

1993

Hidden Valley Coal Company v. Utah Board of Oil, Gas, and Mining, Utah Division of Oil, Gas, and Mining : Brief of Appellant

Utah Court of Appeals

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**UTAH COURT OF APPEALS
BRIEF**

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IN THE UTAH COURT OF APPEALS

HIDDEN VALLEY COAL COMPANY,	:	
Plaintiff and Appellant,	:	
v.	:	Case No. 930073-CA
The UTAH BOARD OF OIL, GAS & MINING and the UTAH DIVISION OF OIL, GAS & MINING,	:	Priority 14
Defendants and Appellants.	:	

BRIEF OF THE APPELLANT

On Appeal From the Third Judicial District Court
County of Salt Lake, State of Utah

The Honorable Glenn Iwasaki
Third District Court Judge

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FILED

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COURT OF APPEALS

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TABLE OF CONTENTS

STATEMENT OF JURISDICTION	i
ISSUES PRESENTED	i
STANDARD OF REVIEW	i
DETERMINATIVE STATUTES AND RULES	ii
STATEMENT OF THE CASE	iii
A. Nature of the Case	iii
B. Course of Proceedings Below and Disposition at the Agency	iv
STATEMENT OF THE FACTS	vi
SUMMARY OF THE ARGUMENT	x
ARGUMENT	1
I. THE DIVISION HAS NOT ESTABLISHED A <i>PRIMA FACIE</i> CASE IN SUPPORT OF ITS NOV	1
A. The Division Did Not Establish Part 1 of Its NOV	1
1. Substantial Evidence was Not Introduced by the Division that the Diversions at the Mine Site were Unstable	2
2. Substantial Evidence was Not Introduced by the Division that HVCC Failed to Minimize Erosion to the Extent Possible	2
B. The Division Did Not Establish Part 2 of Its NOV	4
1. Substantial Evidence was Not Introduced by the Division that HVCC Failed to Mark Disturbed Areas With Perimeter Markers	5

2.	Substantial Evidence was Not Introduced by the Division that HVCC Failed to Seed and Revegetate all Disturbed Areas	6
II.	THE DIVISION IS EQUITABLY ESTOPPED FROM ISSUING ITS NOV AND PENALTY ASSESSMENTS	8
A.	All Three <i>Plateau Mining</i> Elements of Equitable Estoppel Are Present In This Case	18
1.	The Division's Admissions, Statements and Acts Are Inconsistent With Their November, 1991 NOV and Penalty Assessment	18
2.	HVCC Has Conducted Itself According to the Division's Admissions, Statements and Acts	20
3.	HVCC Will Be Injured as a Result of Allowing the Division to Contradict or Repudiate Their Admissions, Statements and or Acts	20
B.	Circumstances in This Case Justify an Application of the Governmental Exception to the Doctrine of Equitable Estoppel	21
1.	Manifest Injustice Will Result if the Division is Allowed to Enforce Its NOV and Penalty Assessment	22
2.	Applying Equitable Estoppel in this Case Will Not Impair the Division's Powers	24
III.	THE NOV IS BARRED BY THE TWO-YEAR STATUTE OF LIMITATIONS SET FORTH AT UTAH CODE ANN. 40-8-9(2) (1987)	25
A.	The Board's Order is Inconsistent with State Regulations Specifically Incorporating a Two Year Statute of Limitations	25
B.	The Violations at the Mine Site are not Continuing	28
	CONCLUSION	30

TABLE OF AUTHORITIES

CASES

<i>Anderson v. Public Service Comm'n of Utah</i> , 839 P.2d 822 (Utah 1992)	17, 22, 23
<i>Celebrity Club, Inc. v. Utah Liquor Control Comm'n</i> , 602 P.2d 689 (Utah 1979) .	17, 23-25
<i>Cowling v. Bd. of Oil, Gas and Mining</i> , 830 P.2d 220 (Utah 1991)	ii
<i>Ehlers & Ehlers v. Carbon County</i> , 805 P.2d 789 (Utah Ct. App. 1991)	17
<i>Gottfredson v. Utah State Retirement Bd.</i> , 808 P.2d 153 (Utah Ct. App. 1991)	ii, 25
<i>Grace Drilling Co. v. Bd. of Review</i> , 776 P.2d 63 (Utah Ct. App. 1989)	3
<i>Guaranty Trust Co. v. United States</i> , 304 U.S. 126 (1938)	27
<i>Hackett v. City of Ottawa</i> , 99 U.S. 86 (1878)	22-24
<i>Hobson's Choice and Similar Practices in Federal Taxation</i> , 48 Harv. L. Rev. 1281(1935)	22
<i>Intersouth Mineral v. OSM</i> , IBLA 89-248 (Feb. 19, 1991)	1
<i>Johnson v. Bd. of Review</i> , 198 Utah Adv. Rep. 67 (Oct. 23, 1992)	3
<i>Mendez v. State Dep't of Social Services</i> , 813 P.2d 1234 (Utah Ct. App. 1991) .	17, 21, 22
<i>Morgan v. Bd. of State Lands</i> , 549 P.2d 695 (Utah 1976)	18
<i>Nat'l Wildlife Found. v. Lujan</i> , 950 F.2d 765 (D.C. Cir. 1991)	21
<i>Plateau Mining v. Utah Div. of State Lands</i> , 802 P.2d 720 (Utah 1990)	17, 18, 20, 21
<i>Prows v. State</i> , 822 P.2d 764 (Utah 1991)	22
<i>Railway Telegraphers v. Railway Express Agency</i> , 321 U.S. 342 (1944)	27
<i>Rith Energy, Inc. v. OSMRE</i> , 119 IBLA 83 (1991)	1
<i>State v. Sponburgh</i> , 401 P.2d 635 (Wash. 1965)	25

<i>United States v. Graham</i> , No. 87-1843, 1989 WL 248111 (W.D. Penn. July 20, 1989) . . .	28
<i>United States v. Kubrick</i> , 444 U.S. 111 (1979)	27
<i>United States v. Lueking</i> , 125 B.R. 513 (E.D.Tenn. 1990)	27
<i>United States v. McCune</i> , No. C-2-87-1387 (S.D. Ohio, Dec. 13, 1989)	27
<i>Utah State University v. Sutro & Co.</i> , 646 P.2d 715 (Utah 1982)	17, 22, 23
<i>Wood v. Carpenter</i> , 101 U.S. 135 (1879)	27

STATUTES

30 U.S.C. § 1201 <i>et seq.</i>	iii
Utah Code Ann. § 40-6-1 <i>et seq.</i>	vi
Utah Code Ann. § 40-8-1 <i>et seq.</i>	iii, vi
Utah Code Ann. § 40-8-9 (1987)	i, 25, 26
Utah Code Ann. § 40-10-1 <i>et seq.</i>	ii, iii, vi, 26
Utah Code Ann. § 40-10-4 (1979)	i, 26
Utah Code Ann. § 40-10-20 (1986)	21
Utah Code Ann. § 40-10-22 (1981)	21
Utah Code Ann. § 40-10-30 (1986)	i, iii, v, vi
Utah Code Ann. § 78-2-2 (1992)	i

RULES

30 C.F.R. Part 700 <i>et seq.</i> (1991)	iii
Utah Admin. R. 613-1-101 <i>et seq.</i>	iii
Utah Admin. R. 613-5-111 (1991)	iii

Utah Admin. R. 614-1A (1991)	iii
Utah Admin. R. 614-1Q-900 (1991)	26
Utah Admin. R. 614-300 (1991)	iii
Utah Admin. R. 614-301-354 (1991)	7, 28
Utah Admin. R. 614-301-521.251 (1991)	x, 5, 28
Utah Admin. R. 614-301-742.113 (1991)	x, 3, 28
Utah Admin. R. 614-301-742.312.1 (1991)	x, 2, 4, 28
Utah Admin. R. 614-401-760 (1991)	iv
Utah Admin. R. 614-401-762 (1991)	iv
Utah Admin. R. 614-402 (1991)	iii

OTHER AUTHORITIES

Berger, <i>Estoppel Against the Government</i> , 21 U. Chi. L. Rev. 680, 686 (1954)	17
Davis, <i>Administrative Law of the Seventies</i> , § 17.01	17
Newman, <i>Should Official Advice Be Reliable? -- Proposals as to Estoppel and Related Doctrines in Administrative Law</i> , 53 Colum. L. Rev. 374 (1953)	17

STATEMENT OF JURISDICTION

This Court has jurisdiction over this appeal pursuant to Utah Code Ann. § 78-2-2(3)(e)(iv) (1992) and Utah Code Ann. § 40-10-30 (3) (1986).

ISSUES PRESENTED

The issues presented for consideration by the Court are:

1. Has the Board erroneously interpreted and applied UCMRA in its finding that the Division established a *prima facie* case supporting with substantial evidence its issuance of the NOV and that HVCC failed to rebut the Division's case?
2. Has the Board erroneously interpreted and applied UCMRA and Utah law in its finding that the Division was not estopped in the enforcement of its NOV after it had repeatedly found the Mine Site to be in compliance and had approved HVCC's reclamation activities for a Phase I bond release?
3. Has the Board erroneously interpreted and misapplied Utah Code Ann. § 40-8-9(2) (1987) and Utah Code Ann. § 40-10-4 (1979) and the rules promulgated thereunder in its determination that a two-year statute of limitations did not apply to bar the issuance of the NOV?

STANDARD OF REVIEW

The standard of review is statutory. Appeals taken from an order of the Board of Oil, Gas and Mining under Title 40 Chapter 10 is on the record and not a trial *de novo*. Utah Code Ann. § 40-10-30 (1986). 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 a 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 on a clearly erroneous interpretation or application of the law; or
- (f) as to an adjudicative proceeding, unsupported by substantial evidence on the record.

Id.

Further, *Cowling v. Bd. of Oil, Gas and Mining*, 830 P.2d 220 (Utah 1991) recently held that "[w]hen a lower court reviews an 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." *Id.* at 223. If the reviewing court is reviewing an issue of law, a "correction-of-error standard" is applied, to which the agency's conclusions are not extended deference. *Gottfredson v. Utah State Retirement Bd.*, 808 P.2d 153, 154 (Utah Ct. App. 1991).

DETERMINATIVE STATUTES AND RULES

The applicable statutes are contained in:

- (1) Utah Code Ann. § 40-10-1 *et seq.*, (Utah Coal Mining Reclamation Act, "UCMRA");

(2) Utah Admin. R. 614-1A; (Chapter I. UMC Regulations Pertaining To Surface Effects of Underground Coal Mining Activities (1991)); Utah Admin. R. 614-300 - R. 614-402 (1991);

(3) Utah Code Ann. § 40-8-1 *et seq.* (Utah Mined Land Reclamation Act);

(4) Utah Admin. R. 613-1-101 *et seq.* through Utah Admin. R. 613-5-111 (1991) (regulations under the Utah Mined Land Reclamation Act);

(5) 30 U.S.C. § 1201 *et seq.* (Surface Mining Coal Reclamation Act, "SMCRA");
and

(6) 30 C.F.R. Part 700 *et seq.* (1991) (regulations under SMCRA).

These statutes and regulations are reproduced in full in Addendum "A" through Addendum "G," attached hereto.

STATEMENT OF THE CASE

A. Nature of the Case.

This is a case of first impression under the Utah Coal Mining and Reclamation Act ("UCMRA"). Utah Code Ann. § 40-10-1 *et seq.* It involves HVCC's challenge to the Division's issuance of an NOV and civil penalties against it. The Division action was upheld by the Board on administrative review and, in part, by the Third Judicial District Court on judicial review. This appeal seeks appellate review of the Board Order against HVCC. This appeal is a review on the record rather than a trial de novo. Utah Code Ann. § 40-10-30 (1986).

B. Course of Proceedings Below and Disposition at the Agency.

On November 20, 1991, the Division issued Notice of Violation number 91-26-8-2, Parts 1 and 2 ("NOV") relating to reclamation activities at the Hidden Valley Mine ("the Mine Site") to HVCC. R.64-66; *see* Addendum "H." On December 17, 1991, the Division issued a proposed penalty assessment for the NOV of \$760.00 for Part 1 and \$460.00 for Part 2.

The NOV and the penalty assessment were informally reviewed by the Division on December 20, 1991 and an informal order upholding the NOV and penalty was issued on January 17, 1992. Utah Admin. R. 614-401-760 (1991). R.40-49; *see* Addendum "H." Under the rules of the Division, this informal order cannot be used as a basis for upholding the NOV or assessment on appeal. Utah Admin. R. 614-401-762 (1991).

On February 10, 1992, HVCC initiated an administrative appeal of the NOV and the assessment to the Board of Oil, Gas & Mining. HVCC paid the total penalty into escrow pending administrative review. On that same day, HVCC filed a petition with the Board for temporary relief from the abatement action ordered by the NOV. The Board granted temporary relief, extending the time for abatement to thirty days following the Board's entry of its written decision on the matter. On June 30, 1992, an evidentiary hearing was held. HVCC challenged the factual basis, jurisdiction and legal authority for issuance of the NOV and the penalty assessment. Both the Division and HVCC presented evidence and testimony to the Chairman of the Board acting as hearing examiner. On July 30, 1992, after considering the hearing examiner's proposed findings of fact and conclusions of law, the Board issued an Order

upholding the Division in its issuance of both parts of the NOV and the total penalty assessed for Part 1. R.432-438; *see* Addendum "J." The penalty assessment for Part 2 of the NOV was reduced from \$460 to \$330.

On August 27, 1992, HVCC filed an appeal for judicial review of the Board's Order to the Third District Court under Utah Code Ann. § 40-10-30 (1986). Despite HVCC's timely appeal, on September 3, 1992 the Division issued a Cessation Order ("CO") against HVCC's parent company requiring abatement action under the NOV. *See* Addendum "K." On September 3, 1992, HVCC requested the Board to issue an emergency order to preserve the *status quo* while HVCC sought judicial review. On September 9, 1992, the Board stayed the CO from date of issuance until September 10, 1992 to enable HVCC to seek appropriate judicial remedies or commence abatement action.

On September 11, 1992, the Third District Court issued a Temporary Restraining Order. After further hearing on September 30, 1992, this Court entered an order from the bench staying enforcement of the NOV and the CO pending judicial review of HVCC's appeal.

On October 29, 1992, the Third District Court, Honorable Glenn K. Iwasaki presiding, heard oral argument on the appeal issues which had been fully briefed by the parties. On November 5, 1992, that Court entered an Order upholding the Division with respect to the entire NOV except for the violation for failure to place perimeter markers, which the Court overturned. Addendum "L."

HVCC now appeals the Board's Order under Utah Code Ann. § 40-10-30 (1986). The Board's findings are not supported by substantial evidence. Notwithstanding the lack of evidence, the Division was estopped by its own conduct from violating HVCC for Mine Site conditions. A two-year statute of limitations barred Division action against HVCC.

STATEMENT OF THE FACTS

1. Defendants, the Utah Board of Oil Gas and Mining ("the Board") and the Utah Division of Oil, Gas & Mining ("the Division") are agencies of the Utah Department of Natural Resources, created and authorized under Utah Code Ann. § 40-6-1 *et seq.*, Utah Code Ann. § 40-8-1 *et seq.* and Utah Code Ann. § 40-10-1 *et seq.*

2. Plaintiff Hidden Valley Coal Company ("HVCC") is a Utah corporation which owns a coal property in Emery County, Utah, hereinafter referred to as the "Mine Site." (Permit No. ACT/015/007).

3. The Mine Site is located in a desert area with a "low annual rainfall making establishment of vegetation and top soil very difficult. There is a lot of exposed rock geographically. "The weather patterns are such that [the Mine Site gets] very infrequent severe rainfall." R.1195-1197. "The whole area [around the Mine Site], both the disturbed and undisturbed area[s], is basically void of vegetation." R.1195-1197.

4. In 1978 or 1979, HVCC's affiliate, Soldier Creek Coal Company, acquired the Mine Site and performed various analyses on the property to determine the feasibility of developing the Mine Site into a commercially viable coal mine. R.1146-1148.

5. The Mine Site has never been operated as a commercial venture. In fact, by August of 1980, it became evident to Soldier Creek that the commercial development of the Mine Site was not economically feasible and further development at the mine ceased. R.396-397; R.1147-1152. The minutes of the September 9, 1980 meeting of the Soldier Creek Management Committee reflect that the Company voted to temporarily suspend further development of the Mine. R.288-292.

6. In October, 1985, HVCC informed the Division of the sale of Soldier Creek and assumption of control of the Mine Site by HVCC, a wholly-owned subsidiary of California Portland Cement Company, and of the continuing responsibility of California Portland Cement Company for reclamation under the Interim Program. R.280. HVCC also advised the Division of its intent to reclaim the Mine. R.279.

7. On May 28, 1986, HVCC submitted a reclamation plan under the Permanent Program for review by the Division. *See* Addendum "M."

8. On December 12, 1986, the Division issued a final permit approval for reclamation of the Mine Site under the Permanent Program ("Reclamation Plan").

9. HVCC reclaimed the Mine Site in 1986. R.1153; R.1121.

10. Pursuant to the Reclamation Plan, HVCC contracted to have the site regraded, scarified and reseeded. R.1153.

11. Since 1986, HVCC has "conformed with all requests that have been made . . . to reclaim the property in the manner that was specified. [HVCC has] responded to all

suggestions for maintenance and basically done everything the Division has ever asked . . . since the site was initially reclaimed in [19]86." R.1157.

12. A Division memorandum dated June 1, 1988 indicates that a bond release inspection was conducted on May 24, 1988 and specifically states that "the access road, from the end of the paved county road to the mine site, was ripped, water bars constructed, and seeded and mulched." R.267.

13. Effective June 1, 1988, the Division approved a Phase I bond release for the Mine, reducing the reclamation bond by approximately 60% from \$ 171,515.00 to \$ 68,606.00 based upon completion of backfilling, grading, topsoil placement and reseeding in accordance with the approved reclamation plan. R.266.

14. By letter dated July 16, 1988 from the Division to HVCC, the Division states: "As a result of this inspection, the backfilling, grading, topsoil placement and drainage controls were determined complete." R.266. By letter dated June 16, 1988 from the Division to Emery County the Division states: "The reclamation bond will be reduced from \$171,515 to \$68,606 because backfilling, grading, installations of drainage controls and revegetation have all been done at the site." R.265. By letter dated July 17, 1988 from the Division to St. Paul Fire Insurance Company the Division states that HVCC's bond at the Mine may be reduced to \$68,606, due to the Phase I bond release. R.264.

15. At the time of the Phase I bond release, HVCC was in compliance at the Mine Site with the reclamation plan and all rules and regulations for that phase of reclamation work. R.1174; R.1110-1111; R.1125-1131.

16. The Division has inspected the Mine Site at least fifty-nine (59) different times since 1987. R.1183; R.1250; R.804-954; *see* Addendum "N". The Division's Inspection Reports always find the Mine Site to be in full compliance.

17. Prior to November 19, 1991, the Division made no indication whatsoever that any violation existed with respect to the Mine Site or the Reclamation Plan. R.1158-1159; R.1232-1233.

18. In fact, in April, 1991, William J. Malencik, a Reclamation Specialist for the Division, inspected the Mine Site. At that time the conditions at the Mine Site did not constitute a violation of any kind. R.1029-1037; R.935-936.

19. Again in May, 1991, William J. Malencik, a Reclamation Specialist for the Division, inspected the Mine Site. At that time the conditions at the Mine Site did not constitute a violation of any kind. R.1029-1037. In fact, "[o]n site conditions were substantially the same as covered in the previous inspection dated 4/20/91." R.937-938.

20. From 1987 - 1991 there has been insignificant, insubstantial change in the erosion conditions at the Mine Site. R.1192.

21. From 1987 - 1991 there have been no changes whatsoever in the placement of perimeter markers in disturbed areas. R.1232-1233.

22. Up to and until at least November 1, 1991, the Division records the Mine Site as in "good condition." R.952-954.

23. On or about November 19, 1991, the Division conducted another inspection of the Mine Site. R.955-957. On November 22, 1991, Notice of Violation 91-26-8-2 ("NOV") was issued by the Division to HVCC relating to reclamation of the mine access road. R.64-66; *see* Addendum "H." Part 1 of 2 alleges failure to maintain the stability of diversions and failure to minimize erosion to the extent possible under Utah Admin. R. 614-301-742.312.1 and 614-301-742.113 as to the road outslope and upslope. R.65. Part 2 of 2 was written for failure to clearly mark with perimeter markers all disturbed areas and failure to seed and revegetate all disturbed areas, under Utah Admin. R. 614-301-521.251 and 614-301-354 with respect to the road and stream disturbed outslopes and road upslopes. R.64.

24. The NOV was issued notwithstanding the fact that the conditions at the Mine Site have remained unchanged since 1986, since the bond release, and since at least fifty-nine (59) prior inspections.

SUMMARY OF THE ARGUMENT

The Board's findings which upheld the November 22, 1991 Notice of Violation were not based upon substantial evidence on the record and therefore should be reversed. The Division simply did not provide testimony or evidence to support its issuance of the NOV to Hidden Valley. There was virtually no testimony regarding the stability of diversions or the placement of perimeter markers. The Division did introduce testimony in support of its allegation that

erosion was occurring at the Mine Site, but did not produce substantial evidence, especially in light of other evidence and testimony at the hearing. Under the Administrative Rules, the Division had to show that HVCC did not minimize erosion *to the extent possible*. The Division did not make this showing. In addition, the Division did not show by substantial evidence that HVCC failed to reseeded disturbed areas. In fact, HVCC has reseeded disturbed areas and the Division has approved this action. The Division's testimony on this consisted of one man's *visual* observations. HVCC has reseeded to the extent possible. Since there was not substantial evidence to support the Division's Order of July 30, 1992, the Board's Order was in error.

Further, the Board erred when it found that the Division was not equitably estopped from violating HVCC with respect to the environmental conditions at the Mine Site. The Division gave HVCC fifty-nine (59) verbal and written representations that they were in compliance with all permit and performance standards. The Division released part of the reclamation bond. The Division told HVCC that the Mine Site was in "good condition." Notwithstanding all of these representations, the Division issued the NOV to HVCC without a change in environmental conditions or the law. HVCC relied on the representations of compliance and will be damaged by the enforcement of the NOV and CO against them. Therefore, the Board erred when it found that the Division was not estopped from issuing the NOV.

There is also a two-year statute of limitations that applies under UCMRA. However, the Board failed to apply this statute to the Division's enforcement action. This was an error of law and should be reviewed by this Court giving no deference to the Board's finding. Testimony

was introduced by HVCC which established that the statute existed and that Division has applied this statute in the past. Therefore, the statute of limitations should have been applied to bar the Division's NOV in this case.

ARGUMENT

I. THE DIVISION HAS NOT ESTABLISHED A *PRIMA FACIE* CASE IN SUPPORT OF ITS NOV.

The Division bears the burden of proof and must prove a *prima facie* case establishing the fact of the NOV and regarding its jurisdiction to issue the NOV. Similarly, the Division has the burden of establishing a *prima facie* case in support of its penalty assessment. R.967-968. *Intersouth Mineral v. OSM*, IBLA 89-248 (Feb. 19, 1991).¹ Only after the Division has made a *prima facie* showing does the focus of the proceeding shift to HVCC to carry the burden of persuasion regarding its defense. *Rith Energy, Inc. v. OSMRE*, 119 IBLA 83 (1991). In this case, the burden never shifted to HVCC due to the Division's failure to support its NOV with substantial evidence.

A. The Division Did Not Establish Part 1 of Its NOV.

The NOV in issue, NOV 91-26-8-2² was issued in two parts. Part 1 of the NOV was issued for:

- (a) failure to maintain diversions to be stable; and

¹All cases not found in Pacific Reporter, Federal Reporter, Federal Supplement or United States Reports are reproduced in order of citation in Addendum "O," attached hereto.

² See Addendum "H."

(b) failure to minimize erosion to the extent possible.

R.65. These violations were issued pursuant to Utah Admin. R. 614-301-742.312.1 (1991) and 614-301-742.113 (1991) and pertained to the road outslope and upslope. R.65.

1. Substantial Evidence was Not Introduced by the Division that the Diversions at the Mine Site were Unstable.

At the June 30, 1992 administrative hearing, the Division did not introduce any evidence that the diversions at the Mine Site were unstable. There is an utter lack of evidence in the record regarding diversions *except* for testimony presented by HVCC that diversions exist at the Mine Site which are stable. R.1200.

Utah Admin. R. 614-301-742.312.1 (1991) requires only that "[t]he diversion and its appurtenant structures will be designed, located, constructed, maintained and used to: . . . Be stable." Since no Division testimony was presented regarding stability, and no Division testimony refuted HVCC's evidence that the diversions are stable, there is not *any* evidence to support the Board's finding which upheld this portion of the NOV.

2. Substantial Evidence was Not Introduced by the Division that HVCC Failed to Minimize Erosion to the Extent Possible.

The Division introduced the following testimony that HVCC failed to minimize erosion at the Mine Site to the extent possible:

- * HVCC took "some steps" to minimize erosion which were not enough. R.989.
- * HVCC *could have taken* other steps to minimize erosion such as riprapping the channel and placing rock gabbions. R.1003-1004; 1247.

- * HVCC did not place "sufficient" soil and rocks into the gullies to minimize erosion. R.1011.
- * It is not impossible to control erosion at the Mine Site. R.1243.
- * The cutting of the access road increased the potential for erosion. R.992.³

This evidence is not substantial evidence. Substantial evidence is "such relevant evidence as reasonable minds might accept as adequate to support a conclusion." *Johnson v. Bd. of Review*, 198 Utah Adv. Rep. 67, 68 (Oct. 23, 1992) (quoting *Grace Drilling Co. v. Bd. of Review*, 776 P.2d 63, 68 (Utah Ct. App. 1989)). The evidence that the Division introduced to support the NOV cannot support a conclusion that HVCC did not implement "[a]ppropriate sediment control measures . . . designed, constructed and maintained using the best technology currently available to: . . . Minimize erosion to the extent possible." Utah Admin. R. 614-301-742.113 (1991). In fact, both the Division and HVCC introduced testimony which *discounts* a violation of Utah Admin. R. 614-301-742.113 (1991). This evidence includes:

- * The existing soil type at the Mine Site increases the likelihood of erosion. R.995. Accelerated erosion is caused by slope, lack of vegetation, amount of precipitation and high intensity runoff. R.1022-1023.
- * HVCC placed angular riprap rock at the top of the ephemeral drainage at the Mine Site to minimize erosion. R.1002; 1005.
- * HVCC placed a small rock check dam at the crest of the slope at the Mine Site to minimize erosion. R.1008.

³ The access road was constructed in 1980. R.674. The fact that the existence of the access road accelerates erosion is not helpful to the Division's burden since the Division allowed the access road to remain pursuant to HVCC's 1986 Reclamation Plan. R.1018. Furthermore, the road construction itself was approved by the Division. R.1023.

- * HVCC placed water bars and ripped the road to minimize erosion. R.1010.
- * HVCC performed regular routine hand shovel work maintenance of small erosion areas. R.1157.
- * HVCC performed significant repair work after a 1987 storm that exceeded the design standard of the Mine Site. R.1157. These repair measures included new water bars, new rock to place in gullies which were created from the runoff. R.1191. The entire road surface was ripped again to provide moisture retention capacity. R.1191. Revegetation was done. R.1191.
- * It would be a very difficult, if not impossible, engineering feat given the nature of the access road to structure a different condition at the Mine Site to minimize erosion on the access road. R.1197.
- * HVCC's 1986 Reclamation Plan, approved by the Division, sought to prevent only "significant erosion." See Addendum "M" at p. 21.

Reasonable minds could not accept the scanty testimony that HVCC *could have done other things* as adequate to support the conclusion that HVCC did not minimize erosion to the extent possible. It is important to note that HVCC did not need to prevent *all* erosion, HVCC just needed to "minimize" as best as possible. Substantial evidence was introduced by HVCC which supports a finding that HVCC minimized erosion at the Mine Site. The fact that HVCC could have done other things does not support a violation of the rule without testimony that the other measures would have gone further toward minimizing erosion. Therefore, it was error for the Board to uphold this portion of the NOV.

B. The Division Did Not Establish Part 2 of Its NOV.

Part 2 of the NOV was issued for:

- (a) failure to clearly mark with perimeter markers all disturbed areas; and

(b) failure to seed and revegetate all disturbed areas.

R.64. These violations were issued under Utah Admin. R. 614-301-521.251 (1991) and 614-301-354 (1991) with respect to the road and stream disturbed outslopes and road upslopes. R.64.

1. Substantial Evidence was Not Introduced by the Division that HVCC Failed to Mark Disturbed Areas With Perimeter Markers.

At the June 30, 1992 administrative hearing, the Division presented almost no evidence regarding the placement of perimeter markers at the Mine Site. Division Reclamation Specialist William Malencik merely recited the Rule that disturbed areas be marked. R.1013. Malencik admitted that the markers were on the road at the Mine Site. R.1015. Therefore, the Division did not present substantial evidence to support its NOV.

Even if the Board could have found support in this scant testimony for the NOV, HVCC presented witness Joe Jarvis who testified that:

The markers were placed after the reclamation was completed and were placed at the perimeter of all the reclaimed sites as they were defined as previously disturbed areas, and so the markers exist on both sides of the road, road bed and around the disturbed areas as defined by this map. They were placed in 1987.

R.1232. Jarvis also testified that in November, 1991 the markers were placed appropriately. R.1232-1233. This evidence refuted the Division claim that HVCC had failed to comply with Utah Admin. R. 614-301-521.251 (1991) which states that "[f]or purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, the perimeter of all areas affected by surface operations or facilities before beginning mining activities will be clearly marked."

[emphasis in original]. Therefore, there is no substantial evidence to support the Board's finding which upheld this portion of the NOV.

2. Substantial Evidence was Not Introduced by the Division that HVCC Failed to Seed and Revegetate all Disturbed Areas.

The Division introduced minimal, weak evidence regarding the seeding and vegetation at the Mine Site. This evidence consisted of testimony that William Malencik, the Division Reclamation Specialist, made a "visual inspection" of the Mine Site and did not see any seeds. R.1014.

This insubstantial evidence is contradicted by the following testimony:

- * HVCC reseeded areas that had been previously seeded. R.1157.
- * HVCC reseeded the road fill slopes and some small sites which required hand application of seed, mulch and fertilizer. R.204.
- * The outslopes are seeded. R.1237.
- * There is very little likelihood of getting vegetation established at the Mine Site. R.1196.

Further, in reviewing the Division's evidence, it is important note the fact that in 1989, HVCC amended its 1986 Reclamation Plan regarding reseeding and revegetation efforts. This revision was approved by the Division and states that:

During the 1989 work, it was decided not to do further revegetation work on the road surface, for the following reasons:

- 1) Each successive year of ripping the road surface to prepare the seedbed has had the negative effect of bringing large rock to the surface, while the desirable soil material has fallen into the voids. In localized areas, ripping the road continues to expose the coal

bedrock just under the road surface. These consequences of ripping have substantially decreased the suitability of the road surface as an adequate medium for plant growth. Ripping has also prevented the road from being suitable as a four-wheel drive road, as was permitted during the initial Reclamation Plan. It was felt that re-ripping the road would simply worsen these problems.

- 2) Observations of growth patterns on the road surface over three consecutive years indicates that the salinity of the soil may also be worsened by excessive disturbances such as ripping. It is thought that exposing new material to the surface, as well as creating conditions for excessive evaporation of soil moisture, has increased salinity of the already-saline soil material. It was felt prolonged exposure of the ripped soils to precipitation may leach some of the salts from the surfaces, as the ripping has provided adequate internal drainage. Also, the residue from successive seeding over the last few years has provided adequate seed when future conditions allow for germination. For the above reasons, it was felt that minimizing the disturbance on the road would be the best alternative at this time.
- 3) It appears that erosion from the road surface is adequately controlled, so additional ripping and reseeding is not necessary from a water quality standpoint.

See Addendum "M" at p. 51-a. Utah Admin. R. 614-301-354 (1991) provides that "[d]isturbed areas will be planted during the first normal period for favorable planting conditions after replacement of the plant-growth medium. The normal period for favorable planting is that planting time generally accepted locally for the type of plant materials selected." Since HVCC presented evidence that planting occurred at the Mine Site and that further efforts to revegetate were revised and approved by the Division itself in 1989, the Division's claim of a violation of Utah Admin. R. 614-301-354 (1991) was successfully refuted. Substantial evidence did not exist to uphold this portion of the NOV.

II. THE DIVISION IS EQUITABLY ESTOPPED FROM ISSUING ITS NOV AND PENALTY ASSESSMENTS.

Contrary to the Board's Order, HVCC has met all the elements necessary to establish estoppel. The Division repeatedly since 1987 has lulled HVCC into the belief that it was in full compliance with all SMCRA, UCMRA and regulatory laws. The Division filed "Inspection Reports" which state that no violations have existed at the Mine Site since the bond was released in 1988. As a result, HVCC has expended substantial sums of money to reclaim the Mine Site in accordance with the Division approved Reclamation Plan and has complied with all Division requests. Suddenly, and *without a change in Mine Site conditions or the law*, the Division issued a Notice of Violation to HVCC. The Division is equitably estopped from taking this action because it results in manifest injustice to HVCC.

Although the Mine Site was never operated as a coal mine, HVCC began reclamation of the Mine Site in 1986. The Mine Site was reclaimed in accordance with a Reclamation Plan approved by the Division. HVCC received a Phase I bond release in 1988 because " . . . the backfilling, grading, topsoil placement and drainage controls were determined complete." R.266. The Division has inspected the Mine Site at least fifty-nine (59) different times since 1987. R.1183; R.1250; R.804-954.⁴ The Division's inspection reports always found the Mine Site to be in full compliance. R.804-954.

⁴ All Inspection Reports are attached in Addendum "N."

- * 01/29/87: "Overall reclamation of the site looks good." R.816. Full compliance with permits and performance standards noted. R.815.
- * 04/02/87: Full compliance with permits and performance standards noted. R.817. NOV N87-11-1-1 issued for to repair a fence. R.818-819.
- * 04/21/87: Full compliance with permits and performance standards noted with the exception of the fence. R.820.
- * 05/04/87: Full compliance with permits and performance standards noted. R.822. The fence condition had been repaired. R.823.
- * 06/11/87: Full compliance with permits and performance standards noted. R.825.
- * 07/07/87: "The general mine area looks good." R.828. Full compliance with permits and performance standards noted. R.827.
- * 08/14/87: "The mine site area appears stable and looks good." R.830. Full compliance with permits and performance standards noted. R.820.
- * 09/03/87: Full compliance with permits and performance standards noted. R.831.
- * 10/06/87: Full compliance with permits and performance standards noted. R.833.
- * 10/21/87: Full compliance with permits and performance standards noted. R.835.

- * 12/08/87: "No problems were encountered." R.839. Full compliance with permits and performance standards noted. R.838.
- * 01/08/88: "No compliance problems were noted." R.841. Full compliance with permits and performance standards noted. R.840.
- * 02/12/88: Full compliance with permits and performance standards noted. R.842.
- * 03/08/88: Full compliance with permits and performance standards noted. R.844.
- * 04/06/88: "The site . . . looked in good shape and improvements were in place." R.847. Full compliance with permits and performance standards noted. R.846.
- * 05/24/88: "Overall, the reclaimed site looked good on this inspection." R.849. Full compliance with permits and performance standards noted. R.848.
- * 06/21/88: Full compliance with permits and performance standards noted. R.850.
- * 07/06/88: "No erosion problems were encountered." R.853. Full compliance with permits and performance standards noted. R.852.
- * 08/09/88: Full compliance with permits and performance standards noted. R.854.
- * 09/07/88: Full compliance with permits and performance standards noted. R.857.

- * 10/24/88: Full compliance with permits and performance standards noted.
R.860.
- * 11/07/88: Full compliance with permits and performance standards noted.
R.862.
- * 12/05/88: Full compliance with permits and performance standards noted.
R.865.
- * 01/04/89: Full compliance with permits and performance standards noted.
R.868.
- * 02/01/89: Full compliance with permits and performance standards noted.
R.871.
- * 03/07/89: Full compliance with permits and performance standards noted.
R.874.
- * 04/06/89: Full compliance with permits and performance standards noted.
R.876.
- * 04/19/89: Full compliance with permits and performance standards noted.
R.878.
- * 06/08/89: Full compliance with permits and performance standards noted.
R.881.
- * 07/05/89: "No violations were observed." R.886. Full compliance with permits
and performance standards noted. R.885.

- * 07/11/89: Full compliance with permits and performance standards noted.
R.887.
- * 08/31/89: Full compliance with permits and performance standards noted.
R.889.
- * 09/20/89: Full compliance with permits and performance standards noted.
R.892.
- * 10/19/89: Full compliance with permits and performance standards noted.
R.895.
- * 11/02/89: Full compliance with permits and performance standards noted.
R.898.
- * 12/15/89: Full compliance with permits and performance standards noted.
R.902.
- * 02/07/90: Full compliance with permits and performance standards noted.
R.904.
- * 03/23/90: Full compliance with permits and performance standards noted.
R.906.
- * 04/24/90: Full compliance with permits and performance standards noted.
R.908.
- * 05/18/90: Full compliance with permits and performance standards noted.
R.911.

- * 06/01/90: Full compliance with permits and performance standards noted.
R.913.
- * 07/19/90: Full compliance with permits and performance standards noted.
R.915.
- * 08/21/90: Full compliance with permits and performance standards noted.
R.917.
- * 09/27/90: Full compliance with permits and performance standards noted.
R.919.
- * 10/15/90: Full compliance with permits and performance standards noted.
R.921.
- * 11/08/90: Full compliance with permits and performance standards noted.
R.924.
- * 12/07/90: Full compliance with permits and performance standards noted.
R.926.
- * 12/13/90: "In general the site looked very good." R.929. Full compliance with
permits and performance standards noted. R.928.
- * 02/08/91: Full compliance with permits and performance standards noted.
R.930.
- * 03/21/91: "Generally, the site appeared unchanged from previous inspections."
R.934. Full compliance with permits and performance standards noted. R.933.

- * 04/26/91: Full compliance with permits and performance standards noted. R.935.
- * 05/07/91: "On site conditions were substantially the same as covered in the previous inspection dated 04/20/91." R.938. Full compliance with permits and performance standards noted. R.937.
- * 06/12/91: Full compliance with permits and performance standards noted. R.939.
- * 07/11/91: Full compliance with permits and performance standards noted. R.941.
- * 07/31/91: Full compliance with permits and performance standards noted. R.943.
- * 09/10/91: Full compliance with permits and performance standards noted. R.945.
- * 10/08/91: Full compliance with permits and performance standards noted. R.948.
- * 11/01/91: Full compliance with permits and performance standards noted. R.952.
- * 11/19/91: NOV 91-26-8-2 was issued for failure to maintain stable diversions, minimize erosion and failure to seed and mark all disturbed areas. R.955.

As indicated above, in as late as May, 1991 the Division made no indication whatsoever that any violation existed with respect to the Mine Site or the reclamation plan. R.1158-1159; R.1232-1233; R.1029-1037; R.935-936. From 1987 - 1991 there has been insignificant, insubstantial change in the erosion conditions at the Mine Site and no changes whatsoever in the placement of perimeter markers in disturbed areas. R.1192. HVCC has "conformed with all request that have been made . . . to reclaim the property in the manner that was specified. [HVCC has] responded to all suggestions for maintenance and basically done everything the Division has ever asked . . . since the site was initially reclaimed in [19]86." R.1157. Up to and until at least November 1, 1991, the Division records the Mine Site as in "good condition." R.952-954.

The Division did not introduce any evidence establishing that Mine Site conditions had changed since earlier inspections. Division expert William Malencik testified that on April 1, 1991 he did "not think a violation existed." R.1032; 1038. The Inspection Reports are true and accurate based upon the inspections performed by Division officials. R.1019-1020.

To counter HVCC's estoppel argument, the Division has argued that it "consistently warned Hidden Valley that erosion was a concern." *See* Third District Court Brief of Appellees, pp. 23, 25-26. The Division cited eight (8) occasions, out of a total of fifty-nine (59) inspections, when HVCC was purportedly "warned" of erosion problems in its monthly inspection reports.

Out of the fifty-nine (59) Inspection Reports, eight (8) noted "minor erosion," "watching for erosion" or "concern of erosion." *See* Third District Court Brief of Appellees, pp. 23, 25-26; R.831, 833, 835, 854, 889, 921, 924 and 935. However, in a harsh environmental setting setting such as Hidden Valley Mine, and in this specific location where there is no choice but for runoff water to be discharged down a steep, unengineered fill, the above-mentioned erosion problems are to be expected and are not significant, even in the Division's own wording and reports. In three of the eight citations, the Division simply says that "watching" or "monitoring" is required. Watching is a standard part of the maintenance and does not indicate a problem. In two of the eight citations, the erosion mentioned was due to extreme runoff events, not due to the negligence or lack of maintenance by HVCC. In another of the citations, the erosion is mentioned as being "minor." In another citation, only one water bar is mentioned as needing repair.

Given the above summary, the Division's characterization that it "continually warned" HVCC of erosion problems misstates both the severity of the problem and the level of Division concern over a five year period. Further, HVCC was very responsive to performing maintenance as needed to hold erosion in check to what they felt was an acceptable level given the site conditions. The Division Inspection Reports do not indicate otherwise until the NOV was issued.

Despite substantial evidence to the contrary, the Board erroneously concluded that the Division was not estopped from issuing the NOV and penalties in against HVCC. R.425. The Utah Supreme Court recently identified the following as the elements of equitable estoppel:

- (1) an admission, statement or act inconsistent with the claim afterwards asserted;
- (2) action by the other party on the faith of such admission, statement or act; and
- (3) injury to such other party resulting from allowing the first party to contradict or repudiate such admission, statement or act.

Plateau Mining v. Utah Div. of State Lands, 802 P.2d 720, 729 (Utah 1990). Generally, equitable estoppel may not be invoked against governmental entities such as the Division. *Mendez v. State Dep't of Social Services*, 813 P.2d 1234, 1236 (Utah Ct. App. 1991). However, an exception to this general rule exists⁵ where: (1) it is necessary to prevent manifest injustice; and (2) the exercise of governmental powers will not be impaired as a result of the application of estoppel. *Anderson v. Public Service Comm'n of Utah*, 839 P.2d 822, 827 (Utah 1992); *Mendez*, 813 P.2d at 1236 (quoting *Celebrity Club, Inc. v. Utah Liquor Control Comm'n*, 602 P.2d 689, 694 (Utah 1979); *Utah State University v. Sutro & Co.*, 646 P.2d 715, 718 (Utah 1982); and *Ehlers & Ehlers v. Carbon County*, 805 P.2d 789, 792 (Utah Ct. App.

⁵ ". . . [C]ourts are increasingly applying this exception, consistent with the trend toward holding government and its agencies more responsible for their actions." *Utah State University v. Sutro & Co.*, 646 P.2d 715, 718, n.4 (Utah 1982) (quoting Davis, *Administrative Law of the Seventies*, § 17.01; Berger, *Estoppel Against the Government*, 21 U. Chi. L. Rev. 680, 686 (1954); Newman, *Should Official Advice Be Reliable? -- Proposals as to Estoppel and Related Doctrines in Administrative Law*, 53 Colum. L. Rev. 374 (1953)).

1991)). Utah's appellate courts have increasingly approved the application of this exception in recent years.

The Utah Supreme Court established years ago that:

. . . Estoppel arises when a party (defendant Board) by his acts, representations, or admissions, or by his silence when he ought to speak, intentionally or through culpable negligence, induces another (plaintiffs) to believe certain facts to exist and that such other (plaintiffs) acting with reasonable prudence and diligence, relies and acts thereon so that he will suffer an injustice if the former (Land Board) is permitted to deny the existence of such facts.

Morgan v. Bd. of State Lands, 549 P.2d 695, 697 (Utah 1976) (emphasis added). "Estoppel is a doctrine of equity purposed to rescue from loss a party who has, without fault, been deluded into a course of action by the wrong or neglect of another." *Plateau Mining*, 802 P.2d at 728.

A. All Three *Plateau Mining* Elements of Equitable Estoppel Are Present In This Case.

1. The Division's Admissions, Statements and Acts Are Inconsistent With Their November, 1991 NOV and Penalty Assessment.

Plateau Mining, in establishing the elements of equitable estoppel, requires an admission, statement or act by the Division which is inconsistent with a claim afterwards asserted. In this case, the Division has issued fifty-nine (59) statements in writing regarding HVCC's compliance regarding the very actions which are cited by the NOV. Statements in the form of "Inspection Reports" specifically finding the Mine Site to be in compliance may be found in the record in this case, at R.804-954. Addendum "N." In addition, the Division issued memoranda and letters finding the Mine Site to be in compliance and releasing 60% of the reclamation bond.

The Division inspected the Mine Site on May 24, 1988 and issued a memorandum specifically finding that "the access road, from the end of the paved county road to the mine site, was ripped, water bars constructed, and seeded and mulched." R.267. Based upon this inspection memorandum, the State released 60% of HVCC's reclamation bond at the Mine Site. R.266. By letter dated July 16, 1980 from the Division to HVCC, the Division states: "As a result of this inspection, the backfilling, grading, topsoil placement and drainage controls were determined complete." R.266. By letter dated June 16, 1988 from the Division to Emery County the Division states: "The reclamation bond will be reduced from \$171,515 to \$68,606 because backfilling, grading, installations of drainage controls and revegetation have all been done at the site." R.265. At the time of the Phase I bond release, HVCC was in compliance at the Mine Site with the reclamation plan and all rules and regulations for that phase of reclamation work. R.1174; R.1110-1111; R.1125-1131. The Division has inspected the Mine Site at least 59 different times since 1987 and, until November 19, 1991, HVCC was found to be in compliance. R.1183; R.1250; R.804-954.

Suddenly, on November 19, 1991, *without a change in Mine Site conditions or the law* the Division issued an NOV to HVCC. The NOV alleges: (1) failure to maintain the stability of diversions and failure to minimize erosion to the extent possible; and (2) failure to clearly mark with perimeter markers all disturbed areas and failure to seed and revegetate all disturbed areas. This is clearly inconsistent with the Division's bond release and findings for five

consecutive years that the Mine Site was in compliance with UCMRA. Therefore, this prong of the equitable estoppel test is satisfied.

2. HVCC Has Conducted Itself According to the Division's Admissions, Statements and Acts.

The second *Plateau Mining* element is action by HVCC on the faith of the Division's admissions, statements or acts above. HVCC has conducted (or, not conducted) its operations at the Mine Site based upon the Division's continuous findings that it was in full compliance. The Mine Site has not been operational since 1980 and was reclaimed in 1986 under a Reclamation Plan approved by the Division. HVCC expended substantial sums of money to regrade, scarify and reseed the Mine Site in accordance with the approved Reclamation Plan. R.1153. Since 1986, HVCC has conformed to all requests made by the Division to reclaim the Mine Site. R.1157.

Moreover, HVCC obtained a bond release in 1988, indicating that HVCC had completed this portion of its Reclamation Plan. An owner of reclaimed property should not be subject to arbitrary determinations of non-compliance in perpetuity; rather one should receive a release and proceed with business operations into the future. This is what HVCC has done.

3. HVCC Will Be Injured as a Result of Allowing the Division to Contradict or Repudiate Their Admissions, Statements and or Acts.

Finally, *Plateau Mining* requires injury to HVCC as a result of allowing the Division to contradict or repudiate their admissions, statements or acts. In this case, injury resulted to HVCC in the form of issuance of an NOV and a resulting penalty. The NOV also creates a

potential for a pattern of violation and more serious enforcement sanctions. The State may seek criminal fines and imprisonment against HVCC pursuant to Utah Code Ann. § 40-10-20(5) and (6) (1986) if the NOV is not abated. In addition, the State may request the attorney general to institute a civil action against HVCC pursuant to Utah Code Ann. § 40-10-22(2) (1981).

Most significantly, however, is the fact that if the Division is allowed to contradict their prior representations to HVCC and enforce its NOV, HVCC will be required to spend thousands of dollars on the abatement action required under the NOV. As a result of this abatement action, the period of reclamation liability may be extended for another ten year period. Furthermore, the potential for perpetual change in Division reclamation policy is great, especially in light of the new Division Director opening at the Division. The Division may reinterpret existing policy or define new regulations in perpetuity resulting in an unending reclamation responsibility at the Mine Site. See *Nat'l Wildlife Found. v. Lujan*, 950 F.2d 765, 769 (D.C. Cir. 1991) ([SMCRA] "cannot be read to express or assume that regulatory jurisdiction over a surface coal mining and reclamation operation must continue forever.") This constitutes injury to HVCC sufficient to satisfy the third and final prong of the *Plateau Mining* test.

B. Circumstances in This Case Justify an Application of the Governmental Exception to the Doctrine of Equitable Estoppel.

Mendez v. State Dep't of Social Services, 813 P.2d 1234, 1236 (Utah Ct. App. 1991) summarizes the governmental agency exception to the equitable estoppel doctrine. The application of the doctrine must be (1) necessary to prevent manifest injustice; and (2) not

impair the exercise of governmental powers. *Id.* The governmental agency exception "safeguards the interests of the public which may be jeopardized by the 'vagaries of political tides, frequent changes of public officials, the possibility of collusion, or of circumventing procedures set up by law . . .'" *Prows v. State*, 822 P.2d 764, 769 (Utah 1991) (quoting *Sutro & Co.*, 646 P.2d at 718). The exception applies if "the facts may be found with such certainty, and the injustice suffered is of sufficient gravity to invoke the exception." *Anderson*, 839 P.2d at 827 (quoting *Sutro & Co.*, 646 P.2d at 720).

1. Manifest Injustice Will Result if the Division is Allowed to Enforce Its NOV and Penalty Assessment.

In this case, the Division's action is manifestly unjust and borders on bad faith. Since 1988 when the Division released 60% of HVCC's bond, HVCC has been lulled into the belief that it was in full compliance with UCMRA and all applicable regulations. Over fifty-nine (59) inspection reports in five years indicated that the Mine Site was in "good condition." R.804-954. "If we say with Mr. Justice Holmes, 'Men must turn square corners when they deal with the Government,' it is hard to see why the government should not be held to a like standard of rectangular rectitude when dealing with its citizens." *Mendez*, 813 P.2d at 1237 (quoting Note, *Hobson's Choice and Similar Practices in Federal Taxation*, 48 Harv. L. Rev. 1281, 1299 (1935)).

Several cases have helped define what constitutes "manifest injustice," within the equitable estoppel context. In *Hackett v. City of Ottawa*, 99 U.S. 86 (1878) (cited in *Sutro & Co.*, 646 P.2d at 719) city officials represented that bonds were issued for a lawful purpose and

issued them under the city's seal, but it was later determined that their issuance had not been in accordance with lawful authority. The United States Supreme Court held that because such obvious unfairness would otherwise result to purchasers of the bonds, the city was estopped from asserting the bonds were void.

In *Celebrity Club, Inc. v. Utah Liquor Control Comm'n*, 602 P.2d 689 (Utah 1979), a liquor license applicant was advised that it "was in compliance with the law" and that it qualified for a license upon the satisfaction of certain conditions. *Id.* at 690. In reliance on that representation, the licensee expended funds on the completion of its building. The state later changed their interpretation of the applicable law and determined that Celebrity Club's application should be denied. *Id.* at 692. The Utah Supreme Court held that the state was estopped from changing its interpretation. *Id.* at 695. A copy of *Celebrity Club* case is attached hereto in the Addendum "P."

In these cases, "the critical inquiry is whether it appears that the facts may be found with such certainty, and the injustice to be suffered is of sufficient gravity, to invoke the exception." *Sutro & Co.*, 646 P.2d at 720. Those cases "involved very clear, well-substantiated representations by government entities." *Anderson*, 839 P.2d at 828. The instant case is similar to *Celebrity Club* and *Hackett*. There cannot be a more clear, well-substantiated set of governmental representations than exists in the fifty-nine (59) Inspection Reports which found HVCC to be in full compliance with all permit and performance standards. R.804-954; see Addendum "N."

The Division has represented to HVCC that it is in compliance for at least five years. *See* Summary of Inspection Reports, pp. 9-14, *supra*. Without a change in Mine Site conditions, HVCC was suddenly hit with a NOV and penalty assessments requiring substantial and costly abatement action and extending reclamation liability indefinitely. In this case, as in *Celebrity Club* and *Hackett*, it would be manifestly unjust to allow the Division to arbitrarily and unilaterally violate HVCC when it has continuously maintained that the Mine Site was in compliance. This injustice justifies the application of equitable estoppel to the Division.

2. Applying Equitable Estoppel in this Case Will Not Impair the Division's Powers.

Vacating the NOV would result in no substantial adverse effect to public policy; nor will it impair the power of the Division to regulate under UCMRA. Indeed, public policy will be enhanced by vacating the NOV and applying the Division's regulations in a manner consistent with earlier findings of compliance. The Division had ample opportunity to regulate conditions at the Mine Site, not the least of which were the April and May, 1991 inspections at which it found the Mine Site to be in "good condition." R.1029-1037; R.935-938.

The only power of the Division which would be impaired by the application of equitable estoppel here is the power to act arbitrarily and in a self-contradictory manner. As such, there is no valid public policy argument in favor of allowing the Division to reverse its own prior findings.

In summary, it is helpful to note language of the Washington Supreme Court, adopted by the Utah Supreme Court in *Celebrity Club*:

The doctrine of equitable estoppel is properly applicable in a case such as this, otherwise the whim of an administrative body could bankrupt an applicant who acted in good faith in reliance upon a solemn written commitment.

The conduct of government should always be scrupulously just in dealing with its citizens; and where a public official acting within his authority and with knowledge of the pertinent facts, has made a commitment and the party to whom it was made has acted to his detriment in reliance on that commitment, the official should not be permitted to revoke that commitment.

Celebrity Club, 602 P.2d at 695 (quoting *State v. Sponburgh*, 401 P.2d 635, 640 (Wash. 1965)) (emphasis added). Since HVCC has met each of the standards for equitable estoppel, established that no public policy concerns are jeopardized by its application, and demonstrated a manifest injustice, the Division is estopped from issuing the NOV and the penalty assessments. This Court need not afford the Board's findings on this point any deference. *Gottfredson*, 808 P.2d at 154.

III. THE NOV IS BARRED BY THE TWO-YEAR STATUTE OF LIMITATIONS SET FORTH AT UTAH CODE ANN. 40-8-9(2) (1987).

A. The Board's Order is Inconsistent with State Regulations Specifically Incorporating a Two Year Statute of Limitations

The Board incorrectly concluded that the two-year statute of limitations set forth at Utah Code Ann. § 40-8-9(2) (1987) and specifically applied to the UCMRA does not bar issuance of the NOV. R.425-426. That section of the Utah Mined Land Reclamation Act provides:

No suit, action, or other proceeding based upon a violation of this chapter, or any rule or order issued under this chapter, may be commenced or maintained unless the suit, action, or proceeding is commenced within two years from the date of the alleged violation.

Utah Code Ann. § 40-8-9(2) (1987) (emphasis added). Utah Code Ann. § 40-10-4 (1979) states that:

. . . Title 40, Chapter 8 and the rules and regulations adopted under it, where appropriate, and not in conflict with this chapter . . shall be applicable . . .

Utah Admin. R. 614-1Q-900(a) (1991) provides:

The following provisions of 40-8 U.C.A. (1953, as amended), (the Utah Mined Land Reclamation Act of 1975) and its implementing regulations are deemed consistent with Chapter 10 of Title 40, U.C.A. (1953, as amended) and are, therefore, made part of that Act pursuant to 40-10-4, U.C.A. Provisions not specifically adopted by this rule are determined to be inconsistent with this rule and shall not apply to coal mining reclamation activities

(IX) Section 40-8-9(1) and (2): Adopted.

Title 40, Chapter 10 does not enumerate a statute of limitations. Therefore, the two-year statute of limitations under Title 40, Chapter 8 is applicable to the facts in this matter and requires that the enforcement proceedings against HVCC be vacated in their entirety.

As authorized by statute, the Board promulgated regulations under Utah Code Ann. § 40-10-4 (1979) of UCMRA which specifically apply the two-year statute of limitations to the Utah Coal Program. Notwithstanding, and without reference to the above stated statutes and regulations, the Board erroneously concluded that "the statute of limitations is not incorporated by reference under Utah Code Ann. § 40-10-1 *et seq.*" R.425-426. This conclusion is directly contrary to the plain meaning of Utah Admin. R. 614-1Q-900 (1991) and is clearly erroneous.

"Statutes of limitation, which 'are found and approved in all systems of enlightened jurisprudence' . . . represent a pervasive legislative judgment that it is unjust to fail to put the

adversary on notice to defend within a specified period of time and that 'the right to be free from stale claims in time comes to prevail over the right to prosecute them." *United States v. Kubrick*, 444 U.S. 111 (1979) (quoting *Wood v. Carpenter*, 101 U.S. 135, 139 (1879); *Railway Telegraphers v. Railway Express Agency*, 321 U.S. 342, 349 (1944)).

These enactments are statutes of repose; and although affording plaintiffs what the legislature deems a reasonable time to present their claims, they protect defendants and the courts from having to deal with cases in which the search for truth may be seriously impaired by the loss of evidence, whether by death or disappearance of witnesses, fading memories, disappearance of documents, or otherwise.

Id. [citations omitted]. The plea of limitation is a "meritorious defense, in itself serving a public interest." *Guaranty Trust Co. v. United States*, 304 U.S. 126, 136 (1938). Since the two year statute of limitations has clearly been incorporated into UCMRA, and it a legitimate bar to the Division's NOV, the NOV should be vacated.

The Board's Order also incorrectly concludes that application of a statute of limitations to UCMRA enforcement actions renders UCMRA less stringent than SMCRA. R.425-426. However, statutes of limitations have been applied to enforcement penalties arising under SMCRA. For instance, in *United States v. Lueking*, 125 B.R. 513, 5 (E.D.Tenn. 1990)⁶, a five-year statute of limitations was applied to collection of civil penalties assessed under SMCRA. In addition, the Court cited two unpublished district court cases which also applied statutes of limitations to SMCRA. *United States v. McCune*, No. C-2-87-1387 (S.D. Ohio, Dec.

⁶For the Court's ease, cited cases which cannot be found in Pacific Reporter, Federal Reporter or United States Supreme Court Reports have been reproduced in order of citation in part "O" of the Addendum, filed and served herewith.

13, 1989) and *United States v. Graham*, No. 87-1843, 1989 WL 248111 (W.D. Penn. July 20, 1989). Therefore, it is consistent with both the federal SMCRA and well-established jurisprudential policies to apply the statute of limitations to bar the Division's action here.

