and C.W.Mining with regards to surface ownership, right of entry, violation information, and insurance information. Please complete a word search on these sections of the MRP, Chapter 1 and replace all incorrect references with Hiawatha Coal Co. Inc.

## **VIOLATION INFORMATION**

Regulatory Reference: 30 CFR 773.15(b); 30 CFR 773.23; 30 CFR 778.14; R645-300-132; R645-301-113

### **Analysis:**

The Division conducted a check of the AVS system on January 22, 2009 and found no reports of violations for COP Development or Hiawatha Coal Co., Inc.

Violation information provided in Appendix 1-A of the MRP is dated 2006 and must be updated to include the past three years of violation information for any law rule or regulation pertaining to air or water environmental protection or for any violation of a provision of the Act incurred in connection with the Bear Canyon Mine.

A fine was paid for failure to conduct water monitoring vilatin number #10020.

A proposed assessment went out on December 11, 2008 for \$2,970 for water monitoring violation #10031. The Permittee requested an assessment conference on December 23, 2008. The conference is scheduled for 1/27/09.

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### **Findings:**

The information provided in the application does not meet the violation reporting requirements of the regulations. Prior to approval, the Permittee must provide the following information in accordance with:

**R645-303-321.300 and R645-301-133.300 et seq**, The application must include a list of all violation notices pertaining to air or water environmental protection or for any violation of a provision of SMCRA received by the Permittee during the three year period preceding the transfer application date. The violation list must

include the information required by R645-301-113.310 through R645-301-113.350, as appropriate.

## **RIGHT OF ENTRY**

Regulatory Reference: 30 CFR 778.15; R645-301-114

### **Analysis:**

Hiawatha Coal Co. Inc has acquired right of entry to the surface and subsurface federal coal leases U-020668, U-024316, U-024318, U-38727, U-46484, U-61048, and U-61409 from C. O. P. Coal Development Co, by letter dated August 19, 2008 (App. 1B, page19 and 20). Federal lease documents are provided in Appendix 1E.

### **Findings:**

The information provided in the application meets the requirements for right of entry.

## **LEGAL DESCRIPTION AND STATUS OF UNSUITABILITY CLAIMS**

Regulatory Reference: 30 CFR 778.16; 30 CFR 779.12(a); 30 CFR 779.24(a)(b)(c); R645-300-121.120; R645-301-112.800; R645-300-141; R645-301-115.

### **Analysis:**

Section R645-301-112.500 and 112.600 of the application contains a legal description of the current lease area. The legal description of the lease area does not include the NE1/4 of the NE1/4 of section 24, T. 16 S., R. 7 E, which was added to the permit area in 2002 with lease U-38727.

The operations are not within 100 feet of a public road. The operations are within 300 feet of three occupied dwellings owned by C.O.P. Coal Development Co (Plate 3-3). Appendix 1-F contains waiver letters from the owners and occupants of these buildings.)

There is no portion of the area permitted within an area designated as unsuitable for mining (MRP, Sec. R645-301-115). The Division is unaware of any study or petition for designation as unsuitable.

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TECHNICAL MEMO

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**Findings:**

The information provided in the application does not meet the information requirements for the Division to determine the status of unsuitability. Prior to approval, the Permittee must provide the following, information in accordance with:

**R645-303-321.300 and R645-112.800**, Section R645-301-112.500 and 112.600 of the MRP contains a legal description of the current lease area. The legal description of the lease area should be checked for accuracy. The Division notes that it does not include the NE1/4 of the NE1/4 of section 24, T. 16 S., R. 7 E, which was added to the permit area in 2002 with lease U-38727.

**PERMIT TERM**

Regulatory References: 30 CFR 778.17; R645-301-116.

**Analysis:**

The permit was originally issued in 1985. The current permit was issued November 2, 2005 to Co-Op Mining Co. (aka CW Mining) and expires in 2010. There were no special conditions placed on this permit other than using the electronic water monitoring database. The previous special condition regarding monitoring of groundwater inflows into Mine #1 was removed when the Permittee notified the Division that reclamation of Mine #1 was initiated on December 13, 2003 (2003Incoming folder, document 0037.pdf).