B. The Violations at the Mine Site are not Continuing.

The Board Order incorrectly concludes that the violations set forth in the NOV are continuing in nature and are not barred by the two-year statute of limitations. R.425-426. This conclusion is not supported by substantial evidence in the record. The NOV was issued by the Division on November 22, 1991 with respect to conditions at the Mine Site which existed well in excess of two years prior to that date. Part 1 of 2 alleges failure to maintain the stability of diversions and failure to minimize erosion to the extent possible under Utah Admin. R. 614-301-742.312.1 and 614-301-742.113 as to the road outslope and upslope. Part 2 of 2 was written for failure to clearly mark with perimeter markers all disturbed areas and failure to seed and revegetate all disturbed areas, under Utah Admin. R. 614-301-521.251 and 614-301-354 with respect to the road and stream disturbed outsoles and road upslopes.

In contrast, the record reflects that more than three years ago, the Division had found HVCC to be in compliance regarding the very actions which are cited by the NOV. The Division inspected the Mine Site on May 24, 1988 and issued a memorandum specifically finding that "the access road, from the end of the paved county road to the Mine Site, was ripped, water bars constructed, and seeded and mulched." R.267. Based upon this inspection, the State released 60% of HVCC's reclamation bond at the site. R.1174; R.110-111; R.1125-

1131. In addition, numerous inspection reports issued by the Division find this area to be in compliance. These reports date back to 1985 and indicate full compliance at the Mine Site. R.804-954; R.1158; R.1232-1233. The record indicates that during the period 1987 - 1991, there has been insignificant change in the erosion conditions at the Mine Site and no change in the placement of perimeter markers. R.1192; R.1232-1233. The conditions giving rise to the alleged violations under the NOV existed from 1987 -1991 without change and the Division specifically found the site to be in compliance with Phase I reclamation requirements in May, 1988. Therefore the two-year statute of limitations bars issuance of the NOV on November 22, 1991, more than three years following Phase I bond release.

Further, absolutely no evidence was introduced by the Division upon which the Board could base an opinion that an event within the last two years tolled the running of the statute of limitations. In fact, the Division's own witness testified that this statute of limitations was applied by the Division in other cases.

MR. STIRBA: Are you aware that there is a statute that has a Statute of Limitations that provides for two years under the Utah Mined Land Reclamation Act?

MR. DANIELS: Yes.

MR. STIRBA: And, I believe, that's 40-8-9; is that correct?

MR. DANIELS: Right.

MR. STIRBA: You're familiar with that particular provision that I'm referring to?

MR. DANIELS: Yes.

MR. STIRBA: Now, isn't it true that there are times when that provision has been applied by a hearing officer in the administrative appeal context and that you've just testified to concerning coal matters?

MR. DANIELS: Yes, it has.

MR. STIRBA: In essence, that hearing officer would apply that statute as a position of law that was applicable in this State to matters within the jurisdiction of the Division, correct?

MR. DANIELS: Yes.

See R.1069-1071. There was absolutely no evidence in the record to support this ruling, much less substantial evidence. The application of this statute of limitations is established by the Division itself. The Division coordinator of Minerals Research admitted that fact. Since the condition at the Mine Site has existed at least since 1987 the NOV was time barred.

CONCLUSION

As a result of the Division's failure to establish a *prima facie* case supporting its NOV, the burden of persuasion never shifted to HVCC. As such, the Board erroneously upheld the NOV since there was not substantial evidence to support it. Since the Division repeatedly found that the Mine Site is in compliance, it is equitably estopped from issuing its NOV and penalty

assessments against HVCC. Also, a two year statute of limitations applies to the conditions at the Mine Site and bars the Division's NOV.

Dated this 8th day of March, 1993.

STIRBA & HATHAWAY

BY: _____

PETER STIRBA
MARGARET H. OLSON
Attorneys for Plaintiff Hidden Valley
Coal Company

CERTIFICATE OF DELIVERY

I hereby certify that on this 8th day of March, 1993, a true and correct copy of the foregoing BRIEF OF THE APPELLANT was hand delivered to the following:

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Tab A

40-9-5. Disposal of used oil.

No establishment covered under this act may dispose of or discard any used oil in any quantity other than through a used oil collector or any other method permitted by the division.

1977

40-9-6. Violations — Adjudicative proceedings — Injunctions — Misdemeanors — Limitation of actions.

(1) (a) Whenever it appears that any person is violating any provision of this chapter, or any rule or order issued under the authority of this chapter, the board shall file a notice of agency action and hold an adjudicative proceeding.

(b) If, following this hearing, the board finds a violation, it may:

(i) issue a compliance order or a cessation order; or

(ii) bring suit in the name of the state to restrain the violator from continuing the violation in any court in the state having jurisdiction in the county of residence of any defendant or in the county where the violation is alleged to have occurred.

(c) The court may grant injunctions, prohibitory and mandatory, including temporary restraining orders.

(d) Failure to comply with the terms of any order issued by the court is punishable by the imposition of a penalty not to exceed \$1,000 per day for each day of failure to comply, in addition to any fine otherwise imposed for violation of this chapter.

(2) Any person or entity who knowingly and willfully violates this chapter or any rule or order adopted under the authority of this chapter is guilty of a class "C" misdemeanor.

(3) No suit, action, or other proceeding based upon a violation of this chapter, or any rule or order issued under the authority of this chapter, may be commenced after two years from the date of the alleged violation.

1987

CHAPTER 10**COAL MINING AND RECLAMATION**

Section		
40-10-1.	Legislative finding.	40-10-19.
40-10-2.	Purpose.	
40-10-3.	Definitions.	
40-10-4.	Mined land reclamation provisions applied.	
40-10-5.	Activities exempted from chapter.	
40-10-6.	Powers, functions, and duties of board and division.	40-10-20.
40-10-6.5.	Rulemaking authority and procedure.	
40-10-6.6.	Repealed.	
40-10-7.	Financial interest in mining operation prohibited — Penalty — Enforcement — Quorum for board hearings.	40-10-21.
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.	
40-10-9.	Permit required for surface coal mining operations — Exemptions — Expiration of permit — Maximum time for commencement of mining operations — Renewal of permit.	40-10-22.
		40-10-10.
		40-10-11.
		40-10-12.
		40-10-13.
		40-10-14.
		40-10-15.
		40-10-16.
		40-10-17.
		40-10-18.
		40-10-19.
		40-10-20.
		40-10-21.
		40-10-22.

Section

40-10-10.

Permit application fee — Submission of application and reclamation plan — Determinations, tests, and samplings — Filing of application — Insurance required — Blasting plan.

40-10-11.

Division action on permit application — Requirements for approval — Schedule of applicant's mining law violation — Restoration of prime farmland.

40-10-12.

Revised permit and reclamation plan — Application — Transfer, assignment or sale of rights — Revision or modification of permit provisions.

40-10-13.

Advertisement of ownership, location and boundaries — Notice to interested agencies or bodies — Objections — Conference.

40-10-14.

Division's findings issued to applicant and parties to conference — Notice to applicant of approval or disapproval of application — Hearing — Temporary relief — Appeal to district court — Further review.

40-10-15.

Performance bond — Duration of liability under bond — Cash deposit or securities in lieu of bond — Surety — Adjustment of amount.

40-10-16.

Relief of performance bond, surety, or deposit — Inspection and evaluation of reclamation work — Action on application for relief of bond — Objections — Formal hearing or informal conference.

40-10-17.

Performance standards for all coal mining and reclamation operations — Additional standards for steep-slope surface coal mining — Variances.

40-10-18.

Underground coal mining — Rules and regulations regarding surface effects — Operator requirements for underground coal mining — Suspension of underground mining on finding of imminent danger to surface inhabitants — Applicability of other chapter provisions.

40-10-19.

Information provided by permittees to division — Inspections by division — Signs required at operations entrances — Violations reported by reclamation officers — Copies of records and reports available to public.

40-10-20.

Civil penalty for violation of chapter — Public hearing — Contest of violation or amount of penalty — Collection — Criminal penalties — Civil penalty for failure to correct violation.

40-10-21.

Civil action to compel compliance with chapter — Jurisdiction — Venue — Division and board as parties — Court costs — Security when temporary restraining order or injunction sought — Other rights not affected — Action for damages.

40-10-22.

Violation of chapter or permit conditions — Inspection — Cessation order, abatement notice, or show cause order — Suspension or revocation.

- Section tion of permit — Review — Costs assessed against either party.
- 40-10-23. Time for bringing criminal proceeding.
- 40-10-24. Determination of unsuitability of lands for surface coal mining — Petition — Public hearing — Detailed statement by division.
- 40-10-25. Abandoned mine reclamation program — Expenditure priorities — Eligible lands and water.
- 40-10-25.1. Abandoned Mine Reclamation Fund created — Contents — Use of monies.
- 40-10-25.2. Liability limitation for abandoned mine reclamation.
- 40-10-26. State reclamation plan and annual projects submitted to secretary of interior — Contents of plan — Annual support and implementation requests — Costs for proposed projects.
- 40-10-27. Entry upon land adversely affected by past coal mining practices — Conducting of studies or exploratory work — State acquisition of land — Lien — Waste disposal fund — Water pollution control and treatment plants.
- 40-10-28. Recovery of reclamation costs — Lien against reclaimed land.
- 40-10-28.1. Certification of completion of coal reclamation.
- 40-10-29. Other enforcement and protection rights unaffected — Operator to replace adversely affected water supply of legitimate users.
- 40-10-30. Judicial review of rules or orders.
- 40-10-31. Chapter's procedures supersede Title 63, Chapter 46b.

40-10-1. Legislative finding.

The Utah Legislature finds that:

(1) Coal mining operations presently contribute significantly to the nation's energy requirements; surface coal mining constitutes one method of extraction of the resource; the overwhelming percentage of Utah's coal reserves can only be extracted by underground mining methods; and it is, therefore, essential to the national interest to insure the existence of an expanding and economically healthy underground coal mining industry.

(2) The expansion of coal mining in Utah to meet the nation's energy needs makes even more urgent the establishment of appropriate standards to minimize damage to the environment and to productivity of the soil and to protect the health and safety of the public.

(3) Surface mining and reclamation technology is now developed so that effective and reasonable regulation of surface coal mining operations is an appropriate and necessary means to minimize so far as practicable the adverse social, economic, and environmental effects of the mining operations.

(4) In recognition of the innate differences between coal and other mineral deposits and between surface and underground mining methods, the Legislature perceives a need for a separate

chapter for effective and reasonable regulation of such operations. 1979

40-10-2. Purpose.

It is the purpose of this chapter to:

(1) Grant to the Board and Division of Oil, Gas and Mining the necessary authority to assure exclusive jurisdiction over non-federal lands and cooperative jurisdiction over federal lands in regard to regulation of coal mining and reclamation operations as authorized pursuant to Public Law 95-87.

(2) Assure that the rights of surface landowners and other persons with a legal interest in the land or appurtenances thereto are fully protected from these operations.

(3) Assure that surface coal mining operations are conducted so as to protect the environment, that reclamation occurs as contemporaneously as possible with the operations, and that operations are not conducted where reclamation as required by this chapter is not economically or technologically feasible.

(4) Assure that appropriate procedures are provided for the public participation in the development, revision, and enforcement of regulations, standards, reclamation plans, or programs established by the state under this chapter.

(5) Promote the reclamation of mined areas left without adequate reclamation prior to the effective date of this chapter and which continue, in their unreclaimed condition, to substantially degrade the quality of the environment, prevent or damage the beneficial use of land or water resources, or endanger the health or safety of the public.

(6) Wherever necessary, exercise the full reach of state constitutional powers to insure the protection of the public interest through effective control of surface coal mining operations and efficient reclamation of abandoned mines. 1979

40-10-3. Definitions.

For the purposes of this chapter:

(1) "Alluvial valley floors" mean the unconsolidated stream laid deposits holding streams where water availability is 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 by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation and windblown deposits.

(2) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area 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 and spoil piles eliminated; but water impoundments may be permitted where the division determines that they are in compliance with Subsection 40-10-17(2)(h).

(3) "Board" means the Board of Oil, Gas and Mining and the board shall not be defined as an employee of the division.

(4) "Division" means the Division of Oil, Gas and Mining.

(5) "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirement of this chapter in a surface coal mining and reclamation operation, which condition, practice, or violation could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation or [of] death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose himself or herself to the danger during the time necessary for abatement.

(6) "Employee" means those individuals in the employ of the division and excludes the board.

(7) "Operator" means any person, partnership, or corporation engaged in coal mining who removes or intends to remove more than 250 tons of coal from the earth by coal mining within 12 consecutive calendar months in any one location.

(8) "Other minerals" mean clay, stone, sand, gravel, metalliferous and nonmetalliferous ores, and any other solid material or substances of commercial value excavated in solid or solution form from natural deposits on or in the earth, exclusive of coal and those minerals which occur naturally in liquid or gaseous form.

(9) "Permit" means a permit to conduct surface coal mining and reclamation operations issued by the division.

(10) "Permit applicant" or "applicant" means a person applying for a permit.

(11) "Permitting agency" means the division.

(12) "Permit area" means the area of land indicated on the approved map submitted by the operator with his application, which area of land shall be covered by the operator's bond as required by Section 40-10-15 and shall be readily identifiable by appropriate markers on the site.

(13) "Permittee" means a person holding a permit.

(14) "Person" means an individual, partnership, association, society, joint stock company, firm, company, corporation, or other governmental or business organization.

(15) "Prime farmland" means the same as prescribed by the United States Department of Agriculture on the basis of such factors as moisture availability, temperature regime, chemical balance, permeability, surface layer composition, susceptibility to flooding, and erosion characteristics.

(16) "Reclamation plan" means a plan submitted by an applicant for a permit which sets forth a plan for reclamation of the proposed surface coal mining operations pursuant to Section 40-10-10.

(17) "Surface coal mining and reclamation operations" mean surface mining operations and all activities necessary and incident to the reclamation of these operations after the effective date of this chapter.

(18) "Surface coal mining operations" mean:

- (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, surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly af-

fect interstate commerce. These activities include 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 uses of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal for interstate commerce at or near the mine site; but these activities do not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16 $\frac{2}{3}$ % of the tonnage of minerals removed for purposes of commercial use or sale or coal explorations subject to Section 40-10-8.

(b) The areas upon which the activities occur or where the activities disturb the natural land surface. These areas shall also include any adjacent land the use of which is incidental to the 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 the activities and for haulage and excavations, working, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailing, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or materials on the surface resulting from or incident to the activities.

(19) "Unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of any violation of his permit or any requirement of this chapter due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of the permit or this chapter due to indifference, lack of diligence, or lack of reasonable care. 1979

40-10-4. Mined land reclamation provisions applied.

The Utah Mined Land Reclamation Act (Title 40, Chapter 8), and the rules and regulations adopted under it, where appropriate, and not in conflict with the provisions of this chapter or the rules and regulations adopted under it, shall be applicable to coal mining operations and reclamation operations. 1979

40-10-5. Activities exempted from chapter.

This chapter does not apply to the following activities:

- (1) the extraction of coal by a landowner for his own noncommercial use from land owned or leased by him; or
- (2) the extraction of coal as an incidental part of federal, state, or local government-financed highway or other construction under rules established by the division. 1991

40-10-6. Powers, functions, and duties of board and division.

In addition to those provided in Title 40, Chapter 8, the board and division have the following powers, functions, and duties:

- (1) to make and promulgate in accordance with Title 63, Chapter 46a, the Utah Administrative Rulemaking Act, such rules as are speci-

cally necessary for the regulation of coal mining operations and reclamation operations;

(2) to authorize its employees, agents, or contractors to enter upon any property for the purpose of carrying out the provisions of this chapter and Title 40, Chapter 8;

(3) to establish specific reclamation and performance standards for new and existing coal mining operations and to effectuate these standards retroactively;

(4) to prohibit mining and exploration operations without a permit and to establish procedures and requirements for the preparation, submission, approval, denial, termination, and modification of applications for coal mining and reclamation permits and for coal exploration permits;

(5) to set and assess an application fee based on no more than the actual cost of review and processing of the application, this fee to accompany each application for a surface coal mining and reclamation permit and each application for an exploration permit;

(6) to establish procedures and detailed requirements for all reclamation plans submitted as part of a permit application;

(7) to condition the issuance of a permit to commence or continue surface mining operations upon the posting of performance bonds, deposits, or sureties and to make provision for the release of same in compliance with the requirements of this chapter;

(8) to appoint or employ technical support, legal services, or independent consultants in furtherance of the objectives of this chapter and shall be responsible for coordination with other agencies in matters relating to mined land reclamation and the application of related law; and

(9) to do all other things and take such other actions retroactively or otherwise within the purposes of this chapter as may be necessary to enforce its provisions. 1989

40-10-6.5. Rulemaking authority and procedure.

(1) Except as provided in Subsection (2), no rule which the board adopts for the purpose of the state administering a program under the federal Surface Mining Control and Reclamation Act may be more stringent than the corresponding federal regulations which address the same circumstances. In adopting such rules, the board may incorporate by reference corresponding federal regulations.

(2) The board may adopt rules more stringent than corresponding federal regulations for the purpose described in Subsection (1), only if it makes a written finding after public comment and hearing, and based on evidence in the record, that the corresponding federal regulation is not adequate to protect public safety and the environment of the state. Those findings shall be accompanied by an opinion referring to and evaluating the public safety and environmental information and studies contained in the record which form the basis for the board's conclusion.

(3) Hearings under this chapter shall be conducted in a manner which guarantees the parties' due process rights. This includes, but is not limited to, the right to examine any evidence presented to the committee, the right to cross-examine any witness, and a prohibition of ex parte communication between any party and a member of the board. 1988

40-10-6.6. Repealed.

1991

40-10-7. Financial interest in mining prohibited — Penalty — Enforcement — Quorum for board hearing:

(1) No employee of the division perform function or duty under this chapter shall have direct or indirect financial interest in any 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 regulation 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. 1979

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. 1979

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.

1975

40-10-10. Permit application fee — Submission of application and reclamation plan — Determinations, tests, and samplings — Filing of application — Insurance required — Blasting plan.

(1) Each application for a surface coal mining and reclamation permit under the provisions of this chapter shall be accompanied by a fee as determined by the division, but not to exceed the cost of application, review, and processing.

(2) The permit application and the reclamation plan submitted as part of a permit application shall be submitted in the manner, form, and content specified by the division in implementing rules and shall include the following:

- (a) the names and addresses of:
 - (i) the permit applicant;
 - (ii) every legal owner of record of the property (surface and mineral) to be mined;
 - (iii) the holders of record of any leasehold interest in the property;
 - (iv) any purchaser of record of the property under a real estate contract;
 - (v) the operator if he is a person different from the applicant; and
 - (vi) if any of these are business entities other than a single proprietor, the names and addresses of the principals, officers, and resident agent for service of process.

(b) an accurate map or plan, to an appropriate scale, clearly showing the land to be affected as of the date of the application, the area of land within the permit area upon which the applicant has the legal right to enter and commence surface mining operations, and a statement of those documents upon which the applicant bases his legal right to enter and commence surface mining operations on the area affected, and whether that right is the subject of pending court litigation; but this chapter may not be construed as vesting in the division the jurisdiction to adjudicate property title disputes.

(c) a determination of the probable hydrologic consequences of the mining and reclamation operations, both on and off the mine site with respect to the hydrologic regime, quantity and quality of water in surface and groundwater systems, including the dissolved and suspended solids under seasonal flow conditions, and the collection of sufficient data for the mine site and surrounding areas so that an assessment can be made by the division of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area and, particularly, upon water availability; but this determination,

shall not be required until such time as hydrologic information on the general area prior to mining is made available from an appropriate federal or state agency. The permit shall not be approved until this information is available and is incorporated into the application.

(d) a statement of the result of test borings or core samplings from the permit area, including logs of the drill holes; the thickness of the coal seam found; an analysis of the chemical properties of such coal; the sulfur content of any coal seam; chemical analysis of potentially acid or toxic-forming sections of the overburden; and chemical analysis of the stratum lying immediately underneath the coal to be mined, except that the provisions of this subsection may be waived by the division with respect to the specific application by a written determination that these requirements are unnecessary.

(3) If the division finds that the probable total annual production at all locations of any coal surface mining operator will not exceed 100,000 tons, the determination of probable hydrologic consequences required by Subsection (2)(c) and the statement of the result of test borings or core samplings required by Subsection (2)(d) shall, upon the written request of the operator, be performed by a qualified public or private laboratory designated by the division; and the cost of the preparation of this determination and statement shall be assumed by the division.

(4) Information pertaining to coal seams, test borings, core samplings, or soil samples or other equivalent information as required by this section shall be made available to any person with an interest which is or may be adversely affected; but information which pertains only to the analysis of the chemical and physical properties of the coal (excepting information regarding any mineral or elemental content which is potentially toxic to the environment) shall be kept confidential and not made a matter of public record.

(5) Each applicant for a surface coal mining and reclamation permit shall file a copy of the application for public inspection with the county clerk of the county or an appropriate public office approved by the division where the mining is proposed to occur, except for that information pertaining to the coal seam itself.

(6) Each applicant for a permit shall be required to submit to the division as part of the permit application a certificate issued by an insurance company authorized to do business in the state certifying that the applicant has a public liability insurance policy in force for the surface mining and reclamation operation for which the permit is sought or evidence that the applicant has satisfied other state or federal self-insurance requirements. The policy shall provide for personal injury and property damage protection in an amount adequate to compensate any persons damaged as a result of surface coal mining and reclamation operations, including use of explosives, and entitled to compensation under the applicable provisions of state law. The policy shall be maintained in full force and effect during the terms of the permit or any renewal, including the length of all reclamation operations.

(7) Each applicant for a surface coal mining and reclamation permit shall submit to the division as part of the permit application a blasting plan which shall outline the procedures and standards by which the operator will meet the provisions of Subsection 40-10-17(2)(o).

40-10-11. Division action on permit application — Requirements for approval — Schedule of applicant's mining law violation — Restoration of prime farmland.

(1) Upon the basis of a complete mining application and reclamation plan or a revision or renewal of same, as required by this chapter, including public notification and an opportunity for a public hearing as required by Section 40-10-13 [Section 40-10-14], the division shall grant, require modification of, or deny the application for a permit in a reasonable time set by the division and notify the applicant in writing. The applicant for a permit, or revision of a permit, shall have the burden of establishing that his application is in compliance with all the requirements of this chapter. Within 10 days after the granting of a permit, the division shall notify the local governmental officials in the local political subdivision in which the area of land to be affected is located that a permit has been issued and shall describe the location of the land.

(2) No permit or revision application shall be approved unless the application affirmatively demonstrates and the division finds in writing on the basis of the information set forth in the application or from information otherwise available which will be documented in the approval and made available to the applicant, that:

(a) The permit application is accurate and complete and that all the requirements of this chapter have been complied with.

(b) The applicant has demonstrated that reclamation as required by this chapter can be accomplished under the reclamation plan contained in the permit application.

(c) The assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance specified in Subsection 40-10-10(2)(c) has been made by the division and the proposed operation of same has been designed to prevent material damage to hydrologic balance outside the permit area.

(d) The area proposed to be mined is not included within an area designated unsuitable for surface coal mining pursuant to Section 40-10-24 or is not within an area under study for such designation in an administrative proceeding commenced pursuant to Subsection 40-10-24(2) (unless in the area as to which an administrative proceeding has commenced pursuant to Section 40-10-24, the operator demonstrates that prior to January 1, 1977, he has made substantial legal and financial commitments in relation to the operation for which he is applying for a permit).

(e) The proposed surface coal mining operation would:

(i) not interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally subirrigated, but excluding undeveloped range lands which are not significant to farming on the alluvial valley floors and those lands as to which the division finds that if the farming that will be interrupted, discontinued, or precluded is of such small acreage as to be of negligible impact on the farm's agricultural production; or

(ii) not materially damage the quantity or quality of water in surface or underground water systems that supply these alluvial valley floors in Subsection (2)(e)(i), but this Subsection (2)(e) shall not affect those sur-

face coal mining operations which in the year preceding August 3, 1977, produced coal in commercial quantities and were located within or adjacent to alluvial valley floors or had obtained specific permit approval by the division to conduct surface coal mining operations within these alluvial valley floors.

(f) In cases where the private mineral estate has been severed from the private surface estate, the applicant has submitted to the division:

(i) the written consent of the surface owner to the extraction of coal by surface mining methods; provided, however, that nothing in this section shall be construed as increasing or diminishing any property rights by the state of Utah or by any other landowner.

(ii) a conveyance that expressly grants or reserves the right to extract the coal by surface mining methods; or

(iii) if the conveyance does not expressly grant the right to extract coal by surface mining methods, the surface-subsurface legal relationship shall be determined in accordance with state law.

(3) The applicant shall file with his permit application a schedule listing any and all notices of violations of this chapter and any law, rule, or regulation of the United States, state of Utah, or any department or agency in the United States pertaining to air or water environmental protection incurred by the applicant in connection with any surface coal mining operation during the three-year period prior to the date of application. The schedule shall also indicate the final resolution of any notice of violation. Where the schedule or other information available to the division indicates that any surface coal mining operation owned or controlled by the applicant is currently in violation of this chapter or other laws referred to in this subsection, the permit shall not be issued until the applicant submits proof that the violation has been corrected or is in the process of being corrected to the satisfaction of the division, department, or agency which has jurisdiction over the violation; and no permit shall be issued to an applicant after a finding by the board after opportunity for hearing that the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violations of this chapter of such nature and duration with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of this chapter.

(4) (a) In addition to finding the application in compliance with Subsection (2), if the area proposed to be mined contains prime farmland pursuant to division regulations, the division shall grant a permit to mine on prime farmland if the division finds in writing that the operator has the technological capability to restore the mined area within a reasonable time to equivalent or higher levels of yield as non-mined prime farmland in the surrounding area under equivalent levels of management and can meet the soil reconstruction standards specified in division regulations. Except for compliance with Subsection (2), the requirements of this Subsection (4)(a) shall apply to all permits issued after August 3, 1977.

(b) Nothing in this Subsection (4) shall apply to any permit issued prior to August 3, 1977 or to

any revisions or renewals of it, or to any existing surface mining operations for which a permit was issued prior to August 3, 1977.

1981

40-10-12. Revised permit and reclamation plan — Application — Transfer, assignment or sale of rights — Revision or modification of permit provisions.

(1) (a) During the term of the permit the permittee may submit an application for a revision of the permit, together with a revised reclamation plan, to the division.

(b) An application for a revision of a permit shall not be approved unless the division finds that reclamation as required by this chapter can be accomplished under the revised reclamation plan. The revision shall be approved or disapproved within a period of time established by the division. The division shall establish guidelines for a determination of the scale or extent of a revision request for which all permit application information requirements and procedures, including notice and hearings, shall apply; but any revisions which propose significant alterations in the reclamation plan shall, at a minimum, be subject to notice and hearing requirements.

(c) Any extensions to the area covered by the permit, except incidental boundary revisions must be made by application for another permit.

(2) No transfer, assignment, or sale of the rights granted under any permit issued pursuant to this chapter shall be made without the written approval of the division.

(3) The division shall, within a time limit prescribed in regulations promulgated by the board, review outstanding permits and may require reasonable revision or modification of the permit provisions during the term of the permit; but the revision or modification shall be based upon a written finding and subject to notice and hearing requirements established by this chapter.

1979

40-10-13. Advertisement of ownership, location and boundaries — Notice to interested agencies or bodies — Objections — Conference.

(1) At the time of submission of an application for a surface coal mining and reclamation permit, or revision of an existing permit pursuant to the provisions of this chapter, the applicant shall submit to the division a copy of his advertisement of the ownership, precise location, and boundaries of the land to be affected. At the time of submission the advertisement shall be placed by the applicant in a local newspaper of general circulation in the locality of the proposed surface mine at least once a week for four consecutive weeks. The division shall notify various local governmental bodies, planning agencies, and sewage and water treatment authorities of water companies in the locality in which the proposed surface mining will take place, notifying them of the operator's intention to surface mine a particularly-described tract of land and indicating the application's permit number and where a copy of the proposed mining and reclamation plan may be inspected. These local bodies, agencies, authorities, or companies may submit written comments within a reasonable period established by the division on the mining applications with respect to the effects of the proposed operation on the environment which are within their area of responsibility. These comments shall immediately be transmitted to the applicant by the division and shall be made avail-

able to the public at the same locations as are the mining applications.

(2) (a) Any person having an interest which is or may be adversely affected or the officer or head of any federal, state, or local governmental agency or authority shall have the right to file written objections to the proposed initial or revised application for a permit for surface coal mining and reclamation operations with the division within 30 days after the last publication of the notice. These objections shall immediately be transmitted to the applicant by the division and shall be made available to the public.

(b) If written objections are filed and a conference requested, the division shall then hold a conference within a reasonable time of the receipt of the objections or request. The date, time, and location of the conference shall be advertised by the division in a newspaper of general circulation in the locality at least two weeks prior to the scheduled conference date. The division may arrange with the applicant upon request by any party to the administrative proceeding access to the proposed mining area for the purpose of gathering information relevant to the proceeding. An electronic or stenographic record shall be made of the conference proceeding unless waived by all parties. This record shall be maintained and shall be accessible to the parties until final release of the applicant's performance bond. In the event all parties requesting the conference stipulate agreement prior to the requested conference and withdraw their request, the conference need not be held.

1979

40-10-14. Division's findings issued to applicant and parties to conference — Notice to applicant of approval or disapproval of application — Hearing — Temporary relief — Appeal to district court — Further review.

(1) If a conference has been held under Subsection 40-10-13(2), the division shall issue and furnish the applicant for a permit and persons who are parties to the proceedings with the written finding of the division granting or denying the permit in whole or in part and stating the reasons, within the 60 days after the conference.

(2) If there has been no conference held under Subsection 40-10-13(2), the division shall notify the applicant for a permit within a reasonable time as set forth in regulations, taking into account the time needed for proper investigation of the site, the complexity of the permit application, and whether or not written objection to the application has been filed, whether the application has been approved or disapproved in whole or part.

(3) Upon approval of the application, the permit shall be issued. If the application is disapproved, specific reasons shall be set forth in the notification. Within 30 days after the applicant is notified of the final decision of the division on the permit application, the applicant or any person with an interest which is or may be adversely affected may request a hearing on the reasons for the final determination. The board shall hold a hearing pursuant to the rules of practice and procedure set forth in implementing rules and regulations within 30 days of this request and provide notification to all interested parties at the time that the applicant is notified. Within 30 days after the hearing the board shall issue and furnish the applicant, and all persons who participated in the

hearing, with the written decision of the board granting or denying the permit in whole or in part and stating the reasons.

(4) Where a hearing is requested pursuant to Subsection (3), the board may, under conditions it prescribes, grant temporary relief it deems appropriate pending final determination of the proceedings if:

(a) all parties to the proceedings have been notified and given an opportunity to be heard on a request for temporary relief;

(b) the person requesting the relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceedings; and

(c) the relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air, or water resources.

(5) For the purpose of the hearing, the board may administer oaths, subpoena witnesses or written or printed materials, compel attendance of the witnesses or production of the materials, and take evidence, including, but not limited to, site inspections of the land to be affected and other surface coal mining operations carried on by the applicant in the general vicinity of the proposed operation. A verbatim record of each public hearing required by this chapter shall be made, and a transcript made available on the motion of any party or by order of the board.

(6) Any applicant, or any person with an interest which is or may be adversely affected who has participated in the proceedings as an objector, and who is aggrieved by the decision of the board, or if the board fails to act within the time limits specified in this chapter, has the right to appeal to the district court for the county in which the proposed operation is located. Any party to the action in district court may appeal from the final judgment, order, or decree of the district court.

1992

40-10-15. Performance bond — Duration of liability under bond — Cash deposit or securities in lieu of bond — Surety — Adjustment of amount.

(1) After a surface coal mining and reclamation permit application has been approved but before the permit is issued, the applicant shall file with the division on a form prescribed and furnished by the division, a bond for performance payable, as appropriate, to the United States or to the state and conditional upon faithful performance of all the requirements of this chapter and the permit. The bond shall cover that area of land within the permit area upon which the operator will initiate and conduct surface coal mining and reclamation operations within the initial term of the permit. As succeeding increments of surface coal mining and reclamation operations are to be initiated and conducted within the permit area, the permittee shall file with the division an additional bond or bonds to cover these increments in accordance with this section. The amount of the bond required for each bonded area shall depend upon the reclamation requirements of the approved permit; shall reflect the probable difficulty of reclamation, giving consideration to such factors as topography, geology of the site, hydrology, and revegetation potential; and shall be determined by the division. The amount of the bond shall be sufficient to assure the completion of the reclamation plan if the work had to be performed by the division in the event of forfeiture and in no case shall the bond for the entire area under one permit be less than \$10,000.

(2) Liability under the bond shall be for the duration of the surface coal mining and reclamation operation and for a period coincident with the operator's responsibility for revegetation requirements in Section 40-10-17. The bond shall be executed by the operator and a corporate surety licensed to do business in the state, except that the operator may elect to deposit cash, negotiable bonds of the United States government, or negotiable certificates of deposit of any bank organized or transacting business in the United States. The cash deposit or market value of the securities shall be equal to or greater than the amount of the bond required for the bonded area.

(3) The division may accept the bond of the applicant itself without separate surety when the applicant demonstrates to the satisfaction of the division the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient for authorization to self-insure or bond the amount.

(4) Cash or securities so deposited shall be deposited upon the same terms as the terms upon which surety bonds may be deposited. The securities shall be security for the repayment of the negotiable certificate of deposit.

(5) The amount of the bond, surety, or deposit required and the terms of each acceptance of the applicant's bond shall be adjusted by the division from time to time as affected land acreages are increased or decreased or where the cost of future reclamation changes.

1979

40-10-16. Relief of performance bond, surety, or deposit — Inspection and evaluation of reclamation work — Action on application for relief of bond — Objections — Formal hearing or informal conference.

(1) The division shall adopt and promulgate rules and regulations providing for the release of all or part of a performance bond, surety, or deposit which will include the following requirements:

(a) filing of a request with the division by the operator; and

(b) advertisement by the operator designed to give public notice of the release and the reclamation steps taken by the operator.

(2) Upon receipt of the notification and request, the division shall within 30 days conduct an inspection and evaluation of the reclamation work involved. The evaluation shall consider, among other things, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuance of future occurrence of the pollution, and the estimated cost of abating the pollution. The division shall notify the operator in writing of its decision to release or not to release all or part of the performance bond or deposit within 60 days from the filing of the request, if no public hearing is held pursuant to Subsection (6), and if there has been a public hearing held pursuant to Subsection (6), within 30 days thereafter.

(3) The division may release in whole or in part the bond or deposit if the division is satisfied the reclamation covered by the bond or deposit or portion of them has been accomplished as required by this chapter according to the schedule set forth in the division's implementing regulations, but no bond shall be fully released until all reclamation requirements of this chapter are finally met.

(4) If the division disapproves the application for release of the bond or portion of it, the division shall

notify the permittee in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure the release and allowing opportunity for a public hearing.

(5) When any application for total or partial bond release is filed with the division, the division shall notify the municipality in which a surface coal mining operation is located by certified mail at least 30 days prior to the release of all or a portion of the bond.

(6) (a) Any person with a valid legal interest which might be adversely affected by release of the bond or the responsible officer or head of any federal, state, or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation, or is authorized to develop and enforce environmental standards with respect to these operations shall have the right to file written objections to the proposed release from bond with the division within 30 days after the last publication of the above notice.

(b) If written objections are filed and a formal hearing requested, the board shall inform all the interested parties of the time and place of the hearing and hold a public hearing within 30 days after the request for the hearing. The date, time, and location of these public hearings shall be advertised by the board in a newspaper of general circulation in the locality for two consecutive weeks, within 30 days after the request for the hearing.

(c) For the purpose of formal hearing the board shall have the authority and is hereby empowered to administer oaths, subpoena witnesses or written or printed materials, compel the attendance of witnesses or production of the materials, and take evidence including, but not limited to, inspections of the land affected and other surface coal mining operations carried on by the applicant in the general vicinity. A verbatim record of each public hearing required by this chapter shall be made and a transcript made available on the motion of any party or by order of the board.

(d) Without prejudice to the rights of the objectors, the applicant, or the responsibilities of the division pursuant to this section, the division may establish an informal conference to resolve these written objections.

1981

40-10-17. Performance standards for all coal mining and reclamation operations — Additional standards for steep-slope surface coal mining — Variances.

(1) Any permit issued pursuant to this chapter to conduct surface coal mining shall require that the surface coal mining operations will meet all applicable performance standards of this chapter, and such other requirements as the division shall promulgate.

(2) General performance standards shall be applicable to all surface coal mining and reclamation operations and shall require the operations as a minimum to:

(a) Conduct surface coal mining operations so as to maximize the utilization and conservation of the solid fuel resource being recovered so that re-affecting the land in the future through surface coal mining can be minimized.

(b) Restore the land affected to a condition capable of supporting the uses which it was capable of supporting prior to any mining, or higher or

better uses of which there is reasonable likelihood, so long as the use or uses does [do] not present any actual or probable hazard to public health or safety or pose any actual or probable threat of water diminution or pollution, and the permit applicant's declared proposed land use following reclamation is not deemed to be impractical or unreasonable, inconsistent with applicable land use policies and plans, involves unreasonable delay in implementation, or is violative of federal, state, or local law.

(c) Except as provided in Subsection (3) with respect to all surface coal mining operations backfill, compact (where advisable to insure stability or to prevent leaching of toxic materials) and grade in order to restore the approximate original contour of the land with highwalls, spoil piles, and depressions eliminated (unless small depressions are needed in order to retain moisture to assist revegetation or as otherwise authorized pursuant to this chapter); but in surface coal mining which is carried out at the same location over a substantial period of time where the operation transects the coal deposit and the thickness of the coal deposits relative to the volume of the overburden is large and where the operator demonstrates that the overburden and other spoil and waste materials at a particular point in the permit area or otherwise available from the entire permit area is insufficient, giving due consideration to volumetric expansion, to restore the approximate original contour, the operator, at a minimum, shall backfill, grade, and compact (where advisable) using all available overburden and other spoil and waste materials to attain the lowest practicable grade but not more than the angle of repose, to provide adequate drainage and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region. In surface coal mining where the volume of overburden is large relative to the thickness of the coal deposit and where the operator demonstrates that due to volumetric expansion the amount of overburden and other spoil and waste materials removed in the course of the mining operation is more than sufficient to restore the approximate original contour, the operator shall, after restoring the approximate contour, backfill, grade, and compact (where advisable) the excess overburden and other spoil and waste materials to attain the lowest grade but more than the angle of repose, and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region and that the overburden or spoil shall be shaped and graded in such a way as to prevent slides, erosion, and water pollution and is revegetated in accordance with the requirements of this chapter.

(d) Stabilize and protect all surface areas, including spoil piles affected by the surface coal mining and reclamation operation to effectively control erosion and attendant air and water pollution.

(e) Remove the topsoil from the land in a separate layer, replace it on the backfill area, or if not utilized immediately, segregate it in a separate pile from other spoil, and when the topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, maintain a successful cover by quick growing

plant or other means thereafter so that the topsoil is preserved from wind and water erosion, remains free of any contamination by other acid or toxic material, and is in a usable condition for sustaining vegetation when restored during reclamation; except if topsoil is of insufficient quantity or of poor quality for sustaining vegetation, or if other strata can be shown to be more suitable for vegetation requirements, then the operator shall remove, segregate, and preserve in a like manner the other strata which is best able to support vegetation.

(f) Restore the topsoil or the best available subsoil which is best able to support vegetation.

(g) For all prime farmlands as identified in implementing regulations to be mined and reclaimed, specifications for soil removal, storage, replacement, and reconstruction, the operator shall, as a minimum, be required to:

(i) Segregate the A horizon of the natural soil, except where it can be shown that other available soil materials will create a final soil having a greater productive capacity, and if not utilized immediately, stockpile this material separately from other spoil, and provide needed protection from wind and water erosion or contamination by other acid or toxic material;

(ii) Segregate the B horizon of the natural soil, or underlying C horizons or other strata, or a combination of these horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon, in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that which existed in the natural soil, and if not utilized immediately, stockpile this material separately from other spoil, and provide needed protection from wind and water erosion or contamination by other acid or toxic material;

(iii) Replace and regrade the root zone material described in Subsection (2)(g)(ii) above with proper compaction and uniform depth over the regraded spoil material; and

(iv) Redistribute and grade in a uniform manner the surface soil horizon described in Subsection (2)(g)(i).

(h) Create, if authorized in the approved mining and reclamation plan and permit, permanent impoundments of water on mining sites as part of reclamation activities only when it is adequately demonstrated that:

(i) The size of the impoundment is adequate for its intended purposes;

(ii) The impoundment dam construction will be so designed as to achieve necessary stability with an adequate margin of safety compatible with that of structures constructed under Public Law 83-566 (16 U.S.C. 1006);

(iii) The quality of impounded water will be suitable on a permanent basis for its intended use and that discharges from the impoundment will not degrade the water quality below water quality standards established pursuant to applicable federal and state law in the receiving stream;

(iv) The level of water will be reasonably stable;

(v) Final grading will provide adequate safety and access for proposed water users; and

(vi) These water impoundments will not result in the diminution of the quality or quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

(i) Conducting (Conduct) any augering operation associated with surface mining in a manner to maximize recoverability of mineral reserves remaining after the operation and reclamation are complete and seal all auger holes with an impervious and noncombustible material in order to prevent drainage except where the division determines that the resulting impoundment of water in the auger holes may create a hazard to the environment or the public health or safety; but the permitting authority may prohibit augering if necessary to maximize the utilization, recoverability, or conservation of the solid fuel resources or to protect against adverse water quality impacts.

(j) Minimize the disturbances to the prevailing hydrologic balance at the mine site and in associated offsite areas and to the quality and quantity of water in surface and groundwater systems both during and after surface coal mining operations and during reclamation by:

(i) Avoiding acid or other toxic mine drainage by such measures as, but not limited to:

(A) preventing or removing water from contact with toxic-producing deposits;

(B) treating drainage to reduce toxic content which adversely affects downstream water upon being released to water courses;

(C) casing, sealing, or otherwise managing boreholes, shafts, and wells, and (to) keep acid or other toxic drainage from entering ground and surface waters.

(ii) (A) Conducting surface coal mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to stream-flow or runoff outside the permit area, but in no event shall contributions be in excess of requirements set by applicable state or federal law;

(B) Constructing any siltation structures pursuant to Subsection (2)(j)(ii) prior to commencement of surface coal mining operations, such structures to be certified by a qualified registered engineer to be constructed as designed and as approved in the reclamation plan.

(iii) Cleaning out and removing temporary or large settling ponds or other siltation structures from drainways after disturbed areas are revegetated and stabilized and depositing the silt and debris at a site and in a manner approved by the division;

(iv) Restoring recharge capacity of the mined area to approximate premining conditions;

(v) Avoiding channel deepening or enlargement in operations requiring the discharge of water from mines;

(vi) Preserving throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors in the arid and semiarid areas of the state; and

(vii) Such other actions as the division may prescribe.

(k) With respect to surface disposal of mine wastes, tailings, coal processing wastes, and other waste in areas other than the mine working or excavations stabilize all waste piles in designated areas through construction in compacted layers, including the use of incombustible and impervious materials, if necessary, and assure the final contour of the waste pile will be compatible with natural surroundings and that the site can and will be stabilized and revegetated according to the provisions of this chapter.

(l) Refrain from surface coal mining within 500 feet from active and abandoned underground mines in order to prevent breakthroughs and to protect health or safety of miners; but the division shall permit an operator to mine near, through, or partially through an abandoned underground mine or closer to an active underground mine if:

(i) The nature, timing, and sequencing of the approximate coincidence of specific surface mine activities with specific underground mine activities are jointly approved by the departments, divisions, and agencies concerned with surface mine reclamation and the health and safety of underground miners; and

(ii) The operations will result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public.

(m) Design, locate, construct, operate, maintain, enlarge, modify, and remove or abandon, in accordance with the standards and criteria developed pursuant to the division's rules and regulations, all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes, or other liquid and solid wastes, and used either temporarily or permanently as dams or embankments.

(n) Insure that all debris, acid-forming materials, toxic materials, or materials constituting a fire hazard are treated or buried and compacted or otherwise disposed of in a manner designed to prevent contamination of ground or surface waters and that contingency plans are developed to prevent sustained combustion.

(o) Insure that explosives are used only in accordance with existing state and federal law and the regulations adopted by the board, which shall include provisions to:

(i) Provide adequate advance written notice to local governments and residents who might be affected by the use of the explosives by publication of the planned blasting schedule in a newspaper of general circulation in the locality and by mailing a copy of the proposed blasting schedule to every resident living within one-half mile of the proposed blasting site and by providing daily notice to resident/occupiers in these areas prior to any blasting;

(ii) Maintain for a period of at least three years and make available for public inspection upon request a log detailing the location of the blasts, the pattern and depth of the

drill holes, the amount of explosives used per hole, and the order and length of delay in the blasts;

(iii) Limit the type of explosives and detonating equipment, the size, the timing and frequency of blasts based upon the physical conditions of the site so as to prevent injury to persons, damage to public and private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of ground or surface water outside the permit area;

(iv) Require that all blasting operations be conducted by trained and competent persons, and to implement this requirement, the division shall promulgate regulations requiring the training, examination, and certification of persons engaging in or directly responsible for blasting or the use of explosives in surface and coal mining operations;

(v) Provide that upon the request of a resident or owner of a man-made dwelling or structure within one-half mile of any portion of the permitted area, the applicant or permittee shall conduct a preblasting survey of the structures and submit the survey to the division and a copy to the resident or owner making the request, the area of which survey shall be decided by the division and shall include such provisions as promulgated.

(p) Insure that all reclamation efforts proceed in an environmentally-sound manner and as contemporaneously as practicable with the surface coal mining operations; but where the applicant proposes to combine surface mining operations with underground mining operations to assure maximum practical recovery of the mineral resources, the division may grant a variance for specific areas within the reclamation plan from the requirement that reclamation efforts proceed as contemporaneously as practicable to permit underground operations prior to reclamation:

(i) If the division finds in writing that:

(A) The applicant has presented, as part of the permit application, specific, feasible plans for the proposed underground mining operations;

(B) The proposed underground mining operations are necessary or desirable to assure maximum practical recovery of the mineral resource and will avoid multiple disturbance of the surface;

(C) The applicant has satisfactorily demonstrated that the plan for the underground mining operations conforms to requirements for underground mining in the jurisdiction and that permits necessary for the underground mining operations have been issued by the appropriate authority;

(D) The areas proposed for the variance have been shown by the applicant to be necessary for the implementing of the proposed underground mining operations;

(E) No substantial adverse environmental damage, either onsite or offsite, will result from the delay in completion of reclamation as required by this chapter;

(F) Provisions for the offsite storage of spoil will comply with Subsection 40-10-17(2)(v).

(ii) If the board has adopted specific regulations to govern the granting of the variances in accordance with the provisions of this Subsection (2)(p) and has imposed such additional requirements as deemed necessary;

(iii) If variances granted under this Subsection (2)(p) are to be reviewed by the division not more than three years from the date of issuance of the permit; and

(iv) If liability under the bond filed by the applicant with the division pursuant to Section 40-10-15 shall be for the duration of the underground mining operations and until the requirements of Subsection 40-10-17(2) and Section 40-10-16 have been fully complied with.

(q) Insure that the construction, maintenance, and post-mining conditions of access roads into and across the site of operations will control or prevent erosion and siltation, pollution of water, damage to fish or wildlife or their habitat, or public or private property.

(r) Refrain from the construction of roads or other access ways up a stream bed or drainage channel or in such proximity to the channel so as to seriously alter the normal flow of water.

(s) Establish on the regraded areas and all other lands affected, a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area of land to be affected and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area; except that introduced species may be used in the revegetation process where desirable and necessary to achieve the approved post-mining land use plan.

(t) Assume the responsibility for successful revegetation, as required by Subsection (2)(s), for a period of five full years after the last year of augmented seeding, fertilizing, irrigation, or other work in order to assure compliance with Subsection (2)(s), except in those areas or regions of the state where the annual average precipitation is 26 inches or less, then the operator's assumption of responsibility and liability will extend for a period of 10 full years after the last year of augmented seeding, fertilizing, irrigation, or other work; but when the division approves a long-term intensive agricultural post-mining land use, the applicable five or 10-year period of responsibility for revegetation shall commence at the date of initial planting for this long-term intensive, agricultural post-mining land use, except when the division issues a written finding approving a long-term, intensive, agricultural post-mining land use, as part of the mining and reclamation plan, the division may grant exception to the provisions of Subsection (2)(s).

(u) Protect offsite areas from slides or damage occurring during the surface coal mining and reclamation operations and not deposit spoil material or locate any part of the operations or waste accumulations outside the permit area.

(v) Place all excess spoil material resulting from coal surface mining and reclamation activities in a manner that:

(i) Spoil is transported and placed in a controlled manner in position for concurrent

compaction and in a way to assure mass stability and to prevent mass movement;

(ii) The areas of disposal are within the bonded permit areas and all organic matter shall be removed immediately prior to spoil placement;

(iii) Appropriate surface and internal drainage systems and diversion ditches are used so as to prevent spoil erosion and movement;

(iv) *The disposal area does not contain springs, natural water courses, or wet weather seeps unless lateral drains are constructed from the wet areas to the main underdrains in a manner that filtration of the water into the spoil pile will be prevented;*

(v) If placed on a slope, the spoil is placed upon the most moderate slope among those upon which, in the judgment of the division, the spoil could be placed in compliance with all the requirements of this chapter and shall be placed, where possible, upon or above a natural terrace, bench, or berm, if this placement provides additional stability and prevents mass movement;

(vi) Where the toe of the spoil rests on a downslope, a rock toe buttress of sufficient size to prevent mass movement, is constructed;

(vii) The final configuration is compatible with the natural drainage pattern and surroundings and suitable for intended uses;

(viii) Design of the spoil disposal area is certified by a qualified professional engineer, and to implement this requirement, the division shall promulgate regulations regarding the certification of engineers in the area of spoil disposal design; and

(ix) All other provisions of this chapter are met.

(w) Meet such other criteria as are necessary to achieve reclamation in accordance with the purposes of this chapter, taking into consideration the physical, climatological, and other characteristics of the site.

(x) To the extent possible, using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values, and achieve enhancement of these resources where practicable.

(y) Provide for an undisturbed natural barrier beginning at the elevation of the lowest coal seam to be mined and extending from the outslope for the distance as the division shall determine shall be retained in place as a barrier to slides and erosion.

(3) (a) Where an applicant meets the requirements of Subsections (3)(b) and (c), a permit without regard to the requirement to restore to approximate original contour provided in Subsections (2)(c), (4)(b), and (4)(c) may be granted for the surface mining of coal where the mining operation *will remove an entire coal seam or seams running through the upper fraction of a mountain, ridge, or hill (except as provided in Subsection (3)) by removing all of the overburden and creating a level plateau or a gently rolling contour with no highwalls remaining, and capable of supporting post-mining uses in accord with the requirements of this subsection.*

(b) In cases where an industrial, commercial, agricultural, residential, or public facility (including recreational facilities) use is proposed for the post-mining use of the affected land, the division may grant a permit for a surface mining operation of the nature described in Subsection (3)(a) pursuant to procedures and criteria set forth in implementing rules and regulations, including:

(i) The applicant's presentation of specific plans for the proposed post-mining land use which meet criteria concerning the type of use proposed;

(ii) The applicant's demonstration that the proposed use would be consistent with adjacent land uses and existing state and local land use plans and programs and with other requirements of this chapter;

(iii) Procedures whereby the division provides the governing body of the unit of general-purpose government in which the land is located and any state or federal agency which the division, in its discretion, determines to have an interest in the proposed use, an opportunity of not more than 60 days to review and comment on the proposed use.

(c) All permits granted under the provisions of this Subsection (3) shall be reviewed not more than three years from the date of issuance of the permit, unless the applicant affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the approved schedule and reclamation plan.

(4) The following performance standards shall be applicable to steep-slope surface coal mining and shall be in addition to those general performance standards required by this section; but the provisions of this Subsection (4) shall not apply to those situations in which an operator is mining on flat or gently rolling terrain, on which an occasional steep slope is encountered through which the mining operation is to proceed, leaving a plain or predominantly flat area or where an operator is in compliance with provisions of Subsection (3):

(a) Insure that when performing surface coal mining on steep slopes, no debris, abandoned or disabled equipment, spoil material, or waste mineral matter be placed on the downslope below the bench or mining cut; but spoil material in excess of that required for the reconstruction of the approximate original contour under the provisions of Subsection (2)(c) or this Subsection (4) shall be permanently stored pursuant to Subsection 40-10-17(2)(v).

(b) Complete backfilling with spoil material shall be required to cover completely the highwall and return the site to the appropriate original contour, which material will maintain stability following mining and reclamation.

(c) The operator may not disturb land above the top of the highwall unless the division finds that the disturbance will facilitate compliance with the environmental protection standards of this section; but the land disturbed above the highwall shall be limited to that amount necessary to facilitate this compliance.

(d) For the purposes of this Subsection (4), "steep slope" means any slope above 20° or such lesser slope as may be defined by the division after consideration of soil, climate, and other characteristics of an area.

(5) The board shall promulgate specific regulations to govern the granting of variances from the requirement to restore to approximate original contour pursuant to Subsection (4)(b) pursuant to procedures and criteria set forth in those regulations including:

- (a) Written request by the surface owner concerning the proposed use;
- (b) Approval of the proposed use as an equal or better economic or public use;
- (c) Approval of the proposed use as improving the watershed control in the area and as using only such amount of spoil as is necessary to achieve the planned post-mining land use. 1981

40-10-18. Underground coal mining — Rules and regulations regarding surface effects — Operator requirements for underground coal mining — Suspension of underground mining on finding of imminent danger to surface inhabitants — Applicability of other chapter provisions.

(1) The board shall adopt rules and regulations directed toward the surface effects of underground coal mining operations, embodying the requirements provided in this section. In adopting any rules and regulations the board shall consider the distinct difference between surface coal mining and underground coal mining methods.

(2) Each permit issued pursuant to this chapter and relating to underground coal mining shall require the operator to:

(a) Adopt measures consistent with known technology in order to prevent subsidence causing material damage to the extent technologically and economically feasible, maximize mine stability, and maintain the value and reasonably foreseeable use of the surface lands, except in those instances where the mining technology used requires planned subsidence in a predictable and controlled manner; but nothing in this Subsection (2) shall be construed to prohibit the standard method of room and pillar mining.

(b) Seal all portals, entryways, drifts, shafts, or other openings between the surface and underground mine working when no longer needed for the conduct of the mining operations.

(c) Fill or seal exploratory holes no longer necessary for mining, maximizing to the extent technologically and economically feasible return of mine and processing waste, tailings, and any other waste incident to the mining operation, to the mine workings or excavations.

(d) With respect to surface disposal of mine wastes, tailings, coal processing wastes, and other wastes in areas other than the mine workings or excavations, stabilize all waste piles created by the permittee from current operations through construction in compacted layers, including the use of incombustible and impervious materials, if necessary, and assure that the leachate will not degrade below water quality standards established pursuant to applicable federal and state law surface or ground waters and that the final contour of the waste accumulation will be compatible with natural surroundings and that the site is stabilized and revegetated according to the provisions of this section.

(e) Design, locate, construct, operate, maintain, enlarge, modify, and remove or abandon in accordance with the standards and criteria developed pursuant to Section 40-10-17 all existing

and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes, or other liquid and solid wastes used either temporarily or permanently as dams or embankments.

(f) Establish on regraded areas and all other lands affected, a diverse and permanent vegetative cover capable of self-regeneration and plant succession and at least equal in extent of cover to the natural vegetation of the area.

(g) Protect offsite areas from damages which may result from the mining operations.

(h) Eliminate fire hazards and otherwise eliminate conditions which constitute a hazard to health and safety of the public.

(i) Minimize the disturbances of the prevailing hydrologic balance at the mine site and in associated offsite areas and to the quantity of water in surface and groundwater systems both during and after coal mining operations and during reclamation by:

(i) Avoiding acid or other toxic mine drainage by such measures as, but not limited to:

(A) preventing or removing water from contact with toxic-producing deposits;

(B) treating drainage to reduce toxic content which adversely affects downstream water upon being released to water courses;

(C) casing, sealing, or otherwise managing boreholes, shafts, and wells to keep acid or other toxic drainage from entering ground and surface waters.

(ii) Conducting surface coal mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area (but in no event shall these contributions be in excess of requirements set by applicable state or federal law), and avoiding channel deepening or enlargement in operations requiring the discharge of water from mines.

(j) With respect to other surface impacts not specified in this Subsection (2), including the construction of new roads or the improvement or use of existing roads to gain access to the site of these activities and for haulage, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structure, facilities, or other property or materials on the surface, resulting from or incident to such activities, operate in accordance with the standards established under Section 40-10-17 for such effects which result from surface coal mining operations; but the division shall make the modification in the requirements imposed by this Subsection (2)(j) as are necessary to accommodate the distinct difference between surface and underground coal mining methods.

(k) To the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values, and achieve enhancement of these resources where practicable.

(l) Locate openings for all new drift mines working acid producing or iron producing coal seams in a manner as to prevent a gravity discharge of water from the mine.

(3) In order to protect the stability of the land, the board shall suspend underground coal mining under urbanized areas, cities, towns, and communities and adjacent to industrial or commercial buildings, major impoundments, or permanent streams if, after proper notice and hearing there is a finding of imminent danger to inhabitants of the urbanized areas, cities, towns, and communities.

(4) The provisions of this chapter relating to permits, sureties, bonds, inspections, and enforcement, public review, and administrative and judicial review shall be applicable to surface operations and surface impacts incident to an underground coal mine with those modifications to the permit application requirements, permit approval or denial procedures, and bond requirements as are necessary to accommodate the distinct difference between surface and underground coal mining methods. 1981

40-10-19. Information provided by permittees to division — Inspections by division — Signs required at operations entrances — Violations reported by reclamation officers — Copies of records and reports available to public.

(1) For the purpose of developing, administering, and enforcing any permit under this chapter, or of determining whether any person is in violation of any requirement of this chapter, the division shall require any permittee to provide information relative to surface coal mining and reclamation operations as the division deems reasonable and necessary in the division's implementing rules and regulations.

(2) The authorized representatives of the division, without advance notice and upon presentation of appropriate credentials:

(a) Shall have the right of entry into, upon, or through any surface coal mining and reclamation operations or any premises in which any records required to be maintained under this Subsection (2) are located.

(b) May at reasonable times, and without delay, have access to and copy any records, inspect any monitoring equipment or method of operation required under this chapter. As required by Subsection 40-8-17(2), this entry and access are conditions to obtaining an approved state permit to conduct surface mining operations.

(3) The inspections by the division shall:

(a) Occur on an irregular basis averaging not less than one partial inspection per month and one complete inspection per calendar quarter for the surface coal mining and reclamation operation covered by each permit;

(b) Occur without prior notice to the permittee or his agents or employees except for necessary onsite meetings with the permittee; and

(c) Include the filing of inspection reports adequate to enforce the requirements of and to carry out the terms and purposes of this chapter.

(4) Each permittee shall conspicuously maintain at the entrances to the surface coal mining and reclamation operations a clearly visible sign which sets forth the names, business address, and phone number of the permittee and the permit number of the surface coal mining and reclamation operations.

(5) Each reclamation officer, upon detection of each violation of any requirement of this chapter, shall forthwith inform the operator in writing and shall report in writing the violation to the division.

(6) Copies of any records, reports, inspection materials, or information obtained under this chapter by

the division shall be made immediately available to the public.

40-10-20. Civil penalty for violation of chapter — Public hearing — Contest of violation or amount of penalty — Collection — Criminal penalties — Civil penalty for failure to correct violation.

(1) Any permittee who violates any permit condition or who violates any other provision of this chapter may be assessed a civil penalty by the board, except that if the violation leads to the issuance of a cessation order under Section 40-10-22, the civil penalty shall be assessed. This penalty shall not exceed \$5,000 for each violation. Each day of continuing violation may be deemed a separate violation for purposes of the penalty assessments. In determining the amount of penalty, consideration shall be given to the permittee's history of previous violations at the particular surface coal mining operation; the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public; whether the permittee was negligent; and the demonstrated good faith of the permittee charged in attempting to achieve rapid compliance after notification of the violation.

(2) A civil penalty shall be assessed by the board only after the person charged with a violation described under Subsection (1) has been given an opportunity for a public hearing. Where the public hearing has been held, the board shall make findings of fact, and shall issue a written decision as to the occurrence of the violation and the amount of the penalty which is warranted, incorporating, when appropriate, an order requiring that the penalty be paid. When appropriate, the board shall consolidate these hearings with other proceedings under Section 40-10-22. Any hearing under this section shall be of record and shall be conducted pursuant to board rules and regulations governing the proceedings. Where the person charged with a violation fails to avail himself of the opportunity for a public hearing, a civil penalty shall be assessed by the board after the board has determined that a violation did occur and the amount of the penalty which is warranted, and has issued an order requiring that the penalty be paid.

(3) Upon the issuance of a notice or order charging that a violation of this chapter has occurred, the board shall inform the operator within 30 days of the proposed amount of the penalty. The person charged with the penalty shall then have 30 days to pay the proposed penalty in full, or, if the person wishes to contest either the amount of the penalty or the fact of the violation, forward the proposed amount to the board for placement in an escrow account. If, through administrative or judicial review of the proposed penalty, it is determined that no violation occurred or that the amount of the penalty should be reduced, the board shall within 30 days remit the appropriate amount to the person, with interest accumulated. Failure to forward the money to the board within 30 days shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.

(4) Civil penalties owed under this chapter may be recovered in a civil action brought by the attorney general of Utah at the request of the board in any appropriate district court of the state.

(5) Any person who willfully and knowingly violates a condition of a permit issued pursuant to this chapter or fails or refuses to comply with any order issued under Section 40-10-22 or any order incorporated in a final decision issued by the board under

this chapter, except an order incorporated in a decision under Subsection (2) shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than one year, or both.

(6) Whenever a corporate permittee violates a condition of a permit issued pursuant to this chapter or fails or refuses to comply with any order incorporated in a final decision issued by the board under this chapter, except an order incorporated in a decision issued under Subsection (2), any director, officer, or agent of the corporation who willfully and knowingly authorized, ordered, or carried out the violation, failure, or refusal shall be subject to the same civil penalties, fines, and imprisonment that may be imposed upon a person under Subsections (1) and (5).

(7) Whoever knowingly makes any false statement, representation, or certification, or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this chapter or any order or decision issued by the board under this chapter shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than one year, or both.

(8) Any operator who fails to correct a violation for which a notice or cessation order has been issued under Subsection 40-10-22(1) within the period permitted for its correction (which period shall not end until the entry of a final order by the board, in the case of any review proceedings initiated by the operator in which the board orders, after an expedited hearing, the suspension of the abatement requirements of the citation after determining that the operator will suffer irreparable loss or damage from the application of those requirements, or until the entry of an order of the court, in the case of any review proceedings initiated by the operator wherein the court orders the suspension of the abatement requirements of the citation), shall be assessed a civil penalty of not less than \$750 for each day during which the failure or violation continues.

1986

40-10-21. Civil action to compel compliance with chapter — Jurisdiction — Venue — Division and board as parties — Court costs — Security when temporary restraining order or injunction sought — Other rights not affected — Action for damages.

(1) (a) Except as provided in Subsection (2), any person having an interest which is or may be adversely affected may commence a civil action on his own behalf to compel compliance with this chapter against:

(i) the state or any other governmental instrumentality or agency to the extent permitted by the 11th Amendment to the United States Constitution or the Utah Governmental Immunity Act, Title 63, Chapter 30, which is alleged to be in violation of the provisions of this chapter or of any rule, regulation, order, or permit issued pursuant to it;

(ii) any person who is alleged to be in violation of any rule, regulation, order, or permit issued pursuant to this chapter; or

(iii) the division or board where there is alleged a failure of the division or board to perform any act or duty under this chapter which is not discretionary with the division or with the board.

(b) The district courts shall have jurisdiction without regard to the amount in controversy or the citizenship of the parties.

(2) No action may be commenced:

(a) under Subsection (1)(a)(i) or (ii):

(i) prior to 60 days after the plaintiff has given notice in writing of the violation to the division and to any alleged violator; or

(ii) if the attorney general has commenced and is diligently prosecuting a civil action in a court of the state to require compliance with the provisions of this chapter, or any rule, regulation, order, or permit issued pursuant to this chapter;

(b) under Subsection (1)(a)(iii) prior to 60 days after the plaintiff has given notice in writing of the action to the board, in the manner as the board prescribes by rule, except that the action may be brought immediately after the notification in the case where the violation or order complained of constitutes an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.

(3) (a) Any action concerning a violation of this chapter or the rules promulgated under it may be brought only in the judicial district in which the surface coal mining operation complained of is located.

(b) In the action, the division and board, if not a party, may intervene as a matter of right.

(4) (a) The court, in issuing any final order in any action brought pursuant to Subsection (1) may award costs of litigation, including attorney and expert witness fees, to any party whenever the court determines that award is appropriate.

(b) The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Utah Rules of Civil Procedure.

(5) Nothing in this section may restrict any right which any person, or class of persons, has under any statute or common law to seek enforcement of any of the provisions of this chapter and the regulations promulgated under it, or to seek any other relief, including relief against the division and board.

(6) Any person who is injured in his person or property through the violation by an operator of any rule, order, or permit issued pursuant to this chapter may bring an action for damages, including reasonable attorney and expert witness fees, only in the judicial district in which the surface coal mining operation complained of is located. Nothing in this subsection shall affect the rights established by or limits imposed under Utah workmen's compensation laws.

1985

40-10-22. Violation of chapter or permit conditions — Inspection — Cessation order, abatement notice, or show cause order — Suspension or revocation of permit — Review — Costs assessed against either party.

(1) (a) Whenever, on the basis of any information available, including receipt of information from any person, the division has reason to believe that any person is in violation of any requirement of this chapter or any permit condition required by this chapter, the division shall immediately order inspection of the surface coal mining operation at which the alleged violation is occurring, unless the information available to the division is a result of a previous inspection of the

surface coal mining operation. When the inspection results from information provided to the division by any person, the division shall notify that person when the inspection is proposed to be carried out, and that person shall be allowed to accompany the inspector during the inspection.

(b) When, on the basis of any inspection, the division determines that any condition or practices exist, or that any permittee is in violation of any requirement of this chapter or any permit condition required by this chapter, which condition, practice, or violation also creates an imminent danger to the health or safety of the public, or is causing, or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources, the division shall immediately order a cessation of surface coal mining and reclamation operations or the portion thereof relevant to the condition, practice, or violation. The cessation order shall remain in effect until the division determines that the condition, practice, or violation has been abated, or until modified, vacated, or terminated by the division pursuant to Subsection (1)(e). Where the division finds that the ordered cessation of surface coal mining and reclamation operations, or any portion of same, will not completely abate the imminent danger to health or safety of the public or the significant imminent environmental harm to land, air, or water resources, the division shall, in addition to the cessation order, impose affirmative obligations on the operator requiring him to take whatever steps the division deems necessary to abate the imminent danger or the significant environmental harm.

(c) When, on the basis of an inspection, the division determines that any permittee is in violation of any requirement of this chapter or any permit condition required by this chapter, but the violation does not create an imminent danger to the health or safety of the public or cannot be reasonably expected to cause significant, imminent environmental harm to land, air, or water resources, the division shall issue a notice to the permittee or his agent fixing a reasonable time but not more than 90 days for the abatement of the violation and providing opportunity for conference before the division. If upon expiration of the period of time as originally fixed or subsequently extended, for good cause shown, and upon the written finding of the division, the division finds that the violation has not been abated, it shall immediately order a cessation of surface coal mining and reclamation operations or the portion of same relevant to the violation. The cessation order shall remain in effect until the division determines that the violation has been abated or until modified, vacated, or terminated by the division pursuant to Subsection (1)(e). In the order of cessation issued by the division under this Subsection (1)(c), the division shall determine the steps necessary to abate the violation in the most expeditious manner possible and shall include the necessary measures in the order.

(d) When on the basis of an inspection the division determines that a pattern of violations of any requirements of this chapter or any permit conditions required by this chapter exists or has existed, and if the division also finds that these violations are caused by the unwarranted failure of the permittee to comply with any require-

ments of this chapter or any permit conditions or that these violations are willfully caused by the permittee, the board shall be requested to issue an order to the permittee to show cause as to why the permit should not be suspended or revoked and shall provide opportunity for a public hearing. If a conference is requested, the division shall inform all interested parties of the time and place of the hearing. Upon the permittee's failure to show cause as to why the permit should not be suspended or revoked, the board shall immediately suspend or revoke the permit.

(e) Notices and orders issued under this section shall set forth with reasonable specificity the nature of the violation and the remedial action required, the period of time established for abatement, and a reasonable description of the portion of the surface coal mining and reclamation operation to which the notice or order applies. Each notice or order issued under this section shall be given promptly to the permittee or his agent by the division, and the notices and orders shall be in writing and shall be signed by the director, or his authorized representative who issues such notice or order. Any notice or order issued under this section may be modified, vacated, or terminated by the division, but any notice or order issued under this section which requires cessation of mining by the operator shall expire within 30 days of actual notice to the operator unless a conference is held before the division.

(2) (a) The division may request the attorney general to institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order in the district court for the district in which the surface coal mining and reclamation operation is located or in which the permittee of the operation has his principal office, whenever such permittee or his agent:

(i) violates or fails or refuses to comply with any order or decision issued by the division under this chapter;

(ii) interferes with, hinders, or delays the division or its authorized representatives in carrying out the provisions of this chapter;

(iii) refuses to admit the authorized representatives to the mine;

(iv) refuses to permit inspection of the mine by the authorized representative;

(v) refuses to furnish any information or report requested by the division in furtherance of the provisions of this chapter; or

(vi) refuses to permit access to and copying of such records as the division determines necessary in the carrying out the provisions of this chapter.

(b) The court shall have jurisdiction to provide such relief as may be appropriate. Any relief granted by the court to enforce an order under Subsection (2)(a)(i) shall continue in effect until the completion or final termination of all proceedings for review of that order under this chapter, unless, prior to this completion or termination, the district court granting the relief sets it aside or modifies it.

(3) (a) A permittee issued a notice or order by the division pursuant to the provisions of Subsections (1)(b) and (1)(c), or any person having an interest which may be adversely affected by the notice or order, may apply to the board for review of the notice or order within 30 days of receipt of

it or within 30 days of its modification, vacation, or termination. Upon receipt of this application, the board shall cause such investigation to be made as it deems appropriate. The investigation shall provide an opportunity for a public hearing at the request of the applicant or the person having an interest which is or may be adversely affected to enable the applicant or that person to present information relating to the issuance and continuance of the notice or order or the modification, vacation, or termination of it. The filing of an application for review under this Subsection (3)(a) shall not operate as a stay of any order or notice.

(b) The permittee and other interested persons shall be given written notice of the time and place of the hearing at least five days prior to the hearing. This hearing shall be of record and shall be subject to judicial review.

(c) Pending completion of the investigation and hearing required by this section, the applicant may file with the board a written request that the board grant temporary relief from any notice or order issued under this section, together with a detailed statement giving the reasons for granting this relief. The board shall issue an order or decision granting or denying this relief expeditiously; and where the applicant requests relief from an order for cessation of coal mining and reclamation operations issued pursuant to Subsections (1)(b) or (1)(c), the order or decision on this request shall be issued within five days of its receipt. The board may grant the relief under such conditions as it may prescribe, if a hearing has been held in the locality of the permit area on the request for temporary relief and the conditions of Subsections 40-10-14(4)(a), 40-10-14(4)(b), and 40-10-14(4)(c) are met.

(d) Following the issuance of an order to show cause as to why a permit should not be suspended or revoked pursuant to this section, the board shall hold a public hearing after giving written notice of the time, place, and date of it. The hearing shall be of record and shall be subject to judicial review. Within 60 days following the public hearing, the board shall issue and furnish to the permittee and all other parties to the hearing a written decision and the reasons for it, concerning suspension or revocation of the permit. If the board revokes the permit, the permittee shall immediately cease surface coal mining operations on the permit area and shall complete reclamation within a period specified by the board, or the board shall declare as forfeited the performance bonds for the operation.

(e) Whenever an order is issued under this section or as a result of any administrative proceeding under this chapter, at the request of any person, a sum equal to the aggregate amount of all costs and expenses (including attorney fees) as determined by the board to have been reasonably incurred by that person in connection with his participation in the proceedings, including any judicial review of agency actions, may be assessed against either party as the court, resulting from judicial review, or the board, resulting from administrative proceedings, deems proper.

(f) Action by the board taken under this section or any other provision of the state program shall be subject to judicial review by the appropriate district court within the state of Utah, but the availability of this review shall not be con-

strued to limit the operation of the citizen suit in Section 40-10-21, except as provided in this latter section. 1981

40-10-23. Time for bringing criminal proceeding.

No criminal proceeding based upon violation of this chapter, or any rule, regulation, or order issued under this chapter, shall be commenced or maintained unless it shall have been commenced within five years from the date of the alleged violation. 1979

40-10-24. Determination of unsuitability of lands for surface coal mining — Petition — Public hearing — Detailed statement by division.

(1) (a) The board and division, with the advice of appropriate federal, state, and local agencies, shall establish a planning process enabling objective decisions based upon competent and scientifically sound data and information as to which, if any, land areas of the state are unsuitable for all or certain types of surface coal mining operations pursuant to the standards set forth in Subsections (1)(b) and (1)(c). This designation shall not prevent the mineral exploration pursuant to this chapter of any area so designated.

(b) Upon petition pursuant to Subsection (2), the board shall designate an area as unsuitable for all or certain types of surface coal mining operations if the board and division determine that reclamation pursuant to the requirements of this chapter is not technologically and economically feasible.

(c) Upon petition pursuant to Subsection (2), a surface area may be designated unsuitable for certain types of surface coal mining operations if these operations will:

(i) be incompatible with existing state or local land use plans or programs;

(ii) affect fragile or historic lands in which the operations could result in significant damage to important historic, cultural, scientific, and esthetic values and natural systems;

(iii) affect renewable resource lands in which the operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products, and the lands to include aquifers and aquifer recharge areas; or

(iv) affect natural hazard lands in which the operations could substantially endanger life and property, these lands to include areas subject to frequent flooding and areas of unstable geology;

and where the criteria listed in Subsections (1)(c)(i), (1)(c)(ii), (1)(c)(iii), and (1)(c)(iv) have been balanced against the economic impact of the designation in a cost-benefit analysis.

(d) Determinations of the unsuitability of lands for surface coal mining, as provided for in this section, shall be integrated as closely as possible with present and future land use planning and regulation processes at the state and local levels.

(e) The requirements of this section shall not apply to lands on which surface coal mining operations are being conducted on August 3, 1977, or under a permit issued pursuant to this chapter, or where substantial legal and financial commit-

ments in these operations were in existence prior to January 1, 1977.

(2) Any person having an interest which is or may be adversely affected shall have the right to petition the board to have an area designated as unsuitable for surface coal mining operations or to have this designation terminated. The petition shall contain allegations of facts with supporting evidence which would tend to establish the allegations. Within 10 months after receipt of the petition the board shall hold a public hearing, after appropriate notice and publication of the date, time, and location of the hearing. After a person having an interest which is or may be adversely affected has filed a petition and before the hearing, as required by this subsection, any person may intervene by filing allegations of facts with supporting evidence which would tend to establish the allegations. Within 60 days after the hearing, the board shall issue and furnish to the petitioner and any other party to the hearing, a written decision regarding the petition and the reasons for it. If all the petitioners stipulate agreement prior to the requested hearing and withdraw their request, the hearing need not be held.

(3) Prior to any land areas being designated as unsuitable for surface coal mining operations, a detailed statement shall be prepared by the division on:

- (a) the potential coal resources of the area;
- (b) the demand for coal resources; and
- (c) the impact of the designation on the environment, the economy, and the supply of coal.

(4) After August 3, 1977, and subject to valid existing rights, no surface coal mining operations, except those which exist on that date, shall be permitted:

- (a) on any lands where this activity is precluded by Public Law 95-87;

(b) on any lands which will adversely affect any publicly-owned park or places included in the National Register of Historic Sites, unless approved jointly by the division and the federal, state, or local agency with jurisdiction over the park or the historic site;

(c) within 100 feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join this right-of-way line and except that the division may permit these roads to be relocated or the area affected to lie within 100 feet of the road, if after public notice and opportunity for public hearing in the locality a written finding is made that the interests of the public and the landowners affected thereby will be protected; or

(d) within 300 feet from any occupied dwelling, unless waived by the owner of same, nor within 300 feet from any public building, school, church, community, institutional building, or public park, or within 100 feet of a cemetery.

1992

40-10-25. Abandoned mine reclamation program — Expenditure priorities — Eligible lands and water.

(1) Grants made to the state by the secretary of the United States Department of Interior for the administration of an abandoned mine reclamation program and monies of the Abandoned Mine Reclamation Fund created in Section 40-10-25.1 shall be used by the division in accordance with Sections 40-10-25 through 40-10-28.1.

(2) The expenditure of monies shall reflect the following priorities:

(a) the protection of public health, safety, general welfare, and property from extreme danger of adverse effects of coal mining practices;

(b) the protection of public health, safety, and general welfare from adverse effects of coal mining practices;

(c) the restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices, including measures for the conservation and development of soil, water (excluding channelization), woodland, fish and wildlife, recreation resources, and agricultural productivity;

(d) research and demonstration projects relating to the development of surface mining reclamation and water quality control program methods and techniques;

(e) the protection, repair, replacement, construction, or enhancement of public facilities such as utilities, roads, and recreation and conservation facilities adversely affected by coal mining practices; and

(f) the development of publicly-owned land adversely affected by coal mining practices, including land acquired as provided in this section for recreation and historic purposes, conservation, reclamation purposes, and open space benefits.

(3) Except as provided in Section 40-10-28.1, lands and water eligible for reclamation or drainage abatement expenditures under this section are those:

(a) which were mined for coal or affected by coal mining, wastebanks, coal processing, or other coal mining processes;

(b) abandoned or left in an inadequate reclamation status prior to August 3, 1977; and

(c) for which there is no continuing reclamation responsibility under state or federal laws.

1992

40-10-25.1. Abandoned Mine Reclamation Fund created — Contents — Use of monies.

(1) (a) There is created an expendable trust fund known as the Abandoned Mine Reclamation Fund.

(b) (i) The fund shall consist of the monies specified in Subsections (2) and (3).

(ii) The monies of Subsection (2) shall be segregated from the monies of Subsection (3).

(2) (a) Monies received by the state from the following sources shall be deposited into the Abandoned Mine Reclamation Fund:

(i) recovered liens filed against privately-owned land as provided by Section 40-10-28;

(ii) fees for the use of reclaimed lands as provided by Section 40-10-28;

(iii) fines collected for violations of this chapter or any rule or order issued under this chapter;

(iv) donations designated for reclamation of abandoned mines; and

(v) interest credited to the fund pursuant to Subsection (b).

(b) Monies received under Subsection (a) shall be invested by the state treasurer and the income earned shall be credited to the Abandoned Mine Reclamation Fund, except interest income earned over \$9,500 per year shall be credited to the General Fund.

(c) The division may at any time expend monies deposited into the fund under Subsection

(2)(a) to accomplish the purposes of the abandoned mine reclamation program.

(3) (a) (i) Monies received by the state from the secretary of the United States Department of Interior, which are granted as special state set-aside monies in accordance with 30 U.S.C. Sec. 1232 et seq. shall be deposited in the Abandoned Mine Reclamation Fund.

(ii) Monies deposited into the fund under Subsection (3)(a)(i) shall be invested by the state treasurer and the income earned shall be credited to the Abandoned Mine Reclamation Fund.

(b) After August 3, 1992, the division shall use the monies deposited into the Abandoned Mine Reclamation Fund under Subsection (3) to accomplish the purposes set forth in Sections 40-10-25 through 40-10-28.1.

(c) Except as provided in Subsection (3)(d), the monies deposited into the Abandoned Mine Reclamation Fund under Subsection (3) shall be made available to the division through legislative appropriations.

(d) The director of the division with the concurrence of the board may at any time expend monies deposited into the Abandoned Mine Reclamation Fund under Subsection (3)(a) for any emergency requiring immediate reclamation.

1991

40-10-25.2. Liability limitation for abandoned mine reclamation.

(1) The state is not liable for any costs or damages resulting from action taken or not taken to carry out an abandoned mine reclamation plan.

(2) (a) Subsection (1) does not preclude liability for costs or damages resulting from gross negligence or intentional misconduct by the state.

(b) For purposes of this section, reckless, willful, or wanton misconduct constitutes gross negligence.

1991

40-10-26. State reclamation plan and annual projects submitted to secretary of interior — Contents of plan — Annual support and implementation requests — Costs for proposed projects.

(1) The division will submit to the secretary of the interior a state reclamation plan and annual projects to carry out the purposes of this section.

(2) The state reclamation plan shall generally identify the areas to be reclaimed, the purposes for which the reclamation is proposed, the relationship of the lands to be reclaimed and the proposed reclamation to surrounding areas, the specific criteria for ranking and identifying projects to be funded, and the legal authority and programmatic capability to perform this work in conformance with the provisions of this chapter.

(3) The division shall have the authority to submit an annual application for the support of the state program and implementation of specific reclamation projects to the secretary of the interior. These annual requests shall include such information as may be requested by the secretary.

(4) The division shall have the authority to provide annual and other reports required by the secretary of the interior to accompany the annual request for support required in Subsection (3).

(5) The costs for each proposed project under this section shall include: actual construction costs, actual operation and maintenance costs of permanent facilities, planning and engineering costs, construction in-

spection costs, and other necessary administrative expenses.

1979

40-10-27. Entry upon land adversely affected by past coal mining practices — Conducting of studies or exploratory work — State acquisition of land — Lien — Waste disposal fund — Water pollution control and treatment plants.

(1) If the board, after notice and hearing, makes a finding of fact that:

(a) Land or water resources have been adversely affected by past coal mining practices;

(b) The adverse effects are at a stage where, in the public interest, action to restore, reclaim, abate, control, or prevent should be taken;

(c) The owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices are not known or readily available, or the owners will not give permission for the state or its political subdivisions, their agents, employees, or contractors to enter upon the property to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices;

Then, upon giving notice by mail to the owners, if known, or if not known, by posting notice upon the premises and advertising once in a newspaper of general circulation in the county in which the land lies, the agents, employees, or contractors of the division, shall have the right to enter the property adversely affected by past coal mining practices and any other property to have access to that property to do all things necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects. This entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare and shall not be construed as an act of condemnation of property nor of trespass on it. The monies expended for this work and the benefits accruing to the premises so entered upon shall be chargeable against the land and shall mitigate or offset any claim in or any action brought by any owner of any interest in these premises for any alleged damages by virtue of the entry; but this provision is not intended to create new rights of action or eliminate existing immunities.

(2) The agents, employees, or contractors of the division shall have the right to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past coal mining practices and to determine the feasibility of restoration, reclamation, abatement, control, or prevention of these adverse effects. This entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare and shall not be construed as an act of condemnation of property nor trespass on it.

(3) The state may acquire any land by purchase, donation, or condemnation which is adversely affected by past coal mining practices if the board, after notice and hearing, determines that acquisition of this land is necessary to successful reclamation and that:

(a) The acquired land, after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices, will serve recreation and historic purposes, conservation and reclamation purposes, or provide open space benefits; and

interceptors and other facilities appurtenant to the plant.

(c) The division may transfer funds to other appropriate state agencies, in order to carry out the reclamation activities authorized by this chapter. 1992

40-10-28. Recovery of reclamation costs — Lien against reclaimed land.

(1) All reclamation costs of each project shall be recovered to the extent possible, taking into consideration the objectives of the project and the criteria under which the project was selected for reclamation work in accordance with the following:

(a) All possible reclamation costs shall be recovered at the time of first sale of land following reclamation as follows:

(i) Whenever reclaimed land is sold at a value higher than that at which the unreclaimed land was appraised immediately prior to reclamation, the difference between the pre and post reclamation values shall be payable to the fund to mitigate or offset the cost of the reclamation program; and

(ii) When land is to be sold to a state or local government for public purposes, the amount of the sale price may be less than the market value after reclamation but may not be less than the actual costs of reclamation.

(b) (i) Special charges for use of land may be levied, including recreation fees, leases, livestock grazing fees, or special lawful uses. These fees may be waived by the board when deemed to be to the public benefit.

(ii) These user fees, however, shall be charged to all users of the reclaimed lands which result in financial or personal benefits to persons, corporations, or profit-making organizations.

(iii) All fees collected, less operating and maintenance expenses, shall be redeposited in the fund.

(2) (a) The division shall place a lien against reclaimed land at the market value of which has increased as a result of the reclamation work, except where the surface owner neither consented to nor participated in nor exercised control over the mining operation which necessitated the reclamation work.

(b) The board may waive the requirement of a lien where land is owned by a state, local government, or municipality or when owned and operated for a charitable public purpose by a non-profit charitable organization.

(c) The amount of the lien shall consist of the monies expended for the reclamation work but shall not exceed the resulting increase in the market value of the reclaimed land as determined by an independent appraiser.

(d) A written statement of monies expended for the reclamation work, together with a notarized appraisal of an independent appraiser of the market value of the land before and after the reclamation work, shall within six months after completion of the reclamation work, be filed in the office of the county recorder of the county in which the land lies. 1979

40-10-28.1. Certification of completion of coal reclamation.

(1) The governor may certify to the secretary of the United States Department of Interior that all of the

priorities stated in Subsection 40-10-25(2) for the eligible lands and waters specified in Subsection 40-10-25(3) have been achieved.

(2) (a) If the secretary concurs with the certification made by the governor, Subsection 40-10-25(3) does not apply for the purpose of determining the eligibility of lands and waters for annual grants, and, except as provided in Subsection (2)(b), eligible lands, waters, and facilities are those:

(i) which were mined or processed for minerals or which were affected by mineral mining or processing;

(ii) abandoned or left in an inadequate reclamation status prior to August 3, 1977; and

(iii) for which there is no continuing reclamation responsibility under state or other federal laws.

(b) In determining the eligibility of federal lands, water, and facilities under the jurisdiction of the Forest Service or Bureau of Land Management, in lieu of the August 3, 1977, date referred to in Subsection (2)(a), the applicable dates shall be August 28, 1974, and November 26, 1980, respectively.

(3) Expenditures of monies for lands, waters, and facilities referred to in Subsection (2) shall reflect the following objectives and priorities in the order stated, instead of the priorities set forth in Subsection 40-10-25(2):

(a) the protection of public health, safety, general welfare, and property from extreme danger of adverse effects of mineral mining and processing practices;

(b) the protection of public health, safety, and general welfare from adverse effects of mineral mining and processing practices; and

(c) the restoration of land and water resources and the environment previously degraded by the adverse effects of mineral mining and processing practices.

(4) Sites and areas designated for remedial action pursuant to the Uranium Mill Tailings Radiation Control Act of 1978, 42 U.S.C. 7901 et seq., or which have been listed for remedial action pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. 9601 et seq., are not eligible for expenditures from the fund under this section.

(5) The following projects may be undertaken if they relate to the priorities stated in Subsection (3):

(a) reclamation projects involving the protection, repair, replacement, construction, or enhancement of utilities, such as those relating to water supply or roads, or other facilities serving the public that are adversely affected by mineral mining and processing practices; or

(b) the construction of public facilities in communities impacted by coal or other mineral mining and processing practices.

(6) Notwithstanding Subsection (5), if the secretary concurs in the certification referenced in Subsection (1) and if the governor determines there is a need for activities or construction of specific public facilities related to the coal or minerals industry in a state impacted by coal or minerals development and the secretary concurs in this need, then the division may use annual grants made available under Subsection 40-10-25(1) to carry out these activities or construction.

(7) Sections 40-10-27 and 40-10-28, which govern the reclamation of abandoned coal mines, shall also apply to the reclamation of abandoned mineral operations. 1991

40-10-29. Other enforcement and protection rights unaffected — Operator to replace adversely affected water supply of legitimate users.

(1) Nothing in this chapter shall be construed as affecting in any way the right of any person to enforce or protect, under applicable law, his interest in water resources affected by a surface coal mining operation.

(2) The operator of a surface coal mine shall replace the water supply of an owner of interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source where this supply has been affected by contamination, diminution, or interruption proximately resulting from the surface coal mine operation. 1979

40-10-30. Judicial review of rules or orders.

(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.

(2) An action or appeal involving any provision of this chapter, or a rule or order shall be determined as expeditiously as feasible. The trial court shall determine the issues on both questions of law and fact and shall affirm or set aside the rule or order, enjoin or stay the effective date of agency action, or remand the cause to the board for further proceedings. Judicial review of disputed issues of fact shall be confined to the agency record. The court may, in its discretion, receive additional evidence for good cause shown.

(3) Review of the adjudication of the district court by the Supreme Court. 1986

40-10-31. Chapter's procedures supersede Title 63, Chapter 46b.

The provisions of this chapter relating to agency adjudicative procedures before the board or division supersede the procedures and requirements of Title 63, Chapter 46b, only until and unless the appropriate federal authority approves Title 63, Chapter 46b, for the governance of the board as to this chapter. 1987

TITLE 41

MOTOR VEHICLES

Chapter

- 1. Motor Vehicle Act [Renumbered].
- 1a. Motor Vehicle Act.
- 2. Operators' License Act.
- 3. Motor Vehicle Business Regulation.
- 4. Financing Dealers and Purchasers.

Chapter

- 5. Motor Vehicle Insurance [Repealed].
- 6. Traffic Rules and Regulations.
- 7. Publicly Owned Motor Vehicles.
- 8. Driving by Minors.
- 9. Guest Statute [Repealed].
- 10. State Vehicle Department.
- 11. Motor Fuels [Repealed].
- 11a. Alcohol Production Incentive [Repealed].
- 12. Safety Responsibility Act [Repealed].
- 12a. Motor Vehicle Financial Responsibility.
- 13. Department of Public Safety.
- 13a. Security Personnel Licensing and Regulation.
- 14. Traffic Safety Coordinating Committee [Repealed].
- 15. Vehicle Equipment Safety Compact.
- 16. Motor Clubs [Repealed].
- 17. Drivers' License Compact [Repealed].
- 18. Commercial Driver Training Schools [Repealed].
- 19. Federal Highway Safety Act.
- 20. Recreational Vehicles.
- 21. Vintage Vehicles.
- 22. Off-Highway Vehicles.
- 23. Multistate Highway Transportation Agreement.
- 24. Nonresident Violator Compact [Repealed].
- 25. Victim Restitution.

CHAPTER 1

MOTOR VEHICLE ACT

(Renumbered by L. 1992, ch. 1, §§ 6 to 178.)

41-1-1 to 41-1-231. Renumbered as §§ 41-1a-1 to 41-1a-1402.

CHAPTER 1a

MOTOR VEHICLE ACT

Part 1

Administration

Section

- 41-1a-101. Short title.
- 41-1a-102. Definitions.
- 41-1a-103. Commission to administer chapter.
- 41-1a-104. Commission powers.
- 41-1a-105. Commission to create forms.
- 41-1a-106. Division created.
- 41-1a-107. Commission, division, and officers to enforce chapter — Duties.
- 41-1a-108. Division inspection of applications for registration, certificate of title, or license plate.
- 41-1a-109. Grounds for division refusing registration or certificate of title.
- 41-1a-110. Authority of division to suspend or revoke registration, certificate of title, license plate, or permit.
- 41-1a-111. Cancellation, suspension, or revocation of registration — Return of registration items.
- 41-1a-112. Authority to administer oaths.
- 41-1a-113. Power to summon witnesses and take testimony — Service of summons — Witness fees — Failure to appear.
- 41-1a-114. Method of giving notice.
- 41-1a-115. Division records — Copies.
- 41-1a-116. Records — Telephone requests for records — Search fee.
- 41-1a-117. Adjudicative proceedings.

Tab B

to appeal the Division order and have the contested and processed formally are available. Adequate administrative remedies and may be exercised prior to seeking judicial review.

5-108. Waivers.

Notwithstanding any other provision of these rules, any procedural matter, including any right to notice of hearing, may be waived by the affected persons; provided, written waiver in a form acceptable to the Division.

5-109. Severability.

In the event that any provision, section, subsection or phrase of these rules is determined by a court or body of competent jurisdiction to be invalid, unconstitutional, or unenforceable, other remaining provisions, sections, subsections or phrases shall remain in force and effect.

5-110. Construction.

The Utah Administrative Procedures Act described in Title 63, Chapter 46b of the Utah Code Annotated (1963, as amended) shall supersede any conflicting provision of these rules. These rules should be construed to be in compliance with said Act.

5-111. Time Periods.

Nothing in these rules may be interpreted to restrict the Division Director, for good cause shown, from lengthening or shortening any time period prescribed herein.

40-8-1 et seq.

R614. Oil, Gas and Mining; Coal.

R614-1A. Chapter I — Subchapter A — General — UMC Regulations Pertaining to Surface Effects of Underground Coal Mining Activities.

R614-1F. Subchapter F — Areas Unsuitable for Surface Effects of Underground Coal Mining Activities.

R614-1G. Subchapter G — Underground Coal Mining Activities Permits and Coal Exploration Procedures Systems.

R614-1J. Subchapter J — Bonding and Insurance Requirements for Surface Coal Mining and Reclamation Operations.

R614-1K. Subchapter K — UMC Permanent Program Performance Standards.

R614-1L. Subchapter L — Inspection and Enforcement Procedures.

R614-1M. Subchapter M — Training, Examination, and Certification of Blasters.

R614-1P. Subchapter P — Protection of Employees.

R614-1Q. Subchapter Q — Applicability of 40-8-1 et seq. and Rules M-1 through M-10.

R614-2A. Chapter II — Subchapter A — General — UMC Regulations Pertaining to Surface Coal Mining Activities.

R614-2F. Subchapter F — Areas Unsuitable for Surface Coal Mining Activities.

R614-2G. Subchapter G — Surface Coal Mining and Reclamation Activities Permits and Coal Exploration Procedures Systems.

R614-2J. Subchapter J — Bonding and Insurance Requirements for Surface Coal Mining and Reclamation Operations.

R614-2K. Subchapter K — Permanent Program Performance Standards.

R614-2L. Subchapter L — Inspection and Enforcement Procedures.

R614-2M. Subchapter M — Training, Examination, and Certification of Blasters.

R614-2P. Subchapter P — Protection of Employees.

R614-2Q. Subchapter Q — Applicability of 40-8-1 et seq. and Rules M-1 through M-10.

R614-100. Administrative: Introduction.

R614-101. Restrictions on State Employees.

R614-102. Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction.

R614-103. Areas Unsuitable for Coal Mining and Reclamation Operations.

R614-104. Protection of Employees.

R614-105. Administrative: Blaster Training, Examination and Certification.

R614-200. Coal Exploration: Introduction.

R614-201. Coal Exploration: Requirements for Exploration Approval.

R614-202. Coal Exploration: Compliance Duties.

R614-203. Coal Exploration: Public Availability of Information.

R614-300. Coal Mine Permitting: Administrative Procedures.

R614-301. Coal Mine Permitting: Permit Application Requirements.

R614-302. Coal Mine Permitting: Special Categories and Areas of Mining.

R614-303. Coal Mine Permitting: Change, Renewal, and Transfer, Assignment, or Sale of Permit Rights.

R614-400. Inspection and Enforcement: Division Authority and Procedures.

R614-401. Inspection and Enforcement: Civil Penalties.

R614-402. Inspection and Enforcement: Individual Civil Penalties.

R614-1A. Chapter I — Subchapter A — General — UMC Regulations Pertaining to Surface Effects of Underground Coal Mining Activities.

R614-1A-700. Part UMC 700 — General.

R614-1A-705. Part UMC 705 — Restrictions on State Employees Financial Interest.

R614-1A-707. Part UMC 707 — Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction.

R614-1A-700. Part UMC 700 — General.

UMC 700.1 Scope

This Chapter I, consisting of Parts UMC 700-900, establishes the procedures through which the Utah State Division of Oil, Gas and Mining will implement those provisions of the Coal Mining Reclamation Act of 1979, (U.C.A. 40-10-1 et seq.) pertaining to surface effects of underground coal mining activities and includes regulations implementing U.C.A. 40-10-8 of the Act pertaining to coal exploration. Regulations pertaining to coal exploration are also set forth in Chapter II. Chapter I is divided into the following subchapters:

(a) Subchapter A contains general introductory information intended to serve as a guide to the rest of the chapter and to the regulatory requirements and definitions generally applicable to the program and persons covered by those provisions of the Act that are applicable to coal exploration and surface effects of underground coal mining activities.

b) Subchapter F implements those requirements of the Utah Coal Mining Reclamation Act of 1979 for designating certain lands unsuitable for all or certain types of surface effects of underground coal mining activities and for termination of such designations.

c) Subchapter G governs applications for and decisions on permits for underground coal mining activities and approvals.

d) Subchapter J sets forth requirements for performance bonds and public liability insurance for underground coal mining activities.

e) Subchapter K sets forth the environmental and other performance standards which apply to coal exploration and underground coal mining activities. Performance standards applicable to special coal mining situations such as alluvial valley floors and prime farmlands are included.

f) Subchapter L sets forth the inspection, enforcement, and civil penalty provisions.

g) Subchapter M will set forth the requirements for training, examination, and certification of blasters.

h) Subchapter P sets forth the provision for the protection of employees who initiate proceedings under the Act or testify in any proceeding resulting from the administration or enforcement of the Act.

i) Subchapter Q sets forth the applicability of certain provisions of 40-8, U.C.A. 1953, as amended, the Utah Mined Land Reclamation Act of 1975, and Rules M-1 through M-10 to the Utah state program.

UMC 700.2 Notations

This copy of the Regulations Pertaining to Surface Effects of Underground Mining Activities (including regulations for coal exploration) incorporates changes that have been adopted by the Board of Oil, Gas and Mining and approved by the Office of Surface Mining Reclamation and Enforcement through March 1987.

Sections marked with a single asterisk indicate regulations remanded, in whole or in part, by either the Secretary of the Department of the Interior or the U. S. Court of Appeals (Judge Flannery's decisions). Whereas, sections marked with double asterisks indicate regulations suspended, in whole or in part, by the Secretary or the Court.

*Remanded

**Suspended

UMC 700.5 Definitions

As used in this chapter, the following terms have the specified meanings, except where otherwise indicated:

"Account" means abandoned mine reclamation account established pursuant to 40-10-25 of the Act.

"Act" means Utah Code Annotated U.C.A. 40-10-1 et seq.

"Acid drainage" means water with a pH of less than 6.0 and in which total acidity exceeds total alkalinity, discharged from active, inactive, or abandoned underground coal mining activities or from an area affected by underground coal mining activities.

"Acid-forming materials" means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, form acids that may create acid drainage.

"Adjacent area" means the area outside the permit area where a resource or resources, determined according to the context in which adjacent area is used, are or reasonably could be expected to be adversely impacted by proposed mining operations, including probable impacts from underground workings.

"Affected area" means any land or water surface area which is used to facilitate, or is physically altered by, surface coal mining and reclamation opera-

tions. The affected area includes the disturbed area upon which surface coal mining and reclamation operations are conducted; any adjacent area the use of which is incidental to surface coal mining and reclamation operations; all areas covered by or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as provided in this definition; an area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, fuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any area upon which are sited structures, facilities, or other property material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings. The affected area shall include every road used for purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations.

"Agricultural activities" means, with respect to alluvial valley floors, the use of any tract of land for the production of animal or vegetable life, where the use is enhanced or facilitated by subirrigation or flood irrigation associated with alluvial valley floors. These uses include, but are not limited to, the pasturing, grazing, or watering of livestock, and the cropping, cultivation, or harvesting of plants whose production is aided by the availability of water from subirrigation or flood irrigation. Those uses do not include agricultural practices which do not benefit from the availability of water from subirrigation or flood irrigation.

"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 from the Division to conduct underground coal mining and reclamation activities pursuant to the Act.

"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 eliminated. Permanent water impoundments may be permitted where the Division has determined that they comply with UMC 817.49 and 817.56, and 817.133.

"Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantity 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.

"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 streamflow 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 of the Office of Surface Mining, even though 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 UMC 817. Within the constraints of the permanent program, the Division or Board shall have the discretion to determine the best technology currently available on a case-by-case basis, as authorized by the state and federal Acts and this chapter.

"Board" means the Board of Oil, Gas and Mining for the state of Utah.

"Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77, referred to and incorporated by reference in the definition of "anthracite" as given in 30 CFR 700.5.

"Coal exploration" means the field gathering of 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 the gathering of environmental data which would cause substantial disturbance to the earth's surface or subsurface to establish the conditions of an area before beginning (underground) (surface) coal mining and reclamation operations under the requirements of this chapter.

"Coal processing" means chemical or 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 may be combustible, physically unstable, or acid-forming or toxic-forming, and which are wasted or otherwise separated from product coal, and slurried or otherwise transported from coal preparation plants, after physical or chemical processing, cleaning, or concentrating of coal.

"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.

"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.

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

"Director" means the Director, Utah State Division of Oil, Gas and Mining or a Director's representative.

"Director of the Office of Surface Mining" means the Director of that federal agency.

"Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal-processing waste, underground-development waste, or noncoal waste is placed by surface or underground coal mining operations. Those areas are classified as disturbed until reclamation is complete and the performance bond, or other assurance of performance required by UMC Part 800, is released.

"Diversion" means a channel, embankment, or other manmade structure constructed to divert water from one area to another.

"Division" means Utah State Division of Oil, Gas and Mining, the designated state regulatory authority.

"Downslope" means the land surface between the projected outcrop of the lowest coalbed being mined along each highwall and a valley floor.

"Edge effect" means the effect created by the juxtaposition of two diverse habitats.

"Embankment" means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or for other similar purposes.

"Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.

"Essential hydrologic functions" means the role of an alluvial valley floor in collecting, storing, regulating, and making the natural flow of surface or ground water, or both, usefully available for agricultural activities by reason of the valley floor's topographic position, the landscape and the physical properties of its underlying materials. A combination of these functions provides a water supply during extended periods of low precipitation.

(a) The role of the alluvial valley floor in collecting water includes accumulating runoff and discharge from aquifers in sufficient amounts to make the water available at the alluvial valley floor greater than the amount available from direct precipitation.

(b) The role of the alluvial valley floor in storing water involves limiting the rate of discharge of surface water, holding moisture in soils, and holding ground water in porous materials.

(c)(1) The role of the alluvial valley floor in regulating the natural flow of surface water results from the characteristic configuration of the channel flood plain and adjacent low terraces.

(2) The role of alluvial valley floor in regulating the natural flow of ground water results from the properties of the aquifers which control inflow and outflow.

(d) The role of the alluvial valley floor in making water usefully available for agricultural activities results from the existence of flood plains and terraces where surface and ground water can be provided in sufficient quantities to support the growth of agriculturally useful plants, from the presence of earth materials suitable for the growth of agriculturally useful plants, from the temporal and physical distribution of water making it accessible to

plants throughout the critical phases of the growth cycle either by flood irrigation or by subirrigation, from the natural control of alluvial valley floors in limiting destructive extremes of stream discharge, and from the erosional stability of earth materials suitable for the growth of agriculturally useful plants.

"Existing structure" means a structure or facility used in connection with or to facilitate underground coal mining activities for which construction begins prior to the approval of a state program.

"Federal lands" means any land, including mineral interests, owned by the United States, without regard to how the United States acquired ownership of the lands or which agency manages the lands. It does not include Indian lands.

"Federal Act" means P.L. 95-87.

"Federal lands program" means a program established by the Secretary pursuant to Section 523 of the Federal Act to regulate surface coal mining and reclamation activities and surface effects of underground coal mining activities on federal lands.

"Federal program" means a program established by the Secretary pursuant to Section 504 of the Federal Act to regulate coal exploration, surface effects of underground coal mining activities and surface coal mining and reclamation activities on nonfederal and non-Indian lands within a state in accordance with the Federal Act and 30 CFR 700 et seq.

(a) Complete federal program means a program established by the Secretary pursuant to Section 504 of the Federal Act before June 3, 1980, by which the Director of the Office of Surface Mining regulates all coal exploration, surface effects of underground coal mining activities, and surface coal mining and reclamation activities.

(b) Partial federal program means a program established by the Secretary pursuant to Sections 102, 201 and 504 of the Federal Act upon the partial withdrawal of a state program, by which the Director of the Office of Surface Mining may regulate appropriate portions of coal exploration, surface effects of underground coal mining activities, and surface coal mining and reclamation activities.

"Flood irrigation" means, with respect to alluvial valley floors, supplying water to plants by natural overflow or the diversion of flows, so that the irrigated surface is largely covered by a sheet of water.

"Fund" means the Abandoned Mine Reclamation Fund established pursuant to 40-10-25 of the Act.

"Fugitive dust" means that particulate matter not emitted from a duct or stack which becomes airborne due to the forces of wind or underground coal mining activities or both. During underground coal mining activities it may include emissions from haul roads; wind erosion of exposed surfaces, storage piles, and spoil piles; reclamation operations; and other activities in which material is either removed, stored, transported, or redistributed.

"Ground water" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

"Habitats of unusually high value for fish and wildlife" means areas defined by the state as crucial-critical use areas for wildlife.

"Half-shrub" means a perennial plant with a woody base whose annually produced stems die back each year.

"Head-of-hollow fill" means a fill structure consisting of any material, other than coal processing waste and organic materials, placed in the uppermost reaches of a hollow where side slopes of the existing

hollow measured at the steepest point are more than 20 degrees or the average slope of the side of the hollow from the toe of the fill to the top of the hollow is greater than 10 degrees. In fills with less than 250,000 cubic yards of material, associated with surface mining, the top surface of the fill will be at the elevation of the coal seam. In all other head-of-hollow fills, the top surface of the fill, when completed, will be at approximately the same elevation as the adjacent ridge line, and no significant area of natural drainage occurs above the fill draining into the fill area.

"Highwall" means the face of exposed overburden and coal in an open cut for entry to underground mining activities.

"Historically used for cropland" means (1) lands that have been used for cropland for any five years out of the 10 years immediately preceding acquisition, including purchase, lease, or option, the land for the purpose of conducting or allowing through resale, lease, or option the conduct of underground coal mining activities; (2) lands that the Director determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, that the permit area is clearly cropland but fails outside the specific 5-years-in-cropland criterion, in which case the regulations for prime farmland may be applied to include more years of cropland history only to increase the prime farmland acreage to be preserved; or (3) lands that would likely have been used as cropland for any five out of the last 10 years, immediately preceding such acquisition but for the same fact of ownership or control of the land unrelated to the productivity of the land.

"Hydrologic balance" means the relationship between the quality and quantity of water inflow, water output from, and storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationships among precipitation, runoff, evaporation, and changes in ground and surface water storage.

"Hydrologic regime" means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

"Immediate danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirements of the Act in an underground coal mining activity, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

"Impoundment" means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

"Incidental boundary change" means additions or deletions which result in a net increase to the originally approved permit area which are less than one (1) percent, or 10 acres, whichever is smaller. All approved incidental boundary changes over the five-year permit term shall be considered cumulative.

"Indian lands" means all lands, including mineral interests, within the exterior boundaries of any federal Indian reservation, notwithstanding the issue-

ance of any patent, and including rights-of-way, and all lands including mineral interests held in trust for or supervised by an Indian tribe.

"Indian tribe" means any Indian tribe, band, group, or community having a governing body recognized by the Secretary.

"In situ processes" means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.

"Intermittent stream" means a stream or reach of a stream that is below the local water table for at least some part of the year, and that contributes to the stream and obtains its flow from both surface runoff and ground water discharge.

"Land use" means specific uses or management-related activities, rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal uses occur. Changes of land use or uses from one of the following categories to another shall be considered as a change to an alternative land use which is subject to approval by the Division.

(a) 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. Land used for facilities in support of cropland farming operations which is adjacent to or an integral part of these operations is also included for purposes of these land use categories.

(b) Pastureland or land occasionally cut for hay. Land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed. Land used for facilities in support of pastureland or land occasionally cut for hay which is adjacent to or an integral part of these operations is also included.

(c) Grazing. Includes both grasslands and forest lands where the indigenous vegetation is actively managed for grazing, browsing, or occasional hay production. Land used for facilities in support of ranching operations which are adjacent to or an integral part of these operations is also included.

(d) Forestry. Land used or managed for the long-term production of wood, wood fiber, or wood derived products. Land used for facilities in support of forest harvest and management operations which is adjacent to or an integral part of these operations is also included.

(e) Residential. Includes single and multiple-family housing, mobile home parks, and other residential lodgings. Land used for facilities in support of residential operations which is adjacent to or an integral part of these operations is also included. Support facilities include, but are not limited to, vehicle parking and open space that directly relate to the residential use.

(f) Industrial/Commercial. Land used for—

(1) Extraction or transformation of materials for fabrication of products, wholesaling of products or for long-term storage products. This includes all heavy and light manufacturing facilities such as lumber and wood processing, chemical manufacturing, petroleum refining, and fabricated metal products manufacture. Land used for facilities in support of these operations which is adjacent to or an integral part of

that operation is also included. Support facilities include, but are not limited to, rail, road, and other transportation facilities.

(2) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments. Land used for facilities in support of commercial operations which is adjacent to or an integral part of these operations is also included. Support facilities include, but are not limited to, parking, storage or shipping facilities.

(g) Recreation. Land used for public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

(h) Fish and wildlife habitat. Land dedicated wholly or partially to the production, protection, or management of species of fish and wildlife.

(i) Developed water resources. Includes land used for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control, and water supply.

(j) Undeveloped land or no current use or land management. Land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to a state through natural succession.

"Materially damage the quantity or quality of water" means, with respect to alluvial valley floors, changes in the quality or quantity of the water supply to any portion of an alluvial valley floor where such changes are caused by underground coal mining activities and result in changes that significantly and adversely affect the composition, diversity, or productivity of vegetation dependent on subirrigation, or which result in changes that would limit the adequacy of the water for flood irrigation of the irrigable land acreage existing prior to mining.

"Moist bulk density" means the weight of soil (oven dry) per unit volume. Volume is measured when the soil is at field moisture capacity ($1/3$ bar moisture tension). Weight is determined after drying the soil at 105 degrees C.

"Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing microclimatic conditions suitable for germination and growth.

"Noxious plants" means species that are included on official state lists of noxious plants.

"Office of Surface Mining" means Office of Surface Mining Reclamation and Enforcement, U. S. Department of Interior.

"Operator" means any person engaged in coal mining who removes or intends to remove more than 250 tons of coal from the earth or from coal refuse piles by mining within 12 consecutive calendar months in any one location.

"Outslope" means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

"Overburden" means material of any nature, consolidated or unconsolidated, that overlies a coal deposit, excluding topsoil.

"Perennial stream" means a stream or part of a stream that flows continuously during all of the calendar year as a result of ground water discharge or surface runoff. The term does not include intermittent stream or ephemeral stream.

"Performance bond" means a surety bond, collateral bond or self-bond or a combination thereof, by which a permittee assures faithful performance of all the requirements of the Act, this chapter, the state

program, and the requirements of the permit and reclamation plan.

"Permanent diversion" means a diversion remaining after underground coal mining activities are completed which has been approved for retention by the Division and other appropriate state and federal agencies.

"Permit" means a permit to conduct underground coal mining activities issued by the Division pursuant to a state program. For purposes of the federal lands program, permit means the document issued authorizing underground coal mining activities on federal lands, after approval of a mining plan by the Secretary, and, where a cooperative agreement pursuant to Section 523 of the Federal Act has been executed by the Division.

"Permit area" means the area of land indicated on the approved map submitted by the operator with the application required to be covered by the operator's performance bond under Part UMC 800, and which shall include the area of land upon which the operator proposes to conduct surface coal mining and reclamation operations or proposes to conduct surface operations incident to underground mining activities under the permit, including all disturbed areas; provided that areas adequately bonded under another valid permit may be excluded from the permit.

"Permittee" means a person holding or required by the Act or this chapter to hold a permit to conduct underground coal mining activities issued by the Division pursuant to a state program, or, where a cooperative agreement pursuant to Section 523 of the Federal Act has been executed, by the Director of the Office of Surface Mining and the Division.

"Person" means an individual, Indian tribe when conducting underground coal mining activities on non-Indian lands, partnership, association, society, joint venture, joint stock company, firm, company, corporation, cooperative or other business organization and any agency, unit, or instrumentality of federal, state or local government including any publicly owned utility or publicly owned corporation of federal, state, or local government.

"Person having an interest which is or may be adversely affected or person with a valid legal interest means any person" —

(a) Who uses any resource of economic, recreational, esthetic, or environmental value that may be adversely affected by coal exploration or surface coal mining and reclamation activities or any related action of the Secretary, the Division, or the Board; or

(b) Whose property is or may be adversely affected by coal exploration or surface coal mining and reclamation activities or any related action of the Secretary, the Division, or the Board.

"Prime farmland" means those lands which are defined by the Secretary of Agriculture in 7 CFR 657 (Federal Register Vol. 4 No. 21) and which have historically been used for cropland as that phrase is defined above.

"Public office" means a facility under the direction and control of a governmental entity which is open to public access on a regular basis during reasonable business hours.

"Rangeland" means those areas which by reason of physical limitations such as low and erratic precipitation, rough topography, poor drainage, or extreme temperatures are generally unsuited for cultivation. Rangelands include grasslands, brushlands, deserts, and open forests and are managed primarily to enhance the production of forage for both free-ranging wildlife and domestic animals.

"Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

"Reclamation" means those actions taken to restore mined land as required by this chapter to postmining land use approved by the Division.

"Recurrence interval" means the interval of time in which a precipitation event is expected to occur once, on the average. For example, the 10-year, 24-hour precipitation event would be that 24-hour precipitation event expected to occur on the average once in 10 years.

"Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity and plant species diversity that are produced naturally or by crop production methods approved by the Division. Reference areas must be representative of geology, soils, slope, aspect, and vegetation in the permit area.

"Regional Director" means a Regional Director of the Office of Surface Mining or a Regional Director's representative.

"Renewable resource lands" means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazinglands.

"Road" means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or underground coal mining activities. A road consists of the entire area within the right-of-way, including roadbed, shoulders, parking and side area, approaches, structures, ditches, surface, and such contiguous appendages as are necessary for the total structure. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration or underground coal mining activities, including use by coal-hauling vehicles leading to transfer, processing, or storage areas. The term does not include pioneer or construction roadways used for part of the road construction procedure and promptly replaced by a Class I, Class II, or Class III road located in the identical right-of-way as the pioneer or construction roadway. The term also excludes any roadway within the immediate mining pit area.

(a) Class I Road means a road that is utilized for transportation of coal.

(b) Class II Road means any road, other than a Class I Road, planned to be used over a six-month period or longer.

(c) Class III Road means any road, other than a Class I Road, planned to be used over a period of less than six (6) months, or for very infrequent use over the life of the mine.

"Safety factor" means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

"Sedimentation pond" means a primary sediment control structure designed, constructed, and maintained in accordance with UMC 816.46 and including but not limited to a barrier, dam, or excavated depression which slows down water runoff to allow sediment to settle out. A sedimentation pond shall not include secondary sedimentation control structures, such as straw dikes, riprap, check dams, mulches, dugouts, and other measures that reduce flow velocity, reduce runoff volume or trap sediment, to the extent that such secondary sedimentation structures drain to a sedimentation pond.

"Significant, imminent environmental harm to land, air, or water resources means" —

(1) An environmental harm is an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life.

(b) An environmental harm is imminent, if a condition, practice, or violation exists which —

(1) Is causing such harm; or,

(2) May reasonably be expected to cause harm at any time before the end of the reasonable abatement time that would be set under 40-10-22 of the Act.

(c) An environmental harm is significant if that harm is appreciable and not immediately reparable.

"Slope" means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g., 1v:5h). It may also be expressed as a percent or in degrees.

"Soil horizons" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The three major soil horizons are —

(a) A horizon. The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.

(b) B horizon. The layer that typically is immediately beneath the A horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A or C horizons.

(c) C horizon. The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

"Soil survey" means a field and other investigation, resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets such soils for use. Soil surveys must meet the standards of the National Cooperative Soil Survey as incorporated by reference in SMC 785.17(b)(1).

"Spoil" means overburden that has been removed during underground coal mining activities.

"Stabilize" means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

"State program" means a program established by a state and approved by the Secretary pursuant to Section 503 of the Federal Act to regulate surface coal mining and reclamation activities and surface effects of underground coal mining activities on non-Indian and nonfederal lands within the state, according to the requirements of the Federal Act and this chapter. If a cooperative agreement under 30 CFR 745 has been entered into, a state program will apply to federal lands, in accordance with the terms of the cooperative agreement.