A new reclamation agreement was provided to the Applicant (2008\Outgoing document 0045.pdf).

**Findings:**

A new permit will be issued as a result of this transfer.

**PUBLIC NOTICE AND COMMENT**

Regulatory References: 30 CFR 778.21; 30 CFR 773.13; R645-300-120; R645-301-117.200.

**Analysis:**

Public notice was provided on a single day, July 1, 2008, in the "Sun Advocate." An affidavit of publication has been provided in Appendix 1-D. R645-303-322 does not place any time frame on the advertisement. The Utah Attorney General's office has been in correspondence with the bankruptcy court concerning this transfer of permit (2008 Incoming document 0073.pdf).

Appendix 1-C contains a general liability insurance policy for Hiawatha Coal Co. AIG is the insurer who provides coverage for the Permittee through the Bear Canyon Mine. The most recent policy is on file (2009 Incoming document #0003.pdf).

**Findings:**

The information provided meets the requirements for public notice and liability insurance requirements of the Regulations.

**FILING FEE**

Regulatory Reference: 30 CFR 777.17; R645-301-118.

**Analysis:**

A filing fee is not required for this type of application.

**Findings:**

The information provided in the application is adequate to meet the requirements of this section of the regulations.

**ENVIRONMENTAL RESOURCE INFORMATION**

Regulatory Reference: Pub. L 95-87 Sections 507(b), 508(a), and 516(b); 30 CFR 783., et. al.

**PERMIT AREA**

Regulatory Requirements: 30 CFR 783.12; R645-301-521.

TECHNICAL MEMO

**Analysis:**

There are either 10,920.54 (Plate 1-1) or 10,991.83 acres within the permit/lease area (Sec. R645-301-112.500 and R645-301-112.600, page 1-6). The lease area is shown on all maps and categorized by ownership of surface and minerals in Table 1-3. Plate 1-1 provides the key to understanding Table 1-3. The permit area has the following boundaries:

Township 16 South, Range 7 East, SLBM

- Section 13: W1/4
- Section 14: S1/2, NE1/4
- Section 23: E1/2, E1/2 W1/2
- Section 24: ALL
- Section 25: ALL
- Section 26: NE1/4 NE1/4, NW1/4 NE1/4, N1/2 SW1/4 NE1/4, and cherry stem of the mine access road through the SE1/4 NE1/4

Township 16 South, Range 8 East, SLBM

- Section 19: S1/2 NW1/4, SW1/4, SW1/4 SE1/4
- Section 30: W1/2, W1/2 NE1/4, NW1/4 SE1/4
- Section 31: NE1/4 NW1/4, NW1/4 NE1/4

Disturbed area boundaries are shown on Plates 5-2, and shown in Table 1-4. The surface acreage disturbed by the mine encompasses approximately 40.46 acres.

**Findings:**

The information provided in the application does not clearly indicate the lease area. Prior to approval, please provide the following in accordance with:

**R645-303-300 and R645-301-121.200**, Please clarify whether there are 10,920.54 acres as stated on Plate 1-1 or 10,991.83 acres within the permit/lease area (as stated in Sec. R645-301-112.500 and R645-301-112.600, page 1-6).

## RECLAMATION PLAN

## BONDING AND INSURANCE REQUIREMENTS

Regulatory Reference: 30 CFR Sec. 800; R645-301-800, et seq.

**Analysis:**

**General**

The surety bond on file for the Division was secured by Co-Op Mining (dba CW Mining) and covers Exhibit A, the permit area. Bonding for the Bear Canyon mine was recently reviewed and modified and approved on December 18, 2008 under a Task 3036. Hiawatha Coal Co., Inc. has until Monday, January 26, 2009 to secure a bond for the Bear Canyon Mine.

**Findings:**

Bonding for the Bear Canyon mine must be secured by Hiawatha Coal Co. prior to permit transfer.

**RECOMMENDATIONS:**

The application is not recommended for approval until several administrative details are cleared up as outlined in this memo.