"Steep slope" means any slope of more than 20 degrees or such lesser slope as may be designated by the Division after consideration of soil, climate, and other characteristics of a region or state.

"Subirrigation" means, with respect to alluvial valley floors, the supplying of water to plants from underneath or from a semi-saturated or saturated subsurface zone where water is available for use by vegetation. Subirrigation may be identified by:

(a) Diurnal fluctuation of the water table, due to the difference in nighttime and daytime evapotranspiration rates;

(b) Increasing soil moisture from a portion of the root zone down to the saturated zone, due to capillary action;

(c) Mottling of the soils in the root zones;

(d) Existence of an important part of the root zone within the capillary fringe or water table of an alluvial aquifer; or

(e) An increase in streamflow or a rise in ground water levels, shortly after the first killing frost on the valley floor.

"Substantially disturb" means, for purposes of coal exploration, to impact significantly upon land, air, or water resources by such activities as blasting, mechanical excavation, drilling or altering coal or water exploratory holes or wells, construction of roads and other access routes, and the placement of structures, excavated earth, or other debris on the surface of land.

"Surface coal mining activities" means:

(a) Activities conducted on the surface of lands in connection with a surface coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include 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 uses of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, 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 per centum 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) Areas upon which the activities described in paragraph (a) above occur or where those activities disturb the natural land surface. These areas shall 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.

"Surface coal mining and reclamation activities" means surface coal mining activities and all activities necessary or incidental to the reclamation of such activities. This term includes the term surface coal mining activities.

"Surface effects of underground coal mining activities" means the "surface operations" and surface impacts incident to "underground coal mining activities."

"Surface operations" means with respect to "underground coal mining activities", the activities conducted on the surface of the earth incident to an underground coal mine, such as the uses of explosives and blasting on the surface of the earth, in situ distillation or retorting, leaching, or other chemical or physical processing, and the cleaning, concentrating

or other processing or preparation and loading of coal for interstate commerce at or near the mine site and the construction, use, maintenance, and reclamation of roads, 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 these activities.

"Temporary diversion" means a diversion of a stream or overload flow which is used during coal exploration or underground coal mining activities and not approved by the Division to remain after reclamation as part of the approved postmining land use.

"Ton" means 2,000 pounds avoirdupois (90718 metric ton).

"Topsoil" means the A soil horizon layer of the three major soil horizons.

"Toxic-forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.

"Toxic mine drainage" means water that is discharged from active or abandoned mines or other areas affected by coal exploration or underground coal mining activities which contains a substance that through chemical action or physical effects is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

"Unconsolidated streamlaid deposits holding streams" means, with respect to alluvial valley floors, all flood plains and terraces located in the lower portions of topographic valley which contain perennial or other streams with channels that are greater than three (3) feet in bankful width and greater than 0.5 feet in bankful depth.

"Underground development waste" means waste rock mixtures of coal, shale, claystone, siltstone, sandstone, limestone, or related materials that are excavated, moved, and disposed of during development and preparation of areas incident to underground coal mining activities.

"Underground coal mining activities" means a combination of "surface operations" and "underground operations" incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce.

"Underground operations" means those operations conducted below the surface of the earth in connection with an underground coal mine, such as underground construction, operation, and reclamation of shafts, adits, underground support facilities, in situ processing, and underground mining, hauling, storage, and blasting.

"Undeveloped rangeland" means, for purposes of alluvial valley floors, lands where the use is not specifically controlled and managed.

"Upland areas" means, with respect to alluvial valley floors, those geomorphic features located outside the floodplain and terrace complex, such as isolated higher terraces, alluvial fans, sediment surfaces, landslide deposits, and surfaces covered with residuum, mud flows or debris flows, as well as highland areas underlain by bedrock and covered by residual weathered material or debris deposited by sheetwash, rillwash, or windblown material.

"Valley fill" means a fill structure consisting of any material, other than coal processing waste and other organic material, that is placed in a valley where side slopes of the existing valley measured at the steepest point are greater than 20 degrees or the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than 10 degrees.

"Water table" means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

UMC 700.6 Responsibility

(a) The Director of the Office of Surface Mining, under the general direction of the Assistant Secretary, Energy and Minerals, is responsible for exercising the authority of the Secretary of the Interior, except for the following:

(1) Approval, disapproval, or withdrawal of approval of a state program and implementation of a federal program. The Director of the Office of Surface Mining is responsible for exercising the authority of the Secretary to substitute federal enforcement of a state program under Section 521(b) of the Federal Act;

(2) Designation of lands as unsuitable for all or certain types of surface coal mining activities and surface effects of underground coal mining activities under Section 522 of the Federal Act and as unsuitable for noncoal mining under Section 601 of the Federal Act; and

(3) Authority to approve or disapprove mining plans to conduct underground coal mining activities and surface coal mining and reclamation activities on federal land.

(b) The Director of the Office of Surface Mining is responsible for consulting with federal land-managing agencies with responsibility for natural and historic resources on federal lands on actions which may have an effect on their responsibilities.

(c) The Division of Oil, Gas and Mining is responsible for the regulation of surface effects of underground coal mining activities, surface coal mining and reclamation activities and coal exploration under an approved state program and the reclamation of abandoned mine lands under an approved state reclamation plan on nonfederal and non-Indian lands in accordance with procedures in this chapter.

(d) The Division, through a cooperative agreement, exercises certain authority relating to the regulation of surface effects of underground coal mining activities and surface coal mining and reclamation activities on federal lands in accordance with 30 CFR Part 745.

UMC 700.11 Applicability

(a) This chapter applies to all coal exploration and underground coal mining activities, except —

(1) The extraction of coal by landowner for his or her own noncommercial use from land owned or leased by him or her. Noncommercial use does not include the extraction of coal by one unit of an integrated company or other business or nonprofit entity which uses the coal in its own manufacturing or power plants;

(2) The extraction of coal for commercial purposes where the underground coal mining activity affects two acres or less, but not any such operation conducted by a person who affects or intends to affect more than two acres at physically related sites;

(3) The extraction of 250 tons of coal or less by a person conducting an underground coal mining activity. A person who intends to remove more than 250 tons is not exempted.

The extraction of coal as an incidental part of a state, or local government-financed highway construction in accordance with 30 CFR Part 741 and UMC 707;

The extraction of coal incidental to the extraction of other minerals where coal does not exceed 16 percent of the mineral tonnage removed for commercial use or sale;

The extraction of coal on Indian lands in accordance with 25 CFR 177, Subpart B.

Coal exploration on federal lands outside a permit area.

(b) Any person who conducts underground coal mining activities on non-Indian or nonfederal lands on or after eight months from the date of approval of a state program shall have a permit issued pursuant to the Act. However, under conditions specified in UMC 771.13(b), a person may continue operations under a previously issued permit after eight months from the date of approval of the state program.

(c) Any person who conducts underground coal mining activities on federal lands on and after eight months from the date of approval of a state program or implementation of a federal program for the state in which the federal lands are located shall have a permit issued pursuant to 30 CFR Part 741. However, under conditions specified in 30 CFR 741.11(c), a person may continue such operations under a previously approved mine plan pursuant to 30 CFR Part 211 after eight months after the date of approval of a state program or implementation of a federal program.

(d) The requirements of Subchapter K shall be effective and shall apply to each underground coal mining activity which is required to obtain a permit under the Act, on the earliest date upon which the Act and this chapter require a permit to be obtained, except as provided in paragraph (e) of this section.

(e)(1) Each structure used in connection with or to facilitate coal exploration or underground coal mining activities shall comply with the performance standards and the design requirements of Subchapter K of this chapter, except that —

(i) An existing structure which meets the performance standards of Subchapter K of this chapter but does not meet the design requirements of Subchapter K of this chapter may be exempted from meeting those design requirements by the Division. The Division may grant this exemption only as part of the permit application process after obtaining the information required by UMC 784.12 and after making the findings required in UMC 786.21 or, on federal lands as required by 30 CFR 741.11.

(ii) If the performance standard of Subchapter B of 30 CFR Chapter VII is at least as stringent as the comparable performance standard of Subchapter K of this chapter, an existing structure which meets the performance standards of said Subchapter B may be exempted by the Division from meeting the design requirements of Subchapter K of this chapter. The Division may grant this exemption only as part of the permit application process after obtaining the information required by UMC 780.12 and after making the findings required in UMC 786.21 or, on federal lands as required by 30 CFR 741.11.

(iii) An existing structure which meets a performance standard of Subchapter B of 30 CFR Chapter VII which is less stringent than the comparable performance standard of Subchapter K of this chapter for which there was no equivalent performance standard in Subchapter B of this chapter shall be modified or reconstructed to meet the design standard of Sub-

chapter K of this chapter pursuant to a compliance plan approved by the Division only as part of the permit application as required in UMC 784.12 and according to the findings required by UMC 786.21 or, on federal lands as required by 30 CFR 741.11:

(iv) An existing structure which does not meet the performance standards of Subchapter B of 30 CFR Chapter VII and which the applicant proposes to use in connection with or to facilitate the coal exploration or underground coal mining activity shall be modified or reconstructed to meet the performance and design standards of Subchapter K prior to issuance of the permit.

(2) The exemptions provided in paragraphs (e)(1)(i) and (e)(1)(ii) shall not apply to:

(i) The requirements for existing and new waste piles used either temporarily or permanently as dams or embankments; and

(ii) The requirements to restore the approximate original contour of the land.

(f)(1) Any person conducting coal exploration on nonfederal and non-Indian lands on or after the date on which a state program is approved shall either file a notice of intention to explore or obtain approval of the Division, as required by UMC 776.

(2) Coal exploration performance standards in UMC 815 shall apply to coal exploration on nonfederal and non-Indian lands which substantially disturbs the natural land surface two months after approval of the state program.

UMC 700.12 Petition To Initiate Rulemaking

Petitions to initiate rulemaking should proceed pursuant to the Utah Administrative Rulemaking Act, U.C.A. 63-46-8.

UMC 700.13 Notice Of Citizen Suits

(a) A person who intends to initiate a civil action on his or her own behalf under 40-10-21 of the Act shall give notice of intent to do so, in accordance with this section.

(b) Notice shall be given to the Secretary and the Director of the Office of Surface Mining in all cases and the State Division Director, if a complaint involves Utah. A copy of the notice shall be sent by first-class mail to the Regional Director of the Office of Surface Mining, if the complaint involves underground coal mining and reclamation activities in Utah.

(c) Notice shall be given by certified mail to the alleged violator, if the complaint alleges a violation of the Act or any regulation, order, or permit issued under the Act.

(d) Service of notice under this section is complete upon mailing to the last known address of the person being notified.

(e) A person giving notice regarding an alleged violation shall state, to the extent known —

(1) Sufficient information to identify the provision of the Act, regulation, order, or permit allegedly violated;

(2) The act or omission alleged to constitute a violation;

(3) The name, address, and telephone numbers of the person or persons responsible for the alleged violation;

(4) The date, time, and location of the alleged violation;

(5) The name, address, and telephone number of the person giving notice; and

(6) The name, address, and telephone number of legal counsel, if any, of the person giving notice.

(f) A person giving notice of an alleged failure by the Division to perform a mandatory act or duty under the Act shall state, to the extent known:

- 1) The provision of the Act containing the mandatory act or duty allegedly not performed;
- 2) Sufficient information to identify the omission alleged to constitute the failure to perform a mandatory act or duty under the Act;
- 3) The name, address, and telephone number of legal counsel, if any, of the person giving notice;
- 4) The name, address, and telephone number of the person giving notice.

UMC 700.14 Availability Of Records

(a) Records required by the Act to be made available locally to the public shall be retained at the geographically closest office of the state or federal regulatory authority having jurisdiction over the area involved.

(b) Other nonconfidential records or documents in the possession of the Division may be requested from the Division.

(c) Confidentiality: Information received which is required to be held confidential by the terms of the Act shall not be available for public inspection.

UMC 700.15 Computation Of Time

(a) Except as otherwise provided, computation of time under this chapter is based on calendar days.

(b) In computing any period of prescribed time, the day on which the designated period of time begins is not included. The last day of the period is included unless it is a Saturday, Sunday, or legal holiday on which the regulatory authority is not open for business, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.

(c) Intermediate Saturdays, Sundays, and legal holidays are excluded from the computation when the period of prescribed time is seven days or less.

R614-1A-705. Part UMC 705 — Restrictions on State Employees Financial Interest.

UMC 705.4 Responsibility

(a) The Director shall:

(1) Provide advice, assistance, and guidance to all state employees required to file statements pursuant to UMC 705.11;

(2) Promptly review the statement of employment and financial interests and supplements, if any, filed by each employee, to determine if the employee has correctly identified those listed employment and financial interests which constitute a direct or indirect financial interest in any underground or surface coal mining activities;

(3) Resolve prohibited financial situations by ordering or initiating remedial action or by reporting the violations to the Office of Surface Mining Director who is responsible for initiating action to impose the penalties of the Act;

(4) Certify on each statement that review has been made, that prohibited financial interests, if any, have been resolved, and that no other prohibited interests have been identified from the statement;

(5) Submit to the Office of Surface Mining Director such statistics and information as he or she may request to enable preparation of the required annual report to Congress;

(6) Submit to the Office of Surface Mining Director the initial listing and the subsequent annual listings of positions as required by UMC 705.11(b), (c), and (d);

(7) Furnish a blank statement 45 days in advance of the filing date established by UMC 705.13(a) to each state employee required to file a statement; and

(8) Inform annually each state employee required to file a statement with the Director of the Division or such other official designated by state law or regulation, of the name, address, and telephone number of the person whom they may contact for advice and counseling.

(c) Division employees performing any duties or functions under the Act shall:

1) Have no direct or indirect financial interest in underground or surface coal mining activities;

2) File a fully completed statement of employment and financial interest 120 days after these regulations become effective or upon entrance to duty, and annually thereafter on the specified filing date; and

3) Comply with directives issued by persons responsible for approving each statement and comply with directives issued by those persons responsible for ordering remedial action.

UMC 705.5 Definitions

"Employee" means any person employed by the Division who performs any function or duty under the Act, and does not mean the Board of Oil, Gas, and Mining which is excluded from these provisions.

"Performing any function or duty under this Act" means those decisions or actions, which if performed or not performed by an employee, affect the programs under the Act.

"Direct financial interest" means ownership or part ownership by an employee of lands, stocks, bonds, debentures, warrants, partnership shares, or other holdings and also means any other arrangement where the employee may benefit from his or her holding in or salary from underground or surface coal mining activities. Direct financial interests include employment, pensions, creditor, real property, and other financial relationships.

"Indirect financial interest" means the same financial relationships as for direct ownership, but where the employee reaps the benefits of such interest, including interests held by his or her spouse, minor child and other relatives, including in-laws, residing in the employee's home. The employee will not be deemed to have an indirect financial interest if there is no relationship between the employee's functions or other duties and the coal mining activities in which the spouse, minor children, or other resident relatives hold a financial interest.

"Prohibited financial interest" means any direct or indirect financial interest in any underground or surface coal mining activities.

UMC 705.6 Penalties

(a) Criminal penalties are imposed by Section 40-10-7 of the Act which prohibits each employee of the Division who performs any function or duty under the Act from having a direct or indirect financial interest in any underground or surface coal mining activities. The Act provides that whoever knowingly violates the provisions of Section 40-10-7 of the Act shall, upon conviction, be punished by a fine of not more than \$2,500.00, or by imprisonment of not more than one year or by both,

(b) The provisions in Section 40-10-7 of the Act make compliance with the financial interest requirements a condition of employment for employees of the Division who perform any functions or duties under the Act. Accordingly, an employee who fails to file the required statement will be considered in violation of the intended employment provisions of Section

40-10-7 of the Act and will be subject to removal from or her position.

UMC 705.11 Who Shall File

(a) Any employee who performs any function or duty under the Act is required to file a statement of employment and financial interests. An employee who occupies a position which has been determined by the Director not to involve performance of any function or duty under the Act or who is no longer employed by the Division at the time a filing is due, is not required to file a statement.

(b) The Director shall prepare a list of those positions within the state regulatory program that do not involve performance of any functions or duties under the Act. Only those employees who are employed in a listed organizational unit or who occupy a listed position will be exempted from the filing requirements of Section 40-10-7 of the Act.

(c) The Director of the Division shall prepare and submit to the Office of Surface Mining Director, an initial listing of positions that do not involve performance of any functions or duties under the Act within 60 days of the effective date of these regulations.

(d) The Director of the Division shall annually review and update this listing. For monitoring and reporting reasons, the listing must be submitted to the Office of Surface Mining Director and must contain a written justification for inclusion of the positions listed. Proposed revisions or a certification that revision is not required shall be submitted to the Office of Surface Mining Director by no later than September 30 of each year. The Director of the Division may revise the listing by the addition or deletion of positions at any time he or she determines such revisions are required to carry out the purpose of the law or the regulations of this part. Additions to and deletions from the listing of positions are effective upon notification to the incumbents of the positions added or deleted.

UMC 705.13 When To File

(a) Employees performing functions or duties under the Act shall file:

(1) Within 120 days of the effective date of these regulations; and

(2) Annually on February 1 of each year, or at such other date as may be agreed to by the Director of the Office of Surface Mining, provided that such alternative date will allow sufficient time to obtain information needed by the Director of the Office of Surface Mining for his or her annual report to the Congress.

(b) New employees hired, appointed, or transferred to perform functions or duties under the Act will be required to file at the time of entrance to duty.

(c) New employees are not required to file an annual statement on the subsequent annual filing date if this date occurs within two months after their initial statement was filed. For example, an employee entering duty on December 1, 1985 would file a statement on that date. Because December 1 is within two months of February 1 the employee would not be required to file his or her next annual statement until February 1, 1987.

UMC 705.15 Where To File

(a) The Director of the Division shall file his or her statement with the Office of Surface Mining Director. All other employees, as provided in UMC 705.11, shall file their statement with the Director of the Division or such other official as may be designated by state law or regulation.

UMC 705.17 What To Report

(a) Each employee shall report all information required on the statement of employment and financial

interests of the employee, his or her spouse, minor children, or other relatives who are full-time residents of the employee's home. The report shall be on OSM Form 705-1 as provided by the Division. The statement consists of three major parts: (1) a listing of all financial interest, including employment, security, real property, creditor and other financial interests held during the course of the proceeding years; (2) a certification that none of the listed financial interests represent a direct or indirect financial interest in underground or surface coal mining activities except as specifically described by the employee as part of the certificate, and (3) a certification by the reviewer that the form was reviewed, that prohibited interests have been resolved, and that no other prohibited interests have been identified from the statement.

(b) Listing of all financial interests. The statement will set forth the following information regarding any financial interest:

(1) Employment. Any continuing financial interests in business entities and nonprofit organizations through a pension or retirement plan, shared income, salary, or other income arrangement as a result of prior or current employment. The employee, his or her spouse or other resident relative is not required to report a retirement plan from which he or she will receive a guaranteed income. A guaranteed income is one which is unlikely to be changed as a result of actions taken by the Division.

(2) Securities. Any financial interest in business entities and nonprofit organizations through ownership of stock, stock options, bonds, securities, or other arrangements including trusts. An employee is not required to report holdings in widely diversified mutual funds, investment clubs, or regulated investment companies not specializing in underground and surface coal mining activities.

(3) Real Property. Ownership, lease, royalty, or other interests or rights in lands or minerals. Employees are not required to report lands developed and occupied for a personal residence.

(4) Creditors. Debts owed to business entities and nonprofit organizations. Employees are not required to report debts owed to financial institutions (banks, savings and loan associations, credit unions, and the like) which are chartered to provide commercial or personal credit. Also excluded are charge accounts and similar short term debts for current and ordinary household and living expenses.

(c) Employee certification, and, if applicable, a listing of exceptions.

(1) The statement will provide for a signed certification by the employee that to the best of his or her knowledge, (i) none of the listed financial interests represent an interest in any underground or surface coal mining activities except as specifically identified and described as exceptions by the employee as part of the certificate, and (ii) the information shown on the statement is true, correct, and complete.

(2) An employee is expected to (i) have complete knowledge of his or her personal involvement in business enterprises such as a sole proprietorship and partnership, his or her outside employment and the outside employment of the spouse and other covered relatives, and (ii) be aware of the information contained in the annual financial statement or other corporate or business reports routinely circulated to investors or routinely made available to the public.

(3) The exceptions shown in the employee certification of the form must provide enough information for the Director of the Division to determine the exis-

tence of a direct or indirect financial interest. Accordingly, the exceptions should:

- (i) List the financial interests;
- (ii) Show the number of shares, estimated value, or annual income of the financial interests; and
- (iii) Include any other information which the employee believes should be considered in determining whether or not the interest represents a prohibited interest.

(4) Employees are cautioned to give serious thought to their direct or indirect financial interests before signing the statement of certification. Signing the certification without listing known prohibited financial interests may be cause for imposing the penalties prescribed in UMC 705.6(a).

UMC 705.18 Gifts And Gratuities

(a) Except as provided in paragraph (b) of this section, employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from a coal company which:

(1) Conducts or is seeking to conduct, operations or activities that are regulated by the Division.

(2) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duty.

(b) The prohibitions in paragraph (a) of this section do not apply in the context of obvious family or personal relationships, such as those between the parents, children, or spouse of the employee and the employee, when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors. An employee may accept:

(1) Food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon, dinner, or other meeting where an employee may properly be in attendance; and

(2) Unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other items of nominal value.

(c) Employees found guilty of violating the provisions of this section will be subject to administrative remedies in accordance with existing or adopted state regulations or policies.

UMC 705.19 Resolving Prohibited Interests

(a) Actions to be taken by the Director:

(1) Remedial action to effect resolution. If an employee has a prohibited financial interest, the Director shall promptly advise the employee that remedial action which will resolve the prohibited interest is required within 90 days.

(2) Remedial action may include:

(i) Reassignment of the employee to a position which performs no function or duty under the Act, or

(ii) Divestiture of the prohibited financial interest,

or

(iii) Other appropriate action which either eliminates the prohibited interest or eliminates the situation which creates the conflict.

(3) Reports of noncompliance. If 90 days after an employee is notified to take remedial action that employee is not in compliance with the requirements of the Act and these regulations, the Director shall report the facts of the situation to the Director of the Office of Surface Mining who shall determine whether action to impose the penalties prescribed by the Act should be initiated. The report to the Director of the Office of Surface Mining shall include the original or a certified true copy of the employee's statement and any other information pertinent to the Director of the Office of Surface Mining's determina-

tion, including a statement of actions being taken at the time the report is made.

(b) Actions to be taken by the Director of the Office of Surface Mining:

(1) Remedial action to effect resolution. Violations of the regulations in this part by the Director of the Division, will be cause for remedial action by the Governor of the state or other appropriate state official based on recommendations from the Director of the Office of Surface Mining on behalf of the Secretary. The Governor or other appropriate state official shall promptly advise the Director of the Division that remedial action which will resolve the prohibited interest is required within 90 days.

(2) Remedial action should be consistent with the procedures prescribed for other state employees by 705.19(a)(2).

UMC 705.21 Appeals Procedures

Employees have the right to appeal an order for remedial action under UMC 705.19, and shall have 30 days to exercise this right before disciplinary action is initiated or the matter is referred to the Attorney General for criminal prosecution.

(a) Employees other than the Director of the Division, may file their appeal, in writing, pursuant to the provisions of the State Personnel Management Act (Section 67-19-1 et seq., Utah Code Ann.).

(b) The Director of the Division may file his or her appeal, in writing, with the Director of the Office of Surface Mining who will refer it to the Conflict of Interest Appeals Board within the U. S. Department of the Interior.

R614-1A-707. Part UMC 707 — Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction.

UMC 707.1 Scope

(a) This part establishes the procedures for determining those underground coal mining activities which are exempt from the Act and this chapter because the extraction of coal is an incidental part of federal, state, or local government-financed highway or other construction.

(b) This part exempts the extraction of coal which is incidental to government-financed construction from the requirements of the Act and this chapter, if that extraction meets specified criteria which ensure that the construction is government-financed and that the extraction of coal is incidental to it.

UMC 707.4 Responsibility

(a) The Division is responsible for enforcing the requirements of this part.

(b) Any person conducting coal extraction as an incidental part of government-financed construction is responsible for possessing, on the site of the extraction operation, the documentation required by UMC 707.12.

UMC 707.5 Definitions

As used in this part, the following terms have the specified meaning:

"Extraction of coal as an incidental part" means the extraction of coal which is necessary to enable the construction to be accomplished. For purposes of this part, only that coal extracted from within the right-of-way, in the case of a road, railroad, utility line, or other such construction, or within the boundaries of the area directly affected by other types of government-financed construction, may be considered incidental to that construction. Extraction of coal outside the right-of-way or boundary of the area directly affected by the construction shall be subject to the requirements of the Act and this chapter.

"Government financing agency" means a federal, state, county, municipal, or local unit of government, or a department, bureau, agency, or office of the unit which, directly or through another unit of government, finances construction.

"Government-financed construction" means construction funded 50 percent or more by funds appropriated from a government financing agency's budget obtained from general revenue bonds, but shall not mean government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments.

UMC 707.11 Applicability

(a) Coal extraction which is an incidental part of government-financed construction is exempt from the Act and this chapter.

(b) Any person who conducts or intends to conduct coal extraction which does not satisfy paragraph (a) of this section shall not proceed until a permit has been obtained from the Division under a state, federal, or federal lands program.

UMC 707.12 Information To Be Maintained On Site

Any person extracting coal incident to government-financed highway or other construction who extracts more than 250 tons of coal or affects more than two acres shall maintain, on the site of the extraction operation and available for inspection, documents which show —

(a) A description of the construction project;

(b) The exact location of the construction, right-of-way or the boundaries of the area which will be directly affected by the construction; and

(c) The government agency which is providing the financing and the kind and amount of public financing, including the percentage of the entire construction costs represented by the government financing.

40-10-1 et seq.

R614-1F. Subchapter F — Areas Unsuitable for Surface Effects of Underground Coal Mining Activities.

R614-1F-760. PART UMC 760 — General.

R614-1F-761. UMC Part 761 — Areas Designated by Act of Congress.

R614-1F-762. Part UMC 762 — Criteria for Designating Areas as Unsuitable for Surface Effects of Underground Coal Mining Activities.

R614-1F-764. Part UMC 764 — State Processes for Designating Areas Unsuitable for Surface Effects of Underground Coal Mining Activities.

R614-1F-760. PART UMC 760 — General.

UMC 760.1 Scope

This subchapter establishes procedures for implementing the requirements of the Act for designating lands unsuitable for all or certain types of surface effects of underground coal mining activities, for terminating such designations, for identifying lands on which surface effects of underground coal mining activities are limited or prohibited under Section 40-10-24 of the Act and for implementing those limits and prohibitions.

UMC 760.2 Objectives

The objectives of this subchapter are to establish:

(a) Procedures for consideration of petitions for the designation of lands as unsuitable for all or certain types of surface effects of underground coal mining

activities, for the termination of these designations, and for public participation in petition proceedings;

(b) The minimum standards for obtaining, maintaining and analyzing information on the effects of coal development in areas covered by a petition in light of other potential uses and activities;

(c) Procedures for identifying lands on which mining is prohibited or limited by Section 522(e) of the Act (30 U.S.C. 1272(e)) and for implementing those prohibitions or limitations; and

(d) Criteria for determining if an area should be designated as unsuitable for all or certain types of surface effects of underground coal mining activities.

UMC 760.3 Authority

(a) The Board and Division are authorized, under Section 40-10-24 to establish a data base and inventory system and a petition process to designate any nonfederal and non-Indian land areas of the state as unsuitable for all or certain types of surface effects of underground coal mining activities.

UMC 760.4 Responsibility

(a) The Board and Division shall integrate as closely as possible decisions to designate lands as unsuitable for surface effects of underground coal mining activities with present and future land-use planning and regulatory processes at the federal, state, and local levels;

(b) The Division shall use a process that allows any person having an interest which is or may be adversely affected to petition to have an area designated as unsuitable for all or certain types of surface effects of underground coal mining activities, or to have a designation terminated;

(c) The Division shall prohibit or limit surface effects of underground coal mining activities on certain lands and in certain locations designated by Congress in Section 522(e) of the Federal Act (30 U.S.C. 1272(e)).

(d) The Division shall establish a process that allows any person having an interest which is or may be adversely affected to petition to have an area designated as unsuitable for all or certain types of surface effects of underground coal mining activities, or to have a designation terminated.

(e) The Division shall prohibit or limit surface effects of underground coal mining activities on certain lands and in certain locations designated by Congress in Section 522(e) of the Federal Act (30 U.S.C. 1272(e)).

R614-1F-761. UMC Part 761 — Areas Designated by Act of Congress.

UMC 761.1 Scope

This part establishes the procedures and standards to be followed in determining whether the surface effects of proposed underground coal mining activities can be permitted in light of the prohibitions and limitations in Section 522(e) of the Federal Act for those types of surface effects on certain federal, public, and private lands.

UMC 761.2 Objective

The objective of this part is to implement the prohibitions and limitations for surface effects of underground coal mining activities on or near certain private, federal, and other public lands under Section 522(e) of the Federal Act.

UMC 761.3 Authority

The state Division or the Secretary is authorized by Section 522(e) of the Act (30 U.S.C. 1272(e)) to prohibit or limit surface effects of underground coal mining activities on or near certain private, federal, and other public lands, except for those activities which

Tab C

231. Habitats of unique or unusually high value for fish, wildlife, and other related environmental values and critical habitats of threatened or endangered species identified pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) will not be disturbed during coal exploration.

232. All roads or other transportation facilities used for coal exploration will comply with the applicable provisions of R614-301-358, R614-301-512.250, R614-301-526.200, R614-301-527.100, R614-301-527.230, R614-301-534.100 through R614-301-534.300, R614-301-542.600, R614-301-742.410 through R614-301-742.420, R614-301-752.200, and R614-301-762.

233. Topsoil will be separately removed, stored, and redistributed on areas disturbed by coal exploration activities as necessary to assure successful revegetation or as required by the Division.

234. Diversions of overland flows and ephemeral, perennial, or intermittent streams will be made in accordance with R614-301-742.300.

235. Coal exploration will be conducted in a manner which minimizes disturbance of the prevailing hydrologic balance in accordance with R614-301-356.300 through R614-301-356.400, R614-301-512.240, R614-301-513.200, R614-301-514.300, R614-301-515.200, R614-301-533.100 through R614-301-533.600, R614-301-731.100 through R614-301-731.522, R614-301-731.800, R614-301-733.220 through R614-301-733.240, R614-301-742.200 through R614-301-742.300, R614-301-743, and R614-301-763. The Division may specify additional measures which will be adopted by the person engaged in coal exploration.

236. Acid- or toxic-forming materials will be handled and disposed of in accordance with R614-301-731.110, R614-301-731.300, and R614-301-553.260. The Division may specify additional measures which will be adopted by the person engaged in coal exploration.

240. Reclamation Standards.

241. If excavations, artificially flat areas, or embankments are created during exploration, these areas will be returned to the approximate original contour promptly after such features are no longer needed for coal exploration.

242. All areas disturbed by coal exploration activities will be revegetated in a manner that encourages prompt revegetation and recovery of a diverse, effective, and permanent vegetative cover. Revegetation will be accomplished in accordance with the following:

242.100. All areas disturbed by coal exploration activities will be seeded or planted to the same seasonal variety native to the areas disturbed. If the land use of the exploration area is intensive agriculture, planting of the crops normally grown will meet the requirements of R614-202-242.100; and

242.200. The vegetative cover will be capable of stabilizing the soil surface from erosion.

243. Each exploration hole, borehole, well, or other exposed underground opening created during exploration will be reclaimed in accordance with R614-301-529, R614-301-551, R614-301-631, R614-301-738, and R614-301-765.

244. All facilities and equipment will be promptly removed from the exploration area when they are no longer needed for exploration, except for those facilities and equipment that the Division determines may remain to:

244.100. Provide additional environmental data;

244.200. Reduce or control the onsite and offsite effects of the exploration activities; or

244.300. Facilitate future coal mining and reclamation operations by the person conducting the exploration.

1989

40-10-1 et seq.

R614-203. Coal Exploration: Public Availability of Information.

R614-203-100. Public Records.

R614-203-200. Confidentiality.

R614-203-100. Public Records.

Except as provided in R614-203-200 all information submitted to the Division under R614-200 through R614-202 will be made available for public inspection and copying at the Division.

R614-203-200. Confidentiality.

The Division will not make information available for public inspection, if the person submitting it requests in writing, at the time of submission, that it not be disclosed and the information is confidential.

210. The Division will keep information confidential if it concerns trade secrets or is privileged commercial or financial information which relates to the competitive rights of the person intending to conduct coal exploration.

220. Information requested to be held as confidential under R614-203-200 will not be made publicly available until after notice and opportunity to be heard is afforded both persons seeking and opposing disclosure of the information.

1989

40-10-1 et seq.

R614-300. Coal Mine Permitting: Administrative Procedures.

R614-300-100. Review, Public Participation, and Approval or Disapproval of Permit Applications and Permit Terms and Conditions.

R614-300-200. Administrative and Judicial Review of Decisions on Permits.

R614-300-100. Review, Public Participation, and Approval or Disapproval of Permit Applications and Permit Terms and Conditions.

The rules in R614-300-100 present the procedures to carry out the entitled activities.

110. Introduction.

111. Objectives. The objectives of R614-300-100 are to:

111.100. Provide for broad and effective public participation in the review of applications and the issuance or denial of permits;

111.200. Ensure prompt and effective review of each permit application by the Division; and

111.300. Provide the requirements for the terms and conditions of permits issued and the criteria for approval or denial of a permit.

112. Responsibilities.

112.100. The Division has the responsibility to approve or disapprove permits under the approved State Program.

112.200. The Division and persons applying for permits under the State Program will involve the public throughout the permit process of the State Program.

112.300. The Division will assure implementation of the requirements of R614-300 under the State Program.

112.400. All persons who engage in and carry out any coal mining and reclamation operations will first obtain a permit from the Division. The applicant will provide all information in an administratively complete application for review by the Division in accordance with R614-300 and the State Program.

112.500. Any permittee seeking to renew a permit for coal mining and reclamation operations solely for the purpose of reclamation and not for the further extraction, processing, or handling of the coal resource will follow the procedures set forth in R614-303-232.500.

113. Coordination with requirements under other laws. The Division will provide for the coordination of review and issuance of permits for coal mining and reclamation operations with applicable requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.), the Fish and Wildlife Coordination Act, as amended (16 U.S.C. 661 et seq.), the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703 et seq.), the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 et seq.), the Bald Eagle Protection Act, as amended (16 U.S.C. 668a), and where federal and Indian lands covered by that Act are involved, the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469 et seq.) and the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.).

120. Public Participation in Permit Processing.

121. Filing and Public Notice.

121.100. Upon submission of an administratively complete application, an applicant for a permit, significant revision of a permit under R614-303-220 or renewal of a permit under R614-303-230 will place an advertisement in a local newspaper of general circulation in the locality of the proposed coal mining and reclamation operation at least once a week for four consecutive weeks. A copy of the advertisement as it will appear in the newspaper will be submitted to the Division. The advertisement will contain, at a minimum, the following:

121.110. The name and business address of the applicant;

121.120. A map or description which clearly shows or describes the precise location and boundaries of the proposed permit area and is sufficient to enable local residents to readily identify the proposed permit area. It may include towns, bodies of water, local landmarks, and any other information which would identify the location. If a map is used, it will indicate the north direction;

121.130. The location where a copy of the application is available for public inspection;

121.140. The name and address of the Division, where written comments, objections, or requests for informal conferences on the application may be submitted under R614-300-122 and R614-300-123.

121.150. If an applicant seeks a permit to mine within 100 feet of the outside right-of-way of a public road or to relocate or close a public road, except where public notice and hearing have previously been provided for this particular part of the road in accordance with R614-103-234, a concise statement describing the public road, the particular part to be relocated or closed, and the approximate timing and duration of the relocation or closing; and

121.160. If the application includes a request for an experimental practice under R614-302-210, a statement indicating that an experimental practice is

requested and identifying the regulatory provisions for which a variance is requested.

121.200. The applicant will make an application for a permit, significant revision under R614-303-220, or renewal of a permit under R614-303-230 available for the public to inspect and copy by filing a full copy of the application with the recorder at the courthouse of the county where the coal mining and reclamation operation is proposed to occur, or an accessible public office approved by the Division. This copy of the application need not include confidential information exempt from disclosure under R614-300-121. The application required by R614-300-121 will be filed by the first date of newspaper advertisement of the application. The applicant will file any changes to the application with the public office at the same time the change is submitted to the Division.

121.300. Upon receipt of an administratively complete application for a permit, a significant revision to a permit under R614-303-220, or a renewal of a permit under R614-303-230, the Division will issue written notification indicating the applicant's intention to conduct coal mining and reclamation operations within the described tract of land, the application number or other identifier, the location where the copy of the application may be inspected, and the location where comments on the application may be submitted. The notification will be sent to:

121.310. Local governmental agencies with jurisdiction over or an interest in the area of the proposed coal mining and reclamation operation, including but not limited to planning agencies, sewage and water treatment authorities, water companies; and

121.320. All federal or state governmental agencies with authority to issue permits and licenses applicable to the proposed coal mining and reclamation operation and which are part of the permit coordinating process developed in accordance with the State Program, Section 503(a)(6) or Section 504(h) of P.L. 95-87, or 30 CFR 733.12; or those agencies with an interest in the proposed coal mining and reclamation operation, including the U.S. Department of Agriculture Soil Conservation Service district office, the local U.S. Army Corps of Engineers district engineer, the National Park Service, state and federal fish and wildlife agencies, and Utah State Historic Preservation Officer.

122. Comments and Objections on Permit Application.

122.100. Within 30 days of the last newspaper publication, written comments or objections to an application for a permit, significant revision to a permit under R614-303-220, or renewal of a permit under R614-303-230 may be submitted to the Division by public entities notified under R614-300-121.300 with respect to the effects of the proposed coal mining and reclamation operation on the environment within their areas of responsibility.

122.200. Written objections to an application for a permit, significant revision to a permit under R614-303-220, or renewal of a permit under R614-303-230 may be submitted to the Division by any person having an interest which is or may be adversely affected by the decision on the application, or by an officer or head of any federal, state, or local government agency or authority, within 30 days after the last publication of the newspaper notice required by R614-300-121.

122.300. The Division will upon receipt of such written comments or objections.

122.310. Transmit a copy of the comments or objections to the applicants, and

122.320. File a copy for public inspection at the Division.

123. Informal Conferences.

123.100. Any person having an interest which is or may be adversely affected by the decision on the application, or an office or a head of a federal, state, or local government agency, may request in writing that the Division hold an informal conference on the application for a permit, significant revision to a permit under R614-303-220, or renewal of a permit under R614-303-230. The request will:

123.110. Briefly summarize the issues to be raised by the requestor at the conference;

123.120. State whether the requestor desires to have the conference conducted in the locality of the proposed coal mining and reclamation operation; and

123.130. Be filed with the Division no later than 30 days after the last publication of the newspaper advertisement required under R614-300-121.

123.200. Except as provided in R614-300-123.300, if an informal conference is requested in accordance with R614-300-123.100, the Division will hold an informal conference within 30 days following the receipt of the request. The informal conference will be conducted as follows:

123.210. If requested under R614-300-123.120, it will be held in the locality of the proposed coal mining and reclamation operation.

123.220. The date, time, and location of the informal conference will be sent to the applicant and other parties to the conference and advertised by the Division in a newspaper of general circulation in the locality of the proposed coal mining and reclamation operation at least two weeks before the scheduled conference.

123.230. If requested in writing by a conference requestor at a reasonable time before the conference, the Division may arrange with the applicant to grant parties to the conference access to the proposed permit area and, to the extent that the applicant has the right to grant access to it, to the adjacent area prior to the established date of the conference for the purpose of gathering information relevant to the conference.

123.240. The requirements of the Procedural Rules of the Board of Oil, Gas and Mining (R619 Rules) will apply to the conduct of the informal conference. The conference will be conducted by a representative of the Division, who may accept oral or written statements and any other relevant information from any party to the conference. An electronic or stenographic record will be made of the conference, unless waived by all the parties. The record will be maintained and will be accessible to the parties of the conference until final release of the applicant's performance bond or other equivalent guarantee pursuant to R614-301-800.

123.300. If all parties requesting the informal conference withdrew their request before the conference is held, the informal conference may be canceled.

123.400. An informal conference held in accordance with R614-300-123 may be used by the Division as the public hearing required under R614-103-234 on proposed relocation or closing of public roads.

124. Public Availability of Permit Applications.

124.100. General Availability. Except as provided in R614-300-124.200 and R614-300-124.300, all applications for permits; permit changes; permit renewals; and transfers, assignments or sales of permit rights on file with the Division will be made available, at reasonable times, for public inspection and copying.

124.200. Limited Availability. Except as provided in R614-300-124.310, information pertaining to coal seams, test borings, core samplings, or soil samples in an application will be made available to any person with an interest which is or may be adversely affected. Information subject to R614-300-124 will be made available to the public when such information is required to be on public file pursuant to Utah law.

124.300. Confidentiality. The Division will provide procedures, including notice and opportunity to be heard for persons both seeking and opposing disclosure, to ensure confidentiality of qualified confidential information, which will be clearly identified by the applicant and submitted separately from the remainder of the application. Confidential information is limited to:

124.310. Information that pertains only to the analysis of the chemical and physical properties of the coal to be mined, except information on components of such coal which are potentially toxic in the environment.

124.320. Information required under section 40-10-10 of the Act that is authorized by that section to be held confidential and is not on public file pursuant to Utah law and that the applicant has requested in writing to be held confidential; and

124.330. Information on the nature and location of archeological resources on public land and Indian land as required under the Archeological Resources Protection Act of 1979 (P. L. 96-95, 93 Stat. 721, 16 U.S.C. 470).

130. Review of Permit Application.

131. General.

131.100. The Division will review the application for a permit, permit change, or permit renewal; written comments and objections submitted; and records of any informal conference or hearing held on the application and issue a written decision, within a reasonable time set by the Division, either granting, requiring modification of, or denying the application. If an informal conference is held under R614-300-123 the decision will be made within 60 days of the close of the conference, unless a later time is necessary to provide an opportunity for a hearing under R614-300-210.

131.110. Application review will not exceed the following time periods:

131.111. Permit change applications.

131.111.1. Significant revision — 120 days.

131.111.2. Amendments — 60 days.

131.112. Permit renewal — 120 days.

131.113. New underground mine applications — One year.

131.114. New surface mine applications — One year.

131.120. Time will be counted as cumulative days of Division review and will not include operator response time or time delays attributed to informal or formal conferences or Board hearings.

131.200. The applicant for a permit or permit change will have the burden of establishing that their application is in compliance with all the requirements of the State Program.

132. Review of Compliance.

132.100. The Division will review available information on state and federal failure-to-abate cessation orders, unabated federal and state imminent harm cessation orders, delinquent civil penalties issued under section 518 of the federal Act, SMCRA-derived laws of other states, and section 40-10-20 of the Act, bond forfeitures where violations on which the forfeitures are based have not been corrected, delinquent

abandoned mine reclamation fees, and unabated violations of the Act, derivative laws of other states and federal air and water protection laws, rules and regulations incurred at any coal mining and reclamation operations connected with the applicant. The Division will then make a finding that neither the applicant, nor any person who owns or controls the applicant, nor any person owned or controlled by the applicant is currently in violation of any law, rule, or regulation referred to in R614-300-132. If such a finding cannot be made, the Division will require the applicant, before issuance of the permit, to either:

132.110. Submit to the Division proof that the current violation has been or is in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation; or

132.120. Establish for the Division that the applicant or any person owned or controlled by the applicant or any person who owns or controls the applicant has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of the current violation. If the initial judicial review authority under R614-300-220 either denies a stay applied for in the appeal or affirms the violation, then the applicant will within 30 days submit the proof required under R614-300-132.110.

132.200. Any permit that is issued on the basis of proof submitted under R614-300-132.110 or pending the outcome of an appeal described in R614-300-132.120 will be issued conditionally.

132.300. If the Division makes a finding that the applicant, or anyone who owns or controls the applicant, or the operator specified in the application, controls or has controlled coal mining and reclamation operations with a demonstrated pattern of willful violations of the Act of such nature and duration and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the Act, the application will not be granted. Before such a finding becomes final, the applicant or operator will be afforded an opportunity for an adjudicatory hearing on the determination as provided for in R614-300-210.

133. Written Findings for Permit Application Approval. No permit application or application for a permit change will be approved unless the application affirmatively demonstrates and the Division finds, in writing, on the basis of information set forth in the application or from information otherwise available that is documented in the approval, the following:

133.100. The application is complete and accurate and the applicant has complied with all the requirements of the State Program;

133.200. The proposed permit area is:

133.210. Not within an area under study or administrative proceedings under a petition, filed pursuant to R614-103-400 or 30 CFR 769, to have an area designated as unsuitable for coal mining and reclamation operations, unless the applicant demonstrates that before January 4, 1977, substantial legal and financial commitments were made in relation to the operation covered by the permit application; or

133.220. Not within an area designated as unsuitable for mining pursuant to R614-103-300 and R614-103-400 or 30 CFR 769 or subject to the prohibitions or limitations of R614-103-230;

133.300. For coal mining and reclamation operations where the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted to the Division the documentation required under R614-301-114.200,

133.400. The Division has made an assessment of the probable cumulative impacts of all anticipated coal mining and reclamation operations on the hydrologic balance in the cumulative impact area and has determined that the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area;

133.500. The operation would not affect the continued existence of endangered or threatened species or result in destruction or adverse modification of their critical habitats, as determined under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

133.600. The Division has taken into account the effect of the proposed permitting action on properties listed on and eligible for listing on the National Register of Historic Places. This finding may be supported in part by inclusion of appropriate permit conditions or changes in the operation plan protecting historic resources, or a documented decision that the Division has determined that no additional protection measures are necessary; and

133.700. The applicant has:

133.710. Demonstrated that reclamation is required by the State Program can be accomplished according to information given in the permit application;

133.720. Demonstrated that any existing structure will comply with the applicable performance standards of R614-301 and R614-302

133.730. Paid all reclamation fees from previous and existing coal mining and reclamation operations as required by 30 CFR Part 870

133.740. Satisfied the applicable requirements of R614-302.

133.750. If applicable, satisfied the requirements for approval of a long-term, intensive agricultural postmining land use, in accordance with the requirements of R614-301-353.400.

133.800. For a proposed re-mining operation where the applicant intends to reclaim in accordance with the requirements of R614-301-553.500, the site of the operation is a previously mined area as defined in R614-100-200.

134. Performance Bond Submittal. If the Division decides to approve the application, it will require that the applicant file the performance bond or provide other equivalent guarantee before the permit is issued, in accordance with the provisions of R614-301-800.

140. Permit Conditions. Each permit issued by the Division will be subject to the following conditions:

141. The permittee will conduct coal mining and reclamation operations only on those lands that are specifically designated as the permit area on the maps submitted with the application and authorized for the term of the permit and that are subject to the performance bond or other equivalent guarantee in effect pursuant to R614-301-800.

142. The permittee will conduct all coal mining and reclamation operations only as described in the approved application, except to the extent that the Division otherwise directs in the permit.

143. The permittee will comply with the terms and conditions of the permit, all applicable performance standards and requirements of the State Program.

144. Without advance notice, delay, or a search warrant, upon presentation of appropriate credentials, the permittee will allow the authorized representatives of the Division to:

144.100. Have the right of entry provided for in R614-400-110 and R614-400-220

- 144.200. Be accompanied by private persons for the purpose of conducting an inspection in accordance with R614-400-100 and R614-400-200 when the inspection is in response to an alleged violation reported to the Division by the private person.
145. The permittee will take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from noncompliance with any term or condition of the permit, including, but not limited to:
- 145.100. Any accelerated or additional monitoring necessary to determine the nature and extent of noncompliance and the results of the noncompliance;
- 145.200. Immediate implementation of measures necessary to comply; and
- 145.300. Warning, as soon as possible after learning of such noncompliance, any person whose health and safety is in imminent danger due to the noncompliance.
146. As applicable, the permittee will comply with R614-301 and R614-302 for compliance, modification, or abandonment of existing structures.
147. The operator will pay all reclamation fees required by 30 CFR Part 870 for coal produced under the permit, for sale, transfer or use.
148. Within 30 days after a cessation order is issued under R614-400-310, except where a stay of the cessation order is granted and remains in effect, the permittee will either submit the following information current to when the order was issued or inform the Division in writing that there has been no change since the immediately preceding submittal of such information:
- 148.100. Any new information needed to correct or update the information previously submitted to the Division by the permittee under R614-301-112.300.
- 148.200. If not previously submitted, the information required from a permit applicant by R614-301-112.300.
150. Permit Issuance and Right of Renewal.
151. Decision. If the application is approved, the permit will be issued upon submittal of a performance bond in accordance with R614-301-800. If the application is disapproved, specific reasons therefor will be set forth in the notification required by R614-300-152.
152. Notification. The Division will issue written notification of the decision to the following persons and entities:
- 152.100. The applicant, each person who files comments or objections to the permit application, and each party to an informal conference;
- 152.200. The local governmental officials in the local political subdivision in which the land to be affected is located within 10 days after the issuance of a permit, including a description of the location of the land; and
- 152.300. The Office.
153. Permit Term. Each permit will be issued for a fixed term of five years or less, unless the requirements of R614-301-116 are met.
154. Right of Renewal. Permit application approval will apply to those lands that are specifically designated as the permit area on the maps submitted with the application and for which the application is complete and accurate. Any valid permit issued in accordance with R614-300-151 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, in accordance with R614-303-230.
155. Initiation of Operations.

- 155.100. A permit will terminate if the permittee has not begun the coal mining and reclamation operation covered by the permit within three years of the issuance of the permit.
- 155.200. The Division may grant a reasonable extension of time for commencement of these operations, upon receipt of a written statement showing that such an extension of time is necessary, if:
- 155.210. Litigation precludes the commencement or threatens substantial economic loss to the permittee; or
- 155.220. There are conditions beyond the control and without the fault or negligence of the permittee.
- 155.300. With respect to coal to be mined for use in a synthetic fuel facility or specified major electric generating facility, the permittee will be deemed to have commenced coal mining and reclamation operations at the time that the construction of the synthetic fuel or generating facility is initiated.
- 155.400. Extensions of time granted by the Division under R614-300-155 will be specifically set forth in the permit, and notice of the extension will be made public by the Division.
160. Improvidently Issued Permits: Review Procedures.
161. Permit review. When the Division has reason to believe that it improvidently issued a coal mining and reclamation permit it will review the circumstances under which the permit was issued, using the criteria in R614-300-162. Where the Division finds that the permit was improvidently issued, it shall comply with R614-300-163.
162. Review criteria. The Division will find that a coal mining and reclamation permit was improvidently issued if:
- 162.100. Under the violations review criteria of the regulatory program at the time the permit was issued;
- 162.110. The Division should not have issued the permit because of an unabated violation or a delinquent penalty or fee; or
- 162.120. The permit was issued on the presumption that a notice of violation was in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation, but a cessation order subsequently was issued; and
- 162.200. The violation, penalty or fee;
- 162.210. Remains unabated or delinquent; and
- 162.220. Is not the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; and
- 162.300. Where the permittee was linked to the violation, penalty or fee through ownership or control, under the violations review criteria of the regulatory program at the time the permit was issued an ownership or control link between the permittee and the person responsible for the violation, penalty or fee still exists, or where the link was severed the permittee continues to be responsible for the violation, penalty or fee.
163. Remedial Measures.
- When the Division, under R614-300-162, finds that because of an unabated violation or a delinquent penalty or fee a permit was improvidently issued, it will use one or more of the following remedial measures:
- 163.100. Implement, with the cooperation of the permittee or other person responsible, and of the responsible agency, a plan for abatement of the violation or a schedule for payment of the penalty or fee;

- 163.200. Impose on the permit a condition requiring that in a reasonable period of time the permittee or other person responsible abate the violation or pay the penalty or fee;
- 163.300. Suspend the permit until the violation is abated or the penalty or fee is paid; or
- 163.400. Rescind the permit under R614-300-164.
164. Improvidently Issued Permits: Recission procedures. When the Division under R614-300-163 elects to rescind an improvidently issued permit it will serve on the permittee a notice of proposed suspension and recission which includes the reasons for the finding of the regulatory authority under R614-300-162 and states that:
- 164.100. Automatic suspension and recissions. After a specified period of time not to exceed 90 days the permit automatically will become suspended, and not to exceed 90 days thereafter rescinded, unless within those periods the permittee submits proof, and the regulatory authority finds, that:
- 164.110. The finding of the Division under R614-300-162 was erroneous;
- 164.120. The permittee or other person responsible has abated the violation on which the finding was based, or paid the penalty or fee, to the satisfaction of the responsible agency;
- 164.130. The violation, penalty or fee is the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; or
- 164.140. Since the finding was made, the permittee has severed any ownership or control link with the person responsible for, and does not continue to be responsible for, the violation, penalty or fee;
- 164.200. Cessation of operations. After permit suspension or recission, the permittee shall cease all coal mining and reclamation operations under the permit, except for violation abatement and for reclamation and other environmental protection measures as required by the Division; and
- 164.300. Right to appeal. The permittee may file an appeal for administrative review of the notice under R614-300-200.
170. Final Compliance Review.
- After an application is approved, but before the permit is issued, the Division will reconsider its decision to approve the application based on the compliance review required by rule R614-300-132.100 and in light of any new information submitted under R614-301-112.900 and R614-301-113.400.
- R614-300-200. Administrative and Judicial Review of Decisions on Permits**
- The rules in R614-300-200 present the procedures for performing the entitled activities.
210. Administrative Review
211. General. Within 30 days after an applicant or permittee is notified of the decision of the Division concerning an application for approval of exploration required under R614-200, a permit for coal mining and reclamation operations, a permit change, a permit renewal, or a transfer, assignment, or sale of permit rights, the applicant, permittee, or any person with an interest which is or may be adversely affected may request a hearing on the reasons for the decision, in accordance with R614-300-200.
212. Hearings
- 212.100. The Board will start the administrative hearing within 30 days of such request. The hearing will be on the record and adjudicatory in nature. No person who presided at an informal conference under
- R614-300-123 will either preside at the hearing or participate in the decision following the hearing or administrative appeal.
- 212.200. The Board may, under such conditions as it prescribes, grant such temporary relief as it deems appropriate, pending final determination of the proceeding, if:
- 212.210. All parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;
- 212.220. The person requesting that relief shows that there is a substantial likelihood that he or she will prevail on the merits of the final determination of the proceeding;
- 212.230. The relief sought will not adversely affect the public health or safety, or cause significant, imminent environmental harm to land, air, or water resources; and
- 212.240. The relief sought is not the issuance of a permit where a permit has been denied, in whole or in part, by the Division except that continuation under an existing permit may be allowed where the operation has a valid permit issued under 40-10-11 of the Act.
- 212.300. The hearing will be conducted by the Board under the terms of the R619 Rules, including the requirement that there be no ex parte contact between the Board and representatives of parties appearing before the Board.
- 212.400. Within 30 days after the close of the record, the Board will issue and furnish the applicant and each person who participated in the hearing with the written findings of fact, conclusions of law, and order of the Board with respect to the appeal of the decision.
220. Judicial Review
221. General. Any applicant or any person with an interest which is or may be adversely affected and who has participated in the administrative hearings as an objector may appeal as provided in R614-300-222 or R614-300-223 if:
- 221.100. The applicant or person is aggrieved by the decision of the Board in the administrative hearing conducted pursuant to R614-300-200, or
- 221.200. The Board during administrative review under R614-300-200 fails to act within applicable time limits specified in the State Program.
222. State Program. Action of the Division or Board will be subject to judicial review by a court of competent jurisdiction, as provided for in the State Program, but the availability of such review will not be construed to limit the operation of the rights established in 40-10-21 of the Act.
223. Federal Lands Program. The action of the Division or Board is subject to judicial review by the United States District Court for the district in which the coal exploration or coal mining and reclamation operation is or would be located, in the time and manner provided for in Section 526(a)(2) and (b) of the Federal Act. The availability of such review will not be considered to limit the operations of rights established in Section 520 of the Federal Act.
- 1990 40-10-1 et seq.
- R614-301. Coal Mine Permitting: Permit Application Requirements.**
- R614-301-100. General Contents
- R614-301-200. Soils
- R614-301-300. Biology
- R614-301-400. Land Use and Air Quality

R614-301-500. Engineering.
 R614-301-600. Geology.
 R614-301-700. Hydrology.
 R614-301-800. Bonding and Insurance.

R614-301-100. General Contents.

The rules in R614-301-100 present the requirements for the entitled information which should be included in each permit application.

110. Minimum Requirements for Legal, Financial, Compliance and Related Information.

111. Introduction.

111.100. Objectives. The objectives of R614-301-100 are to insure that all relevant information on the ownership and control of persons who conduct coal mining and reclamation operations, the ownership and control of the property to be affected by the operation, the compliance status and history of those persons, and other important information is provided in the application to the Division.

111.200. Responsibility. It is the responsibility of the permit applicant to provide to the Division all of the information required by R614-301-100.

111.300. Applicability. The requirements of R614-301-100 apply to any person who applies for a permit to conduct coal mining and reclamation operations.

111.400. The applicant shall submit the information required by R614-301-112 and R614-301-113 in a format prescribed by the state program.

112. Identification of Interests. An application will contain the following:

112.100. A statement as to whether the applicant is a corporation, partnership, single proprietorship, association, or other business entity;

112.200. The name, address, telephone number and, as applicable, social security number and employer identification number of the:

112.210. Applicant;

112.220. Applicant's resident agent; and

112.230. Person who will pay the abandoned mine land reclamation fee.

112.300. For each person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" in R614-100-200 of this chapter, as applicable:

112.310. The person's name, address, social security number and employer identification number;

112.320. The person's ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;

112.330. The title of the person's position, date position was assumed, and when submitted under R614-300-147, date of departure from the position;

112.340. Each additional name and identifying number, including employer identification number, Federal or State permit number, and MSHA number with date of issuance, under which the person owns or controls, or previously owned or controlled, a coal mining and reclamation operation in the United States within five years preceding the date of the application; and

112.350. The application number or other identifier of, and the regulatory authority for, any other pending coal mine operation permit application filed by the person in any State in the United States.

112.400. For any coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" in R614-100-200 the operation's:

112.410. Name, address, identifying numbers, including employer identification number, Federal or State permit number and MSHA number, the date of issuance of the MSHA number, and the regulatory authority; and

112.420. Ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure.

112.500. The name and address of each legal or equitable owner of record of the surface and mineral property to be mined, each holder of record of any leasehold interest in the property to be mined, and any purchaser of record under a real estate contract for the property to be mined;

112.600. The name and address of each owner of record of all property (surface and subsurface) contiguous to any part of the proposed permit area;

112.700. The MSHA numbers for all mine-associated structures that require MSHA approval; and

112.900. A statement of all lands, interest in lands, options, or pending bids on interests held or made by the applicant for lands contiguous to the area described in the permit application. If requested by the applicant, any information required by R614-301-112.800 which is not on public file pursuant to Utah law will be held in confidence by the Division as provided under R614-300-124.320.

112.900. After an applicant is notified that his or her application is approved, but before the permit is issued, the applicant shall, as applicable, update, correct or indicate that no change has occurred in the information previously submitted under R614-301-112.100 through R614-301-112.800.

113. Violation Information. An application will contain the following:

113.100. A statement of whether the applicant or any subsidiary, affiliate, or persons controlled by or under common control with the applicant has:

113.110. Had a federal or state permit to conduct coal mining and reclamation operations suspended or revoked in the five years preceding the date of submission of the application; or

113.120. Forfeited a performance bond or similar security deposited in lieu of bond;

113.200. A brief explanation of the facts involved if any such suspension, revocation, or forfeiture referred to under R614-301-113.110 and R614-301-113.120 has occurred, including:

113.210. Identification number and date of issuance of the permit, and the date and amount of bond or similar security;

113.220. Identification of the authority that suspended or revoked the permit or forfeited the bond and the stated reasons for the action;

113.230. The current status of the permit, bond, or similar security involved;

113.240. The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

113.250. The current status of the proceedings; and

113.300. For any violation of a provision of the Act, or of any law, rule or regulation of the United States, or of any derivative State reclamation law, rule or regulation enacted pursuant to Federal law, rule or regulation pertaining to air or water environmental protection incurred in connection with any coal mining and reclamation operation, a list of all violation notices received by the applicant during the three year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" in R614-100-200 the operation's:

mitments before January 4, 1977, concerning the proposed coal mining and reclamation operations.

115.300. An application in which the applicant proposes to conduct coal mining and reclamation operations within 300 feet of an occupied dwelling or within 100 feet of a public road will contain the necessary information and meet the requirements of R614-103-230 through R614-103-238.

116. Permit Term.

116.100. Each permit application will state the anticipated or actual starting and termination date of each phase of the coal mining and reclamation operation and the anticipated number of acres of land to be affected during each phase of mining over the life of the mine.

116.200. If the applicant requires an initial permit term in excess of five years in order to obtain necessary financing for equipment and the opening of the operation, the application will:

116.210. Be complete and accurate covering the specified longer term; and

116.220. Show that the proposed longer term is reasonably needed to allow the applicant to obtain financing for equipment and for the opening of the operation with the need confirmed, in writing, by the applicant's proposed source of financing.

117. Insurance. Proof of Publication and Facilities or Structures Used in Common

117.100. A permit application will contain either a certificate of liability insurance or evidence of self-insurance in compliance with R614-301-800.

117.200. A copy of the newspaper advertisements of the application for a permit, significant revision of a permit, or renewal of a permit, or proof of publication of the advertisements which is acceptable to the Division will be filed with the Division and will be made a part of the application not later than 4 weeks after the last date of publication as required by R614-300-121.100

117.300. The plans of a facility or structure that is to be shared by two or more separately permitted coal mining and reclamation operations may be included in one permit application and referenced in the other applications. In accordance with R614-301-800, each permittee will bond the facility or structure unless the permittees sharing it agree to another arrangement for assuming their respective responsibilities. If such agreement is reached, then the application will include a copy of the agreement between or among the parties setting forth the respective bonding responsibilities of each party for the facility or structure. The agreement will demonstrate to the satisfaction of the Division that all responsibilities under the R614 Rules for the facility or structure will be met

118. Filing Fee. Each permit application to conduct coal mining and reclamation operations pursuant to the State Program will be accompanied by a fee of \$5.00.

120. Permit Application Format and Contents.

121. The permit application will

121.100. Contain current information, as required by R614-200, R614-300, R614-301 and R614-302

121.200. Be clear and concise; and

121.300. Be filed in the format required by the Division.

122. If used in the permit application, referenced materials will either be provided to the Division by the applicant or be readily available to the Division. If provided, relevant portions of referenced published materials will be presented briefly and concisely in the application by photocopying or abstracting and with explicit citations.

123. Nothing given under R614-301-114.100 through R614-301-114.200 will be construed to provide the Division with the authority to adjudicate property rights disputes.

124. Status of Unsuitability Claims.

125.100. An application will contain available information as to whether the proposed permit area is within an area designated as unsuitable for coal mining and reclamation operations or is within an area under study for designation in an administrative proceeding under R614-103-300, R614-103-400, or 30 CFR Part 769.

125.200. An application in which the applicant claims the exemption described in R614-103-333 will contain information supporting the assertion that the applicant made substantial legal and financial com-

123. Applications for permits; permit changes; permit renewals; or transfers, sales or assignments of permit rights will contain the notarized signature of a responsible official of the applicant, that the information contained in the application is true and correct to the best of the official's information and belief.

130. Reporting of Technical Data.

131. All technical data submitted in the permit application will be accompanied by the names of persons or organizations that collected and analyzed the data, dates of the collection and analysis of the data, and descriptions of the methodology used to collect and analyze the data.

132. Technical analyses will be planned by or under the direction of a professional qualified in the subject to be analyzed.

140. Maps and Plans.

141. Maps submitted with permit applications will be presented in a consolidated format, to the extent possible, and will include all the types of information that are set forth on U.S. Geological Survey of the 1:24,000 scale series. Maps of the permit area will be at a scale of 1:6,000 or larger. Maps of the adjacent area will clearly show the lands and waters within those areas and be at a scale determined by the Division, but in no event smaller than 1:24,000.

142. All maps and plans submitted with the permit application with distinguish among each of the phases during which coal mining and reclamation operations were or will be conducted at any place within the life of operations. At a minimum, distinctions will be clearly shown among those portions of the life of operations in which coal mining and reclamation operations occurred:

142.100 Prior to August 3, 1977;

142.200 After August 3, 1977, and prior to either:

142.210. May 3, 1978; or

142.220 In the case of an applicant or operator which obtained a small operator's exemption in accordance with the Interim Program rules (MC Rules), January 1, 1979;

142.300 After May 3, 1978 (or January 1, 1979, for persons who received a small operator's exemption) and prior to the approval of the State Program; and

142.400 After the estimated date of issuance of a permit by the Division under the State Program.

150. Completeness. An application for a permit to conduct coal mining and reclamation operations will be complete and will include at a minimum information required under R614-301 and, if applicable, R614-302.

R614-301-200. Soils.

The regulations in R614-301-200 present the minimum requirements for information on soil resources which will be included in each permit application.

210. Introduction.

211. The applicant will present a description of the premining soil resources as specified under R614-301-221. Topsoil and subsoil to be saved under R614-301-232 will be separately removed and segregated from other material.

212. After removal, topsoil will be immediately redistributed in accordance with R614-301-242, stockpiled pending redistribution under R614-301-234, or if demonstrated that an alternative procedure will provide equal or more protection for the topsoil, the Division may, on a case-by-case basis, approve an alternative.

220. Environmental Description.

221. Prime Farmland Investigation. All permit applications, whether or not Prime Farmland is present,

will include the results of a reconnaissance inspection of the proposed permit area to indicate whether Prime Farmland exists as given under R614-302-313.

222. Soil Survey. The applicant will provide adequate soil survey information for those portions of the permit area to be affected by surface operations incident to UNDERGROUND COAL MINING and RECLAMATION ACTIVITIES and for the permit area of SURFACE COAL MINING and RECLAMATION ACTIVITIES consisting of the following:

222.100. A map delineating different soils;

222.200. Soil identification;

222.300. Soil description; and

222.400. Present and potential productivity of existing soils.

223. Soil Characterization. The survey will meet the standards of the National Cooperative Soil Survey as incorporated by reference in R614-302-314.100.

224. Substitute Topsoil. Where the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application will include results of analyses, trials, and tests as described under R614-301-232.100 through R614-301-232.600, R614-301-234, R614-301-242, and R614-301-243. The Division may also require the results of field-site trials or greenhouse tests as required under R614-301-233.

230. Operation Plan.

231. General Requirements. Each permit application will include a:

231.100. Description of the methods for removing and storing topsoil, subsoil, and other materials;

231.200. Demonstration of the suitability of topsoil substitutes or supplements;

231.300. Testing plan for evaluating the results of topsoil handling and reclamation procedures related to revegetation; and

231.400. Narrative that describes the construction, modification, use and maintenance of topsoil handling and storage areas.

232. Topsoil and Subsoil Removal.

232.100. All topsoil will be removed as a separate layer from the area to be disturbed, and segregated.

232.200. Where the topsoil is of insufficient quantity or poor quality for sustaining vegetation, the materials approved by the Division in accordance with R614-301-233.100 will be removed as a separate layer from the area to be disturbed, and segregated.

232.300. If topsoil is less than six inches thick, the operator may remove the topsoil and the unconsolidated materials immediately below the topsoil and treat the mixture as topsoil.

232.400. The Division may not require the removal of topsoil for minor disturbances which:

232.410. Occur at the site of small structures, such as power poles, signs, or fence lines; or

232.420. Will not destroy the existing vegetation and will not cause erosion.

232.500. Subsoil Segregation. The Division may require that the B horizon, C horizon, or other underlying strata, or portions thereof, be removed and segregated, stockpiled, and redistributed as subsoil in accordance with the requirements of R614-301-234 and R614-301-242 if it finds that such subsoil layers are necessary to comply with the revegetation requirements of R614-301-353 through R614-301-357.

232.600. Timing. All material to be removed under R614-301-232 will be removed after the vegetative cover that would interfere with its salvage is cleared from the area to be disturbed, but before any drilling,

blasting, mining, or other surface disturbance takes place.

232.700. Topsoil and subsoil removal under adverse conditions. An exception to the requirements of R614-301-232 to remove topsoil or subsoils in a separate layer from an area to be disturbed by surface operations may be granted by the Division where the operator can demonstrate:

232.710. The removal of soils in a separate layer from the area by the use of conventional machines would be unsafe or impractical because of the slope or other condition of the terrain or because of the rockiness or limited depth of the soils; and

232.720. That the requirements of R614-301-233 have been or will be fulfilled with regard to the use of substitute soil materials unless no available substitute material can be made suitable for achieving the revegetation standards of R614-301-356, in which event the operator will, as a condition of the permit, be required to import soil material of the quality and quantity necessary to achieve such revegetation standards.

233. Topsoil Substitutes and Supplements.

233.100. Selected overburden materials may be substituted for, or used as a supplement to, topsoil if the operator demonstrates to the Division that the resulting soil medium is equal to, or more suitable for, sustaining vegetation on nonprime farmland areas than the existing topsoil, has a greater productive capacity than that which existed prior to mining for prime farmland reconstruction, and results in a soil medium that is the best available in the permit area to support revegetation.

233.200. The suitability of topsoil substitutes and supplements will be determined on the basis of analysis of the thickness of soil horizons, total depth, texture, percent coarse fragments, pH, and areal extent of the different kinds of soils. The Division may require other chemical and physical analyses, field-site trials, or greenhouse tests if determined to be necessary or desirable to demonstrate the suitability of topsoil substitutes or supplements.

233.300. Results of physical and chemical analyses of overburden and topsoil to demonstrate that the resulting soil medium is equal to or more suitable for sustaining revegetation than the available topsoil, provided that field-site trials, and greenhouse tests are certified by an approved laboratory in accordance with any one or a combination of the following sources:

233.310. SCS published data based on established soil series;

233.320. SCS Technical Guides;

233.330. State agricultural agency, university, Tennessee Valley Authority, Bureau of Land Management of U.S. Department of Agriculture Forest Service published data based on soil series properties and behavior; or

233.340. Results of physical and chemical analyses, field-site trials, or greenhouse tests of the topsoil and overburden materials (soil series) from the permit area.

233.400. If the operator demonstrates through soil survey or other data that the topsoil and unconsolidated material are insufficient and substitute materials will be used, only the substitute materials must be analyzed in accordance with R614-301-233.300.

234. Topsoil Storage.

234.100. Materials removed under R614-301-232.100, R614-301-232.200, and R614-301-232.300 will be segregated and stockpiled when it is impractic-

cal to redistribute such materials promptly on regraded areas.

234.200. Stockpiled materials will:

234.210. Be selectively placed on a stable site within the permit area;

234.220. Be protected from contaminants and unnecessary compaction that would interfere with revegetation;

234.230. Be protected from wind and water erosion through prompt establishment and maintenance of an effective, quick growing vegetative cover or through other measures approved by the Division; and

234.240. Not be moved until required for redistribution unless approved by the Division.

234.300. Where long-term disturbed areas will result from facilities and preparation plants and where stockpiling of materials removed under R614-301-232.100 would be detrimental to the quality or quantity of those materials, the Division may approve the temporary distribution of the soil materials so removed to an approved site within the permit area to enhance the current use of that site until needed for later reclamation, provided that:

234.310. Such action will not permanently diminish the capacity of the topsoil of the host site; and

234.320. The material will be retained in a condition more suitable for redistribution than if stockpiled.

240. Reclamation Plan.

241. General Requirements. Each permit application will include plans for redistribution of soils, use of soil nutrients and amendments and stabilization of soils.

242. Soil Redistribution.

242.100. Topsoil materials removed under R614-301-232.100, R614-301-232.200, and R614-301-232.300 and stored under R614-301-234 will be redistributed in a manner that:

242.110. Achieves an approximately uniform, stable thickness consistent with the approved postmining land use, contours, and surface-water drainage systems;

242.120. Prevents excess compaction of the materials; and

242.130. Protects the materials from wind and water erosion before and after seeding and planting.

242.200. Before redistribution of the materials removed under R614-301-232 the regraded land will be treated if necessary to reduce potential slippage of the redistributed material and to promote root penetration. If no harm will be caused to the redistributed material and reestablished vegetation, such treatment may be conducted after such material is re-placed.

242.300. The Division may not require the redistribution of topsoil or topsoil substitutes on the approved postmining embankments of permanent impoundments or roads if it determines that:

242.310. Placement of topsoil or topsoil substitutes on such embankments is inconsistent with the requirement to use the best technology currently available to prevent sedimentation, and

242.320. Such embankments will be otherwise stabilized.

243. Soil Nutrients and Amendments. Nutrients and soil amendments will be applied to the initially redistributed material when necessary to establish the vegetative cover.

244. Soil Stabilization.

244.100. All exposed surface areas will be protected and stabilized to effectively control erosion and air pollution attendant to erosion.

244.200. Suitable mulch and other soil stabilizing practices will be used on all areas that have been regraded and covered by topsoil or topsoil substitutes. The Division may waive this requirement if seasonal, soil, or slope factors result in a condition where mulch and other soil stabilizing practices are not necessary to control erosion and to promptly establish an effective vegetative cover.

244.300. Rills and gullies, which form in areas that have been regraded and topsoiled and which either:

244.310. Disrupt the approved postmining land use or the reestablishment of the vegetative cover, or
244.320. Cause or contribute to a violation of water quality standards for receiving streams will be filled, regraded, or otherwise stabilized; topsoil will be replaced; and the areas will be reseeded or replanted.

250. Performance Standards.

251. All topsoil, subsoil and topsoil substitutes or supplements will be removed, maintained and redistributed according to the plan given under R614-301-230 and R614-301-240.

252. All stockpiled topsoil, subsoil and topsoil substitutes or supplements will be located, maintained and redistributed according to plans given under R614-301-230 and R614-301-240.

R614-301-300. Biology.

310. Introduction. Each permit application will include descriptions of the:

311. Vegetative, fish, and wildlife resources of the permit area and adjacent areas as described under R614-301-320;

312. Potential impacts to vegetative, fish and wildlife resources and methods proposed to minimize these impacts during coal mining and reclamation operations as described under R614-301-330 and R614-301-340; and

313. Proposed reclamation designed to restore or enhance vegetative, fish, and wildlife resources to a condition suitable for the designated postmining land use as described under R614-301-340.

320. Environmental Description.

321. Vegetation Information. The permit application will contain descriptions as follows:

321.100. If required by the Division, plant communities within the proposed permit area and any reference area for SURFACE COAL MINING AND RECLAMATION ACTIVITIES and areas affected by surface operations incident to an underground mine for UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES. This description will include information adequate to predict the potential for reestablishing vegetation; and

321.200. The productivity of the land before mining within the proposed permit area for SURFACE COAL MINING AND RECLAMATION ACTIVITIES and areas affected by surface operations incident to an underground mine for UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, expressed as average yield of food, fiber, forage, or wood products from such lands obtained under high levels of management. The productivity will be determined by yield data or estimates for similar sites based on current data from the U. S. Department of Agriculture, state agricultural universities, or appropriate state natural resource or agricultural agencies.

322. Fish and Wildlife Information. Each application will include fish and wildlife resource information for the permit area and adjacent areas.

322.100. The scope and level of detail for such information will be determined by the Division in consultation with state and federal agencies with responsibilities for fish and wildlife and will be sufficient to design the protection and enhancement plan required under R614-301-333.

322.200. Site-specific resource information necessary to address the respective species or habitats will be required when the permit area or adjacent area is likely to include:

322.210. Listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.), or those species or habitats protected by similar state statutes;

322.220. Habitats of unusually high value for fish and wildlife such as important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes, or reproduction and wintering areas; or

322.230. Other species or habitats identified through agency consultation as requiring special protection under state or federal law.

322.300. Fish and Wildlife Service review. Upon request, the Division will provide the resource information required under R614-301-322 and the protection and enhancement plan required under R614-301-333 to the U. S. Fish and Wildlife Service Regional or Field Office for their review. This information will be provided within 10 days of receipt of the request from the Service.

323. Maps and Aerial Photographs. Maps or aerial photographs of the permit area and adjacent areas will be provided which delineate:

323.100. The location and boundary of any proposed reference area for determining the success of revegetation;

323.200. Elevations and locations of monitoring stations used to gather data for fish and wildlife, and any special habitat features;

323.300. Each facility to be used to protect and enhance fish and wildlife and related environmental values; and

323.400. If required, each vegetative type and plant community, including sample locations. Sufficient adjacent areas will be included to allow evaluation of vegetation as important habitat for fish and wildlife for those species identified under R614-301-322.

330. Operation Plan. Each application will contain a plan for protection of vegetation, fish, and wildlife resources throughout the life of the mine. The plan will provide:

331. A description of the measures taken to disturb the smallest practicable area at any one time and through prompt establishment and maintenance of vegetation for interim stabilization of disturbed areas to minimize surface erosion. This may include part or all of the plan for final revegetation as described in R614-301-341.100 and R614-301-341.200;

332. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES a description of the anticipated impacts of subsidence on renewable resource lands identified in R614-301-320, and how such impact will be mitigated;

333. A description of how, to the extent possible, using the best technology currently available, the operator will minimize disturbances and adverse impacts to fish and wildlife and related environmental values during coal mining and reclamation operations, including compliance with the Endangered

Species Act of 1973 during coal mining and reclamation operations, including the location and operation of haul and access roads and support facilities so as to avoid or minimize impacts on important fish and wildlife species or other species protected by state or federal law; and how enhancement of these resources will be achieved, where practicable. This description will:

333.100. Be consistent with the requirements of R614-301-358;

333.200. Apply, at a minimum, to species and habitats identified under R614-301-322; and

333.300. Include protective measures that will be used during the active mining phase of operation. Such measures may include the establishment of buffer zones, the selective location and special design of haul roads and powerlines, and the monitoring of surface water quality and quantity.

340. Reclamation Plan.

341. Revegetation. Each application will contain a reclamation plan for final revegetation of all lands disturbed by coal mining and reclamation operations, except water areas and the surface of roads approved as part of the postmining land use, as required in R614-301-353 through R614-301-357. Showing how the applicant will comply with the biological protection performance standards of the State Program. The plan will include, at a minimum:

341.100. A detailed schedule and timetable for the completion of each major step in the revegetation plan;

341.200. Descriptions of the following:

341.210. Species and amounts per acre of seeds and/or seedlings to be used. If fish and wildlife habitat will be a postmining land use, the criteria of R614-301-342.300 apply.

341.220. Methods to be used in planting and seeding;

341.230. Mulching techniques, including type of mulch and rate of application;

341.240. Irrigation, if appropriate, and pest and disease control measures, if any; and

341.250. Measures proposed to be used to determine the success of revegetation as required in R614-301-356.

341.300. The Division may require greenhouse studies, field trials, or equivalent methods of testing proposed or potential revegetation materials and methods to demonstrate that revegetation is feasible pursuant to R614-300-133.710.

342. Fish and Wildlife. Each application will contain a fish and wildlife plan for the reclamation and postmining phase of operation consistent with R614-301-330, the performance standards of R614-301-358 and include the following:

342.100. Enhancement measures that will be used during the reclamation and postmining phase of operation to develop aquatic and terrestrial habitat. Such measures may include restoration of streams and other wetlands, retention of ponds and impoundments, establishment of vegetation for wildlife food and cover, and the replacement of perches and nest boxes. Where the plan does not include enhancement measures, a statement will be given explaining why enhancement is not practicable.

342.200. Where fish and wildlife habitat is to be a postmining land use, the plant species to be used on reclaimed areas will be selected on the basis of the following criteria:

342.210. Their proven nutritional value for fish or wildlife;

342.220. Their use as cover for fish or wildlife, and

342.230. Their ability to support and enhance fish or wildlife habitat after the release of performance bonds. The selected plants will be grouped and distributed in a manner which optimizes edge effect, cover, and other benefits to fish and wildlife.

342.300. Where cropland is to be the postmining land use, and where appropriate for wildlife and crop-management practices, the operator will interperse the fields with trees, hedgerows, or fence rows throughout the harvested area or break up large blocks of monoculture and to diversify habitat types for birds and other animals.

342.400. Where residential, public service, or industrial uses are to be the postmining land use, and where consistent with the approved postmining land use, the operator will interperse reclaimed lands with greenbelts utilizing species of grass, shrubs, and trees useful as food and cover for wildlife.

350. Performance Standards.

351. General Requirements. All coal mining and reclamation operations will be carried out according to plans provided under R614-301-330 through R614-301-340.

352. Contemporaneous Reclamation. Revegetation on all land that is disturbed by coal mining and reclamation operations, and occur contemporaneously is practicable with mining operations, except when such mining operations are conducted in accordance with a variance for combined SURFACE AND UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES issued under R614-302-280. The Division may establish schedules that define contemporaneous reclamation.

353. Revegetation: General Requirements. The permittee will establish on regraded areas and on all other disturbed areas, except water areas and surface areas of roads that are approved as part of the postmining land use, a vegetative cover that is in accordance with the approved permit and reclamation plan.

353.100. The vegetative cover will be:

353.110. Diverse, effective, and permanent.

353.120. Comprised of species native to the area, or of introduced species where desirable and necessary to achieve the approved postmining land use and approved by the Division.

353.130. At least equal in extent of cover to the natural vegetation of the area; and

353.140. Capable of stabilizing the soil surface from erosion.

353.200. The reestablished plant species will:

353.210. Be compatible with the approved postmining land use.

353.220. Have the same seasonal characteristics of growth as the original vegetation.

353.230. Be capable of self-regeneration and plant succession;

353.240. Be compatible with the plant and animal species of the area; and

353.250. Meet the requirements of applicable Utah and federal seed, poisonous and noxious plant, and introduced species laws or regulations.

353.300. The Division may grant exception to the requirements of R614-301-353.220 and R614-301-353.230 when the species are necessary to achieve a quick-growing, temporary, stabilizing cover, and measures to establish permanent vegetation are included in the approved permit and reclamation plan.

353.400. When the approved postmining land use is cropland, the Division may grant exceptions to the requirements of R614-301-353.110, R614-301-353.130, R614-301-353.220, and R614-301-353.230.

The requirements of R614-302-317 apply to areas identified as prime farmland.

354. Revegetation: Timing. Disturbed areas will be planted during the first normal period for favorable planting conditions after replacement of the plant-growth medium. The normal period for favorable planting is that planting time generally accepted locally for the type of plant materials selected.

355. Revegetation: Mulching and Other Soil Stabilizing Practices. Suitable mulch and other soil stabilizing practices will be used on all areas that have been regraded and covered by topsoil or topsoil substitutes. The Division may waive this requirement if seasonal, soil, or slope factors result in a condition where mulch and other soil stabilizing practices are not necessary to control erosion and to promptly establish an effective vegetative cover.

356. Revegetation: Standards for Success.

356.100. Success of revegetation will be judged on the effectiveness of the vegetation for the approved postmining land use, the extent of cover compared to the extent of cover of the reference area or other approved success standard, and the general requirements of R614-301-353.

356.110. Standards for success, statistically valid sampling techniques for measuring success, and approved methods are identified in the Division's "Vegetation Information Guidelines, Appendix A."

356.120. Standards for success will include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking. Ground cover, production, or stocking will be considered equal to the approved success standard when they are not less than 90 percent of the success standard. The sampling techniques for measuring success will use a 90-percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error).

356.200. Standards for success will be applied in accordance with the approved postmining land use and, at a minimum, the following conditions:

356.210. For areas developed for use as grazing land or pasture land, the ground cover and production of living plants on the revegetated area will be at least equal to that of a reference area or such other success standards approved by the Division.

356.220. For areas developed for use as cropland, crop production on the revegetated area will be at least equal to that of a reference area or such other success standards approved by the Division. The requirements of R614-302-310 through R614-302-317 apply to areas identified as prime farmland.

356.230. For areas to be developed for fish and wildlife habitat, recreation, shelter belts, or forest products, success of vegetation will be determined on the basis of tree and shrub stocking and vegetative ground cover. Such parameters are described as follows:

356.231. Minimum stocking and planting arrangements will be specified by the Division on the basis of local and regional conditions and after consultation with and approval by Utah agencies responsible for the administration of forestry and wildlife programs. Consultation and approval may be on a program-wide basis or on a permit-specific basis.

356.232. Trees and shrubs that will be used in determining the success of stocking and the adequacy of plant arrangement will have utility for the approved postmining land use. At the time of bond release, such trees and shrubs will be healthy, and at least 80 percent will have been in place for at least 60 percent of the applicable minimum period of responsibility.

No trees and shrubs in place for less than two growing seasons will be counted in determining stocking adequacy.

356.233. Vegetative ground cover will not be less than that required to achieve the approved postmining land use.

356.240. For areas to be developed for industrial, commercial, or residential use less than two years after regrading is completed, the vegetative ground cover will not be less than that required to control erosion.

356.250. For areas previously disturbed by mining that were not reclaimed to the requirements of R614-200 through R614-203 and R614-301 through R614-302 and that are remined or otherwise redisturbed by coal mining and reclamation operations, at a minimum, the vegetative ground cover will be not less than the ground cover existing before redisturbance and will be adequate to control erosion.

356.300. Siltation structures will be maintained until removal is authorized by the Division and the disturbed area has been stabilized and revegetated. In no case will the structure be removed sooner than two years after the last augmented seeding.

356.400. When a siltation structure is removed, the land on which the siltation structure was located will be revegetated in accordance with the reclamation plan and R614-301-353 through R614-301-357.

357. Revegetation: Extended Responsibility Period.

357.100. The period of extended responsibility for successful vegetation will begin after the last year of augmented seeding, fertilization, irrigation, or other work, excluding husbandry practices that are approved by the Division in accordance with paragraph R614-301-357.300.

357.200. Vegetation parameters identified in R614-301-356.200 will equal or exceed the approved success standard during the growing seasons for the last two years of the responsibility period. The period of extended responsibility will continue for five or ten years based on precipitation data reported pursuant to R614-301-724.411, as follows:

357.210. In areas of more than 26.0 inches average annual precipitation, the period of responsibility will continue for a period of not less than five full years.

357.220. In areas of 26.0 inches or less average annual precipitation, the period of responsibility will continue for a period of not less than ten full years.

357.300. The Division may approve selective husbandry practices, such as weed and brush control, fencing, and water developments or other practices once they have been incorporated into the Utah program, in accordance with 30 CFR 732.17 as being normal husbandry practices, excluding augmented seeding, fertilization, or irrigation, without extending the period of responsibility for revegetation success and bond liability, if such practices can be expected to continue as part of the postmining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success. Approved practices will be normal conservation practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area, including such practices as disease, pest, and vermin control; and any pruning, reseeding and/or transplanting specifically necessitated by such actions.

358. Protection of Fish, Wildlife, and Related Environmental Values. The operator will, to the extent possible using the best technology currently available, minimize disturbances and adverse impacts on

fish, wildlife, and related environmental values and will achieve enhancement of such resources where practicable.

358.100. No coal mining and reclamation operation will be conducted which is likely to jeopardize the continued existence of endangered or threatened species listed by the Secretary or which is likely to result in the destruction or adverse modification of designated critical habitats of such species in violation of the Endangered Species Act of 1973. The operator will promptly report to the Division any state- or federally-listed endangered or threatened species within the permit area of which the operator becomes aware. Upon notification, the Division will consult with appropriate state and federal fish and wildlife agencies and, after consultation, will identify whether, and under what conditions, the operator may proceed.

358.200. No coal mining and reclamation operations will be conducted in a manner which would result in the unlawful taking of a bald or golden eagle, its nest, or any of its eggs. The operator will promptly report to the Division any golden or bald eagle nest within the permit area of which the operator becomes aware. Upon notification, the Division will consult with the U.S. Fish and Wildlife Service and the Utah Division of Wildlife Resources and, after consultation, will identify whether, and under what conditions, the operator may proceed.

358.300. Nothing in the R614 Rules will authorize the taking of an endangered or threatened species or a bald or golden eagle, its nest, or any of its eggs in violation of the Endangered Species Act of 1973 or the Bald Eagle Protection Act, as amended, 16 U.S.C. 668 et seq.

358.400. The operator conducting coal mining and reclamation operations will avoid disturbances to, enhance where practicable, restore, or replace, wetlands and riparian vegetation along rivers and streams and bordering ponds and lakes. Coal mining and reclamation operations will avoid disturbances to, enhance where practicable, or restore, habitats of unusually high value for fish and wildlife.

358.500. Each operator will, to the extent possible using the best technology currently available:

358.510. Ensure that electric powerlines and other transmission facilities used for, or incidental to, coal mining and reclamation operations on the permit area are designed and constructed to minimize electrocution hazards to raptors, except where the Division determines that such requirements are unnecessary;

358.520. Design fences, overland conveyers, and other potential barriers to permit passage for large mammals, except where the Division determines that such requirements are unnecessary; and

358.530. Fence, cover, or use other appropriate methods to exclude wildlife from ponds which contain hazardous concentrations of toxic-forming materials.

R614-301-400. Land Use and Air Quality.

The rules in R614-301-400 present the requirements for information related to Land Use and Air Quality which are to be included in each permit application.

410. Land Use. Each permit application will include a descriptions of the premining and proposed postmining land uses).

411. Environmental Description.

411.100. Premining Land-Use Information. The application will contain a statement of the condition and capability of the land which will be affected by

coal mining and reclamation operations within the proposed permit area, including:

411.110. A map and supporting narrative of the uses of the land existing at the time of the filing of the application. If the premining use of the land was changed within five years before the anticipated date of beginning the proposed operations, the historic use of the land will also be described.

411.120. A narrative of land capability which analyzes the land-use description in conjunction with other environmental resources information required under R614-301-411.100, and R614-301 and R614-302. The narrative will provide analyses of the capability of the land before any coal mining and reclamation operations to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover and the hydrology of the area proposed to be affected by coal mining and reclamation operations; and

411.130. A description of the existing land uses and land-use classifications under local law, if any, of the proposed permit and adjacent areas.

411.140. Cultural and Historic Resources Information. The application will contain maps as described under R614-301-411.141 and a supporting narrative which describe the nature of cultural and historic resources listed or eligible for listing in the National Register of Historic Places and known archeological sites within the permit and adjacent areas. The description will be based on all available information, including, but not limited to, information from the State Historic Preservation Officer and from local archeological, historic, and cultural preservation agencies.

411.141. Cultural and Historic Resources Maps. These maps will clearly show:

411.141.1. The boundaries of any public park and locations of any cultural or historical resources listed or eligible for listing in the National Register of Historic Places and known archeological sites within the permit and adjacent areas;

411.141.2. Each cemetery that is located in or within 100 feet of the proposed permit area; and

411.141.3. Any land within the proposed permit area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act.

411.142. Coordination with the State Historic Preservation Officer (SHPO). The narrative presented under R614-301-411.140 will also describe coordination efforts with and present evidence of clearances by the SHPO. For any publicly owned parks or places listed on the National Register of Historic Places that may be adversely affected by the proposed coal mining and reclamation operations, each plan will describe the measures to be used:

411.142.1. To prevent adverse impacts, or

411.142.2. If valid existing rights exist or joint agency approval is to be obtained under R614-103-236, to minimize adverse impacts.

411.143. The Division may require the applicant to identify and evaluate important historic and archeological resources that may be eligible for listing on the national Register of Historic Places through:

411.143.1. Collection of additional information;

411.143.2. Conducting field investigations; or

411.143.3. Other appropriate analyses.

411.144. The Division may require the applicant to protect historic or archeological properties listed on or eligible for listing on the National Register of Historic Places through appropriate mitigation and

treatment measures. Appropriate mitigation and treatment measures may be required to be taken after permit issuance provided that the required measures are completed before the properties are affected by any mining operation.

411.200. Previous Mining Activity. The application will state whether the proposed permit area has been previously mined, and, if so, the following information, if available:

411.210. The type of mining method used;

411.220. The coal seams or other mineral strata mined;

411.230. The extent of coal or other minerals removed;

411.240. The approximate dates of past mining; and

411.250. The uses of the land preceding mining.

412. Reclamation Plan.

412.100. Postmining Land-Use Plan. Each application will contain a detailed description of the proposed use, following reclamation, of the land within the proposed permit area, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land-use policies and plans. The plan will explain:

412.110. How the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use;

412.120. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, where range or grazing is the proposed postmining use, the detailed management plans to be implemented;

412.130. Where a land use different from the premining land use is proposed, all materials needed for approval of the alternative use under R614-301-413.100 through R614-301-413.334, R614-302-270, R614-302-271.100 through R614-302-271.400, R614-302-271.600, R614-302-271.800, and R614-302-271.900; and

412.140. The consideration which has been given to making all of the proposed coal mining and reclamation operations consistent with surface owner plans and applicable Utah and local land-use plans and programs.

412.200. Land Owner or Surface Manager Comments. The description will be accompanied by a copy of the comments concerning the proposed use by the legal or equitable owner of record of the surface of the proposed permit area and Utah and local government agencies which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

412.300. Suitability and Compatibility. Assure that final fills containing excess spoil are suitable for reclamation and revegetation and are compatible with the natural surroundings and the approved postmining land use.

413. Performance Standards.

413.100. Postmining Land Use. All disturbed areas will be restored in a timely manner to conditions that are capable of supporting:

413.110. The uses they were capable of supporting before any mining; or

413.120. Higher or better uses.

413.200. Determining Premining Uses of Land.

413.210. The premining uses of land to which the postmining land use is compared will be those uses which the land previously supported, if the land has

not been previously mined and has been properly managed.

413.220. The postmining land use for land that has been previously mined and not reclaimed will be judged on the basis of the land use that existed prior to any mining; provided that, if the land cannot be reclaimed to the land use that existed prior to any mining because of the previously mined condition, the postmining land use will be judged on the basis of the highest and best use that can be achieved which is compatible with surrounding areas and does not require the disturbance of areas previously unaffected by mining.

413.300. Criteria for Alternative Postmining Land Uses. Higher or better uses may be approved by the Division as alternative postmining land uses after consultation with the landowner or the land management agency having jurisdiction over the lands, if the proposed uses meet the following criteria:

413.310. There is a reasonable likelihood for achievement of the use;

413.320. The use does not present any actual or probable hazard to public health or safety, or threat of water diminution or pollution; and

413.330. The use will not:

413.331. Be impractical or unreasonable;

413.332. Be inconsistent with applicable land-use policies or plans;

413.333. Involve unreasonable delay in implementation; or

413.334. Cause or contribute to violation of federal, Utah, or local law.

414. Interpretation of R614-301-412 and R614-301-413.100 through R614-301-413.334, R614-302-270, R614-302-271.100 through R614-302-271.400, R614-302-271.600, R614-302-271.800, and R614-302-271.900 for the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, Reclamation Plan: Postmining Land Use. The requirements of R614-301-412-130, for approval of an alternative postmining land use, may be met by requesting approval through the permit revision procedures of R614-303-220 rather than requesting such approval in the original permit application. The original permit application, however, must demonstrate that the land will be returned to its premining land-use capability as required by R614-301-413.100. An application for a permit revision of this type:

414.100. Must be submitted in accordance with the filing deadlines of R614-303-220;

414.200. Will constitute a significant alteration from the mining operations contemplated by the original permit; and

414.300. Will be subject to the requirements of R614-300-120 through R614-300-155 and R614-300-200.

420. Air Quality.

421. Coal mining and reclamation operations will be conducted in compliance with the requirements of the Clean Air Act (42 U.S.C. Sec. 7401 et seq.) and any other applicable Utah or federal statutes and regulations containing air quality standards.

422. The application will contain a description of coordination and compliance efforts which have been undertaken by the applicant with the Utah Bureau of Air Quality.

423. For all Surface Coal Mining and Reclamation Activities with projected production rates exceeding 1,000,000 tons of coal per year, the application will contain an air pollution control plan which includes the following:

423.100. An air quality monitoring program to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices proposed under R614-301-423.200 to comply with federal and Utah air quality standards; and

423.200. A plan for fugitive dust control practices as required under R614-301-244.100 and R614-301-244.300.

424. All plans for SURFACE COAL MINING AND RECLAMATION ACTIVITIES with projected production rates of 1,000,000 tons of coal per year or less, will include a plan for fugitive dust control practices as required under R614-301-244 and R614-244.300.

R614-301-500. Engineering.

The rules in R614-301-500 present the requirements for engineering information which is to be included in a permit application.

510. Introduction. The engineering section of the permit application is divided into the operation plan, reclamation plan, design criteria, and performance standards. All of the activities associated with the coal mining and reclamation operations must be designed, located, constructed, maintained, and reclaimed in accordance with the operation and reclamation plan. All of the design criteria associated with the operation and reclamation plan must be met.

511. General Requirements. Each permit application will include descriptions of:

511.100. The proposed coal mining and reclamation operations with attendant maps, plans, and cross sections;

511.200. The proposed mining operation and its potential impacts to the environment as well as methods and calculations utilized to achieve compliance with design criteria; and

511.300. Reclamation.

512. Certification.

512.100. Cross Sections and Maps. Certain cross sections and maps required to be included in a permit application will be prepared by, or under the direction of, and certified by a qualified, registered, professional engineer or land surveyor, with assistance from experts in related fields such as hydrology, geology and landscape architecture, and will be updated as required by the Division. The following cross sections and maps will be certified:

512.110. Mine workings to the extent known as described under R614-301-521.110;

512.120. Surface facilities and operations as described under R614-301-521.124, R614-301-521.164, R614-301-521.165 and R614-301-521.167;

512.130. Surface configurations as described under R614-301-542.300 and R614-302-200;

512.140. Hydrology as described under R614-301-722, and as appropriate, R614-301-731.700; and

512.150. Geologic cross sections and maps as described under R614-301-622.

512.200. Plans and Engineering Designs. Excess spoil, durable rock fills, coal mine waste, impoundments, primary roads and variances from approximate original contour require certification by a qualified registered professional engineer.

512.210. Excess Spoil. The professional engineer experienced in the design of earth and rock fills will certify the design according to R614-301-535.100.

512.220. Durable Rock Fills. The professional engineer experienced in the design of earth and rock fills must certify that the durable rock fill design will ensure the stability of the fill and meet design requirements according to R614-301-535.100 and R614.301.535.300.

512.230. Coal Mine Waste. The professional engineer experienced in the design of similar earth and waste structures must certify the design of the disposal facility according to R614-301-536.

512.240. Impoundments. The professional engineer will use current, prudent, engineering practices and will be experienced in the design and construction of impoundments and certify the design of the impoundment according to R614-301-743.

512.250. Primary Roads. The professional engineer will certify the design and construction or reconstruction of primary roads as meeting the requirements of R614-301-534.200 and R614-301-742.420.

512.260. Variance From Approximate Original Contour. The professional engineer will certify the design for the proposed variance from the approximate original contour, as described under R614-302-270, in conformance with professional standards established to assure the stability, drainage and configuration necessary for the intended use of the site.

513. Compliance With MSHA Regulations and MSHA Approvals.

513.100. Coal processing waste dams and embankments will comply with MSHA, 30 CFR 77.216-1 and 30 CFR 77.216-2 (see R614-301-528.400 and R614-301-526.820).

513.200. Impoundments and sedimentation ponds meeting the size or other qualifying criteria of MSHA, 30 CFR 77.216(a) will comply with the requirements of MSHA, 30 CFR 77.216 (see R614-301-533.600, R614-301-742.222, and R614-301-742.223).

513.300. Underground development waste, coal processing waste and excess spoil may be disposed of in underground mine workings, but only in accordance with a plan approved by MSHA and the Division (see R614-301-528.321).

513.400. Refuse piles will meet the requirements of MSHA, 30 CFR 77.214 and 30 CFR 77.215 (see R614-301-536.900).

513.500. Each shaft, drift, adit, tunnel, exploratory hole, entryway or other opening to the surface from the underground will be capped, sealed, backfilled or otherwise properly managed consistent with MSHA, 30 CFR 75.1771 (see R614-301-551).

513.600. Discharges into an underground mine are prohibited, unless specifically approved by the Division after a demonstration that the discharge will meet the approval of MSHA (see R614-301-731.511.4).

513.700. The nature, timing and sequence of the SURFACE COAL MINING AND RECLAMATION ACTIVITIES that propose to mine closer than 500 feet to an active underground mine are jointly approved by the Division and MSHA (see R614-301-523.220).

513.800. Coal mine waste fires will be extinguished in accordance with a plan approved by MSHA and the Division (see R614-301-528.323.1).

514. Inspections. All engineering inspections, excepting those described under R614-301-514.330, will be conducted by a qualified registered professional engineer or other qualified professional specialist under the direction of the professional engineer.

514.100. Excess Spoil. The professional engineer or specialist will be experienced in the construction of earth and rock fills and will periodically inspect the fill during construction. Regular inspections will also be conducted during placement and compaction of fill materials.

514 110 Such inspections will be made at least quarterly throughout construction and during critical construction periods. Critical construction periods will include at a minimum:

514 111 Foundation preparation including the removal of all organic material and topsoil.

514 112 Placement of underdrains and protective filter systems.

514 113 Installation of final surface drainage systems and

514 114 The final graded and revegetated fill.

514 120 The qualified registered professional engineer will provide a certified report to the Division promptly after each inspection that the fill has been constructed and maintained as designed and in accordance with the approved plan and the R614 301 and R614 302 Rules. The report will include appearances of instability, structural weakness, and other hazardous conditions.

514 130 Certified reports on Drainage System and Protective Filters.

514 131 The certified report on the drainage system and protective filters will include color photographs taken during and after construction, but before underdrains are covered with excess spoil. If the underdrain system is constructed in phases, each phase will be certified separately.

514 132 Where excess durable rock spoil is placed in single or multiple lifts such that the underdrain system is constructed simultaneously with excess spoil placement by the natural segregation of dumped materials in accordance with R614 301 535 300 and R614 301 745 300, color photographs will be taken of the underdrain as the underdrain system is being formed.

514 133 The photographs accompanying each certified report will be taken in adequate size and number with enough terrain or other physical features of the site shown to provide a relative scale to the photographs and to specifically and clearly identify the site.

514 140 Inspection Reports. A copy of each inspection report will be retained at or near the mine site.

514 200 Refuse Piles. The professional engineer or specialist experienced in the construction of similar earth and waste structures will inspect the refuse pile during construction.

514 210 Regular inspections by the engineer or specialist will also be conducted during placement and compaction of coal mine waste materials. More frequent inspections will be conducted if a danger of harm exists to the public health and safety or the environment. Inspections will continue until the refuse pile has been finally graded and revegetated or until a later time as required by the Division.

514 220 Such inspection will be made at least quarterly throughout construction and during the following critical construction periods:

514 221 Foundation preparation including the removal of all organic material and topsoil.

514 222 Placement of underdrains and protective filter systems.

514 223 Installation of final surface drainage systems and

514 224 The final graded and revegetated facility.

514 230 The qualified registered professional engineer will provide a certified report to the Division promptly after each inspection that the refuse pile has been constructed and maintained as designed and in accordance with the approved plan and R614 Rules. The report will include appearances of instability, structural weakness, and other hazardous conditions.

514 240 The certified report on the drainage system and protective filters will include color photographs taken during and after construction, but before underdrains are covered with coal mine waste. If the underdrain system is constructed in phases, each phase will be certified separately. The photographs accompanying each certified report will be taken in adequate size and number with enough terrain or other physical features of the site shown to provide a relative scale to the photographs and to specifically and clearly identify the site.

514 250 A copy of each inspection report will be retained at or near the mine site.

514 300 Impoundments.

514 310 Certified Inspection. The professional engineer or specialist experienced in the construction of impoundments will inspect the impoundment.

514 311 Inspections will be made regularly during construction upon completion of construction and at least yearly until removal of the structure or release of the performance bond.

514 312 The qualified registered professional engineer will promptly after each inspection provide to the Division a certified report that the impoundment has been constructed and maintained as designed and in accordance with the approved plan and the R614 Rules. The report will include discussion of any appearances of instability, structural weakness, or other hazardous conditions, depth and elevation of any impounded waters, existing storage capacity, any existing or required monitoring procedures and instrumentation and any other aspects of the structure affecting stability.

514 313 A copy of the report will be retained at or near the mine site.

514 320 Weekly Inspections. Impoundments subject to MSHA 30 CFR 77 216 must be examined in accordance with 30 CFR 77 216 3.

514 330 Quarterly Inspections. Other impoundments not subject to MSHA 30 CFR 77 216 will be examined at least quarterly by a qualified person designated by the operator for appearance of structural weakness and other hazardous conditions.

515 Reporting and Emergency Procedures.

515 100 The permit application will incorporate a description of the procedure for reporting a slide. The requirements for the description are: At any time a slide occurs which may have a potential adverse effect on public property, health, safety, or the environment, the permittee who conducts the coal mining and reclamation operations will notify the Division by the fastest available means and comply with any remedial measures required by the Division.

515 200 Impoundment Hazards. The permit application will incorporate a description of notification when potential impoundment hazards exist. The requirements for the description are: If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment will promptly inform the Division of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the Division will be notified immediately. The Division will then notify the appropriate agencies that other emergency procedures are required to protect the public.

515 300 The permit application will incorporate a description of procedures for temporary cessation of operations as follows:

515 310 Temporary abandonment will not relieve a person of his or her obligation to comply with any provisions of the approved permit.

515 311 Each person who conducts UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES will effectively support and maintain all surface access openings to underground operations and secure surface facilities in areas in which there are no current operations, but operations are to be resumed under an approved permit.

515 312 Each person who conducts SURFACE COAL MINING AND RECLAMATION ACTIVITIES will effectively secure surface facilities in areas in which there are no current operations, but in which operations are to be resumed under an approved permit.

515 320 Before temporary cessation of coal mining and reclamation operations for a period of 30 days or more, as soon as it is known that a temporary cessation will extend beyond 30 days, each person who conducts coal mining and reclamation operations will submit to the Division a notice of intention to cease or abandon operations. This notice will include:

515 321 For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, a statement of the exact number of surface acres and the horizontal and vertical extent of subsurface strata which have been permitted area prior to cessation or abandonment, extent and kind of reclamation of surface area which will have been accomplished and identification of the backfilling, regrading, revegetation, environmental monitoring, underground opening closures and water treatment activities that will continue during the temporary cessation.

515 322 For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, a statement of the exact number of acres which will have been affected in the permit area prior to such temporary cessation, the extent and kind of reclamation of those areas which will have been accomplished and identification of the backfilling, regrading, revegetation, environmental monitoring and water treatment activities that will continue during the temporary cessation.

516 Prevention of Slides in SURFACE COAL MINING AND RECLAMATION ACTIVITIES. An undisturbed natural barrier will be provided beginning at the elevation of the lowest coal seam to be mined and extending from the outslope for such distance as may be determined by the Division as is needed to assure stability. The barrier will be retained in place to prevent slides and erosion.

520 Operation Plan.

521 General. The applicant will include a plan with maps, cross sections, narrative descriptions and calculations indicating how the relevant requirements are met. The permit application will describe and identify the lands subject to coal mining and reclamation operations over the estimated life of the operations and the size, sequence, and timing of the subareas for which it is anticipated that individual permits for mining will be sought.

521 100 Cross Sections and Maps. The application will include cross sections, maps and plans showing all the relevant information required by the Division to include, but not be limited to:

521 110 Previously Mined Areas. These maps will clearly show:

521 111 The location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within

the proposed permit and adjacent areas. The map will be prepared and certified according to R614 301 512 and

521 112 The location and extent of existing or previously surface mined areas within the proposed permit area. The maps will be prepared and certified according to R614 301 512.

521 120 Existing Surface and Subsurface Facilities and Features. These maps will clearly show:

521 121 The location of all buildings in and within 1000 feet of the proposed permit area, with identification of the current use of the buildings.

521 122 The location of surface and subsurface mine features within passing through or passing over the proposed permit area, including, but not limited to, major electric transmission line, pipelines, and agricultural drainage tile fields.

521 123 Each public road located in or within 100 feet of the proposed permit area.

521 14 The location and size of existing areas of spoil waste, coal development waste and mineral waste disposal dams, embankments, other impoundments, and water treatment and air pollution control facilities within the proposed permit area. The map will be prepared and certified according to R614 301 512 and

521 125 The location of each sedimentation pond, permanent water impoundment, oil processing waste bank and coal processing waste bin and embankment in accordance with R614 301 512 100, R614 301 512 230, R614 301 521 143, R614 301 521 169, R614 301 528 140, R614 301 531, R614 301 533 600, R614 301 533 700, R614 301 535 140 through R614 301 535 152, R614 301 536 600, R614 301 536 800, R614 301 542 300, R614 301 732 210 and R614 301 733 100.

521 130 Easements and Right of Entry and Public Interest Maps. These maps and cross sections will clearly show:

521 131 All boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area.

521 132 The boundaries of land within the proposed permit area upon which the applicant has the legal right to enter and begin coal mining and reclamation operations and

521 133 The measures to be used to ensure that the interests of the public and landowners affected are protected if under R614 301 231 the applicant seeks to have the Division approve.

521 1311 Conducting the proposed coal mining and reclamation operations within 100 feet of the right of way line of any public road, except where mine access or haul roads join that right of way, or

521 1312 Relocating a public road.

521 140 Mine Maps and Permit Area Maps. These maps and/or cross section drawings will clearly indicate:

521 141 The boundaries of all areas proposed to be affected over the estimated total life of the coal mining and reclamation operations, with a description of size, sequence and timing of the mining of surface for which it is anticipated that additional permits will be sought, the coal mining and reclamation operations to be conducted, the lands to be affected throughout the operation and any changes in a facility or feature to be caused by the proposed operations.

521 142 For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, the underground workings and the location and extent of areas in which planned subsidence may

ing methods will be used and which includes all areas where the measures will be taken to prevent, control, or minimize subsidence and subsidence-related damage (refer to R614-301-525); and

521.143. The proposed disposal sites for placing underground mine development waste and excess spoil generated at surface areas affected by surface operations and facilities for the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES and the proposed disposal site and design of the spoil disposal structures for purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES according to R614-301-211, R614-301-212, R614-301-412.300, R614-301-512.210, R614-301-512.220, R614-301-514.100, R614-301-528.310, R614-301-535.100 through R614-301-535.130, R614-301-535.300 through R614-301-535.500, R614-301-536.300, R614-301-542.720, R614-301-553.240, R614-301-745.100, R614-301-745.300, and R614-301-745.400.

521.150. Land Surface Configuration Maps. These maps will clearly indicate sufficient slope measurements or surface contours to adequately represent the existing land surface configuration of the proposed permit area for the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES and the area affected by surface operations and facilities for the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES measured and recorded according to the following:

521.151. Each measurement will consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed, or, where this is impractical, at locations specified by the Division. Maps will be prepared and certified according to R614-301-512; and

521.152. Where the area has been previously mined, the measurements will extend at least 100 feet beyond the limits of mining disturbances, or any other distance determined by the Division to be representative of the premining configuration of the land. Maps will be prepared and certified according to R614-301-512.

521.160. Maps and Cross Sections of the Proposed Features for the Proposed Permit Area. These maps and cross sections will clearly show:

521.161. Buildings, utility corridors, and facilities to be used;

521.162. The area of land to be affected within the proposed permit area, according to the sequence of mining and reclamation;

521.163. Each area of land for which a performance bond or other equivalent guarantee will be posted under R614-301-800;

521.164. Each coal storage, cleaning and loading area. The map will be prepared and certified according to R614-301-512;

521.165. Each topsoil, spoil, coal preparation waste, underground development waste, and noncoal waste storage area. The map will be prepared and certified according to R614-301-512;

521.166. Each source of waste and each waste disposal facility relating to coal processing or pollution control;

521.167. Each explosive storage and handling facility;

521.168. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, each air pollution collection and control facility; and

521.169. Each proposed coal processing waste bank, dam, or embankment. The map will be prepared and certified according to R614-301-512.

521.170. Transportation Facilities Maps. Each permit application will describe each road, conveyor, and rail system to be constructed, used, or maintained within the proposed permit area. The description will include a map, appropriate cross sections, and specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, and drainage structure, and each stream ford that is used as a temporary route.

521.180. Support facilities. Each permit applicant will submit a description, plans, and drawings for each support facility to be constructed, used, or maintained within the proposed permit area. The plans and drawings will include a map, appropriate cross sections, design drawings, and specifications to demonstrate compliance with R614-301-526.220 through R614-301-526.222 for each facility.

521.190. Other relevant information required by the Division.

521.200. Signs and Markers Specifications. Signs and markers will:

521.210. Be posted, maintained, and removed by the person who conducts the coal mining and reclamation operations;

521.220. Be a uniform design that can be easily seen and read; be made of durable material; and conform to local laws and regulations;

521.230. Be maintained during all activities to which they pertain;

521.240. Mine and Permit Identification Signs.

521.241. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, identification signs will be displayed at each point of access from public roads to areas of surface operations and facilities on permit areas;

521.242. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, identification signs will be displayed at each point of access to the permit area from public roads;

521.243. Show the name, business address, and telephone number of the permittee who conducts coal mining and reclamation operations and the identification number of the permanent program permit authorizing coal mining and reclamation operations; and

521.244. Be retained and maintained until after the release of all bonds for the permit area;

521.250. Perimeter Markers.

521.251. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, the perimeter of all areas affected by surface operations or facilities before beginning mining activities will be clearly marked; or

521.252. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, the perimeter of a permit area will be clearly marked before the beginning of surface mining activities;

521.260. Buffer Zone Markers.

521.261. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, signs will be erected to mark buffer zones as required under R614-301-731.600 and will be clearly marked to prevent disturbance by surface operations and facilities; or

521.262. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, buffer zones will be marked along their boundaries as required under R614-301-731.600; and

521.270. Topsoil Markers. Markers will be erected to mark where topsoil or other vegetation-supporting material is physically segregated and stockpiled as required under R614-301-234.

522. Coal Recovery. The permit application will include a description of the measures to be used to maximize the use and conservation of the coal resource. The description will assure that coal mining and reclamation operations are conducted so as to maximize the utilization and conservation of the coal while utilizing the best technology currently available to maintain environmental integrity, so that reflecting the land in the future through coal mining and reclamation operations is minimized.

523. Mining Methods. Each application will include a description of the mining operation proposed to be conducted during the life of the mine within the proposed permit area, including, at a minimum, a narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage and the major equipment to be used for all aspects of those operations.

523.100. SURFACE COAL MINING AND RECLAMATION ACTIVITIES proposed to be conducted within the permit area within 500 feet of an underground mine will be described to indicate compliance with R614-301-523.200.

523.200. No SURFACE COAL MINING AND RECLAMATION ACTIVITIES will be conducted closer than 500 feet to any point of either an active or abandoned underground mine, except to the extent that:

523.210. The operations result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public; and

523.220. The nature, timing, and sequence of the activities that propose to mine closer than 500 feet to an active underground mine are jointly approved by the Division and MSHA.

524. Blasting and Explosives. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, each permit application will contain a blasting plan for the proposed permit area explaining how the applicant will comply with R614-301-524. This plan will include, at a minimum, information setting forth the limitations the operator will meet with regard to ground vibration and airblast, the bases for those limitations, and the methods to be applied in controlling the adverse effects of blasting operations. Each blasting plan will also contain a description of any system to be used to monitor compliance with the standards of R614-301-524.600 including the type, capability, and sensitivity of any blast-monitoring equipment and proposed procedures and locations of monitoring. Blasting operations conducted within 500 feet of active underground mines require approval of MSHA. Blasts that use more than five pounds of explosive or blasting agent will be conducted according to the schedule required under R614-301-524.400. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, R614-301-524.100 through R614-301-524.700 apply to surface blasting activities incident to underground coal mining, including, but not limited to, initial rounds of slopes and shafts.

524.100. Blaster Certification. The steps taken to achieve compliance with the blaster certification program must be described in the permit application.

524.110. After July 28, 1987, all surface blasting operations incident to underground mining in Utah will be conducted under the direction of a certified blaster.

524.120. Certificates of blaster certification will be carried by blasters or will be on file at the permit area during blasting operations.

524.130. A blaster and at least one other person will be present at the firing of a blast.

524.140. Persons responsible for blasting operations at a blasting site will be familiar with the blasting plan and site-specific performance standards and give on-the-job training to persons who are not certified and who are assigned to the blasting crew or assist in the use of explosives.

524.200. Unless approved by the Division under R614-301-524.220, the blast design must be described in the permit application. The design requirements are:

524.210. An anticipated blast design will be submitted for all blasts if blasting operations will be conducted within:

524.211. 1,000 feet of any building used as a dwelling, public building, school, church, or community or institutional building outside the permit area; or

524.212. 500 feet of an active or abandoned underground mine;

524.220. The blast design may be presented as part of a permit application or at a time before the blast, if approved by the Division.

524.230. The blast design will contain sketches of the drill patterns, delay periods, and decking and will indicate the type and amount of explosives to be used, critical dimensions, and the location and general description of structures to be protected, as well as a discussion of design factors to be used, which protect the public and meet the applicable airblast, flyrock, and ground-vibration standards in R614-301-524.600.

524.240. The blast design will be prepared and signed by a certified blaster; and

524.250. The Division may require changes to the design submitted.

524.300. The preblasting survey must be described in the permit application. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES preblasting surveys are required for blasts that use more than five pounds of blasting agent or explosives. The requirements are:

524.310. At least 30 days before initiation of blasting, the operator will notify, in writing, all residents or owners of dwellings or other structures located within one-half mile of the permit area how to request a preblasting survey;

524.320. A resident or owner of a dwelling or structure within one-half mile of any part of the permit area may request a preblasting survey. This request will be made, in writing, directly to the operator or to the Division, who will promptly notify the operator. The operator will promptly conduct a preblasting survey of the dwelling or structure and promptly prepare a written report of the survey. An updated survey of any additions, modifications, or renovations will be performed by the operator if requested by the resident or owner;

524.330. The operator will determine the condition of the dwelling or structure and will document any preblasting damage and other physical factors that could reasonably be affected by the blasting. Structures such as pipelines, cables, transmission lines, and cisterns, wells, and other water systems warrant special attention; however, the assessment of these structures may be limited to surface conditions and other readily available data.

524.340. The written report of the survey will be signed by the person who conducted the survey. Copies of the report will be promptly provided to the Division.

sion and to the person requesting the survey. If the person requesting the survey disagrees with the contents and/or recommendations contained therein, he or she may submit to both the operator and the Division a detailed description of the specific areas of disagreement; and

524.350. Any surveys requested more than ten days before the planned initiation of blasting will be completed by the operator before the initiation of blasting.

524.400. The schedule of blasts will be described in the permit application.

524.410. Unscheduled blasts may be conducted only where public or operator health and safety so requires and for emergency blasting actions. When an operator conducts an unscheduled surface blast incidental to coal mining and reclamation operations, the operator, using audible signals, will notify residents within one-half mile of the blasting site and document the reason in accordance with R614-301-524.760.

524.420. All blasting will be conducted between sunrise and sunset unless nighttime blasting is approved by the Division based upon a showing by the operator that the public will be protected from adverse noise and other impacts. The Division may specify more restrictive time periods for blasting.

524.430. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, the operator will notify, in writing, residents within one-half mile of the blasting site and local governments of the proposed times and locations of blasting operations. Such notice of times that blasting is to be conducted may be announced weekly, but in no case less than 24 hours before blasting will occur.

524.440. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, the operator will conduct blasting operations at times approved by the Division and announced in the blasting schedule. The Division may limit the area covered, timing, and sequence of blasting as listed in the schedule, if such limitations are necessary and reasonable in order to protect the public health and safety or welfare.

524.450. Blasting Schedule Publication and Distribution. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES the operator will:

524.451. Publish the blasting schedule in a newspaper of general circulation in the locality of the blasting site at least ten days, but not more than 30 days, before beginning a blasting program;

524.452. Distribute copies of the schedule to local governments and public utilities and to each local residence within one-half mile of the proposed blasting site described in the schedule; and

524.453. Republish and redistribute the schedule at least every 12 months and revise and republish the schedule at least ten days, but not more than 30 days, before blasting whenever the area covered by the schedule changes or actual time periods for blasting significantly differ from the prior announcement; and

524.460. Blasting Schedule Contents. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES the blasting schedule will contain, at a minimum:

524.461. Name, address, and telephone number of operator;

524.462. Identification of the specific areas in which blasting will take place;

524.463. Dates and time periods when explosives are to be detonated;

524.464. Methods to be used to control access to the blasting area; and

524.465. Type and patterns of audible warning and all-clear signals to be used before and after blasting.

524.500. The blasting signs, warnings, and access control must be described in the permit application.

524.510. Blasting Signs. Blasting signs will meet the specifications of R614-301-521.200. The operator will:

524.511. Conspicuously place signs reading "Blasting Area" along the edge of any blasting area that comes within 100 feet of any public road right-of-way, and at the point where any other road provides access to the blasting area; and

524.512. At all entrances to the permit area from public roads or highways, place conspicuous signs which state "Warning! Explosives in Use", which clearly list and describe the meaning of the audible blast warning and all-clear signals that are in use, and which explain the marking of blasting areas and charged holes awaiting firing within the permit area.

524.520. Warnings. Warning and all-clear signals of different character or pattern that are audible within a range of one-half mile from the point of the blast will be given. Each person within the permit area and each person who resides or regularly works within one-half mile of the permit area will be notified of the meaning of the signals in the blasting schedule for the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES and blasting notification required by R614-301-524.430 for the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES.

524.530. Access Control. Access within the blasting areas will be controlled to prevent presence of livestock or unauthorized persons during blasting and until an authorized representative of the operator has reasonably determined that:

524.531. No unusual hazards, such as imminent slides or undetonated charges, exist; and

524.532. Access to and travel within the blasting area can be safely resumed.

524.600. The control of adverse blasting effects must be described in the permit application. The requirements are:

524.610. General Requirements. Blasting will be conducted to prevent injury to persons, damage to public or private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of surface or ground water outside the permit area.

524.620. Airblast Limits.

524.621. Airblast will not exceed the maximum limits listed below at the location of any dwelling, public building, school, church, or community or institutional building outside the permit area, except as provided in R614-301-524.690.

Lower Frequency Limit of Measuring System, Hz (±3dB)	Maximum Level dB
0.1 Hz or lower - flat response(1)	134 peak
0.1 Hz or lower - flat response	133 peak
0.1 Hz or lower - flat response	129 peak
C-weighted - slow response(1)	105 peak dBC

(1) Only when approved by the Division.

524.622. If necessary to prevent damage, the Division may specify lower maximum allowable airblast levels than those of R614-301-524.621 for use in the vicinity of a specific blasting operation.

524.630. Monitoring.

524.631. The operator will conduct periodic monitoring to ensure compliance with the airblast standards. The Division may require airblast measurement of any or all blasts and may specify the locations at which such measurements are taken.

524.632. The measuring systems used will have an upper-end flat-frequency response of at least 200 Hz.

524.633. Flyrock. Flyrock traveling in the air or along the ground will not be cast from the blasting site — more than one-half the distance to the nearest dwelling or other occupied structure, beyond the area of control required under R614-301-524.530, or beyond the permit boundary.

524.640. Ground Vibration.

524.641. General. In all blasting operations, except as otherwise authorized in R614-301-524.690, the maximum ground vibration will not exceed the values approved by the Division. The maximum ground vibration for protected structures listed in R614-301-524.642 will be established in accordance with either the maximum peak-particle-velocity limits of R614-301-524.642 and R614-301-524.643, the scaled-distance equation of R614-301-524.650, the blasting-level chart of R614-301-524.660, or by the Division under R614-301-524.670. All structures in the vicinity of the blasting area, not listed in R614-301-524.642, such as water towers, pipelines and other utilities, tunnels, dams, impoundments, and underground mines will be protected from damage by establishment of a maximum allowable limit on the ground vibration, submitted by the operator and approved by the Division before the initiation of blasting.

524.642. Maximum Peak-Particle Velocity. The maximum ground vibration will not exceed the following limits at the location of any dwelling, public building, school, church, or community or institutional building outside the permit area:

EXPLOSIVES

Distance (D) from Blast Site in feet	Maximum allowable Particle Velocity (V _{max}) for ground vibration, in inches/second (1)	Scaled distance factor to be applied without seismic monitoring (2) (D _s)
0 to 300	1.25	50
301 to 5,000	1.00	55
5,001 and beyond	0.75	65

(1) Ground vibration will be measured as the particle velocity. Particle velocity will be recorded in three mutually perpendicular directions. The maximum allowable peak particle velocity will apply to each of the three measurements.

(2) Applicable in the scaled-distance equation of R614-301-524.651.

524.643. A seismographic record will be provided for each blast.

524.650. Scaled-distance equation.

524.651. An operator may use the scaled-distance equation, $W = (D/D_s)^2$, to determine the allowable charge weight of explosives to be detonated in any eight-millisecond period, without seismic monitoring; where W = the maximum weight of explosives, in pounds; D = the distance, in feet, from the blasting site to the nearest protected structure; and D_s = the scaled-distance factor, which may initially be approved by the Division using the values for scaled-distance factor listed in R614-301-524.642.

524.652. The development of a modified scaled-distance factor may be authorized by the Division on receipt of a written request by the operator, supported by seismographic records of blasting at the

mine site. The modified scaled-distance factor will be determined such that the particle velocity of the predicted ground vibration will not exceed the prescribed maximum allowable peak particle velocity of R614-301-524.642, at a 95-percent confidence level.

524.660. Blasting-Level-Chart.

524.661. An operator may use the ground-vibration limits in Figure 1 to determine the maximum allowable ground vibration.

As provided in U.C.A. §3-46a-307(a) figure 1, showing maximum allowable ground particle velocity at specified frequencies, is incorporated by reference. Figure 1 may be viewed at 30 CFR 817.67 or at the Division of Oil, Gas and Mining State Office.

524.662. If the Figure 1 limits are used, a seismographic record including both particle velocity and vibration-frequency levels will be provided for each blast. The method for the analysis of the predominant frequency contained in the blasting records will be approved by the Division before application of this alternative blasting criterion.

524.670. The maximum allowable ground vibration will be reduced by the Division beyond the limits otherwise provided R614-301-524.640, if determined necessary to provide damage protection.

524.680. The Division may require an operator to conduct seismic monitoring of any or all blasts and may specify the location at which the measurements are taken and the degree of detail necessary in the measurement.

524.690. The maximum airblast and ground-vibration standards of R614-301-524.620 through R614-301-524.632 and R614-301-524.640 through R614-301-524.680 will not apply at the following locations: At structures owned by the permittee and not leased to another person; and at structures owned by the permittee and leased to another person, if a written waiver by the lessee is submitted to the Division before blasting.

524.700. Records of Blasting Operations. The permit application will incorporate a description of the blasting records to be maintained at the mine site for at least three years and upon request, make blasting records available for inspection by the Division or the public. Blasting records will contain the following information:

524.710. A record, including:

524.711. Name of the operator conducting the blast;

524.712. Location, date, and time of the blast; and

524.713. Name, signature, and certification number of the blaster conducting the blast; and

524.720. Identification, direction, and distance, in feet, from the nearest blast hole to the nearest dwelling, public building, school, church, community or institutional building outside the permit area, except those described in R614-301-524.690;

524.730. Weather conditions, including those which may cause possible adverse blasting effects;

524.740. A record of the blast, including:

524.741. Type of material blasted;

524.742. Sketches of the blast pattern including number of holes, burden, spacing, decks, and delay pattern;

524.743. Diameter and depth of holes;

524.744. Types of explosives used;

524.745. Total weight of explosives used per hole;

524.746. The maximum weight of explosives detonated in an eight-millisecond period;

524.747. Initiation system;

524.748. Type and length of stemming; and

524.749. Mats or other protections used.

524.750. If required, a record of seismographic and airblast information, which will include:

524.751. Type of instrument, sensitivity, and calibration signal or certification of annual calibration;

524.752. Exact location of instrument and the date, time, and distance from the blast;

524.753. Name of the person and firm taking the reading;

524.754. Name of the person and firm analyzing the seismographic record; and

524.755. The vibration and/or airblast level recorded; and

524.760. The reasons and conditions for each unscheduled blast.

524.800. Each operator will comply with all appropriate Utah and federal laws and regulations in the use of explosives.

525. Subsidence. The requirements of R614-301-525 pertain to permit applications for UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES.

525.100. Subsidence Control Plan. The permit application will include a survey which will show whether structures and renewable resource lands exist within the proposed permit area and adjacent area and whether subsidence, if it occurred, could cause material damage and diminution of reasonably foreseeable use of such structures or renewable resource lands. If the survey shows that no such structures or renewable resource lands exist, or no such material damage or diminution could be caused in the event of mine subsidence, and if the Division agrees with such conclusion, no further information need be provided in the application under R614-301-525. In the event the survey shows that such structures or renewable resource lands exist, or that subsidence could cause material damage or diminution of value of foreseeable use of the land, or if the Division determines that such damage or diminution could occur, the application will include a subsidence control plan which will contain the following information:

525.110. A description of the method of coal removal, such as longwall mining, room-and-pillar removal, hydraulic mining, or other extraction methods, including the size, sequence, and timing for the development of underground workings;

525.120. A description of the physical conditions, such as depth of cover, seam thickness, and lithology, which affect the likelihood or extent of subsidence and subsidence-related damage;

525.130. Except for those areas where planned subsidence is projected to be used, a detailed description of the subsidence control measures that will be taken to prevent or minimize subsidence and subsidence-related damage, including, but not limited to:

525.131. Backstowing or backfilling of voids;

525.132. Leaving support pillars of coal;

525.133. Leaving areas in which no coal is removed, including a description of the overlying area to be protected by leaving the coal in place;

525.134. Taking measures on the surface to prevent material damage or lessening of the value or reasonably foreseeable use of the surface;

525.140. Monitoring, if any, to determine the commencement and degree of subsidence so that other appropriate measures can be taken to prevent or reduce material damage; and

525.150. A description of the anticipated effects of planned subsidence, if any;

525.160. A description of the measures to be taken in accordance with R614-301-525.230 to mitigate or

remedy any subsidence-related material damage to, or diminution in value or reasonably foreseeable use of the land or structures or facilities to the extent required under Utah law; and

525.170. Other information specified by the Division as necessary to demonstrate that the operation will be conducted in accordance with R614-301-525.200.

525.200. Subsidence Control.

525.210. The operator will either adopt measures consistent with known technology which prevent subsidence from causing material damage to the extent technologically and economically feasible, maximize mine stability, and maintain the value and reasonably foreseeable use of surface lands; or adopt mining technology which provides for planned subsidence in a predictable and controlled manner. Nothing in this part will be construed to prohibit the standard method of room-and-pillar mining.

525.220. The operator will comply with all provisions of the approved subsidence control plan.

525.230. The operator will:

525.231. Correct any material damage resulting from subsidence caused to surface lands, to the extent technologically and economically feasible, by restoring the land to a condition capable of maintaining the value and reasonably foreseeable uses which it was capable of supporting before the subsidence; and

525.232. Either correct material damage resulting from subsidence caused to any structures or facilities by repairing the damage or compensate the owner of such structures or facilities in the full amount of the diminution in value resulting from the subsidence. Repair of damage includes rehabilitation, restoration, or replacement of damaged structures or facilities. Compensation may be accomplished by the purchase prior to mining of a noncancellable premium-prepaid insurance policy.

525.240. Unless excepted by R614-301-525.243, UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES will not be conducted beneath or adjacent to:

525.241. Public buildings and facilities;

525.242. Churches, schools, and hospitals;

525.243. Impoundments with a storage capacity of 20 acre-feet or more or bodies of water with a volume of 20 acre-feet or more, unless the subsidence control plan demonstrates that subsidence will not cause material damage to, or reduce the reasonably foreseeable use of, such features or facilities; and

525.244. If the Division determines that it is necessary in order to minimize the potential for material damage to the features or facilities described above or to any aquifer or body of water that serves as a significant water source for any public water supply system, it may limit the percentage of coal extracted under or adjacent thereto.

525.250. If subsidence causes material damage to any of the features or facilities covered by R614-301-525.240, the Division may suspend mining under or adjacent to such features or facilities until the subsidence control plan is modified to ensure prevention of further material damage to such features or facilities.

525.260. The Division will suspend coal mining and reclamation operations under urbanized areas, cities, towns, and communities, and adjacent to industrial or commercial buildings, major impoundments, or perennial streams, if imminent danger is found to inhabitants of the urbanized areas, cities, towns, or communities.

525.270. Within a schedule approved by the Division, the operator will submit a detailed plan of the underground workings. The detailed plan will include maps and descriptions, as appropriate, of significant features of the underground mine, including the size, configuration, and approximate location of pillars and entries, extraction ratios, measure taken to prevent or minimize subsidence and related damage, areas of full extraction, and other information required by the Division. Upon request of the operator, information submitted with the detailed plan may be held as confidential, in accordance with the requirements of R614-300-124.

525.300. Public Notice of Proposed Mining. At least six months prior to mining, or within that period if approved by the Division, the underground mine operator will mail a notification to all owners and occupants of surface property and structures above the underground workings. The notification will include, at a minimum, identification of specific areas in which mining will take place, dates that specific areas will be undermined, and the location or locations where the operator's subsidence control plan may be examined.

526. Mine Facilities. The permit application will include a narrative explaining the construction, modification, use, maintenance and removal of the following facilities (unless retention of such facility is necessary for the postmining land use as specified under R614-301-413.100 through R614-301-413.334, R614-302-270, R614-302-271.100 through R614-302-271.400, R614-302-271.600, R614-302-271.800, and R614-302-271.900).

526.100. Mine Structures and Facilities.

526.110. Existing Structures. A description of each existing structure proposed to be used in connection with or to facilitate the coal mining and reclamation operation. The description will include:

526.111. Location;

526.112. Plans or photographs of the structure which describe or show its current condition;

526.113. Approximate dates on which construction of the existing structure was begun and completed;

526.114. A showing, including relevant monitoring data or other evidence, how the structure meets the requirements of R614-301;

526.115. A compliance plan for each existing structure proposed to be modified or reconstructed for use in connection with or to facilitate coal mining and reclamation operations. The compliance plan will include:

526.115.1. Design specifications for the modification or reconstruction of the structure to meet the design standards of R614-301;

526.115.2. A construction schedule which shows dates for beginning and completing interim steps and final reconstruction;

526.115.3. A schedule for monitoring the structure during and after modification or reconstruction to ensure that the requirements of R614-301 are met; and

526.115.4. A showing that the risk of harm to the environment or to public health or safety is not significant during the period of modification or reconstruction; and

526.116. The measures to be used to ensure that the interests of the public and landowners affected are protected if the applicant seeks to have the Division approve:

526.116.1. Conducting the proposed coal mining and reclamation operations within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way, or

526.116.2. Relocating a public road;

526.200. Utility Installation and Support Facilities.

526.210. The utility installations description must state that all coal mining and reclamation operations will be conducted in a manner which minimizes damage, destruction, or disruption of services provided by oil, gas, and water wells, oil, gas, and coal-slurry pipelines, railroads, electric and telephone lines, and water and sewage lines which pass over, under, or through the permit area, unless otherwise approved by the owner of those facilities and the Division.

526.220. The support facilities description must state that support facilities will be operated in accordance with a permit issued for the mine or coal preparation plant to which it is incident or from which its operation results. Plans and drawings for each support facility to be constructed, used, or maintained within the proposed permit area will include a map, appropriate cross sections, design drawings, and specifications sufficient to demonstrate how each facility will comply with applicable performance standards. In addition to the other provisions of R614-301, support facilities will be located, maintained, and used in a manner that:

526.221. Prevents or controls erosion and siltation, water pollution, and damage to public or private property; and

526.222. To the extent possible using the best technology currently available - minimizes damage to fish, wildlife, and related environmental values, and minimizes additional contributions of suspended solids to streamflow or runoff outside the permit area. Any such contributions will not be in excess of limitations of Utah or Federal law;

526.300. Water pollution control facilities; and

526.400. For SURFACE COAL MINING AND RECLAMATION ACTIVITIES, air pollution control facilities.

527. Transportation Facilities.

527.100. The plan must classify each road.

527.110. Each road will be classified as either a primary road or an ancillary road.

527.120. A primary road is any road which is:

527.121. Used for transporting coal or spoil;

527.122. Frequently used for access or other purposes for a period in excess of six months; or

527.123. To be retained for an approved postmining land use.

527.130. An ancillary road is any road not classified as a primary road.

527.200. The plan must include a detailed description of each road, conveyor, and rail system to be constructed, used, or maintained within the proposed permit area. The description will include a map, appropriate cross sections, and the following:

527.210. Specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, and drainage structure;

527.220. Measures to be taken to obtain Division approval for alteration or relocation of a natural drainageway under R614-301-358, R614-301-512.250, R614-301-527.100, R614-301-527.230, R614-301-527.240, R614-301-534.100, R614-301-534.300, R614-301-542.600, R614-301-742.410, R614-301-742.420, and R614-301-752.200;

527.230. A maintenance plan describing how roads will be maintained throughout their life to meet the design standards throughout their use.

527.240. A commitment that if a road is damaged by a catastrophic event, such as a flood or earth-

quake, the road will be repaired as soon as practical after the damage has occurred.

527.250. A report of appropriate geotechnical analysis, where approval of the Division is required for alternative specifications, or for steep cut slopes.

528. Handling and Disposal of Coal, Overburden, Excess Spoil, and Coal Mine Waste. The permit application will include a narrative explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of such facility is necessary for the postmining land use as specified under R614-301-413.100, through R614-301-413.334, R614-302-270, R614-302-271.100 through R614-302-271.400, R614-302-271.600, R614-302-271.800, and R614-302-271.900):

528.100. Coal removal, handling, storage, cleaning, and transportation areas and structures;

528.200. Overburden;

528.300. Spoil, coal processing waste, mine development waste, and noncoal waste removal, handling, storage, transportation, and disposal areas and structures;

528.310. Excess Spoil. Excess spoil will be placed in designated disposal areas within the permit area, in a controlled manner to ensure mass stability and prevent mass movement during and after construction. Excess spoil will meet the design criteria of R614-301-535. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, the permit application must include a description of the proposed disposal site and the design of the spoil disposal structures according to R614-301-211, R614-301-212, R614-301-412.300, R614-301-512.210, R614-301-512.220, R614-301-514.100, R614-301-528.310, R614-301-535.100 through R614-301-535.130, R614-301-535.300 through R614-301-535.500, R614-536.300, R614-301-542.720, R614-301-553.240, R614-301-745.100, R614-301-745.300, and R614-301-745.400.

528.320. Coal Mine Waste. All coal mine waste will be placed in new or existing disposal areas within a permit area which are approved by the Division for this purpose. Coal mine waste will meet the design criteria of R614-301-536, however, placement of coal mine waste by end or side dumping as defined in "A Dictionary of Mining, Mineral, and Related Terms", 1968, U.S. Bureau of Mines, is prohibited.

528.321. Return of Coal Processing Waste to Abandoned Underground Workings. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, each plan will describe the design, operation and maintenance of any proposed coal processing waste disposal facility, including flow diagrams and any other necessary drawings and maps, for the approval of the Division and MSHA under R614-301-536.520 and meet the design criteria of R614-301-536.700.

528.322. Refuse Piles. Each pile will meet the requirements of MSHA, 30 CFR 77.214 and 30 CFR 77.215, meet the design criteria of R614-301-210, R614-301-512.230, R614-301-513.400, R614-301-514.200, R614-301-515.200, R614-301-528.320, R614-301-536 through R614-301-536.200, R614-301-536.500, R614-301-536.900, R614-301-542.730, R614-301-553.250, R614-301-746.100, R614-301-746.200, and any other applicable requirements.

528.323. Burning and Burned Waste Utilization. 528.323.1. Coal mine waste fires will be extinguished by the person who conducts coal mining and reclamation operations, in accordance with a plan approved by the Division and MSHA. The plan will contain, at a minimum, provisions to ensure that only

those persons authorized by the operator, and who have an understanding of the procedures to be used, will be involved in the extinguishing operations.

528.323.2. No burning or burned coal mine waste will be removed from a permitted disposal area without a removal plan approved by the Division. Consideration will be given to potential hazards to persons working or living in the vicinity of the structure.

528.330. Noncoal Mine Waste.

528.331. Noncoal mine wastes including, but not limited to, grease, lubricants, paints, flammable liquids, garbage, abandoned mining machinery, lumber and other combustible materials generated during mining activities will be placed and stored in a controlled manner in a designated portion of the permit area.

528.332. Final disposal of noncoal mine wastes will be in a designated disposal site in the permit area or a State-approved solid waste disposal area. Disposal sites in the permit area will be designed and constructed to ensure that leachate and drainage from the noncoal mine waste area does not degrade surface or underground water. Wastes will be routinely compacted and covered to prevent combustion and wind-borne waste. When the disposal is completed, a minimum of two feet of soil cover will be placed over the site, slopes stabilized, and revegetation accomplished in accordance with R614-301-244.200 and R614-301-353 through R614-301-357. Operation of the disposal site will be conducted in accordance with all local, Utah, and Federal requirements.

528.333. At no time will any noncoal mine waste be deposited in a refuse pile or impounding structure, nor will any excavation for a noncoal mine waste disposal site be located within eight feet of any coal outcrop or coal storage area.

528.334. Notwithstanding any other provision to the R614 Rules, any noncoal mine waste defined as "hazardous" under 3001 of the Resource Conservation and Recovery Act (RCRA) (Pub. L. 94-580, as amended) and 40 CFR Part 261 will be handled in accordance with the requirements of Subtitle C of RCRA and any implementing regulations.

528.340. Underground Development Waste. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES the permit application must include a description of the proposed disposal methods for placing underground development waste and excess spoil generated at surface areas affected by surface operations and facilities according to R614-301-211, R614-301-212, R614-301-412.300, R614-301-512.210, R614-301-512.220, R614-301-514.100, R614-301-528.310, R614-301-535.100 through R614-301-535.130, R614-301-535.300 through R614-301-535.500, R614-536.300, R614-301-536.600, R614-301-542.720, R614-301-553.240, R614-301-745.100, R614-301-745.300, and R614-301-745.400.

528.350. The permit application will include a description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with R614-301-528.330, R614-301-537.200, R614-301-542.740, R614-301-553.100 through R614-301-553.600, R614-301-553.900, and R614-301-747, and a description of the contingency plans which have been developed to preclude sustained combustion of such materials; and

528.400. Dams, embankments and other impoundments.

529. Management of Mine Openings. The permit application will include a description of the measures

to be used to seal or manage mine openings within the proposed permit area.

529.100. Each shaft or other exposed underground opening will be cased, lined, or otherwise managed as approved by the Division. If these openings are uncovered or exposed by coal mining and reclamation operations within the permit area they will be permanently closed unless approved for water monitoring or otherwise managed in a manner approved by the Division.

529.200. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES:

529.210. Each mine entry which is temporarily inactive, but has a further projected useful service under the approved permit application, will be protected by barricades or other covering devices, fenced, and posted with signs, to prevent access into the entry and to identify the hazardous nature of the opening. These devices will be periodically inspected and maintained in good operating condition by the person who conducts the activity.

529.220. Each shaft and underground opening which has been identified in the approved permit application for use to return underground development waste, coal processing waste or water to underground workings will be temporarily sealed until actual use.

529.300. R614-301-529 does not apply to holes drilled and used for blasting, in the area affected by surface operations.

529.400. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, each exposed underground opening which has been identified in the approved permit application for use to return coal processing waste to underground workings will be temporarily sealed before use and protected during use by barricades, fences, or other protective devices approved by the Division. These devices will be periodically inspected and maintained in good operating condition by the person who conducts the activity.

530. Operational Design Criteria and Plans.

531. General. Each permit application will include a general plan for each proposed sediment pond, water impoundment, and coal processing waste bank, dam or embankment within the proposed permit area. Each general plan will describe the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations, if underground mining has occurred.

532. Sediment Control. The permit application will describe designs for sediment control. Sediment control measures include practices carried out within and adjacent to the disturbed area. The sedimentation storage capacity of practices in and downstream from the disturbed areas will reflect the degree to which successful mining and reclamation techniques are applied to reduce erosion and control sediment. Sediment control measures consist of the utilization of proper mining and sediment control practices, singly or in combination. Sediment control methods include but are not limited to:

532.100. Disturbing the smallest practicable area at any one time during the mining operation through progressive backfilling, grading, and prompt revegetation as required in R614-301-353.200, and

532.200. Stabilizing the backfilled material to promote a reduction of the rate and volume of runoff in accordance with the requirements of R614-301-537.200, R614-301-552 through R614-301-553.230, R614-301-553.260 through R614-301-553.420, R614-301-553.600, and R614-301-553.900

533. Impoundments.

533.100. An impoundment meeting the size or other criteria of 30 CFR 77.216(a) or located where failure would be expected to cause loss of life or serious property damage will have a minimum static safety factor of 1.5 for a normal pool with steady state seepage saturation conditions, and a seismic safety factor of at least 1.2. Impoundments not meeting the size or other criteria of 30 CFR 77.216(a), except for coal mine waste impounding structure, and located where failure would not be expected to cause loss of life or serious property damage will have a minimum static safety factor of 1.3 for normal pool with steady state seepage saturation conditions or meet the requirements of R614-301-733.210.

533.200. Foundation for temporary and permanent impoundments must be designed so that:

533.210. Foundation and abutments for the impounding structure will be stable under all conditions of construction and operation of the impoundment. Sufficient foundation investigations and laboratory testing will be performed in order to determine the design requirements for foundation stability; and

533.220. All vegetative and organic materials will be removed and foundations excavated and prepared to resist failure. Cutoff trenches will be installed if necessary to ensure stability.

533.300. Slope protection will be provided to protect against surface erosion at the site and protect against sudden drawdown.

533.400. Faces of embankments and surrounding areas will be vegetated except that faces where water is impounded may be riprapped or otherwise stabilized in accordance with accepted design practices.

533.500. The vertical portion of any remaining highwall will be located far enough below the low-water line along the full extent of highwall to provide adequate safety and access for the proposed water users.

533.600. Impoundments meeting the criteria of MSHA, 30 CFR 77.216(a) will comply with the requirements of MSHA, 30 CFR 77.216 and R614-301-524.200, R614-301-514.300, R614-301-515.200, R614-301-533.100 through R614-301-533.600, R614-301-733.220 through R614-301-733.224, and R614-301-743. The plan required to be submitted to the District Manager of MSHA under 30 CFR 77.216 will also be submitted to the Division as part of the permit application.

533.610. Each detailed design plan for a structure that meets or exceeds the size or other criteria of MSHA, 30 CFR 77.216(a) will include any geotechnical investigation, design, and construction requirements for the structure. The operation and maintenance requirements for each structure will be described.

533.620. If the structure is 20 feet or higher or impounds more than 20 acre-feet, each plan under R614-301-536.800, R614-301-732.210, and R614-301-733.210 will include a stability analysis of each structure. The stability analysis will include, but not be limited to, strength parameters, pore pressures, and long-term seepage conditions. The plan will also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

533.700. Each detailed design plan for a structure that does not meet the size or other criteria of MSHA, 30 CFR 77.216(a) will include any design and construction requirements for the structure, including any required geotechnical information. The operation

and maintenance requirements for each structure will be described.

534. Roads. The permit application will describe designs for roads.

534.100. Roads will be located, designed, constructed, reconstructed, used, maintained, and reclaimed so as to:

534.110. Prevent or control damage to public or private property;

534.120. Use nonacid- or nontoxic-forming substances in road surfacing; and

534.130. Have, at a minimum, a static safety factor of 1.3 for all embankments.

534.140. Have a schedule and plan to remove and reclaim each road that would not be retained under an approved postmining land use.

534.150. Control or prevent erosion, siltation and the air pollution attendant to erosion by vegetating or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices.

534.200. To ensure environmental protection and safety appropriate for their planned duration and use, including consideration of the type and size of equipment used, the design and reconstruction of roads will incorporate appropriate limits for grade, width, surface materials, and any necessary design criteria established by the Division.

534.300. Primary Roads. Primary roads will meet the requirements of R614-301-358, R614-301-527.100, R614-301-527.230, R614-301-534.100, R614-301-534.200, R614-301-542.600, R614-301-542.600, and R614-301-762, any necessary design criteria established by the Division, and the following requirements. Primary roads will:

534.310. Be located, insofar as practical, on the most stable available surfaces;

534.320. Be surfaced with rock, crushed gravel, asphalt, or other material approved by the Division as being sufficiently durable for the anticipated volume of traffic and the weight and speed of vehicles using the road;

534.330. Be routinely maintained to include repairs to the road surface, blading, filling potholes and adding replacement gravel or asphalt. It will also include revegetation, brush removal, and minor reconstruction of road segments as necessary; and

534.340. Have culverts that are designed, installed, and maintained to sustain the vertical soil pressure, the passive resistance of the foundation, and the weight of vehicles using the road.

535. Spoil. The permit application will describe designs for spoil placement and disposal.

535.100. Disposal of Excess Spoil. Excess spoil will be placed in designated disposal areas within the permit area in a controlled manner. The fill and appurtenant structures will be designed using current, prudent engineering practices and will meet any design criteria established by the Division.

535.110. The fill will be designed to attain a minimum long-term static safety factor of 1.5. The foundation and abutments of the fill must be stable under all conditions of construction. The fill will:

535.111. Be located on the most moderately sloping and naturally stable areas available, as approved by the Division, and be placed, where possible, upon or above a natural terrace, bench, or berm, if such placement provides additional stability and prevents mass movement;

535.112. Be the subject of sufficient foundation investigations. Any necessary laboratory testing of foundation material, will be performed in order to determine the design requirements for foundation

stability. The analyses of foundation conditions will take into consideration the effect of underground mine workings, if any, upon the stability of the fill and appurtenant structures; and

535.113. Incorporate keyway cuts (excavations to stable bedrock) or rock toe buttresses to ensure stability where the slope in the disposal area is in excess of 2.8h:1v (36 percent), or such lesser slope as may be designated by the Division based on local conditions. Where the toe of the spoil rests on a downslope, stability analyses will be performed in accordance with R614-301-535.150 to determine the size of rock toe buttresses and keyway cuts.

535.120. Excess spoil may be disposed of in underground mine workings, but only in accordance with a plan approved by the Division and MSHA under R614-301-232.100 through R614-301-232.600, R614-301-234, R614-301-242, and R614-301-243.

535.130. Placement of Excess Spoil. Excess spoil will be transported and placed in a controlled manner in horizontal lifts not exceeding four feet in thickness; concurrently compacted as necessary to ensure mass stability and to prevent mass movement during and after construction; graded so that surface and subsurface drainage is compatible with the natural surroundings; and covered with topsoil or substitute material in accordance with R614-301-232.100 through R614-301-232.600, R614-301-234, R614-301-242, and R614-301-243. The Division may approve a design which incorporates placement of excess spoil in horizontal lifts other than four feet in thickness when it is demonstrated by the operator and certified by a qualified registered professional engineer that the design will ensure the stability of the fill and will meet all other applicable requirements.

535.140. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES the design of the spoil disposal structure will include the results of geotechnical investigations as follows:

535.141. The character of bedrock and any adverse geologic conditions in the disposal area;

535.142. A survey identifying all springs, seepage, and ground water flow observed or anticipated during wet periods in the area of the disposal site;

535.143. A survey of the potential effects of subsidence of the subsurface strata due to past and future mining operations;

535.144. A technical description of the rock materials to be utilized in the construction of those disposal structures containing rock chimney cores or underlain by a rock drainage blanket; and

535.145. A stability analysis including, but not limited to, strength parameters, pore pressures and long-term seepage conditions. These data will be accompanied by a description of all engineering design assumptions and calculations and the alternatives considered in selecting the specific design specifications and methods.

535.150. If for the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, under R614-301-535.112 and R614-301-535.113, rock-toe buttresses or key-way cuts are required, the application will include the following:

535.151. The number, location, and depth of borings or test pits which will be determined with respect to the size of the spoil disposal structure and subsurface conditions; and

535.152. Engineering specifications utilized to design the rock-toe buttress or key-way cuts which will be determined in accordance with R614-301-535.145.

535.200. Disposal of Excess Spoil: Valley Fills/Head-of-Hollow Fills. Valley fills and head-of-

hollow fills will meet the requirements of R614-301-211, R614-301-212, R614-301-412.300, R614-301-512.210, R614-301-514.100, R614-301-528.310, R614-301-535.100 through R614-301-535.130, R614-301-535.500, R614-301-536.300, R614-301-542.720, R614-301-553.240, and R614-301-745.100, and these additional requirements.

535.210. Rock-core chimney drains may be used in a head-of-hollow fill, instead of the underdrain and surface diversion system normally required, as long as the fill is not located in an area containing intermittent or perennial streams. A rock-core chimney drain may be used in a valley fill if the fill does not exceed 250,000 cubic yards of material and upstream drainage is diverted around the fill.

535.220. The alternative rock-core chimney drain system will be incorporated into the design and construction of the fill as follows:

535.221. The fill will have along the vertical projection of the main buried channel or rill a vertical core of durable rock at least 16 feet thick which will extend from the toe of the fill to the head of the fill, and from the base of the fill to the surface of the fill. A system of lateral rock underdrains will connect this rock core to each area of potential drainage or seepage in the disposal area. The underdrain system and rock core will be designed to carry the anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and springs in the foundation of the disposal area. Rocks used in the rock core and underdrains will meet the requirements of R614-301-211, R614-301-212, R614-301-412.300, R614-301-512.210, R614-301-512.220, R614-301-514.100, R614-301-528.310, R614-301-535.100 through R614-301-535.130, R614-301-535.500 through R614-301-536.300, R614-301-542.720, R614-301-553.240, R614-301-745.100, R614-301-745.300, and R614-301-745.400;

535.222. A filter system to ensure the proper long-term functioning of the rock core will be designed and constructed using current, prudent engineering practices; and

535.223. Grading may drain surface water away from the outslope of the fill and toward the rock core. In no case, however, may intermittent or perennial streams be diverted into the rock core. The maximum slope of the top of the fill will be 33h:1v (three percent). A drainage pocket may be maintained at the head of the fill during and after construction, to intercept surface runoff and discharge the runoff through or over the rock drain, if stability of the fill is not impaired. In no case will this pocket or sump have a potential capacity for impounding more than 10,000 cubic feet of water. Terraces on the fill will be graded with a three to five percent grade toward the fill and a one percent slope toward the rock core.

535.300. Disposal of Excess Spoil: Durable Rock Fills. The Division may approve the alternative method of disposal of excess durable rock spoil by gravity placement in single or multiple lifts, provided that:

535.310. Except as provided under R614-301-211, R614-301-212, R614-301-412.300, R614-301-512.210, R614-301-512.220, R614-301-514.100, R614-301-528.310, R614-301-535.100 through R614-301-535.130, R614-301-535.500 through R614-301-536.300, R614-301-542.720, R614-301-553.240, R614-301-745.100, R614-301-745.300, and R614-301-745.400 are met;

535.320. The excess spoil consists of at least 80 percent, by volume, durable, nonacid- and nontoxic-forming rock (e.g., sandstone or limestone) that does

not stake in water and will not degrade to soil material. Where used, noncemented clay shale, clay spoil, soil or other nondegradable excess spoil material will be mixed with excess durable rock spoil in a controlled manner such that no more than 20 percent of the fill volume, as determined by tests performed by a registered engineer and approved by the Division, is not durable rock;

535.330. The fill is designed to attain a minimum long-term static safety factor of 1.5, and an earthquake safety factor of 1.1; and

535.340. The underdrain system may be constructed simultaneously with excess spoil placement by the natural segregation of dumped materials, provided the resulting underdrain system is capable of carrying anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and springs in the foundation of the disposal area and the other requirements for drainage control are met.

535.400. Disposal of Excess Spoil: Preexisting Benches. Disposal of excess spoil on preexisting benches may be approved by the Division provided that R614-301-211, R614-301-212, R614-301-412.300, R614-301-512.210, R614-301-514.100, R614-301-535.100, R614-301-535.112 through R614-301-535.130, R614-301-535.500, R614-301-536.300, R614-301-542.720, R614-301-553.240, R614-301-745.100 and R614-301-745.300 are met, and the following requirements:

535.410. Excess spoil will be placed only on the solid portion of the preexisting bench;

535.420. The fill will be designed, using current, prudent engineering practices, to attain a long-term static safety factor of 1.3 for all portions of the fill;

535.430. The preexisting bench will be backfilled and graded to achieve the most moderate slope possible which does not exceed the angle of repose, and eliminate the highwall to the maximum extent technically practical; and

535.440. Disposal of excess spoil from an upper actively mined bench to a lower preexisting bench by means of gravity transport may be approved by the Division provided that:

535.441. The gravity transport courses are determined on a site-specific basis by the operator as part of the permit application and approved by the Division to minimize hazards to health and safety and to ensure that damage will be minimized between the benches, outside the set course, and downslope of the lower bench should excess spoil accidentally move;

535.442. All gravity transported excess spoil, including that excess spoil immediately below the gravity transport courses and any preexisting spoil that is disturbed, is rehandled and placed in horizontal lifts in a controlled manner, concurrently compacted as necessary to ensure mass stability and to prevent mass movement, and graded to allow surface and subsurface drainage to be compatible with the natural surroundings and to ensure a minimum long-term static safety factor of 1.3. Excess spoil on the bench prior to the current mining operation that is not disturbed need not be rehandled except where necessary to ensure stability of the fill;

535.443. A safety berm is constructed on the solid portion of the lower bench prior to gravity transport of the excess spoil. Where there is insufficient material on the lower bench to construct a safety berm, only that amount of excess spoil necessary for the construction of the berm may be gravity transported to the lower bench prior to construction of the berm, and

535.444. Excess spoil will not be allowed on the downslope below the upper bench except on designated gravity transport courses properly prepared according to R614-301-232.100 through R614-301-232.600, R614-301-234, R614-301-242, and R614-301-243. Upon completion of the fill, no excess spoil will be allowed to remain on the designated gravity transport course between the two benches and each transport course will be reclaimed in accordance with the requirements of R614-301 and R614-302.

535.500. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, spoil resulting from faceup operations for underground coal mine development may be placed at drift entries as part of a cut and fill structure, if the structure is less than 400 feet in horizontal length, and designed in accordance with R614-301-211, R614-301-212, R614-301-412.300, R614-301-512.210, R614-301-512.220, R614-301-514.100, R614-301-528.310, R614-301-535.100 through R614-301-535.130, R614-301-535.500, R614-301-536.300, R614-301-542.720, R614-301-553.240, R614-301-745.100, R614-301-745.300, and R614-301-745.400.

536. Coal Mine Waste. The permit application will include designs for placement of coal mine waste in new or existing disposal areas within approved portions of the permit area. Coal mine waste will be placed in a controlled manner and have a design certification as described under R614-301-512.

536.100. The disposal facility will be designed using current prudent engineering practices and will meet design criteria established by the Division.

536.110. The disposal facility will be designed to attain a minimum long-term static safety factor of 1.5. The foundation and abutments must be stable under all conditions of construction.

536.120. Sufficient foundation investigations, as well as any necessary laboratory testing of foundation material, will be performed in order to determine the design requirements for foundation stability. The analyses of the foundation conditions will take into consideration the effect of underground mine workings, if any, upon the stability of the disposal facility.

536.200. Coal mine waste will be placed in a controlled manner to:

536.210. Ensure mass stability and prevent mass movement during and after construction;

536.220. Not create a public hazard; and

536.230. Prevent combustion.

536.300. Coal mine waste may be disposed of in excess spoil fills if approved by the Division and, if such waste is:

536.310. Placed in accordance with applicable portions of R614-301-210, R614-301-513.400, R614-301-514.200, R614-301-528.322, R614-301-536.900, R614-301-553.250, and R614-301-746.200;

536.320. Nontoxic and nonacid forming; and

536.330. Of the proper characteristics to be consistent with the design stability of the fill.

536.400. New and existing impounding structures constructed of coal mine waste or intended to impound coal mine waste will meet the requirements of R614-301-512.230, R614-301-515.200, R614-301-528.320, R614-301-536 through R614-301-536.200, R614-301-536.500, R614-301-542.730, and R614-301-746.100.

536.410. Coal mine waste will not be used for construction of impounding structures unless it has been demonstrated to the Division that the stability of such a structure conforms to the requirements of R614-301 and R614-302.

536.420. The stability of the structure will be discussed in detail in the design plan submitted to the Division in accordance with R614-301-512.100, R614-301-512.230, R614-301-521.169, R614-301-531, R614-301-533.600, R614-301-533.700, R614-301-536.800, R614-301-542.500, R614-301-732.210, and R614-301-733.100.

536.500. Disposal of Coal Mine Waste in Special Areas.

536.510. Coal mine waste materials from activities located outside a permit area may be disposed of in the permit area only if approved by the Division. Approval will be based upon a showing that such disposal will be in accordance with R614-301-512.230, R614-301-515.200, R614-301-528.320, R614-301-536 through R614-301-536.200, R614-301-536.500, R614-301-542.730, and R614-301-746.100.

536.520. Underground Disposal. Coal mine waste may be disposed of in underground mine workings, but only in accordance with a plan approved by the Division and MSHA under R614-301-513.300, R614-301-528.321, R614-301-536.700, and R614-301-746.400.

536.600. Underground Development Waste. Each plan will describe the geotechnical investigation, design, construction, operation, maintenance and removal, if appropriate, of the structures and be prepared according to R614-301-211, R614-301-212, R614-301-412.300, R614-301-512.210, R614-301-512.220, R614-301-514.100, R614-301-528.310, R614-301-535.100 through R614-301-535.130, R614-301-535.300 through R614-301-535.500, R614-301-536.300, R614-301-542.720, R614-301-553.240, R614-301-745.100, R614-301-745.300, and R614-301-745.400.

536.700. Coal Processing Waste. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, each plan for returning coal processing waste to abandoned underground workings will describe the source and quality of waste to be stored, area to be backfilled, percent of the mine void to be filled, method of constructing underground retaining walls, influence of the backfilling operation on active underground mine operations, surface area to be supported by the backfill, and the anticipated occurrence of surface effects following backfilling.

536.800. Coal processing waste banks, dams, and embankments will be designed to comply with:

536.810 R614-301-210, R614-301-512.230, R614-301-513.400, R614-301-514.200, R614-301-515.200, R614-301-528.322, R614-301-528.320, R614-301-536 through R614-301-536.200, R614-301-536.400, R614-301-536.500, R614-301-536.900, R614-301-542.730, R614-301-553.250, and R614-301-746.100 through R614-301-746.300.

536.820. Coal processing waste dams and embankments will comply with the requirements of MSHA, 30 CFR 77.216-1 and 30 CFR 77.216-2, and will contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation will be planned and supervised by an engineer or engineering geologist, according to the following:

536.821. The number, location, and depth of borings and test pits will be determined using current prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions;

536.822. The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions, which may affect the particular dam, embankment, or reservoir site will be considered;

536.823. All springs, seepage, and ground water flow observed or anticipated during wet periods in the area of the proposed dam or embankment will be identified on each plan; and

536.824. Consideration will be given to the possibility of mudflows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

536.900. Refuse Piles. Refuse piles will meet the requirements of R614-301-210, R614-301-512.230, R614-301-513.400, R614-301-514.200, R614-301-515.200, R614-301-528.322, R614-301-528.320, R614-301-536 through R614-301-536.200, R614-301-536.500, R614-301-536.900, R614-301-542.730, R614-301-553.250, R614-301-746.100 through R614-301-746.200, and the requirements of MSHA, 30 CFR 77.214 and 30 CFR 77.215.

537. Regraded Slopes.

537.100. Each application will contain a report of appropriate geotechnical analysis, where approval of the Division is required for alternative specifications or for steep cut slopes under R614-301-358, R614-301-512.250, R614-301-527.100, R614-301-527.230, R614-301-534.100, R614-301-534.200, R614-301-534.300, R614-301-542.600, R614-301-742.410, R614-301-742.420, R614-301-752.200, and R614-301-762.

537.200. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, regrading of settled and revegetated fills to achieve approximate original contour at the conclusion of mining operations will not be required if the following conditions are met.

537.210. Settled and revegetated fills will be composed of spoil or nonacid- or nontoxic-forming underground development waste.

537.220. The spoil or underground development waste will not be located so as to be detrimental to the environment, to the health and safety of the public, or to the approved postmining land use.

537.230. Stability of the spoil or underground development waste will be demonstrated through standard geotechnical analysis to be consistent with backfilling and grading requirements for material on the solid bench (1.3 static safety factor) or excess spoil requirements for material not placed on a solid bench (1.5 static safety factor).

537.240. The surface of the spoil or underground development waste will be vegetated according to R614-301-356 and R614-301-357, and surface runoff will be controlled in accordance with R614-301-742.300.

537.250. If it is determined by the Division that disturbance of the existing spoil or underground development waste would increase environmental harm or adversely affect the health and safety of the public, the Division may allow the existing spoil or underground development waste pile to remain in place. The Division may require stabilization of such spoil or underground development waste in accordance with the requirements of R614-301-537.210 through R614-301-537.240.

540. Reclamation Plan.

541. General.

541.100. Persons who cease coal mining and reclamation operations permanently will close or backfill or otherwise permanently reclaim all affected areas,

in accordance with the R614 Rules and the permit approved by the Division.

541.200. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, all underground openings, equipment, structures, or other facilities not required for monitoring, unless approved by the Division is suitable for the postmining and use of environmental monitoring, will be removed and the affected land reclaimed.

541.300. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, all surface equipment, structures, or other facilities not required for continued underground mining activities and monitoring, unless approved by the Division is suitable for the postmining and use of environmental monitoring will be removed and the affected lands reclaimed.

541.300. Each application will include a plan for the reclamation of the lands within the proposed permit area which shows how the applicant will comply with R614-301, and the environmental protection performance standards of the State Program.

542. Narratives, Maps and Plans. The reclamation plan for the proposed permit area will include:

542.100. A detailed timetable for the completion of each major step in the reclamation plan;

542.200. A plan for backfilling, soil stabilization, compacting and grading, with contour maps or cross sections that show the anticipated final surface configuration of the proposed permit area, in accordance with R614-301-537.200, R614-301-552 through R614-301-553.230, R614-301-553.260 through R614-301-553.900, and R614-302-234;

542.300. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, final surface configuration maps with cross sections (at intervals specified by the Division) that indicate:

542.310. The anticipated final surface configuration to be achieved for the affected areas. The maps and cross sections will be prepared and certified as described under R614-301-512; and

542.320. Location of each facility that will remain on the proposed permit area as a permanent feature, after the completion of coal mining and reclamation operations;

542.400. Before abandoning a permit area or seeking bond release, a description ensuring all temporary structures are removed and reclaimed, and all permanent sedimentation ponds, impoundments and treatment facilities that meet the requirements of the R614 Rules for permanent structures, have been maintained properly and meet the requirements of the approved reclamation plan for permanent structures and impoundments. The operator will renovate such structures if necessary to meet the requirements of the R614 Rules and to conform to the approved reclamation plan;

542.500. A timetable, and plans to remove each proposed sedimentation pond, water impoundment, and coal processing waste bank, dam, or embankment, if appropriate;

542.600. Roads. A road not to be retained for use under an approved postmining land use will be reclaimed immediately after it is no longer needed for mining and reclamation operations, including:

542.610. Closing the road to traffic;

542.620. Removing all bridges and culverts, unless approved as part of the postmining land use

542.630. Replacing topsoil and revegetating disturbed surfaces in accordance with R614-301-232.100 through R614-301-232.600, R614-301-234, R614-301-

242, R614-301-243, R614-301-244.200 and R614-301-353 through R614-301-357.

542.640. Removing or otherwise disposing of road-surfacing materials that are incompatible with the postmining land use and revegetation requirements.

542.700. Final Abandonment of Mine Openings and Disposal Areas.

542.710. A description, including appropriate cross sections and maps, of the measures to be used to seal or manage mine openings, and to plug, case or manage other openings within the proposed permit area, in accordance with R614-301-529, R614-301-551, R614-301-631, R614-301-738, and R614-301-765.

542.720. Disposal of Excess Spoil. Excess spoil will be placed in designated disposal areas within the permit area, in a controlled manner to ensure that the final fill is suitable for reclamation and revegetation compatible with the natural surroundings and the approved postmining land use. Excess spoil that is combustible will be adequately covered with noncombustible material to prevent sustained combustion. The reclamation of excess spoil will comply with the design criteria under R614-301-553.240.

542.730. Disposal of Coal Mine Waste. Coal mine waste will be placed in a controlled manner to ensure that the final disposal facility will be suitable for reclamation and revegetation compatible with the natural surroundings and the approved postmining land use.

542.740. Disposal of Noncoal Mine Wastes.

542.741. Noncoal mine wastes including, but not limited to grease, lubricants, paints, flammable liquids, garbage, abandoned mining machinery, lumber and other combustible materials generated during mining activities will be placed and stored in a controlled manner in a designated portion of the permit area. Placement and storage will ensure that fires are prevented, and that the area remains stable and suitable for reclamation and revegetation compatible with the natural surroundings.

542.742. Final disposal of noncoal mine wastes will be in a designated disposal site in the permit area or a state-approved solid waste disposal area. Wastes will be routinely compacted and covered to prevent combustion and wind-borne waste. When the disposal is completed, a minimum of two feet of suitable cover will be placed over the site, slopes stabilized, and revegetation accomplished in accordance with R614-301-244.200 and R614-301-353 through R614-301-357, inclusive. Operation of the disposal site will be conducted in accordance with all local, Utah, and federal requirements.

542.800. The reclamation plan for the proposed coal mining and reclamation operations will also include a detailed estimate of reclamation costs as described in R614-301-830.100 — R614-301-830.300.

550. Reclamation Design Criteria and Plans. Each permit application will include site specific plans that incorporate the following design criteria for reclamation activities.

551. Casing and Sealing of Underground Openings. When no longer needed for monitoring or other use approved by the Division upon a finding of no adverse environmental or health and safety effects, each shaft, drift, adit, tunnel, or other opening to the surface from underground will be capped, sealed and backfilled, or otherwise properly managed, as required by the Division and consistent with MSHA, 30 CFR 75.1771. Permanent closure measures will be designed to prevent access to the mine workings by people, livestock, fish and wildlife, machinery and to

keep acid or other toxic drainage from entering ground or surface waters.

552. Permanent Features.

552.100. Small depressions may be constructed if they are needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or assist revegetation.

552.200. Permanent impoundments may be approved if they meet the requirements of R614-301-512.240, R614-301-514.300, R614-301-515.200, R614-301-533.100 through R614-301-533.600, R614-301-542.400, R614-301-733.220 through R614-301-733.224, R614-301-743, and if they are suitable for the approved postmining land use.

553. Backfilling and Grading. Backfilling and grading design criteria must be described in the permit application. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES nothing in R614-301-553 will prohibit the placement of material in road and portal pad embankments located on the downslope, so long as the material used and the embankment design comply with the applicable requirements of R614-301-500 and R614-301-700 and the material is moved and placed in a controlled manner. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES rough backfilling and grading will follow coal removal by not more than 60 days or 1500 linear feet. The Division may grant additional time for rough backfilling and grading if the permittee can demonstrate, through a detailed written analysis under R614-301-542.200, that additional time is necessary.

553.100. Disturbed areas will be backfilled and graded to:

553.110. Achieve the approximate original contour, except as provided in R614-301-553.600 through R614-301-553.642;

553.120. Eliminate all highwalls, spoil piles, and depressions, except as provided in R614-301-552.100 (small depressions); R614-301-553.620 (previously mined highwalls); and in R614-301-553.650 (retention of highwalls);

553.130. Achieve a postmining slope that does not exceed either the angle of repose or such lesser slope as is necessary to achieve a minimum long-term static safety factor of 1.3 and to prevent slides;

553.140. Minimize erosion and water pollution both on and off the site; and

553.150. Support the approved postmining land use.

553.200. Spoil and Waste. Spoil and waste materials will be compacted where advisable to ensure stability or to prevent leaching or toxic materials.

553.210. Spoil, except as provided in R614-301-537.200, for the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, and except excess spoil disposed of in accordance with R614-301-211, R614-301-212, R614-301-412.300, R614-301-512.210, R614-301-512.220, R614-301-514.100, R614-301-528.310, R614-301-535.100 through R614-301-535.130, R614-301-535.300 through R614-301-535.500, R614-301-536.300, R614-301-542.720, R614-301-553.240, R614-301-745.100, R614-301-745.300, R614-301-745.400, will be returned to the mined-out surface area (UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES) or mined-out area (SURFACE COAL MINING AND RECLAMATION ACTIVITIES).

553.220. Spoil may be placed on the area outside the mined-out surface area (UNDERGROUND COAL

MINING AND RECLAMATION ACTIVITIES) or mined-out area (SURFACE COAL MINING AND RECLAMATION ACTIVITIES) in nonsteep slope areas to restore the approximate original contour by blending the spoil into the surrounding terrain if the following requirements are met:

553.221. All vegetative and organic material will be removed from the area.

553.222. The topsoil on the area will be removed, segregated, stored, and redistributed in accordance with R614-301-232.100 through R614-301-232.600, R614-301-234, R614-301-242, and R614-301-243; and

553.223. The spoil will be backfilled and graded on the area in accordance with R614-301-537.200, R614-301-552 through R614-301-553.230, R614-301-553.260 through R614-301-553.420, R614-301-553.600, and R614-301-553.900.

553.230. Preparation of final graded surfaces will be conducted so that the final-graded surfaces are configured in a manner that minimizes erosion and provides a surface for replacement of topsoil that will minimize slippage.

553.240. The final configuration of the fill (excess spoil) will be suitable for the approved postmining land use. Terraces may be constructed on the outslope of the fill if required for stability, control of erosion, to conserve soil moisture, or to facilitate the approved postmining land use. The grade of the outslope between terrace benches will not be steeper than 2h:1v (50 percent).

553.250. Refuse Piles.

553.251. The final configuration for the refuse pile will be suitable for the approved postmining land use.

553.252. Terraces may be constructed on the outslope of the refuse pile if required for stability, control of erosion, conservation of soil moisture, or facilitation of the approved postmining land use. The grade of the outslope between terrace benches will not be steeper than 2h:1v (50 percent).

553.252. Following final grading of the refuse pile, the coal mine waste will be covered with a minimum of four feet of the best available, nontoxic and noncombustible material, in a manner that does not impede drainage from the underdrains. The Division may allow less than four feet of cover material based on physical and chemical analyses which show that the requirements of R614-301-244.200 and R614-301-353 through R614-301-357.

553.260. Disposal of coal processing waste and underground development waste in the mined-out surface area (UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES) or mined-out area (SURFACE COAL MINING AND RECLAMATION ACTIVITIES) will be in accordance with R614-301-210, R614-301-512.230, R614-301-513.400, R614-301-514.200, R614-301-515.200, R614-301-528.322, R614-301-528.320, R614-301-536 through R614-301-536.200, R614-301-536.500, R614-301-536.900, R614-301-542.730, R614-301-553.250, and R614-301-746.100 through R614-301-746.200, except that a long-term static safety factor of 1.3 will be achieved.

553.300. Exposed coal seams, acid- and toxic-forming materials, and combustible materials exposed, used, or produced during mining will be adequately covered with nontoxic and noncombustible materials, or treated, to control the impact on surface and ground water in accordance with R614-301-731.100 through R614-301-731.522 and R614-301-731.800, to prevent sustained combustion, and to minimize adverse effects on plant growth and the approved postmining land use.

553.400. Cut-and-fill terraces may be allowed by the Division where:

553.410. Needed to conserve soil moisture, ensure stability, and control erosion on final-graded slopes; if the terraces are compatible with the approved postmining land use; or

553.420. Specialized grading, foundation conditions, or roads are required for the approved postmining land use, in which case the final grading may include a terrace of adequate width to ensure the safety, stability, and erosion control necessary to implement the postmining land-use plan.

553.500. Previously Mined Areas.

553.510. Remining operations on previously mined areas that contain a preexisting highwall will comply with the requirements of R614-301-537.200, R614-301-552 through R614-301-553.230, R614-301-553.260 through R614-301-553.900, and R614-302-234, except as provided in R614-301-553.500.

553.520. The requirements of R614-301-553.110 and R614-301-553.120 requiring that elimination of highwalls will not apply to remining operations where the volume of all reasonably available spoil is demonstrated in writing to the Division to be insufficient to completely backfill the reflected or enlarged highwall. The highwall will be eliminated to the maximum extent technically practical in accordance with the following criteria:

553.521. All spoil generated by the remining operation and any other reasonably available spoil will be used to backfill the area. Reasonably available spoil in the immediate vicinity of the remining operation will be included within the permit area;

553.522. The backfill will be graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability;

553.523. Any highwall remnant will be stable and not pose a hazard to the public health and safety or to the environment. The operator will demonstrate, to the satisfaction of the Division, that the highwall remnant is stable; and

553.524. Spoil placed on the outslope during previous mining operations will not be disturbed if such disturbances will cause instability of the remaining spoil or otherwise increase the hazard to the public health and safety or to the environment.

553.600. Approximate Original Contour. Postmining slopes may vary from the approximate original contour when:

553.610. Approval is obtained from the Division in accordance with R614-302-270;

553.620. Approval is obtained from the Division for incomplete elimination of highwalls in previously mined areas in accordance with R614-301-553.500;

553.630. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, approval is obtained from the Division for mountaintop removal operations in accordance with R614-302-220 through R614-302-226.

553.640. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES

553.641. The standards for thin overburden in R614-301-553.700 are met; or

553.642. The standards for thick overburden in R614-301-553.800 are met

553.650. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, approval is obtained from the Division for retention of highwalls in accordance with R614-301-553.100, and

553.651. The "retained" highwall is not significantly greater in height or length than the dimensions of existing cliffs and the surrounding area;

553.652. The residual highwall is similar in structural composition to the preexisting cliffs in the surrounding area and is compatible with the visual attributes of the area; and

553.653. The residual highwall is compatible with the geomorphic processes of the area.

553.700. Backfilling and Grading: Thin Overburden. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, this section applies only where the final thickness is less than 0.8 of the initial thickness. Initial thickness is the sum of the overburden thickness and coal thickness prior to removal of coal. Final thickness is the product of the overburden thickness prior to removal of coal, times the bulking factor to be determined for each permit area. The provisions of this section apply only when SURFACE COAL MINING AND RECLAMATION ACTIVITIES cannot be carried out to comply with the requirements of R614-301-537.200, R614-301-552 through R614-301-553.230, R614-301-553.260 through R614-301-553.420, R614-301-553.600, and R614-301-553.900 to achieve the approximate original contour. The operator will, at a minimum:

553.710. Use all available spoil and waste materials to attain the lowest practicable grade, but not more than the angle of repose; and

553.720. Meet the requirements of R614-301-211, R614-301-212, R614-301-412.300, R614-301-512.210, R614-301-514.100, R614-301-535.100, R614-301-535.112 through R614-301-535.130, R614-301-536.300, R614-301-542.720, R614-301-553.240, and R614-301-745.100.

553.800. Backfilling and Grading: Thick Overburden. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, this section applies only where the final thickness is greater than 1.2 of the initial thickness. Initial thickness is the sum of the overburden thickness and coal thickness prior to removal of coal. Final thickness is the product of the overburden thickness prior to removal of coal, times the bulking factor to be determined for each permit mine plan area. The provisions of this section apply only when SURFACE COAL MINING AND RECLAMATION ACTIVITIES cannot be carried out to comply with the requirements of R614-301-537.200, R614-301-552 through R614-301-553.230, R614-301-553.260 through R614-301-553.420, R614-301-553.600, and R614-301-553.900 to achieve the approximate original contour. In addition the operator will, at a minimum:

553.810. Use the spoil and waste materials to attain the lowest practicable grade, but not more than the angle of repose;

553.820. Meet the requirements of R614-301-211, R614-301-212, R614-301-412.300, R614-301-512.210, R614-301-514.100, R614-301-535.100, R614-301-535.112 through R614-301-535.130, R614-301-536.300, R614-301-542.720, R614-301-553.240, and R614-301-745.100; and

553.830. Dispose of any excess spoil in accordance with R614-301-211, R614-301-212, R614-301-412.300, R614-301-512.210, R614-301-514.100, R614-301-535.100, R614-301-535.112 through R614-301-535.130, R614-301-536.300, R614-301-542.720, R614-301-553.240, R614-301-745.100, R614-301-745.300, and R614-301-745.400.

553.900. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES,

TIES, regrading of settled and revegetated fills at the conclusion of coal mining and reclamation operations will not be required if the conditions of R614-301-537.200 are met;

560. Performance Standards. Coal mining and reclamation operations will be conducted in accordance with the approved permit and requirements of R614-301-510 through R614-301-553.

R614-301-600. Geology.

The rules in R614-301-600 present the requirements for information related to geology which is to be included in each permit application.

610. Introduction.

611. General Requirements. Each permit application will include descriptions of:

611.100. The geology within and adjacent to the permit area as given under R614-301-621 through R614-301-627; and

611.200. Proposed operations given under R614-301-630.

612. All cross sections, maps and plans as required by R614-301-622 will be prepared and certified as described under R614-301-512.100.

620. Environmental Description.

621. General Requirements. Each permit application will include a description of the geology within the proposed permit and adjacent areas that may be affected or impacted by the proposed coal mining and reclamation operation.

622. Cross Sections, Maps and Plans. The application will include cross sections, maps and plans showing:

622.100. Elevations and locations of test borings and core samplings;

622.200. Nature, depth, and thickness of the coal seams to be mined, any coal or rider seams above the seam to be mined, each stratum of the overburden, and the stratum immediately below the lowest coal seam to be mined;

622.300. All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area; and

622.400. Location, and depth if available, of gas and oil wells within the proposed permit area.

623. Each application will include geologic information in sufficient detail to assist in:

623.100. Determining all potentially acid- or toxic-forming strata down to and including the stratum immediately below the coal seam to be mined;

623.200. Determining whether reclamation as required by R614-301 and R614-302 can be accomplished; and

623.300. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES preparing the subsidence control plan described under R614-301-525 and R614-521.142.

624. Geologic information will include, at a minimum, the following:

624.100. A description of the geology of the proposed permit and adjacent areas down to and including the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer below the lowest coal seam to be mined which may be adversely impacted by mining. This description will include the regional and structural geology of the permit and adjacent areas, and other parameters which influence the required reclamation and it will also show how the regional and structural geology may affect the occurrence, availability, movement, quantity and quality of potentially impacted surface and ground water. It will be based on:

624.110. The cross sections, maps, and plans required by R614-301-622.100 through R614-301-622.400.

624.120. The information obtained under R614-301-624.200, R614-301-624.300 and R614-301-625; and

624.130. Geologic literature and practices.

624.200. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, any portion of a permit area in which the strata down to the coal seam to be mined will be removed or are already exposed, and for the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, samples will be collected and analyzed from test borings; drill cores; or fresh, unweathered, uncontaminated samples from rock outcrops down to and including the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer below the lowest coal seam to be mined which may be adversely impacted by mining. The analyses will result in the following:

624.210. Logs showing the lithologic characteristics including physical properties and thickness of each stratum and location of ground water where occurring;

624.220. Chemical analyses identifying those strata that may contain acid- or toxic-forming, or alkalinity-producing materials and to determine their content except that the Division may find that the analysis for alkalinity-producing material is unnecessary; and

624.230. Chemical analysis of the coal seam for acid- or toxic-forming materials, including the total sulfur and pyritic sulfur, except that the Division may find that the analysis of pyritic sulfur content is unnecessary.

624.300. For lands within the permit and adjacent areas of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES where the strata above the coal seam to be mined will not be removed, samples will be collected and analyzed from test borings or drill cores to provide the following data:

624.310. Logs of drill holes showing the lithologic characteristics, including physical properties and thickness of each stratum that may be impacted, and location of ground water where occurring.

624.320. Chemical analyses for acid- or toxic-forming or alkalinity-producing materials and their content in the strata immediately above and below the coal seam to be mined;

624.330. Chemical analyses of the coal seam for acid- or toxic-forming materials, including the total sulfur and pyritic sulfur, except that the Division may find that the analysis of pyrite sulfur content is unnecessary; and

624.340. For standard room and pillar mining operations, the thickness and engineering properties of clays of soft rock such as clay shale, if any, in the stratum immediately above and below each coal seam to be mined.

625. If determined to be necessary to protect the hydrologic balance, to minimize or prevent subsidence, or to meet the performance standards of R614-301 and R614-302, the Division may require the collection, analysis and description of geologic information in addition to that required by R614-301-624.

626. An applicant may request the Division to waive in whole or in part the requirements of R614-301-624.200 and R614-301-624.300. The waiver may be granted only if the Division finds in writing that the collection and analysis of such data is unnecessary because other information having equal value or effect is available to the Division in a satisfactory form.

627. An application for a permit to conduct UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES will include, at a minimum, a description of overburden thickness and lithology.

630. Operation Plan

631. Casing and Sealing of Exploration Holes and Boreholes. Each permit application will include a description of the methods used to backfill, plug, case, cap, seal or otherwise manage exploration holes or boreholes to prevent acid or toxic drainage from entering water resources, minimize disturbance to the prevailing hydrologic balance and to ensure the safety of people, livestock, fish and wildlife, and machinery in the permit and adjacent area. Each exploration hole or borehole that is uncovered or exposed by coal mining and reclamation operations within the permit area will be permanently closed, unless approved for water monitoring or otherwise managed in a manner approved by the Division. Use of an exploration borehole as a monitoring or water well must meet the provisions of R614-301-731. The requirements of R614-301-631 do not apply to boreholes drilled for the purpose of blasting.

631.100. Temporary Casing and Sealing of Drilled Holes. Each exploration borehole, other drill hole or borehole which has been identified in the approved permit application for use to return underground development waste, coal processing waste or water to underground workings or to be used to monitor ground water conditions will be temporarily sealed before use and for the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, protected during use by barricades, or fences, or other protective devices approved by the Division. These protective devices will be periodically inspected and maintained in good operating condition by the operator conducting surface coal mining and reclamation activities.

631.200. Permanent Casing and Sealing of Exploration Holes and Boreholes. When no longer needed for monitoring or other use approved by the Division upon a finding of no adverse environmental or health and safety effect, or unless approved for transfer as a water well under R614-301-731.400, each exploration hole or borehole will be plugged, capped, sealed backfilled or otherwise properly managed under R614-301-631 and consistent with 30 CFR 75.1711. Permanent closure methods will be designed to prevent access to the mine workings by people, livestock, fish and wildlife, and machinery and to keep acid or other toxic drainage from entering water resources.

632. Subsidence Monitoring. Each application for a permit to conduct UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES will, except where planned subsidence is projected to be used, include as part of the subsidence monitoring plan described under R614-301-525.

632.100. A determination of the commencement and degree of subsidence so other appropriate measures can be taken to prevent or reduce material damage; and

632.200. A map showing the locations of subsidence monitoring points within and adjacent to the permit area.

640. Performance Standards

641. All exploration holes and boreholes will be permanently cased and sealed according to the requirements of R614-301-631 and R614-301-631.200.

642. All monuments and surface markers used as subsidence monitoring points and identified under R614-301-632.200 will be reclaimed in accordance with R614-301-521.210.

R614-301-700. Hydrology.

710. Introduction.

711. General Requirements. Each permit application will include descriptions of:

711.100. Existing hydrologic resources as given under R614-301-720.

711.200. Proposed operations and potential impacts to the hydrologic balance as given under R614-301-730.

711.300. The methods and calculations utilized to achieve compliance with hydrologic design criteria and plans given under R614-301-740.

711.400. Applicable hydrologic performance standards as given under R614-301-750.

711.500. Reclamation activities as given under R614-301-760.

712. Certification. All cross sections, maps and plans required by R614-301-722 as appropriate, and R614-301-731.700 will be prepared and certified according to R614-301-512.

713. Inspection. Impoundments will be inspected as described under R614-301-514.300.

720. Environmental Description.

721. General Requirements. Each permit application will include a description of the existing, premining hydrologic resources within the proposed permit and adjacent areas that may be affected or impacted by the proposed coal mining and reclamation operation.

722. Cross Sections and Maps. The application will include cross sections and maps showing:

722.100. Location and extent of subsurface water, if encountered, within the proposed permit or adjacent areas. For UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, location and extent will include, but not limited to, areal and vertical distribution of aquifers, and portrayal of seasonal differences of head in different aquifers on cross-sections and contour maps;

722.200. Location of surface water bodies such as streams, lakes, ponds and springs, constructed or natural drains, and irrigation ditches within the proposed permit and adjacent areas;

722.300. Elevations and locations of monitoring stations used to gather baseline data on water quality and quantity in preparation of the application;

722.400. Location and depth, if available, of water wells in the permit area and adjacent area; and

722.500. Sufficient slope measurements or contour maps to adequately represent the existing land surface configuration of proposed disturbed areas for UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES and the proposed permit area for SURFACE COAL MINING AND RECLAMATION ACTIVITIES will be measured and recorded to take into account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed.

723. Sampling and Analysis. All water quality analyses performed to meet the requirements of R614-301-723 through R614-301-724.300, R614-301-724.500, R614-301-725 through R614-301-731, and R614-301-731.210 through R614-301-731.223 will be conducted according to the methodology in the current edition of "Standard Methods for the Examination of Water and Wastewater" or the methodology in

40 CFR Parts 136 and 434. Water quality sampling performed to meet the requirements of R614-301-723 through R614-301-724.300, R614-301-724.500, R614-301-725 through R614-301-731, and R614-301-731.210 through R614-301-731.223 will be conducted according to either methodology listed above when feasible. "Standard Methods for the Examination of Water and Wastewater" is a joint publication of the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation and is available from the American Public Health Association, 1015 Fifteenth Street, NW, Washington, D.C. 20036.

724. Baseline Information. The application will include the following baseline hydrologic, geologic and climatologic information, and any additional information required by the Division.

724.100. Ground Water Information. The location and ownership for the permit and adjacent areas of existing wells, springs and other ground-water resources, seasonal quality and quantity of ground water, and usage. Water quality descriptions will include, at a minimum, total dissolved solids or specific conductance corrected to 25 degrees C, pH, total iron and total manganese. Ground-water quantity descriptions will include, at a minimum, approximate rates of discharge or usage and depth to the water in the coal seam, and each water-bearing stratum above and potentially impacted stratum below the coal seam.

724.200. Surface water information. The name, location, ownership and description of all surface-water bodies such as streams, lakes and impoundments, the location of any discharge into any surface-water body in the proposed permit and adjacent areas, and information on surface-water quality and quantity sufficient to demonstrate seasonal variation and water usage. Water quality descriptions will include, at a minimum, baseline information on total suspended solids, total dissolved solids or specific conductance corrected to 25 degrees C, pH, total iron and total manganese. Baseline acidity and alkalinity information will be provided if there is a potential for acid drainage from the proposed mining operation. Water quantity descriptions will include, at a minimum, baseline information on seasonal flow rates.

724.300. Geologic Information. Each application will include geologic information in sufficient detail, as given under R614-301-624, to assist in:

724.310. Determining the probable hydrologic consequences of the operation upon the quality and quantity of surface and ground water in the permit and adjacent areas, including the extent to which surface- and ground-water monitoring is necessary; and

724.320. Determining whether reclamation as required by the R614 Rules can be accomplished and whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

724.400. Climatological Information.

724.410. When requested by the Division, the permit application will contain a statement of the climatological factors that are representative of the proposed permit area, including:

724.411. The average seasonal precipitation;

724.412. The average direction and velocity of prevailing winds; and

724.413. Seasonal temperature ranges.

724.420. The Division may request such additional data as deemed necessary to ensure compliance with the requirements of R614-301 and R614-302.

724.500. Supplemental information. If the determination of the PHC required by R614-301-728 indi-

cates that adverse impacts on or off the proposed permit area may occur to the hydrologic balance, or that acid-forming or toxic-forming material is present that may result in the contamination of ground-water or surface-water supplies, then information supplemental to that required under R614-301-724.100 and R614-301-724.200 will be provided to evaluate such probable hydrologic consequences and to plan remedial and reclamation activities. Such supplemental information may be based upon drilling, aquifer tests, hydrogeologic analysis of the water-bearing strata, flood flows, or analysis of other water quality or quantity characteristics.

724.600. Survey of Renewable Resource Lands. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, the applicant will provide a survey that shows whether aquifers or areas for the recharge of aquifers exist within the permit and adjacent area and whether subsidence, if it occurred, could cause material damage or diminution of reasonably foreseeable use of aquifers or areas for the recharge of aquifers. Renewable resource survey information will be incorporated into the subsidence control plan listed under R614-301-525.

724.700. Each permit application that proposes to conduct coal mining and reclamation operations within a valley holding a stream or in a location where the permit area or adjacent area includes any stream will meet the requirements of R614-302-320.

725. Baseline Cumulative Impact Area Information.

725.100. Hydrologic and geologic information for the cumulative impact area necessary to assess the probable cumulative hydrologic impacts of the proposed coal mining and reclamation operation and all anticipated coal mining and reclamation operations on surface- and ground-water systems as required by R614-301-729 will be provided to the Division if available from appropriate federal or state agencies.

725.200. If this information is not available from such agencies, then the applicant may gather and submit this information to the Division as part of the permit application.

725.300. The permit will not be approved until the necessary hydrologic and geologic information is available to the Division.

726. Modeling. The use of modeling techniques, interpolation or statistical techniques may be included as part of the permit application, but actual surface- and ground-water information may be required by the Division for each site even when such techniques are used.

727. Alternative Water Source Information. If the probable hydrologic consequences determination required by R614-301-728 indicates that the proposed SURFACE COAL MINING AND RECLAMATION ACTIVITY may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit or adjacent areas which is used for domestic, agricultural, industrial or other legitimate purpose, then the application will contain information on water availability and alternative water sources, including the suitability of alternative water sources for existing premining uses and approved postmining land uses.

728. Probable Hydrologic Consequences (PHC) Determination.

728.100. The permit application will contain a determination of the PHC of the proposed coal mining and reclamation operation upon the quality and quantity of surface and ground water under seasonal

flow conditions for the proposed permit and adjacent areas.

728.200. The PHC determination will be based on baseline hydrologic, geologic and other information collected for the permit application and may include data statistically representative of the site.

728.300. The PHC determination will include findings on:

728.310. Whether adverse impacts may occur to the hydrologic balance;

728.320. Whether acid-forming or toxic-forming materials are present that could result in the contamination of surface- or ground-water supplies;

728.330. What impact the proposed coal mining and reclamation operation will have on:

728.331. Sediment yield from the disturbed area.

728.332. Acidity, total suspended and dissolved solids and other important water quality parameters of local impact;

728.333. Flooding or streamflow alteration;

728.334. Ground-water and surface-water availability; and

728.335. Other characteristics as required by the Division; and

728.340. Whether the proposed SURFACE COAL MINING AND RECLAMATION ACTIVITY will proximately result in contamination, diminution or interruption of an underground or surface source of water within the proposed permit or adjacent areas which is used for domestic, agricultural, industrial or other legitimate purpose.

728.400. An application for a permit revision will be reviewed by the Division to determine whether a new or updated PHC determination will be required.

729. Cumulative Hydrologic Impact Assessment (CHIA).

729.100. The Division will provide an assessment of the probable cumulative hydrologic impacts of the proposed coal mining and reclamation operation and all anticipated coal mining and reclamation operations upon surface- and ground-water systems in the cumulative impact area. The CHIA will be sufficient to determine, for purposes of permit approval whether the proposed coal mining and reclamation operation has been designed to prevent material damage to the hydrologic balance outside the permit area. The Division may allow the applicant to submit data and analyses relevant to the CHIA with the permit application.

729.200. An application for a permit revision will be reviewed by the Division to determine whether a new or updated CHIA will be required.

730. Operation Plan.

731. General Requirements. The permit application will include a plan, with maps and descriptions, indicating how the relevant requirements of R614-301-730, R614-301-740, R614-301-750 and R614-301-760 will be met. The plan will be specific to the local hydrologic conditions. It will contain the steps to be taken during coal mining and reclamation operations through bond release to minimize disturbance to the hydrologic balance within the permit and adjacent areas; to prevent material damage outside the permit area; to support approved postmining land use in accordance with the terms and conditions of the approved permit and performance standards of R614-301-750; to comply with the Clean Water Act (33 U.S.C. 1251 et seq.); and to meet applicable federal and Utah water quality laws and regulations. The plan will include the measures to be taken to avoid acid or toxic drainage, prevent to the extent possible using the best technology currently avail-

able, additional contributions of suspended solids to streamflow; provide water treatment facilities when needed; and control drainage. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES the plan will include measures to be taken to protect or replace water rights and restore approximate premining recharge capacity. The plan will specifically address any potential adverse hydrologic consequences identified in the PHC determination prepared under R614-301-728 and will include preventative and remedial measures.

The Division may require additional preventative, remedial or monitoring measures to assure that material damage to the hydrologic balance outside the permit area is prevented. Coal mining and reclamation operations that minimize water pollution and changes in flow will be used in preference to water treatment.

731.100. Hydrologic-Balance Protection.
731.110. Ground-Water Protection. In order to protect the hydrologic balance, coal mining and reclamation operations will be conducted according to the plan approved under R614-301-731 and the following:

731.111. Ground-water quality will be protected by handling earth materials and runoff in a manner that minimizes acidic, toxic or other harmful infiltration to ground-water systems and by managing excavations and other disturbances to prevent or control the discharge of pollutants into the ground water; and
731.112. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES ground-water quantity will be protected by handling earth materials and runoff in a manner that will restore approximate premining recharge capacity of the reclaimed area as a whole, excluding coal mine waste disposal areas and fills, so as to allow the movement of water to the ground-water system.

731.120. Surface-Water Protection. In order to protect the hydrologic balance, coal mining and reclamation operations will be conducted according to the plan approved under R614-301-731 and the following:

731.121. Surface-water quality will be protected by handling earth materials, ground-water discharges and runoff in a manner that minimizes the formation of acidic or toxic drainage; prevents, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow outside the permit area; and, otherwise prevent water pollution. If drainage control, revegetation and stabilization of disturbed areas, diversion of runoff, mulching or other reclamation and remedial practices are not adequate to meet the requirements of R614-301-731.100 through R614-301-731.522, R614-301-731.800 and R614-301-751, the operator will use and maintain the necessary water treatment facilities or water quality controls; and

731.122. Surface-water quantity and flow rates will be protected by handling earth materials and runoff in accordance with the steps outlined in the plan approved under R614-301-731.

731.200. Water Monitoring.

731.210. Ground-Water Monitoring. Ground-water monitoring will be conducted according to the plan approved under R614-301-731.200 and the following:

731.211. The permit application will include a ground-water monitoring plan based upon the PHC determination required under R614-301-728 and the analysis of all baseline hydrologic, geologic and other information in the permit application. The plan will provide for the monitoring of parameters that relate to the suitability of the ground water for current and

approved postmining land uses and to the protection of the hydrologic balance set forth in R614-301-731. It will identify the quantity and quality parameters to be monitored, sampling frequency and site locations. It will describe how these data will be used to determine the impacts of the operation upon the hydrologic balance. At a minimum, dissolved solids or specific conductance corrected to 25 degrees C, pH, total iron, total manganese, water levels will be monitored;

731.212. Ground-water will be monitored and will be submitted at least every three months for accessible monitoring location. Monitoring results will include analytical results from each sample taken during the approved reporting period. When the analysis of any ground-water sample indicates noncompliance with the permit conditions, then the operator will promptly notify the Division and immediately take the actions provided for in R614-300-145 and R614-301-731.

731.213. If an applicant can demonstrate by use of the PHC determination and other available information that a particular water-bearing stratum in the proposed permit and adjacent areas is not which serves as an aquifer which significantly impairs the hydrologic balance within the cumulative impact area, then monitoring of that stratum may be waived by the Division.

731.214. Ground-water monitoring will proceed through mining and continue during reclamation until bond release. Consistent with the procedures of R614-303-220 through R614-303-228, the Division may modify the monitoring requirements including the parameters covered and the sampling frequency if the operator demonstrates, using the monitoring data obtained under R614-301-731.214 that:

731.214.1. The coal mining and reclamation operation has minimized disturbance to the prevailing hydrologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to support approved postmining land uses and the SURFACE COAL MINING AND RECLAMATION ACTIVITY has protected or replaced the water rights of other users; or

731.214.2. Monitoring is no longer necessary to achieve the purposes set forth in the monitoring plan approved under R614-301-731.211.

731.215. Equipment, structures and other devices used in conjunction with monitoring the quality and quantity of ground water onsite and offsite will be properly installed, maintained and operated and will be removed by the operator when no longer needed.

731.220. Surface-Water Monitoring. Surface-water monitoring will be conducted according to the plan approved under R614-301-731.220 and the following:

731.221. The permit application will include a surface-water monitoring plan based upon the PHC determination required under R614-301-728 and the analysis of all baseline hydrologic, geologic and other information in the permit application. The plan will provide for the monitoring of parameters that relate to the suitability of the surface water for current and approved postmining land uses and to the objectives for protection of the hydrologic balance as set forth in R614-301-731 as well as the effluent limitations found in R614-301-751;

731.222. The plan will identify the surface water quantity and quality parameters to be monitored, sampling frequency and site locations. It will describe how these data may be used to determine the impacts of the operation upon the hydrologic balance;

731.223. At all monitoring locations in streams, and impoundments, that are potentially impacted or into which water will be discharged and at stream monitoring locations, the total dissolved solids or specific conductance corrected to 25 degrees C, pH, total iron, total manganese, total suspended solids, pH, total iron, total manganese and flow will be monitored; and

731.222.2. For point-source discharges, monitoring will be conducted in accordance with 40 CFR Parts 122, 123, R614-301-751 and as required by the Utah Division of Environmental Health for National Pollutant Discharge Elimination System (NPDES) permits;

731.223. Surface-water monitoring data will be submitted at least every three months for each accessible monitoring location. Monitoring results will include analytical results from each sample taken during the approved reporting period. When the analysis of any surface water sample indicates noncompliance with the permit conditions, the operator will promptly notify the Division and immediately take the actions provided for in R614-300-145 and R614-301-731. The reporting requirements of this paragraph do not exempt the operator from meeting the National Pollutant Discharge Elimination System (NPDES) reporting requirements;

731.224. Surface-water monitoring will proceed through mining and continue during reclamation until bond release. Consistent with R614-303-220 through R614-303-228, the Division may modify the monitoring requirements, except those required by the Utah Division of Environmental Health, including the parameters covered and sampling frequency if the operator demonstrates, using the monitoring data obtained under R614-301-731.224 that:

731.224.1. The operator has minimized disturbance to the hydrologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to support approved postmining land uses and the SURFACE COAL MINING AND RECLAMATION ACTIVITY has protected or replaced the water rights of other users; or

731.224.2. Monitoring is no longer necessary to achieve the purposes set forth in the monitoring plan approved under R614-301-731.221.

731.225. Equipment, structures and other devices used in conjunction with monitoring the quality and quantity of surface water onsite and offsite will be properly installed, maintained and operated and will be removed by the operator when no longer needed.

731.300. Acid- and Toxic-Forming Materials.

731.310. Drainage from acid- and toxic-forming materials and underground development waste into surface water and ground water will be avoided by:

731.311. Identifying and burying and/or treating, when necessary, materials which may adversely affect water quality, or be detrimental to vegetation or to public health and safety if not buried and/or treated; and

731.312. Storing materials in a manner that will protect surface water and ground water by preventing erosion, the formation of polluted runoff and the infiltration of polluted water. Storage will be limited to the period until burial and/or treatment first become feasible, and so long as storage will not result in any risk of water pollution or other environmental damage.

731.320. Storage, burial or treatment practices will be consistent with other material handling and disposal provisions of R614 Rules.

731.400. Transfer of Wells. Before final release of bond, exploratory or monitoring wells will be sealed in a safe and environmentally sound manner in accordance with R614-301-631, R614-301-738, and R614-301-765. With the prior approval of the Division, wells may be transferred to another party for further use. However, at a minimum, the conditions of such transfer will comply with Utah and local laws and the permittee will remain responsible for the proper management of the well until bond release in accordance with R614-301-529, R614-301-551, R614-301-631, R614-301-738, and R614-301-765.

731.500. Discharges.

731.510. Discharges into an underground mine.
731.511. Discharges into an underground mine are prohibited, unless specifically approved by the Division after a demonstration that the discharge will:

731.511.1. Minimize disturbance to the hydrologic balance on the permit area, prevent material damage outside the permit area and otherwise eliminate public hazards resulting from coal mining and reclamation operations;

731.511.2. Not result in a violation of applicable water quality standards or effluent limitations;

731.511.3. Be at a known rate and quality which will meet the effluent limitations of R614-301-751 for pH and total suspended solids, except that the pH and total suspended solids limitations may be exceeded, if approved by the Division; and

731.511.4. Meet with the approval of MSHA.

731.512. Discharges will be limited to the following:

731.512.1. Water;

731.512.2. Coal processing waste;

731.512.3. Fly ash from a coal fired facility;

731.512.4. Sludge from an acid-mine-drainage treatment facility;

731.512.5. Flue-gas desulfurization sludge;

731.512.6. Inert materials used for stabilizing underground mines; and

731.512.7. Underground mine development wastes.

731.513. Water from the underground workings of an UNDERGROUND COAL MINING AND RECLAMATION ACTIVITY may be diverted into other underground workings according to the requirements of R614-301-731.100 through R614-301-731.522 and R614-301-731.800.

731.520. Gravity Discharges from UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES.

731.521. Surface entries and accesses to underground workings will be located and managed to prevent or control gravity discharge of water from the mine. Gravity discharges of water from an underground mine, other than a drift mine subject to R614-301-731.522, may be allowed by the Division if it is demonstrated that the untreated or treated discharge complies with the performance standards of R614-301 and R614-302 and any additional NPDES permit requirements.

731.522. Notwithstanding anything to the contrary in R614-301-731.521, the surface entries and accesses of drift mines first used after January 21, 1981 and located in acid-producing or iron-producing coal seams will be located in such a manner as to prevent any gravity discharge from the mine.

731.600. Stream Buffer Zones.

731.610. No land within 100 feet of a perennial stream or an intermittent stream will be disturbed by coal mining and reclamation operations, unless the Division specifically authorizes coal mining and rec-

lamation operations closer to, or through, such a stream. The Division may authorize such activities only upon finding that:

731.611. Coal mining and reclamation operations will not cause or contribute to the violation of applicable Utah or federal water quality standards and will not adversely affect the water quantity and quality or other environmental resources of the stream; and

731.612. If there will be a temporary or permanent stream channel diversion, it will comply with R614-301-742.300.

731.620. The area not to be disturbed will be designated as a buffer zone, and the operator will mark it as specified in R614-301-521.260.

731.700. Cross Sections and Maps. Each application will contain for the proposed permit area:

731.710. A map showing the locations of water supply intakes for current users of surface water flowing into, out of and within a hydrologic area defined by the Division, and those surface waters which will receive discharges from affected areas in the proposed permit area;

731.720. A map showing the locations of each water diversion, collection, conveyance, treatment, storage and discharge facility to be used. The map will be prepared and certified according to R614-301-512;

731.730. A map showing locations and elevations of each station to be used for water monitoring during coal mining and reclamation operations. The map will be prepared and certified according to R614-301-512;

731.740. A map showing the locations of each existing and proposed sedimentation pond, impoundment and coal processing waste bank, dam or embankment. The map will be prepared and certified according to R614-301-512;

731.750. Cross sections for each existing and proposed sedimentation pond, impoundment and coal processing waste bank, dam or embankment. The cross sections will be prepared and certified according to R614-301-512.100; and

731.760. Other relevant cross sections and maps required by the Division.

731.800. Water Rights and Replacement. Any person who conducts SURFACE COAL MINING AND RECLAMATION ACTIVITIES will replace the water supply of an owner of interest in real property who obtains all or part of his or her supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source, where the water supply has been adversely impacted by contamination, diminution, or interruption proximately resulting from the surface mining activities. Baseline hydrologic information required in R614-301-624.100 through R614-301-624.200, R614-301-625, R614-301-626, R614-301-723 through R614-301-724.300, R614-301-724.500, R614-301-725 through R614-301-731, and R614-301-731.210 through R614-301-731.223 will be used to determine the extent of the impact of mining upon ground water and surface water.

732. Sediment Control Measures.

732.100. Siltation Structures. Siltation structures will be constructed and maintained to comply with R614-301-742.214. Any siltation structure that impounds water will be constructed and maintained to comply with R614-301-512.240, R614-301-514.300, R614-301-515.200, R614-301-533.100 through R614-301-533.600, R614-301-733.220 through R614-301-733.224, and R614-301-743.

732.200. Sedimentation Ponds.

732.210. Sedimentation ponds whether temporary or permanent, will be designed in compliance with the requirements of R614-301-356.300, R614-301-356.400, R614-301-513.200, R614-301-742.200 through R614-301-742.240, and R614-301-763. Any sedimentation pond or earthen structure which will remain on the proposed permit area as a permanent water impoundment will also be constructed and maintained to comply with the requirements of R614-301-743, R614-301-533.100 through R614-301-533.600, R614-301-512.240, R614-301-514.310 through R614-301-514.321 and R614-301-515.200.

732.220. Each plan will, at a minimum, comply with the MSHA requirements given under R614-301-513.100 and R614-301-513.200.

732.300. Diversions. All diversions will be constructed and maintained to comply with the requirements of R614-301-742.100 and R614-301-742.300.

732.400. Road Drainage. All roads will be constructed, maintained and reconstructed to comply with R614-301-742.400.

732.410. The permit application will contain a description of measures to be taken to obtain Division approval for alteration or relocation of a natural drainageway under R614-301-358, R614-301-512.250, R614-301-527.100, R614-301-527.230, R614-301-534.100, R614-301-534.200, R614-301-534.300, R614-301-542.600, R614-301-742.410, R614-301-742.420, R614-301-752.200, and R614-301-762.

732.420. The permit application will contain a description of measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert, for Division approval under R614-301-358, R614-301-512.250, R614-301-527.100, R614-301-527.230, R614-301-534.100, R614-301-534.200, R614-301-534.300, R614-301-542.600, R614-301-742.410, R614-301-742.420, R614-301-752.200, and R614-301-762.

733. Impoundments.

733.100. General Plans. Each permit application will contain a general plan for each proposed water impoundment within the proposed permit area. Each general plan will:

733.110. Be prepared and certified as described under R614-301-512;

733.120. Contain maps and cross sections;

733.130. Contain a narrative that describes the structure;

733.140. Contain the results of a survey as described under R614-301-531;

733.150. Contain preliminary hydrologic and geologic information required to assess the hydrologic impact of the structure; and

733.160. Contain a certification statement which includes a schedule setting forth the dates when any detailed design plans for structures that are not submitted with the general plan will be submitted to the Division. The Division will have approved, in writing, the detailed design plan for a structure before construction of the structure begins.

733.200. Permanent and Temporary Impoundments.

733.210. Permanent and temporary impoundments will be designed to comply with the requirements of R614-301-512.240, R614-301-514.300, R614-301-515.200, R614-301-533.100 through R614-301-533.600, R614-301-733.220 through R614-301-733.226, R614-301-743.240, and R614-301-743. Each plan for an impoundment meeting the size or other criteria of the Mine Safety and Health Administration will comply with the requirements of 30 CFR 77.216-1 and 30 CFR 77.216-2. The plan required to

be submitted to the District Manager of MSHA under 30 CFR 77.216 will be submitted to the Division as part of the permit application package. For an impoundment not meeting the size criteria of 30 CFR 77.216(a) and located where failure would not be expected to cause loss of life or serious property damage, the Division may establish through the Utah State program approval process engineering design standards that ensure stability comparable to a 1.3 minimum static safety factor in lieu of engineering tests to establish compliance with the minimum static safety factor of 1.3 specified in R614-301-533.100.

733.220. A permanent impoundment of water may be created, if authorized by the Division in the approved permit based upon the following demonstration:

733.221. The size and configuration of such impoundment will be adequate for its intended purposes;

733.222. The quality of impounded water will be suitable on a permanent basis for its intended use and, after reclamation, will meet applicable Utah and federal water quality standards, and discharges from the impoundment will meet applicable effluent limitations and will not degrade the quality of receiving water below applicable Utah and federal water quality standards;

733.223. The water level will be sufficiently stable and be capable of supporting the intended use;

733.224. Final grading will provide for adequate safety and access for proposed water users;

733.225. The impoundment will not result in the diminution of the quality and quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational or domestic uses; and

733.226. The impoundment will be suitable for the approved postmining land use.

733.230. The Division may authorize the construction of temporary impoundments as part of coal mining and reclamation operations.

733.240. If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment will promptly inform the Division according to R614-301-515.200.

734. Discharge Structures. Discharge structures will be constructed and maintained to comply with R614-301-744.

735. Disposal of Excess Spoil. Areas designated for the disposal of excess spoil and excess spoil structures will be constructed and maintained to comply with R614-301-745.

736. Coal Mine Waste. Areas designated for the disposal of coal mine waste and coal mine waste structures will be constructed and maintained to comply with R614-301-746.

737. Noncoal Mine Waste. Noncoal mine waste will be stored and final disposal of noncoal mine waste will comply with R614-301-747.

738. Temporary Casing and Sealing of Wells. Each well which has been identified in the approved permit application to be used to monitor ground water conditions will comply with R614-301-748 and be temporarily sealed before use and for the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES protected during use by barricades, or fences, or other protective devices approved by the Division. These devices will be periodically inspected and maintained in good operating condition by the operator conducting SURFACE COAL MINING AND RECLAMATION ACTIVITIES.

740. Design Criteria and Plans.

741. General Requirements. Each permit application will include site-specific plans that incorporate minimum design criteria as set forth in R614-301-740 for the control of drainage from disturbed and undisturbed areas.

742. Sediment Control Measures.

742.100. General Requirements.

742.110. Appropriate sediment control measures will be designed, constructed and maintained using the best technology currently available to

742.111. Prevent, to the extent possible, additional contributions of sediment to stream flow or to runoff outside the permit area;

742.112. Meet the effluent limitations under R614-301-751; and

742.113. Minimize erosion to the extent possible.

742.120. Sediment control measures include practices carried out within and adjacent to the disturbed area. The sedimentation storage capacity of practices in and downstream from the disturbed areas will reflect the degree to which successful mining and reclamation techniques are applied to reduce erosion and control sediment. Sediment control measures consist of the utilization of proper mining and reclamation methods and sediment control practices, singly or in combination. Sediment control methods include, but are not limited to:

742.121. Retaining sediment within disturbed areas;

742.122. Diverting runoff away from disturbed areas;

742.123. Diverting runoff using protected channels or pipes through disturbed areas so as not to cause additional erosion;

742.124. Using straw dikes, riprap, check dams, mulches, vegetative sediment filters, dugout ponds and other measures that reduce overland flow velocities, reduce runoff volumes or trap sediment;

742.125. Treating with chemicals; and

742.126. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, treating mine drainage in underground sumps.

742.200. Siltation Structures.

742.210. General Requirements.

742.211. Additional contributions of suspended solids and sediment to streamflow or runoff outside the permit area will be prevented to the extent possible using the best technology currently available.

742.212. Siltation structures for an area will be constructed before beginning any coal mining and reclamation operations in that area and, upon construction, will be certified by a qualified registered professional engineer to be constructed as designed and as approved in the reclamation plan.

742.213. Any siltation structures which impounds water will be designed, constructed and maintained in accordance with R614-301-512.240, R614-301-514.300, R614-301-515.200, R614-301-533.100 through R614-301-533.600, R614-301-733.220 through R614-301-733.224, and R614-301-743.

742.214. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, any point-source discharge of water from underground workings to surface waters which does not meet the effluent limitations of R614-301-751 will be passed through a siltation structure before leaving the permit area.

742.220. Sedimentation Ponds.

742.221. Sedimentation ponds, when used, will

742.221.1. Be used individually or in series.

742.221.2. Be located as near as possible to the disturbed area and out of perennial streams unless approved by the Division; and

742.221.3. Be designed, constructed, and maintained to:

742.221.31. Provide adequate sediment storage volume;

742.221.32. Provide adequate detention time to allow the effluent from the ponds to meet Utah and federal effluent limitations;

742.221.33. Contain or treat the 10-year, 24-hour precipitation event ("design event") unless a lesser design event is approved by the Division based on terrain, climate, or other site-specific conditions and on a demonstration by the operator that the effluent limitations of R614-301-751 will be met;

742.221.34. Provide a nonclogging dewatering device adequate to maintain the detention time required under R614-301-742.221.32.

742.221.35. Minimize, to the extent possible, short circuiting;

742.221.36. Provide periodic sediment removal sufficient to maintain adequate volume for the design event;

742.221.37. Ensure against excessive settlement;

742.221.38. Be free of sod, large roots, frozen soil, and acid- or toxic-forming coal-processing waste; and

742.221.39. Be compacted properly.

742.222. Sedimentation ponds meeting the size or other qualifying criteria of the MSHA, 30 CFR 77.216(a) will comply with all the requirements of that section, and will have a single spillway or principal and emergency spillways that in combination will safely pass a 100-year, 6-hour precipitation event or greater event as demonstrated to be necessary by the Division.

742.223. Sedimentation ponds not meeting the size or other qualifying criteria of the MSHA, 30 CFR 77.216(a) will provide a combination of principal and emergency spillways that will safely discharge a 25-year, 6-hour precipitation event or greater event as demonstrated to be needed by the Division. Such ponds may use a single open channel spillway if the spillway is:

742.223.1. Of nonerodible construction and designed to carry sustained flows; or

742.223.2. Earth- or grass-lined and designed to carry short-term infrequent flows at non-erosive velocities where sustained flows are not expected.

742.224. In lieu of meeting the requirements of R614-301-742.223.1 and 742.223.2 the Division may approve a sedimentation pond that relies primarily on storage to control the runoff from the design precipitation event when it is demonstrated by the operator and certified by a qualified registered professional engineer or qualified registered professional land surveyor in accordance with R614-301-512.100 that the sedimentation pond will safely control the design precipitation event. The water will be removed from the pond in accordance with current, prudent, engineering practices and any sediment pond so used will not be located where failure would be expected to cause loss of life or serious property damage.

742.225. An exception to the sediment pond location guidance in R614-301-742.224 may be allowed:

742.225.1. In the case of a sedimentation pond meeting the size or other criteria of 30 CFR 77.216(a), if the pond is designed to control the precipitation of the probable maximum precipitation of a 6 hour event or greater event if specified by the Division, or (30 CFR 816.46(c)(2)(iii)(A))

742.225.2. In the case of a sedimentation pond meeting the size or other criteria of 30 CFR 77.216(a), if the pond is designed to control the precipitation of a 100 year 6 hour event or greater event if demonstrated to be needed by the Division.

742.230. Other Treatment Facilities.

742.231. Other treatment facilities will be designed to treat the 10-year, 24-hour precipitation event unless a lesser design event is approved by the Division based on terrain, climate, other site-specific conditions and a demonstration by the operator that the effluent limitations of R614-301-751 will be met.

742.232. Other treatment facilities will be designed in accordance with the applicable requirements of R614-301-742.220.

742.240. Exemptions. Exemptions to the requirements of R614-301-742.200 and R614-301-763 may be granted if the disturbed drainage area within the total disturbed area is small and the operator demonstrates that siltation structures and alternate sediment control measures are not necessary for drainage from the disturbed areas to meet the effluent limitations under R614-301-751 or the applicable Utah and federal water quality standards for the receiving waters.

742.300. Diversions.

742.310. General Requirements.

742.311. With the approval of the Division, any flow from mined areas abandoned before May 3, 1978, and any flow from undisturbed areas or reclaimed areas, after meeting the criteria of R614-301-356.300, R614-301-356.400, R614-301-513.200, R614-301-742.200 through R614-301-742.240, and R614-301-763 for siltation structure removal, may be diverted from disturbed areas by means of temporary or permanent diversions. All diversions will be designed to minimize adverse impacts to the hydrologic balance within the permit and adjacent areas, to prevent material damage outside the permit area and to assure the safety of the public. Diversions will not be used to divert water into underground mines without approval of the Division in accordance with R614-301-731.510.

742.312. The diversion and its appurtenant structures will be designed, located, constructed, maintained and used to:

742.312.1. Be stable;

742.312.2. Provide protection against flooding and resultant damage to life and property;

742.312.3. Prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow outside the permit area; and

742.312.4. Comply with all applicable local, Utah, and federal laws and regulations.

742.313. Temporary diversions will be removed when no longer needed to achieve the purpose for which they were authorized. The land disturbed by the removal process will be restored in accordance with R614-301-742.200 and R614-302. Before diversions are removed, downstream water-treatment facilities previously protected by the diversion will be modified or removed, as necessary, to prevent overtopping or failure of the facilities. This requirement will not relieve the operator from maintaining water-treatment facilities as otherwise required. A permanent diversion or a stream channel reclaimed after the removal of a temporary diversion will be designed and constructed so as to restore or approximate the premining characteristics of the original stream channel including the natural riparian vegetation to promote the recovery and the enhancement of the aquatic habitat.

742.314. The Division may specify additional design criteria for diversions to meet the requirements of R614-301-742.300.

742.320. Diversion of Perennial and Intermittent Streams.

742.321. Diversion of perennial and intermittent streams within the permit area may be approved by the Division after making the finding relating to stream buffer zones under R614-301-731.600.

742.322. The design capacity of channels for temporary and permanent stream channel diversions will be at least equal to the capacity of the unmodified stream channel immediately upstream and downstream from the diversion.

742.323. The requirements of R614-301-742.312.2 will be met when the temporary and permanent diversion for perennial and intermittent streams are designed so that the combination of channel, bank and floodplain configuration is adequate to pass safely the peak runoff of a 10-year, 6-hour precipitation event for a temporary diversion and a 100-year, 6-hour precipitation event for a permanent diversion.

742.324. The design and construction of all stream channel diversions of perennial and intermittent streams will be certified by a qualified registered professional engineer as meeting the performance standards of R614-301 and R614-302 and any design criteria set by the Division.

742.330. Diversion of Miscellaneous Flows.

742.331. Miscellaneous flows, which consist of all flows except for perennial and intermittent streams, may be diverted away from disturbed areas if required or approved by the Division. Miscellaneous flows will include ground-water discharges and ephemeral streams.

742.332. The design, location, construction, maintenance, and removal of diversions of miscellaneous flows will meet all of the performance standards set forth in R614-301-742.310.

742.333. The requirements of R614-301-742.312.2 will be met when the temporary and permanent diversions for miscellaneous flows are designed so that the combination of channel, bank and floodplain configuration is adequate to pass safely the peak runoff of a 2-year, 6-hour precipitation event for a temporary diversion and a 10-year, 6-hour precipitation event for a permanent diversion.

742.400. Road Drainage.

742.410. All Roads.

742.411. To ensure environmental protection and safety appropriate for their planned duration and use, including consideration of the type and size of equipment used, the design and construction or reconstruction of roads will incorporate appropriate limits for surface drainage control, culvert placement, culvert size, and any necessary design criteria established by the Division.

742.412. No part of any road will be located in the channel of an intermittent or perennial stream unless specifically approved by the Division in accordance with applicable parts of R614-301-731 through R614-301-742.300.

742.413. Roads will be located to minimize downstream sedimentation and flooding.

742.420. Primary Roads.

742.421. To minimize erosion, a primary road is to be located, insofar as practical, on the most stable available surfaces.

742.422. Stream fords by primary roads are prohibited unless they are specifically approved by the Division as temporary routes during periods of construction.

742.423. Drainage Control.

742.423.1. Each primary road will be designed, constructed or reconstructed and maintained to have adequate drainage control, using structures such as, but not limited to, bridges, ditches, cross drains, and ditch relief drains. The drainage control system will be designed to pass the peak runoff safely from a 10-year, 6-hour precipitation event, or an alternative event of greater size as demonstrated to be needed by the Division.

742.423.2. Drainage pipes and culverts will be constructed to avoid plugging or collapse and erosion at inlets and outlets.

742.423.3. Drainage ditches will be designed to prevent uncontrolled drainage over the road surface and embankment. Trash racks and debris basins will be installed in the drainage ditches where debris from the drainage area may impair the functions of drainage and sediment control structures.

742.423.4. Natural stream channels will not be altered or relocated without the prior approval of the Division in accordance with R614-301-731.100 through R614-301-731.522, R614-301-731.600, R614-301-731.800, R614-301-742.300, and R614-301-751.

742.423.5. Except as provided in R614-301-742.422, drainage structures will be used for stream channel crossings, made using bridges, culverts or other structures designed, constructed and maintained using current, prudent engineering practice.

743. Impoundments.

743.100. General Requirements. The requirements of R614-301-743 apply to both temporary and permanent impoundments.

743.110. Impoundments meeting the criteria of the MSHA, 30 CFR 77.216(a) will comply with the requirements of 77.216 and R614-301-512.240, R614-301-514.300, R614-301-515.200, R614-301-533.100 through R614-301-533.600, R614-301-733.220 through R614-301-733.224, and R614-301-743. The plan required to be submitted to the District Manager of MSHA under 30 CFR 77.216 will also be submitted to the Division as part of the permit application.

743.120. The design of impoundments will be prepared and certified as described under R614-301-512. Impoundments will have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume.

743.130. Impoundments will include either a combination of principal and emergency spillways or a single spillway as specified in 743.131 which will be designed and constructed to safely pass the design precipitation event or greater event specified in R614-301-743.200 or R614-301-743.300.

743.131. The Division may approve a single-open channel spillway that is:

743.131.1. Of nonerodible construction and designed to carry sustained flows; or

743.131.2. Earth- or grass-lined and designed to carry short-term, infrequent flows at non-erosive velocities where sustained flows are not expected.

743.132. In lieu of meeting the requirements of 743.131 the Division may approve an impoundment which meets the requirements of the sediment pond criteria of R614-301-742.224 and 742.225.

743.140. Impoundments will be inspected as described under R614-301-514.300.

743.200. The design precipitation event for the spillways for a permanent impoundment will be a 100-year, 6-hour precipitation event, or such larger event as the Division may require.

743.300. The design precipitation event for the spillways for a temporary impoundment is a 25-year,

6-hour precipitation event, or such larger event as demonstrated to be needed by the Division.

744. Discharge Structures.

744.100. Discharge from sedimentation ponds, permanent and temporary impoundments, coal processing waste dams and embankments, and diversions will be controlled, by energy dissipators, riprap channels and other devices, where necessary to reduce erosion to prevent deepening or enlargement of stream channels, and to minimize disturbance of the hydrologic balance.

744.200. Discharge structures will be designed according to standard engineering design procedures.

745. Disposal of Excess Spoil.

745.100. General Requirements.

745.110. Excess spoil will be placed in designated disposal areas within the permit area, in a controlled manner to:

745.111. Minimize the adverse effects of leachate and surface water runoff from the fill on surface and ground waters;

745.112. Ensure permanent impoundments are not located on the completed fill. Small depressions may be allowed by the Division if they are needed to retain moisture or minimize erosion, create and enhance wildlife habitat or assist revegetation, and if they are not incompatible with the stability of the fill; and

745.113. Adequately cover or treat excess spoil that is acid- and toxic-forming with nonacid nontoxic material to control the impact on surface and ground water in accordance with R614-301-731.300 and to minimize adverse effects on plant growth and the approved postmining land use.

745.120. Drainage control. If the disposal area contains springs, natural or manmade water courses, or wet weather seeps, the fill design will include diversions and underdrains as necessary to control erosion, prevent water infiltration into the fill and ensure stability.

745.121. Diversions will comply with the requirements of R614-301-742.300.

745.122. Underdrains will consist of durable rock or pipe, be designed and constructed using current, prudent engineering practices and meet any design criteria established by the Division. The underdrain system will be designed to carry the anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and springs in the foundation of the disposal area and will be protected from piping and contamination by an adequate filter. Rock underdrains will be constructed of durable, nonacid-, nontoxic-forming rock (e.g., natural sand and gravel, sandstone, limestone or other durable rock) that does not slake in water or degrade to soil materials and which is free of coal, clay or other nondurable material. Perforated pipe underdrains will be corrosion resistant and will have characteristics consistent with the long-term life of the fill.

745.200. Valley Fills and Head-of-Hollow Fills.

745.210. Valley fills and head-of-hollow fills will meet the applicable requirements of R614-301-211, R614-301-212, R614-301-412.300, R614-301-512.210, R614-301-514.100, R614-301-528.310, R614-301-535.100 through R614-301-535.130, R614-301-535.500, R614-301-536.300, R614-301-542.720, R614-301-553.240, and R614-301-745.100 and the requirements of R614-301-745.200 and R614-301-535.200.

745.220. Drainage Control.

745.221. The top surface of the completed fill will be graded such that the final slope after settlement will be toward properly designed drainage channels

Uncontrolled surface drainage may not be directed over the outslope of the fill.

745.222. Runoff from areas above the fill and runoff from the surface of the fill will be diverted into stabilized diversion channels designed to meet the requirements of R614-301-742.300 and to safely pass the runoff from a 100-year, 6-hour precipitation event.

745.300. Durable Rock Fills. The Division may approve disposal of excess durable rock spoil provided the following conditions are satisfied:

745.310. Except as provided in R614-301-745.300, the requirements of R614-301-211, R614-301-212, R614-301-412.300, R614-301-512.210, R614-301-514.100, R614-301-528.310, R614-301-535.100 through R614-301-535.130, R614-301-535.500, R614-301-536.300, R614-301-542.720, R614-301-553.240, and R614-301-745.100 are met;

745.320. The underdrain system may be constructed simultaneously with excess spoil placement by the natural segregation of dumped materials, provided the resulting underdrain system is capable of carrying anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and springs in the foundation of the disposal area and the other requirements for drainage control are met; and

745.330. Surface water runoff from areas adjacent to and above the fill is not allowed to flow into the fill and is diverted into stabilized diversion channels designed to meet the requirements of R614-301-742.300 and to safely pass the runoff from a 100-year, 6-hour precipitation event.

745.400. Preexisting Benches. The Division may approve the disposal of excess spoil through placement on preexisting benches, provided that the requirements of R614-301-211, R614-301-212, R614-301-412.300, R614-301-512.210, R614-301-512.220, R614-301-514.100, R614-301-535.100, R614-301-535.112 through R614-301-535.130, R614-301-535.300 through R614-301-536.300, R614-301-542.720, R614-301-553.240, R614-301-745.100, R614-301-745.300, and R614-301-745.400 and the requirements of R614-301-535.400 are met.

746. Coal Mine Waste.

746.100. General Requirements.

746.110. All coal mine waste will be placed in new or existing disposal areas within a permit area which are approved by the Division.

746.120. Coal mine waste will be placed in a controlled manner to minimize adverse effects of leachate and surface water runoff on surface and ground water quality and quantity.

746.200. Refuse Piles.

746.210. Refuse piles will meet the requirements of R614-301-512.230, R614-301-515.200, R614-301-528.320, R614-301-536 through R614-301-536.200, R614-301-536.500, R614-301-542.730, and R614-301-746.100 and the additional requirements of R614-301-210, R614-301-513.400, R614-301-514.200, R614-301-528.322, R614-301-536.900, R614-301-553.250, and R614-301-746.200 and the requirements of the MSHA, 30 CFR 77.214 and 77.215.

746.211. If the disposal area contains springs, natural or manmade water courses, or wet weather seeps, the design will include diversions and underdrains as necessary to control erosion, prevent water infiltration into the disposal facility and ensure stability.

746.212. Uncontrolled surface drainage may not be diverted over the outslope of the refuse pile. Runoff from areas above the refuse pile and runoff from the surface of the refuse pile will be diverted into stabilized

diversion channels designed to meet the requirements of R614-301-742.300 to safely pass the runoff from a 100-year, 6-hour precipitation event. Runoff diverted from undisturbed areas need not be commingled with runoff from the surface of the refuse pile.

746.213. Underdrains will comply with the requirements of R614-301-745.122.

746.220. Surface Area Stabilization.

746.221. Slope protection will be provided to minimize surface erosion at the site. All disturbed areas, including diversion channels that are not riprapped or otherwise protected, will be revegetated upon completion of construction.

746.222. No permanent impoundments will be allowed on the completed refuse pile. Small depressions may be allowed by the Division if they are needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or assist revegetation, and if they are not incompatible with stability of the refuse pile.

746.300. Impounding structures. New and existing impounding structures constructed of coal mine waste or intended to impound coal mine waste will meet the requirements of R614-301-512.230, R614-301-515.200, R614-301-528.320, R614-301-536 through R614-301-536.200, R614-301-536.500, R614-301-542.730, and R614-301-746.100.

746.310. Coal mine waste will not be used for construction of impounding structures unless it has been demonstrated to the Division that the use of coal mine waste will not have a detrimental effect on downstream water quality or the environment due to acid seepage through the impounding structure. The potential impact of acid mine seepage through the impounding structure will be discussed in detail.

746.311. Each impounding structure constructed of coal mine waste or intended to impound coal mine waste will be designed, constructed and maintained in accordance with R614-301-512.240, R614-301-513.200, R614-301-514.310 through R614-301-514.330, R614-301-515.200, R614-301-533.100 through R614-301-533.500, R614-301-733.230, R614-301-733.240, R614-301-743.100, and R614-301-743.300. Such structures may not be retained permanently as part of the approved postmining land use.

746.312. Each impounding structure constructed of coal mine waste or intended to impound coal mine waste that meets the criteria of 30 CFR 77.216(a) will have sufficient spillway capacity to safely pass, adequate storage capacity to safely contain, or a combination of storage capacity and spillway capacity to safely control the probable maximum precipitation of a 6-hour precipitation event, or greater event as demonstrated to be needed by the Division.

746.320. Spillways and outlet works will be designed to provide adequate protection against erosion and corrosion. Inlets will be protected against blockage.

746.330. Drainage control. Runoff from areas above the disposal facility or runoff from the surface of the facility that may cause instability or erosion of the impounding structure will be diverted into stabilized diversion channels designed to meet the requirements of R614-301-742.300 and designed to safely pass the runoff from a 100-year, 6-hour design precipitation event.

746.340. Impounding structures constructed of or impounding coal mine waste will be designed and operated so that at least 90 percent of the water stored during the design precipitation event will be removed within a 10-day period following that event.

746.400. Return of Coal Processing Waste to Abandoned Underground Workings. Each permit application to conduct UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES will, if appropriate, include a plan of proposed methods for returning coal processing waste to abandoned underground workings as follows:

746.410. The plan will describe the source of the hydraulic transport mediums, method of dewatering the placed backfill, retention of water underground, treatment of water if released to surface streams and the effect on the hydrologic regime;

746.420. The plan will describe each permanent monitoring well to be located in the backfilled areas, the stratum underlying the mined coal and gradient from the backfilled area; and

746.430. The requirements of R614-301-513.300, R614-301-528.321, R614-301-536.700, R614-301-746.410 and R614-746.420 will also apply to pneumatic backfilling operations, except where the operations are exempted by the Division from requirements specifying hydrologic monitoring.

747. Disposal of Noncoal Mine Waste.

747.100. Noncoal mine waste, including but not limited to grease, lubricants, paints, flammable liquids, garbage, machinery, lumber and other combustible materials generated during coal mining and reclamation operations will be placed and stored in a controlled manner in a designated portion of the permit area or state-approved solid waste disposal area.

747.200. Placement and storage of noncoal mine waste within the permit area will ensure that leachate and surface runoff do not degrade surface or ground water.

747.300. Final disposal of noncoal mine waste within the permit area will ensure that leachate and drainage does not degrade surface or underground water.

748. Casing and Sealing of Wells. Each water well will be cased, sealed, or otherwise managed, as approved by the Division, to prevent acid or other toxic drainage from entering ground or surface water, to minimize disturbance to the hydrologic balance, and to ensure the safety of people, livestock, fish and wildlife, and machinery in the permit and adjacent area. If a water well is exposed by coal mining and reclamation operations, it will be permanently closed unless otherwise managed in a manner approved by the Division. Use of a drilled hole or borehole or monitoring well as a water well must comply with the provision of R614-301-731.100 through R614-301-731.522 and R614-301-731.800.

750. Performance Standards.

All coal mining and reclamation operations will be conducted to minimize disturbance to the hydrologic balance within the permit and adjacent areas, to prevent material damage to the hydrologic balance outside the permit area and support approved postmining land uses in accordance with the terms and conditions of the approved permit and the performance standards of R614-301 and R614-302. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, operations will be conducted to assure the protection or replacement of water rights in accordance with the terms and conditions of the approved permit and the performance standards of R614-301 and R614-302.

751. Water Quality Standards and Effluent Limitations. Discharges of water from areas disturbed by coal mining and reclamation operations will be made in compliance with all Utah and federal water quality laws and regulations and with effluent limitations

for coal mining promulgated by the U.S. Environmental Protection Agency set forth in 40 CFR Part 434.

752. Sediment Control Measures. Sediment control measures must be located, maintained, constructed and reclaimed according to plans and designs given under R614-301-732, R614-301-742 and R614-301-760.

752.100. Siltation structures and diversions will be located, maintained, constructed and reclaimed according to plans and designs given under R614-301-732, R614-301-742 and R614-301-763.

752.200. Road Drainage. Roads will be located, designed, constructed, reconstructed, used, maintained and reclaimed according to R614-301-732.400, R614-301-742.400 and R614-301-762 and to achieve the following:

752.210. Control or prevent erosion, siltation and the air pollution attendant to erosion by vegetating or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices;

752.220. Control or prevent additional contributions of suspended solids to stream flow or runoff outside the permit area;

752.230. Neither cause nor contribute to, directly or indirectly, the violation of effluent standards given under R614-301-751;

752.240. Minimize the diminution to or degradation of the quality or quantity of surface- and ground-water systems; and

752.250. Refrain from significantly altering the normal flow of water in streambeds or drainage channels.

753. Impoundments and Discharge Structures. Impoundments and discharge structures will be located, maintained, constructed and reclaimed to comply with R614-301-733, R614-301-734, R614-301-743, R614-301-745 and R614-301-760.

754. Disposal of Excess Spoil, Coal Mine Waste and Noncoal Mine Waste. Disposal areas for excess spoil, coal mine waste and noncoal mine waste will be located, maintained, constructed and reclaimed to comply with R614-301-735, R614-301-736, R614-301-745, R614-301-746, R614-301-747 and R614-301-760.

755. Casing and Sealing of Wells. All wells will be managed to comply with R614-301-748 and R614-301-765. Water monitoring wells will be managed on a temporary basis according to R614-301-738.

760. Reclamation.

761. General Requirements. Before abandoning a permit area or seeking bond release, the operator will ensure that all temporary structures are removed and reclaimed, and that all permanent sedimentation ponds, diversions, impoundments and treatment facilities meet the requirements of R614-301 and R614-302 for permanent structures, have been maintained properly and meet the requirements of the approved reclamation plan for permanent structures and impoundments. The operator will renovate such structures if necessary to meet the requirements of R614-301 and R614-302 and to conform to the approved reclamation plan.

762. Roads. A road not to be retained for use under an approved postmining land use will be reclaimed immediately after it is no longer needed for coal mining and reclamation operations, including:

762.100. Restoring the natural drainage patterns;

762.200. Reshaping all cut and fill slopes to be compatible with the postmining land use and to complement the drainage pattern of the surrounding terrain.

763. Siltation Structures.

763.100. Siltation structures will be maintained until removal is authorized by the Division and the disturbed area has been stabilized and revegetated. In no case will the structure be removed sooner than two years after the last augmented seeding.

763.200. When the siltation structure is removed, the land on which the siltation structure was located will be regraded and revegetated in accordance with the reclamation plan and R614-301-356, R614-301-356, and R614-301-357. Sedimentation ponds approved by the Division for retention as permanent impoundments may be exempted from this requirement.

764. Structure Removal. The application will include the timetable and plans to remove each structure, if appropriate.

765. Permanent Casing and Sealing of Wells. When no longer needed for monitoring or other use approved by the Division upon a finding of no adverse environmental or health and safety effects, or unless approved for transfer as a water well under R614-301-731.100 through R614-301-731.522 and R614-301-731.800, each well will be capped, sealed, backfilled, or otherwise properly managed, as required by the Division in accordance with R614-301-529.400, R614-301-631.100, and R614-301-748. Permanent closure measures will be designed to prevent access to the mine workings by people, livestock, fish and wildlife, machinery and to keep acid or other toxic drainage from entering ground or surface waters.

R614-301-800. Bonding and Insurance.

The rules in R614-301-800 set forth the minimum requirements for filing and maintaining bonds and insurance for coal mining and reclamation operations under the State Program.

810. Bonding Definitions and Division Responsibilities.

811. Terms used in R614-301-800 may be found defined in R614-100-200.

812. Division Responsibilities — Bonding.

812.100. The Division will prescribe and furnish forms for filing performance bonds.

812.200. The Division will prescribe by regulation terms and conditions for performance bonds and insurance.

812.300. The Division will determine the amount of the bond for each area to be bonded, in accordance with R614-301-830. The Division will also adjust the amount as acreage in the permit area is revised, or when other relevant conditions change according to the requirements of R614-301-830.400.

812.400. The Division may accept a self-bond if the permittee meets the requirements of R614-301-860.300 and any additional requirements in the State or Federal program.

812.500. The Division will release liability under a bond or bonds in accordance with R614-301-880 through R614-301-880.800.

812.600. If the conditions specified in R614-301-880.900 occur, the Division will take appropriate action to cause all or part of a bond to be forfeited in accordance with procedures of that Section.

812.700. The Division will require in the permit that adequate bond coverage be in effect at all times. Except as provided in R614-301-840.520, operating without a bond is a violation of a condition upon which the permit is issued.

820. Requirement to File a Bond.

820.100. After a permit application under R614-301 has been approved, but before a permit is issued, the applicant will file with the Division, on a form prescribed and furnished by the Division, a bond or bonds for performance made payable to the Division and conditioned upon the faithful performance of all the requirements of the State Program, the permit and the reclamation plan.

820.110. Areas to be covered by the Performance Bond are:

820.111. The bond or bonds will cover the entire permit area, or an identified increment of land within the permit area upon which the operator will initiate and conduct coal mining and reclamation operations during the initial term of the permit.

820.112. As coal mining and reclamation operations on succeeding increments are initiated and conducted within the permit area, the permittee will file with the Division an additional bond or bonds to cover such increments in accordance with R614-830.400.

820.113. The operator will identify the initial and successive areas or increments for bonding on the permit application map submitted for approval as provided in the application, and will specify the bond amount to be provided for each area or increment.

820.114. Independent increments will be of sufficient size and configuration to provide for efficient reclamation operations should reclamation of the Division become necessary pursuant to R614-301-880.900.

820.120. An operator will not disturb any surface areas, succeeding increments, or extend any underground shafts, tunnels, or operations prior to acceptance by the Division of the required performance bond.

820.130. The applicant will file, with the approval of the Division, a bond or bonds under one of the following schemes to cover the bond amounts for the permit area as determined in accordance with R614-301-830:

820.131. A performance bond or bonds for the entire permit area;

820.132. A cumulative bond schedule and the performance bond required for full reclamation of the initial area to be disturbed; or

820.133. An incremental-bond schedule and the performance bond required for the first increment in the schedule.

820.200. Form of the Performance Bond.

820.210. The Division will prescribe the form of the performance bond.

820.220. The Division may allow for:

820.221. A surety bond;

820.222. A collateral bond;

820.223. A self-bond; or

820.224. A combination of any of these bonding methods.

820.300. Period of Liability.

820.310. Performance bond liability will be for the duration of the coal mining and reclamation operations and for a period which is coincident with the operator's period of extended responsibility for successful revegetation provided in R614-301-356 or until achievement of the reclamation requirements of the State Program and permit, whichever is later.

820.320. With the approval of the Division, a bond may be posted and approved to guarantee specific phases of reclamation within the permit area provided the sum of phase bonds posted equals or exceeds the total amount required under R614-301-830 and 830.400. The scope of work to be guaranteed and the

liability assumed under each phase bond will be specified in detail.

820.330. Isolated and clearly defined portions of the permit area requiring extended liability may be separated from the original area and bonded separately with the approval of the Division. Such areas will be limited in extent and not constitute a scattered, intermittent, or checkerboard pattern of failure. Access to the separated areas for remedial work may be included in the area under extended liability if deemed necessary by the Division.

820.340. If the Division approves a long-term, intensive agricultural postmining land-use, in accordance with R614-301-413, the applicable five- or ten-year period of liability will commence at the date of initial planting for such long-term agricultural use.

820.350. General.

820.351. The bond liability of the permittee will include only those actions which he or she is obligated to take under the permit, including completion of the reclamation plan, so that the land will be capable of supporting the postmining land use approved under R614-301-413.

820.352. Implementation of an alternative postmining land-use approved under R614-301-413.300 which is beyond the control of the permittee need not be covered by the bond. Bond liability for prime farmland will be as specified in R614-301-880.320.

830. Determination of Bond Amount.

830.100. The amount of the bond required for each bonded area will:

830.110. Be determined by the Division;

830.120. Depend upon the requirements of the approved permit and reclamation plan;

830.130. Reflect the probable difficulty of reclamation, giving consideration to such factors as topography, geology, hydrology and revegetation potential; and

830.140. Be based on, but not limited to, the detailed estimated cost, with supporting calculations for the estimates, submitted by the permit applicant.

830.200. The amount of the bond will be sufficient to assure the completion of the reclamation plan if the work has to be performed by the Division in the event of forfeiture, and in no case will the total bond initially posted for the entire area under one permit be less than \$10,000.

830.300. An additional inflation factor will be added to the subtotal for the permit term. This inflation factor will be based upon an acceptable Costs Index.

830.400. Adjustment of Amount.

830.410. The amount of the bond or deposit required and the terms of the acceptance of the applicant's bond will be adjusted by the Division from time to time as the area requiring bond coverage is increased or decreased or where the cost of future reclamation changes. The Division may specify periodic times or set a schedule for reevaluating and adjusting the bond amount to fulfill this requirement.

830.420. The Division will:

830.421. Notify the permittee, the surety, and any person with a property interest in collateral who has requested notification under R614-301-860.260 of any proposed adjustment to the bond amount; and

830.422. Provide the permittee an opportunity for an informal conference on the adjustment.

830.430. A permittee may request reduction of the amount of the performance bond upon submission of evidence to the Division providing that the permittee's method of operation or other circumstances re-

duces the estimated cost for the Division to reclaim the bonded area. Bond adjustments which involve undisturbed land or revision of the cost estimate of reclamation are not considered bond release subject to procedures of R614-301-880.100 through R614-301-880.800.

830.440. In the event that an approved permit is revised in accordance with the R614 rules, the Division will review the bond for adequacy and, if necessary, will require adjustment of the bond to conform to the permit as revised.

830.500. An operator's financial responsibility under R614-301-525.230 for repairing material damage resulting from subsidence may be satisfied by the liability insurance policy required under R614-301-890.

840. General Terms and Conditions of the Bond.

840.100. The performance bond will be in an amount determined by the Division as provided in R614-301-830.

840.200. The performance bond will be payable to the Division.

840.300. The performance bond will be conditioned upon faithful performance of all the requirements of the State Program and the approved permit, including completion of the reclamation plan.

840.400. The duration of the bond will be for the time period provided in R614-301-820.300.

840.500. General.

840.510. The bond will provide a mechanism for a bank or surety company to give prompt notice to the Division and the permittee of any action filed alleging the insolvency or bankruptcy of the surety company, the bank, or the permittee, or alleging any violations which would result in suspension or revocation of the surety or bank charter or license to do business.

840.520. Upon the incapacity of a bank or surety company by reason of bankruptcy, insolvency, or suspension or revocation of a charter or license, the permittee will be deemed to be without bond coverage and will promptly notify the Division. The Division, upon notification received through procedures of R614-301-840.510 or from the permittee, will, in writing, notify the operator who is without bond coverage and specify a reasonable period, not to exceed 90 days, to replace bond coverage. If an adequate bond is not posted by the end of the period allowed, the operator will cease coal extraction and will comply with the provisions of R614-301-541.100 through R614-301-541.400 as applicable and will immediately begin to conduct reclamation operations in accordance with the reclamation plan. Mining operations will not resume until the Division has determined that an acceptable bond has been posted.

850. Bonding Requirements for UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES and Associated Long-Term Coal-Related Surface Facilities and Structures.

850.100. Responsibilities. The Division will require bond coverage, in an amount determined under R614-301-830, for long-term surface facilities and structures, and for areas disturbed by surface impacts incident to UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, for which a permit is required. Specific reclamation techniques required for underground mines and long-term facilities will be considered in determining the amount of bond to complete the reclamation.

850.200. Long-term period of liability.

850.210. The period of liability for every bond covering long-term surface disturbances will commence with the issuance of a permit, except that to the ex-

tent that such disturbances will occur on a succeeding increment to be bonded, such liability will commence upon the posting of the bond for that increment before the initial surface disturbance of that increment. The liability period will extend until all reclamation, restoration, and abatement work under the permit has been completed and the bond is released under the provisions of R614-301-880.100 through R614-301-880.800 or until the bond has been replaced or extended in accordance with R614-301-850.230.

850.220. Long-term surface disturbances will include long-term coal-related surface facilities and structures, and surface impacts incident to underground coal mining activities which disturb an area for a period that exceeds five years. Long-term surface disturbances include, but are not limited to: surface features of shafts and slope facilities; coal refuse areas; powerlines; boreholes; ventilation shafts; preparation plants; machine shops; roads and loading and treatment facilities.

850.230. To achieve continuous bond coverage for long-term surface disturbances, the bond will be conditioned upon extension, replacement or payment in full, 30 days prior to the expiration of the bond term.

850.240. Continuous bond coverage will apply throughout the period of extended responsibility for successful revegetation and until the provisions of R614-301-880.100 through R614-301-880.800 inclusive have been met.

850.300. Bond Forfeiture. The Division will take action to forfeit a bond pursuant to R614-301-850 if 30 days prior to bond expiration the operator has not filed:

850.310. The performance bond for a new term as required for continuous coverage; or

850.320. A performance bond providing coverage for the period of liability, including the period of extended responsibility for successful revegetation.

860. Forms of Bonds.

860.100. Surety Bonds.

860.110. A surety bond will be executed by the operator and a corporate surety licensed to do business in Utah.

860.120. Surety bonds will be noncancellable during their terms, except that surety bond coverage for lands not disturbed may be cancelled with the prior consent of the Division. The Division will advise the surety, within 30 days after receipt of a notice to cancel bond, whether the bond may be cancelled on an undisturbed area.

860.200. Collateral Bonds.

860.210. Collateral bonds, except for letters of credit, cash accounts and real property, will be subject to the following conditions:

860.211. The Division will keep custody of collateral deposited by the applicant until authorized for release or replacement as provided in R614-301-870 and R614-301-880;

860.212. The Division will value collateral at its current market value, not at face value;

860.213. The Division will require that certificates of deposit be made payable to or assigned to the Division both in writing and upon the records of the bank issuing the certificates. If assigned, the Division will require the banks issuing these certificates to waive all rights of setoff or liens against those certificates;

860.214. The Division will not accept an individual certificate of deposit in an amount in excess of \$100,000 or the maximum insurable amount as determined by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

860.220. Letters of credit will be subject to the following conditions:

860.221. The letter may be issued only by a bank organized or authorized to do business in the United States;

860.222. Letters of credit will be irrevocable during their terms. A letter of credit used as security in areas requiring continuous bond coverage will be forfeited and will be collected by the Division if not replaced by other suitable bond or letter of credit at least 30 days before its expiration date;

860.223. The letter of credit will be payable to the Division upon demand, in part or in full, upon receipt from the Division of a notice of forfeiture issued in accordance with R614-301-880.900.

860.230. Real property posted as a collateral bond will meet the following conditions:

860.231. The applicant will grant the Division a first mortgage, first deed of trust, or perfected first lien security interest in real property with a right to sell or otherwise dispose of the property in the event of forfeiture under state law;

860.232. In order for the Division to evaluate the adequacy of the real property offered to satisfy collateral requirements, the applicant will submit a schedule of the real property which will be mortgaged or pledged to secure the obligations under the indemnity agreement. The list will include:

860.232.1. A description of the property;

860.232.2. The fair market value as determined by an independent appraisal conducted by a certified appraiser approved by the Division; and

860.232.3. Proof of possession and title to the real property;

860.233. The property may include land which is part of the permit area; however, land pledged as collateral for a bond under this section will not be disturbed under any permit while it is serving as security under this section.

860.240. Cash accounts will be subject to the following conditions:

860.241. The Division may authorize the operator to supplement the bond through the establishment of a cash account in one or more federally insured or equivalently protected accounts made payable upon demand to, or deposited directly with, the Division.

The total bond including the cash account will not be less than the amount required under terms of performance bonds including any adjustments, less amounts released in accordance with R614-301-880.

860.242. Any interest paid on a cash account will be retained in the account and applied to the bond value of the account unless the Division has approved the payment of interest to the operator;

860.243. Certificates of deposit may be substituted for a cash account with the approval of the Division; and

860.244. The Division will not accept an individual cash account in an amount in excess of \$100,000 or the maximum insurable amount as determined by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

860.250. Bond Value of Collateral.

860.251. The estimated bond value of all collateral posted as assurance under this section will be subject to a margin which is the ratio of bond value to market values, as determined by the Division. The margin will reflect legal and liquidation fees, as well as value depreciation, marketability and fluctuations which might affect the net cash available to the Division to complete reclamation.

860.252. The bond value of collateral may be evaluated at any time, but it will be evaluated as part of the permit renewal and, if necessary, the performance bond amount increased or decreased. In no case will the bond value of collateral exceed the market value.

860.260. Persons with an interest in collateral posted as a bond, and who desire notification of actions pursuant to the bond, will request the notification in writing to the Division at the time collateral is offered.

860.300. Self-Bonding.

860.310. Definitions. Terms used in self-bonding are defined under R614-100-200.

860.320. The Division may accept a self bond from an applicant for a permit if all of the following conditions are met by the applicant or its parent corporation guarantor:

860.321. The applicant designates a suitable agent, resident within the state of Utah, to receive service of process;

860.322. The applicant has been in continuous operation as a business entity for a period of not less than five years. Continuous operation will mean that business was conducted over a period of five years immediately preceding the time of application;

860.322.1. The Division may allow a joint venture or syndicate with less than five years of continuous operation to qualify under this requirement if each member of the joint venture or syndicate has been in continuous operation for at least five years immediately preceding the time of application;

860.322.2. When calculating the period of continuous operation, the Division may exclude past periods of interruption to the operation of the business entity that were beyond the applicant's control and that do not affect the applicant's likelihood of remaining in business during the proposed coal mining and reclamation operations;

860.323. The applicant submits financial information in sufficient detail to show that the applicant meets one of the following criteria:

860.323.1. The applicant has a current rating for its most recent bond issuance of "A" or higher as issued by either Moody's Investor Service or Standard and Poor's Corporation;

860.323.2. The applicant has a tangible net worth of at least \$10 million, a ratio of total liabilities to net worth of 2.5 times or less and a ratio of current assets to current liabilities of 1.2 times or greater; or

860.323.3. The applicant's fixed assets in the United States total at least \$20 million and the applicant has a ratio of total liabilities to net worth of 2.5 times or less and a ratio of current assets to current liabilities of 1.2 times or greater; and

860.324. The applicant submits:

860.324.1. Financial statements for the most recently completed fiscal year accompanied by a report prepared by an independent certified public accountant in conformity with generally accepted accounting principles and containing the accountant's audit opinion or review opinion of the financial statements with no adverse opinion;

860.324.2. Unaudited financial statements for completed quarters in the current fiscal year;

860.324.3. Additional unaudited information as requested by the Division; and

860.324.4. Annual reports for the five years immediately preceding the time of application

860.330. The Division may accept a written guarantee for an applicant's self bond from a parent corporation guarantor, if the guarantor meets the condi-

tions of R614-301-860.321 through R614-301-860.324 as if it were the applicant. Such a written guarantee will be referred to as a "corporate guarantee." The terms of the corporate guarantee will provide for the following:

860.331. If the applicant fails to complete the reclamation plan, the guarantor will do so or the guarantor will be liable under the indemnity agreement to provide funds to the Division sufficient to complete the reclamation plan, but not to exceed the bond amount.

860.332. The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the applicant and to the Division at least 90 days in advance of the cancellation date, and the Division accepts the cancellation; and

860.333. The cancellation may be accepted by the Division if the applicant obtains a suitable replacement bond before the cancellation date or if the lands for which the self bond, or portion thereof, was accepted have not been disturbed.

860.340. The Division may accept a written guarantee for an applicant's self bond from any corporate guarantor, whenever the applicant meets the conditions of R614-301-860.321, R614-301-860.322, and R614-301-860.324 and the guarantor meets the conditions of R614-301-860.321 through R614-301-860.324 as if it were the applicant. Such a written guarantee will be referred to as a "nonparent corporate guarantee." The terms of this guarantee will provide for compliance with the conditions of R614-301-860.331 through R614-301-860.333. The Division may require the applicant to submit any information specified in R614-301-860.323 in order to determine the financial capabilities of the applicant.

860.350. For the Division to accept an applicant's self bond, the total amount of the outstanding and proposed self bonds of the applicant for coal mining and reclamation operations will not exceed 25 percent of the applicant's tangible net worth in the United States. For the Division to accept a corporate guarantee, the total amount of the parent corporation guarantor's present and proposed self bonds and guaranteed self bonds for surface coal mining and reclamation operations will not exceed 25 percent of the guarantor's tangible net worth in the United States. For the Division to accept a nonparent corporate guarantee, the total amount of the nonparent corporate guarantor's present and proposed self bonds and guaranteed self bonds will not exceed 25 percent of the guarantor's tangible net worth in the United States.

860.360. If the Division accepts an applicant's self bond, an indemnity agreement will be submitted subject to the following requirements:

860.361. The indemnity agreement will be executed by all persons and parties who are to be bound by it, including the parent corporation guarantor, and will bind each jointly and severally;

860.362. Corporations applying for a self bond, and parent and nonparent corporations guaranteeing an applicant's self bond shall submit an indemnity agreement signed by two corporate officers who are authorized to bind their corporations. A copy of such authorization shall be provided to the Division along with an affidavit certifying that such an agreement is valid under all applicable federal and Utah laws. In addition, the guarantor shall provide a copy of the corporate authorization demonstrating that the corporation may guarantee the self bond and execute the indemnity agreement.

860.363. If the applicant is a partnership, joint venture or syndicate, the agreement will bind each partner or party who has a beneficial interest, directly or indirectly, in the applicant;

860.364. Pursuant to R614-301-880.900, the applicant, parent or nonparent corporate guarantor shall be required to complete the approved reclamation plan for the lands in default or to pay to the Division an amount necessary to complete the approved reclamation plan, not to exceed the bond amount.

860.365. The indemnity agreement when under forfeiture will operate as a judgment against those parties liable under the indemnity agreement.

860.370. The Division may require self-bonded applicants, parent and nonparent corporate guarantors to submit an update of the information required under R614-301-860.323 and R614-301-860.324 within 90 days after the close of each fiscal year following the issuance of the self bond or corporate guarantee.

860.380. If at any time during the period when a self bond is posted, the financial conditions of the applicant, parent, or nonparent corporate guarantor change so that the criteria of R614-301-860.323 and R614-301-860.340 are not satisfied, the permittee will notify the Division immediately and will within 90 days post an alternate form of bond in the same amount as the self bond. Should the permittee fail to post an adequate substitute bond, the provisions of R614-301-840.500 will apply.

870. Replacement of Bonds.

870.100. The Division may allow a permittee to replace existing bonds with other bonds that provide equivalent coverage.

870.200. The Division will not release existing performance bonds until the permittee has submitted, and the Division has approved, acceptable replacement performance bonds. Replacement of a performance bond pursuant to this section will not constitute a release of bond under R614-301-880.100 through R614-301-880.800.

880. Requirement to Release Performance Bonds.

880.100. Bond release application.

880.110. The permittee may file an application with the Division for the release of all or part of a performance bond. Applications may be filed only at times or during seasons authorized by the Division in order to properly evaluate the completed reclamation operations. The times or seasons appropriate for the evaluation of certain types of reclamation will be identified in the approved mining and reclamation plan.

880.120. Within 30 days after an application for bond release has been filed with the Division, the operator will submit a copy of an advertisement placed at least once a week for four successive weeks in a newspaper of general circulation in the locality of the coal mining and reclamation operations. The advertisement will be considered part of any bond release application and will contain the permittee's name, permit number and approval date, notification of the precise location of the land affected, the number of acres, the type and amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed, a description of the results achieved as they relate to the operator's approved reclamation plan and the name and address of the Division to which written comments, objections, or requests for public hearings and informal conferences on the specific bond release may be submitted pursuant to R614-301-880.600 and R614-301-880.800. In addition, as part of any bond release application, the applicant will submit copies

of letters which he or she has sent to adjoining property owners, local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the coal mining and reclamation operation took place, notifying them of the intention to seek release from the bond.

880.200. Inspection by the Division.

880.210. Upon receipt of the bond release application, the Division will, within 30 days, or as soon thereafter as weather conditions permit, conduct an inspection and evaluation of the reclamation work involved. The evaluation will consider, among other factors, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of future occurrence of such pollution and the estimated cost of abating such pollution. The surface owner, agent or lessee will be given notice of such inspection and may participate with the Division in making the bond release inspection. The Division may arrange with the permittee to allow access to the permit area, upon request of any person with an interest in bond release, for the purpose of gathering information relevant to the proceeding.

880.220. Within 60 days from the filing of the bond release application, if no public hearing is held pursuant to R614-301-880.600, or, within 30 days after a public hearing has been held pursuant to R614-301-880.600, the Division will notify in writing the permittee, the surety or other persons with an interest in bond collateral who have requested notification under R614-301-860.260 and the persons who either filed objections in writing or objectors who were a party to the hearing proceedings, if any, of its decision to release or not to release all or part of the performance bond.

880.300. The Division may release all or part of the bond for the entire permit area if the Division is satisfied that all the reclamation or a phase of the reclamation covered by the bond or portion thereof has been accomplished in accordance with the following schedules for reclamation of Phases I, II and III.

880.310. At the completion of Phase I, after the operator completes the backfilling and regrading (which may include the replacement of topsoil) and drainage control of a bonded area in accordance with the approved reclamation plan, 60 percent of the bond or collateral for the applicable area;

880.320. At the completion of Phase II, after revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan, an additional amount of bond. When determining the amount of bond to be released after successful revegetation has been established, the Division will retain that amount of bond for the revegetated area which would be sufficient to cover the cost of reestablishing revegetation if completed by a third party and for the period specified for operator responsibility in UCA 40-10-17(i) of the Act for reestablishing revegetation. No part of the bond or deposit will be released under this paragraph so long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by UCA 40-10-17(j) of the Act and by R614-301-751 or until soil productivity for prime farmlands has returned to the equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to UCA 40-10-11(i) of the Act and R614-301-200. Where a silt dam is to be

retained as a permanent impoundment pursuant to R614-301-700, the Phase II portion of the bond may be released under this paragraph so long as provisions for sound future maintenance by the operator or the landowner have been made with the Division, and

880.330. At the completion of Phase III, after the operator has completed successfully all surface coal mining and reclamation operations, the release of the remaining portion of the bond, but not before the expiration of the period specified for operator responsibility in R614-301-357. However, no bond will be fully released under provisions of this section until reclamation requirements of the Act and the permit are fully met.

880.400. If the Division disapproves the application for release of the bond or portion thereof, the Division will notify the permittee, the surety, and any person with an interest in collateral as provided for in R614-301-860.260, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure the release and allowing an opportunity for a public hearing.

880.500. When an application for total or partial bond release is filed with the Division, the Division will notify the municipality in which the coal mining and reclamation activities are located by certified mail at least 30 days prior to the release of all or a portion of the bond.

880.600. Any person with a valid legal interest which might be adversely affected by release of the bond, or the responsible officer or head of any federal, state, or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social or economic impact involved in the operation or which is authorized to develop and enforce environmental standards with respect to such operations, will have the right to file written objections to the proposed release from bond with the Division within 30 days after the last publication of the notice required by R614-301-880.120. If written objections are filed and a hearing is requested, the Division will inform all the interested parties of the time and place of the hearing and will hold a public hearing within 30 days after receipt of the request for the hearing. The date, time and location of the public hearing will be advertised by the Division in a newspaper of general circulation in the locality for two consecutive weeks. The public hearing will be held in the locality of the coal mining and reclamation operations from which bond release is sought, or at the location of the Division office, at the option of the objector.

880.700. For the purpose of the hearing under R614-301-880.600, the Division will have the authority to administer oaths, subpoena witnesses or written or printed material, compel the attendance of witnesses or the production of materials and take evidence including, but not limited to, inspection of the land affected and other surface coal mining operations carried on by the applicant in the general vicinity. A verbatim record of each public hearing will be made and a transcript will be made available on the motion of any party or by order of the Division.

880.800. Without prejudice to the right of an objector or the applicant, the Division may hold an informal conference as provided in UCA 40-10-13(a) of the Act to resolve such written objections. The Division will make a record of the informal conference unless waived by all parties, which will be accessible to all parties. The Division will also furnish all parties of the informal conference with a written finding of the

Division based on the informal conference and the reasons for said finding.

880.900. Forfeiture of Bonds.

880.910. If an operator refuses or is unable to conduct reclamation of an unabated violation, if the terms of the permit are not met, or if the operator defaults on the conditions under which the bond was accepted, the Division will take the following action to forfeit all or part of a bond or bonds for any permit area or an increment of a permit area:

880.911. Send written notification by certified mail, return receipt requested, to the permittee and the surety on the bond, if any, informing them of the determination to forfeit all or part of the bond including the reasons for the forfeiture and the amount to be forfeited. The amount will be based on the estimated total cost of achieving the reclamation plan requirements;

880.912. Advise the permittee and surety, if applicable, of the conditions under which forfeiture may be avoided. Such conditions may include, but are not limited to:

880.912.1. Agreement by the permittee or another party to perform reclamation operations in accordance with a compliance schedule which meets the conditions of the permit, the reclamation plan and the State Program and a demonstration that such party has the ability to satisfy the conditions; or

880.912.2. The Division may allow a surety to complete the reclamation plan, or the portion of the reclamation plan applicable to the bonded phase or increment, if the surety can demonstrate an ability to complete the reclamation in accordance with the approved reclamation plan. Except where the Division may approve partial release authorized under R614-301-880.100 through R614-301-880.800, no surety liability will be released until successful completion of all reclamation under the terms of the permit, including applicable liability periods of R614-301-820.300.

880.920. In the event forfeiture of the bond is required by this section, the Division will:

880.921. Proceed to collect the forfeited amount as provided by applicable laws for the collection of defaulted bonds or other debts if actions to avoid forfeiture have not been taken, or if rights of appeal, if any, have not been exercised within a time established by the Division, or if such appeal, if taken, is unsuccessful; and

880.922. Use funds collected from bond forfeiture to complete the reclamation plan, or portion thereof, on the permit area or increment, to which bond coverage applies.

880.930. Upon default, the Division may cause the forfeiture of any and all bonds deposited to complete reclamation for which the bonds were posted. Bond liability will extend to the entire permit area under conditions of forfeiture.

880.931. In the event the estimated amount forfeited is insufficient to pay for the full cost of reclamation, the operator will be liable for remaining costs. The Division may complete, or authorize completion of, reclamation of the bonded area and may recover from the operator all costs of reclamation in excess of the amount forfeited.

880.932. In the event the amount of performance bond forfeited was more than the amount necessary to complete reclamation, the unused funds will be returned by the Division to the party from whom they were collected.

890. Terms and Conditions for Liability Insurance.

890.100. The Division will require the applicant submit as part of its permit application a certificate issued by an insurance company authorized to do business in Utah certifying that the applicant has a public liability insurance policy in force for the coal mining and reclamation activities for which the permit is sought. Such policy will provide for personal injury and property damage protection in an amount adequate to compensate any persons injured or property damaged as a result of the coal mining and reclamation operations, including the use of explosives and who are entitled to compensation under the applicable provisions of state law. Minimum insurance coverage for bodily injury and property damage will be \$300,000 for each occurrence and \$500,000 aggregate.

890.200. The policy will be maintained in full force during the life of the permit or any renewal thereof, including the liability period necessary to complete all reclamation operations under this chapter.

890.300. The policy will include a rider requiring that the insurer notify the Division whenever substantive changes are made in the policy including any termination or failure to renew.

890.400. The Division may accept from the applicant, in lieu of a certificate for a public liability insurance policy, satisfactory evidence from the applicant that it satisfies applicable state self-insurance requirements approved as part of the State Program and the requirements of R614-301-890.100 through R614-301-890.300.

R614-302. Coal Mine Permitting: Special Categories and Areas of Mining.

R614-302-100. General.

R614-302-200. Special Categories of Mining.

R614-302-300. Special Areas of Mining.

R614-302-100. General.

110. Introduction. The rules given under R614-302-200 through R614-302-300 establish the minimum requirements for approval to conduct coal mining and reclamation operations under designated special categories and areas of mining. All provisions of R614-301 apply to the designated special categories and areas of mining, unless otherwise specifically provided under R614-302.

120. Objective. The objective of R614-302 is to ensure that special categories and areas of mining are approved only after the Division receives information that shows the coal mining and reclamation operations will be conducted according to the applicable requirements of the Act, R614-301 and any other applicable portions of the State Program.

130. Applicability. Special categories and areas of mining that occur within an approved permit area will be evaluated and approved by the Division within the context of the attendant permit or permit application. Special categories and areas of mining that occur external to an approved permit area will require a discrete permit application for review by the Division. Special categories and areas of mining include all those types and areas of mining described in R614-302-200 through R614-302-320.

R614-302-200. Special Categories of Mining.

The rules in R614-302-200 present the requirements for information to be included in the permit application, to conduct coal mining and reclamation

operations for designated special categories of mining and present procedures to process said permit applications.

210. Experimental Practices Mining.

211. Experimental practices provide a variance from environmental protection performance standards of the Act, of R614-301, and the State Program for experimental or research purposes, or to allow an alternative postmining land use, and may be undertaken if they are approved by the Division and the Office and if they are incorporated in a permit or permit change issued in accordance with the requirements of R614-200, R614-300, R614-301, R614-302-100 through R614-302-280, R614-302-310, R614-302-320, or R614-303.

212. An application for an experimental practice will contain descriptions, maps, plans, and data which show:

212.100. The nature of the experimental practice, including a description of the performance standards for which variances are requested, the duration of the experimental practice, and any special monitoring which will be conducted;

212.200. How use of the experimental practice encourages advances in mining and reclamation technology or allows a postmining land use for industrial, commercial, residential, or public use (including recreation facilities) on an experimental basis;

212.300. That the experimental practice:

212.310. Is potentially more, or at least as, environmentally protective, during and after coal mining and reclamation operations, as would otherwise be required by standards promulgated under R614-301 and R614-302; and

212.320. Will not reduce the protection afforded public health and safety below that provided by the requirements of R614-301 and R614-302; and

212.400. That the applicant will conduct monitoring of the effects of the experimental practice. The monitoring program will ensure the collection, analysis, and reporting of reliable data that are sufficient to enable the Division and the Office to:

212.410. Evaluate the effectiveness of the experimental practice; and

212.420. Identify, at the earliest possible time, potential risk to the environment and public health and safety which may be caused by the experimental practice during and after coal mining and reclamation operations.

213. Applications for experimental practices will comply with the public notice requirements of R614-300-120.

214. No application for an experimental practice under R614-302-210 will be approved until the Division first finds in writing and the Office then concurs that:

214.100. The experimental practice encourages advances in coal mining and reclamation technology or allows a postmining land use for industrial, commercial, residential, or public use (including recreational facilities) on an experimental basis;

214.200. The experimental practice is potentially more, or at least as, environmentally protective, during and after coal mining and reclamation operations, as would otherwise be required by standards promulgated under R614-301 and R614-302;

214.300. The coal mining and reclamation operations approved for a particular land use or other purpose are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practice; and

214.400. The experimental practice does not reduce the protection afforded public health and safety below that provided by standards promulgated under R614-301 and R614-302.

215. Experimental practices granting variances from the special environmental protection performance standards of Sections 515 and 516 of the Federal Act applicable to prime farmlands will be approved only after consultation with the SCS.

216. Each person undertaking an experimental practice will conduct the periodic monitoring, recording and reporting program set forth in the application, and will satisfy such additional requirements as the Division or the Office may impose to ensure protection of the public health and safety and the environment.

217. Each experimental practice will be reviewed by the Division at a frequency set forth in the approved permit, but no less frequently than every two and one-half years. After review, the Division may require such reasonable modifications of the experimental practice as are necessary to ensure that the activities fully protect the environment and the public health and safety. Copies of the decision of the Division will be sent to the permittee and will be subject to the provisions for administrative and judicial review of R614-300-200.

218. Revisions or amendments to an experimental practice will be processed in accordance with the requirements of R614-303-220 and approved by the Division. Any revisions which propose significant alterations in the experimental practice will, at a minimum, be subject to notice, hearing, and public participation requirements of R614-300-120 and concurrence by the Office. Revisions that do not propose significant alterations in the experimental practice will not require concurrence by the Office.

220. Mountaintop Removal Mining.

221. R614-302-220 applies to any person who conducts or intends to conduct SURFACE COAL MINING AND RECLAMATION ACTIVITIES by mountaintop removal mining.

222. Mountaintop removal mining means SURFACE COAL MINING AND RECLAMATION ACTIVITIES, where the mining operation removes an entire coal seam or seams running through the upper fraction of a mountain, ridge, or hill, except as provided for in R614-302-227.500, by removing substantially all of the overburden off the bench and creating a level plateau or a gently rolling contour, with no highwalls remaining, and capable of supporting postmining land uses in accordance with the requirements of R614-302-220.

223. The Division may issue approval to conduct mountaintop removal mining, without regard to the requirements of R614-301-537.200, R614-301-552 through R614-301-553.230, R614-301-553.260 through R614-301-553.900, and R614-302-234 to restore the lands disturbed by such mining to their approximate original contour, if it first finds, in writing, on the basis of a complete application, that the following requirements are met:

223.100. The proposed postmining land use of the lands to be affected will be an industrial, commercial, agricultural, residential, or public facility (including recreational facilities) use and, if

223.110. After consultation with the appropriate land-use planning agencies, if any, the proposed land use is deemed by the Division to constitute an equal or better economic or public use of the affected land compared with the premining use.

223.120. The applicant demonstrates compliance with the requirements for acceptable alternative postmining land uses of R614-301-413.100 through R614-301-413.300;

223.130. The applicant has presented specific plans for the proposed postmining land use and appropriate assurances that such use will be:

223.131. Compatible with adjacent land uses;

223.132. Obtainable according to data regarding expected need and market;

223.133. Assured of investment in necessary public facilities;

223.134. Supported by commitments from public agencies where appropriate;

223.135. Practicable with respect to private financial capability for completion of the proposed use;

223.136. Planned pursuant to a schedule attached to the reclamation plan so as to integrate the mining operation and reclamation with the postmining land use; and

223.137. Designed by a registered engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site.

223.140. The proposed use would be consistent with adjacent land uses and existing Utah and local land use plans and programs; and

223.150. The Division has provided, in writing, an opportunity of not more than 60 days to review and comment on such proposed use to the governing body of general purpose government in whose jurisdiction the land is located and to any Utah or federal agency which the Division, in its discretion, determines to have an interest in the proposed use;

223.200. The applicant demonstrates that in place of restoration of the land to be affected to the approximate original contour under R614-301-537.200, R614-301-552 through R614-301-553.230, R614-301-553.260 through R614-301-553.900, and R614-302-234, the SURFACE COAL MINING AND RECLAMATION ACTIVITY will be conducted in compliance with the requirements of R614-302-227;

223.300. The requirements of R614-302-227 are made a specific condition of the permit;

223.400. All other requirements of the State Program are met by the proposed operations; and

223.500. The application to conduct SURFACE COAL MINING AND RECLAMATION ACTIVITIES clearly identifies mountaintop removal mining.

224. Any permits incorporating a variance issued under R614-302-220 will be reviewed by the Division to evaluate the progress and development of the SURFACE COAL MINING AND RECLAMATION ACTIVITIES to establish that the operator is proceeding in accordance with the terms of the variance:

224.100. Within the sixth month preceding the third year from the date of its issuance;

224.200. Before each permit renewal; and

224.300. Not later than the middle of each permit term.

225. Any review required under R614-302-224 need not be held if the permittee has demonstrated and the Division finds, in writing, within three months before the scheduled review, that all SURFACE COAL MINING AND RECLAMATION ACTIVITIES under the permit are proceeding and will continue to be conducted in accordance with the terms of the permit and requirements of the State Program.

226. The terms and conditions of a permit that includes mountaintop removal mining may be modified at any time by the Division, if it determines that

more stringent measures are necessary to insure the operation involved is conducted in compliance with the requirements of the State Program.

227. Performance Standards. Under the State Program, SURFACE COAL MINING AND RECLAMATION ACTIVITIES may be conducted under a variance from the requirement of R614-301 and R614-302-220 if:

227.100. The Division grants the variance under permit to conduct SURFACE COAL MINING AND RECLAMATION ACTIVITIES, in accordance with R614-302-220;

227.200. The activities involve the mining of an entire coal seam running through the upper face of a mountain, ridge, or hill, by removing all of overburden and creating a level plateau or gently rolling contour with no highwalls remaining;

227.300. An industrial, commercial, agricultural, residential, or public facility (including recreational facilities) use is proposed and approved for the affected land;

227.400. The alternative land use requirements of R614-301-413.100 through R614-301-413.300 and applicable requirements of R614-301 and R614-302-220, other than the requirements to restore affected areas to their approximate original contour, are met;

227.500. An outcrop barrier of sufficient width consisting of the toe of the lowest coal seam, and associated overburden, are retained to prevent slippage and erosion, except that the Division may allow exemption to the retention of the coal barrier requirement if the following conditions are satisfied:

227.510. The proposed mine site was mined prior to May 3, 1978, and the toe of the lowest seam has been removed; or

227.520. A coal barrier adjacent to a head-of-hollow fill may be removed after the elevation of head-of-hollow fill attains the elevation of the coal barrier if the head-of-hollow fill provides the stability otherwise ensured by the retention of a coal barrier.

227.600. The final graded slopes on the mined area are less than 1v:5h, so as to create a level plateau or gently rolling configuration, and the outcrops of the plateau do not exceed 1v:2h except where engineering data substantiates, and the Division finds, in writing, and includes in the permit to conduct SURFACE COAL MINING AND RECLAMATION ACTIVITIES under R614-302-220 that a minimum static safety factor of 1.5 will be attained;

227.700. The resulting level or gently rolling contour is graded to drain inward from the outslope, except at specified points where it drains over the outslope in stable and protected channels. The drainage will not be through or over a valley or head-of-hollow fill and natural watercourses below the lowest coal seam mined will not be damaged;

227.800. All waste and acid-forming or toxic-forming materials, including the strata immediately below the coal seam, are covered with nontoxic spoil to prevent pollution and achieve the approved postmining land use; and

227.900. Spoil is placed on the mountaintop bench as necessary to achieve the postmining land use approved under R614-302-227.300 and R614-302-227.400. All excess spoil material not retained on the mountaintop will be placed in accordance with applicable requirements of R614-301-211, R614-301-212, R614-301-412.300, R614-301-512.210, R614-301-512.220, R614-301-514.100, R614-301-528.310, R614-301-535.100, through R614-301-535.130, R614-301-

5300 through R614-301-535.500, R614-301-5300, R614-301-542.720, R614-301-553.240, R614-301-731.100 through R614-301-731.522, R614-301-1800, R614-301-742.300, R614-301-745.100, R614-301-745.300, and R614-301-745.400.

230. Steep Slope Mining.

231. The rules in R614-302-230 apply to any person who conducts or intends to conduct steep slope coal mining and reclamation operations, except:

231.100. Where an operator proposes to conduct coal mining and reclamation operations on flat or gently rolling terrain, leaving a plain or predominantly flat area, but on which an occasional steep slope is encountered as the coal mining and reclamation operation proceeds.

231.200. Where a person obtains a permit under the provisions of R614-302-220; or

231.300. To the extent that a person obtains a permit incorporating a variance under R614-302-270.

232. Any application for a permit to conduct coal mining and reclamation operations covered by R614-302-230 will contain sufficient information to establish that the operations will be conducted in accordance with the requirements of R614-302-234.

233. No permit will be issued for any coal mining and reclamation operations covered by R614-302-230, unless the Division finds, in writing, that in addition to meeting all other requirements of R614-301 and R614-302, the operation will be conducted in accordance with the requirements of R614-302-234.

234. Backfilling and Grading.

234.100. Coal mining and reclamation operations on steep slopes will be conducted so as to meet the requirements of R614-301-537.200, R614-301-552 through R614-301-553.230, R614-301-553.260

through R614-301-553.900, except where mining is conducted on flat or gently rolling terrain with an occasional steep slope through which the mining proceeds and leaves a plain or predominantly flat area or where operations are conducted in accordance with R614-302-227.

234.200. The following materials will not be placed on the downslope except as provided for UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES under R614-301-553:

234.210. Spoil;

234.220. Waste materials of any type;

234.230. Debris, including that from clearing and grubbing; and

234.240. Abandoned or disabled equipment.

234.300. Land above the highwall will not be disturbed unless the Division finds that this disturbance will facilitate compliance with the environmental protection standards of R614-301 and R614-302 and the disturbance is limited to that necessary to facilitate compliance.

234.400. Woody materials will not be buried in the backfilled area unless the Division determines that the proposed method for placing woody material within the backfill will not deteriorate the stable condition of the backfilled area.

240. Auger Mining.

241. The Rules given under R614-302-240 apply to any person who conducts or intends to conduct coal mining and reclamation operations utilizing augering operations.

242. Any application for a permit that includes operations covered by R614-302-240 will contain, in the mining and reclamation plan, a description of the augering methods to be used and the measures to be used to comply with R614-302-244 and R614-302-245.

243. No permit will be issued for any operations covered by R614-302-240 unless the Division finds, in writing, that in addition to meeting all other applicable requirements of R614-200, R614-300, R614-301, R614-302-100 through R614-302-290, R614-302-310, R614-302-320, and R614-303, the operation will be conducted in compliance with R614-302-244 and R614-302-245.

244. The Division may prohibit auger mining, if necessary, to:

244.100. Maximize the utilization, recoverability, or conservation of the solid-fuel resource; or

244.200. Protect against adverse water-quality impacts.

245. Performance Standards.

245.100. Coal Recovery.

245.110. Auger mining will be conducted so as to maximize the utilization and conservation of the coal in accordance with R614-301-522.

245.120. Auger mining will be planned and conducted to maximize recoverability of mineral reserves remaining after coal mining and reclamation operations are completed.

245.130. Each person who conducts auger mining operations will leave areas of undisturbed coal, as approved by the Division, to provide access for future underground coal mining and reclamation activities to coal reserves remaining after augering is completed, unless it is established that the coal reserves have been depleted or are so limited in thickness or extent that it will not be practicable to recover the remaining coal. This determination will be made by the Division upon presentation of appropriate technical evidence by the operator.

245.200. Hydrologic Balance.

245.210. Auger mining will be planned and conducted to minimize disturbances to the prevailing hydrologic balance in accordance with the requirements of R614-301-731.100 through R614-301-731.522, R614-301-731.800, and R614-301-751.

245.220. All auger holes, except as provided in R614-302-245.230, will be:

245.221. Sealed within 72 hours after completion with an impervious and noncombustible material, if the holes are discharging water containing acid or toxic-forming material. If sealing is not possible within 72 hours, the discharge will be treated commencing within 72 hours after completion to meet applicable effluent limitations and water-quality standards until the holes are sealed, and

245.222. Sealed with an impervious noncombustible material, as contemporaneously as practicable with the augering operation, as approved by the Division, if the holes are not discharging water containing acid or toxic-forming material.

245.230. Auger holes need not be sealed with an impervious material so as to prevent drainage if the Division determines that:

245.231. The resulting impoundment of water may create a hazard to the environment or public health and safety; and

245.232. The drainage from the auger holes will, under normal conditions, not pose a threat of pollution to surface water; and

245.232.2. Comply with the requirements of R614-301-731.100 through R614-301-731.522, R614-301-731.800, and R614-301-751.

245.300. Subsidence Protection. Auger mining will be conducted in accordance with the requirements of R614-301-525.210 and R614-301-525.230.

245.400. Backfilling and Grading.

245.410. General. Auger mining will be conducted in accordance with the backfilling and grading requirements of R614-301-537.200 and R614-301-553.

245.420. Remining. Where auger mining operations affect previously mined areas that were not reclaimed to the standards of the R614 Rules and the volume of all reasonably available spoil is demonstrated in writing to the Division to be insufficient to completely backfill the highwall, the highwall will be eliminated to the maximum extent technically practical in accordance with the following criteria:

245.421. The person who conducts the auger mining operation will demonstrate to the Division that the backfill, designed by a qualified registered professional engineer, has a minimum static safety factor for the stability of the backfill of at least 1.3;

245.422. All spoil generated by the auger mining operation and any associated SURFACE COAL MINING AND RECLAMATION ACTIVITIES, and any other reasonably available spoil will be used to backfill the area. Reasonably available spoil will include spoil generated by the mining operation and other spoil located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to the public safety or significant damage to the environment. For this purpose, the permit area will include spoil in the immediate vicinity of the auger mining operation;

245.423. The coal seam mined will be covered with a minimum of four feet of nonacid-, nontoxic-forming material and the backfill graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability;

245.424. Any remnant of the highwall will be stable and not pose a hazard to the public health and safety or to the environment; and

245.425. Spoil placed on the outslope during previous mining operations will not be disturbed if such disturbances will cause instability of the remaining spoil or otherwise increase the hazard to the public health and safety or to the environment.

245.500. Protection of Underground Mining. Auger holes will not extend closer than 500 feet (measured horizontally) to any abandoned or active underground mine workings, except as approved in accordance with R614-301-513.700 and R614-301-523.200.

250. In Situ Processing Activities.

251. R614-302-250 applies to any person who conducts or intends to conduct coal mining and reclamation operations utilizing in situ processing activities.

252. Any application for a permit that includes operations covered by R614-302-250 will address all requirements of R614-200, R614-300, R614-301, R614-302-100 through R614-302-290, R614-302-310, R614-302-320, and R614-303 applicable to coal mining and reclamation operations. In addition, the mining and reclamation operations plan for operations involving in situ processing activities will contain information establishing how those operations will be conducted in compliance with the requirements of R614-302-254, including:

252.100. Delineation of proposed holes and wells and production zone for approval of the Division;

252.200. Specifications of drill holes and casings proposed to be used;

252.300. A plan for treatment, confinement or disposal of all acid-forming, toxic-forming or radioactive gases, solids, or liquids constituting a fire, health, safety or environmental hazard caused by the mining and recovery process; and

252.400. Plans for monitoring surface and water and air quality as required by the Division.

253. No permit will be issued for operations covered by R614-302-250, unless the Division finds in writing, upon the basis of a complete application made in accordance with R614-302-252, that the operation will be conducted in compliance with the requirements of R614-200, R614-300, R614-301, R614-302-100 through R614-302-290, R614-302-310, R614-302-320, and R614-303.

254. Performance Standards.

254.100. The person who conducts in situ processing activities will comply with R614-301, R614-302-254.

254.200. In situ processing activities will be planned and conducted to minimize disturbance of the prevailing hydrologic balance by:

254.210. Avoiding discharge of fluids into holes, wells, other than as approved by the Division;

254.220. Injecting process recovery fluids only in geologic zones or intervals approved as production zones by the Division;

254.230. Avoiding annular injection between the wall of the drill hole and the casing; and

254.240. Preventing discharge of process fluid in surface waters.

254.300. Each person who conducts in situ processing activities will submit for approval as part of the application for permit under R614-302-250, and before approval, a plan that ensures that all acid-forming, toxic-forming, or radioactive gases, solids, liquids constituting a fire, health, safety, or environmental hazard and caused by the mining and recovery process are promptly treated, confined, or disposed of, in a manner that prevents contamination of ground and surface waters, damage to fish, wildlife and related environmental values, and threats to public health and safety.

254.400. Each person who conducts in situ processing activities will prevent flow of the process recovery fluid:

254.410. Horizontally beyond the affected area identified in the permit; and

254.420. Vertically into overlying or underlying aquifers.

254.500. Each person who conducts in situ processing activities will restore the quality of affected ground water in the permit area and adjacent area including ground water above and below the production zone, to the approximate premining levels or better, to ensure that the potential for use of the ground water is not diminished.

254.600. Monitoring.

254.610. Each person who conducts in situ processing activities will monitor the quality and quantity of surface and ground water and the subsurface flow and storage characteristics, in a manner approved by the Division under R614-301-731.100 through R614-301-731.522 and R614-301-731.800, to measure changes in the quantity and quality of water in surface and ground water systems in the permit area and in adjacent areas.

254.620. Air and water quality monitoring will be conducted in accordance with monitoring programs approved by the Division as necessary according to appropriate federal and Utah air and water quality standards.

260. Coal Processing Plants Not Located Within the Permit Area of a Mine.

261. R614-302-260 applies to any person who operates or intends to operate a coal processing plant outside the permit area of any coal mining and reclamation

operation, other than such plants which are located at the site of ultimate coal use. Any person who operates such a processing plant will obtain a permit from the Division in accordance with the requirements of R614-302-260.

262. Any application for a permit that includes operations covered by R614-302-260 will contain an operation and reclamation plan which specifies plans, including descriptions, maps, and cross sections, of construction, operation, maintenance, and reclamation of the processing plant and support facilities located incident thereto or resulting therefrom. The applicant will demonstrate that those operations will be conducted in compliance with R614-302-264.

263. No permit will be issued for any operation covered by R614-302-260, unless the Division finds in writing that, in addition to meeting all other applicable requirements of R614-200, R614-300, R614-301, R614-302-100 through R614-302-290, R614-302-310, R614-302-320, and R614-303, the operations will be conducted in compliance with the requirements of R614-302-264.

264. Performance Standards. Construction, operation, maintenance, modification, reclamation, and reclamation activities at coal processing plants will comply with the requirements listed below.

264.100. Signs and markers for the coal processing plant, coal processing waste disposal area, and water treatment facilities will comply with R614-301-521.200.

264.200. Surface drainage will be controlled according to the following:

264.210. Any stream channel diversion will comply with R614-301-742.300;

264.220. Drainage from any disturbed area related to the coal processing plant will comply with R614-301-356.300, R614-301-532, R614-301-742.100 through R614-301-742.240, R614-301-744, and R614-301-743.200 and all discharges from these areas will meet the requirements of R614-301-731.100 through R614-301-731.522, R614-301-731.800, and R614-301-751 and any other applicable Utah or federal law; and

264.230. Permanent impoundments associated with coal processing plants will meet the requirements of R614-301-512.240, R614-301-514.300, R614-301-515.200, R614-301-533.100 through R614-301-533.600, R614-301-542.400, R614-301-733.220 through R614-301-733.224, and R614-301-743.

Dams constructed of or impounding coal processing waste will comply with R614-301-536.400 and R614-301-746.300.

264.300. Disposal of coal processing waste, noncoal mine waste, and excess spoil will comply with R614-301-210 through R614-301-212, R614-301-412.300, R614-301-512.210 through R614-301-512.230, R614-301-513.400, R614-301-513.800, R614-301-514.100, R614-301-514.200, R614-301-515.200, R614-301-528.310, R614-301-528.322 through R614-301-528.323, R614-301-528.320, R614-301-528.330, R614-301-535.100 through R614-301-535.130, R614-301-535.300 through R614-301-535.500, R614-301-536 through R614-301-536.200, R614-301-536.300 through R614-301-536.500, R614-301-536.900, R614-301-542.720 through R614-301-542.740, R614-301-553.240 through R614-301-553.250, R614-301-745.100, R614-301-745.300 through R614-301-745.400, R614-301-746.100 through R614-301-746.300, and R614-301-747.

264.400. Fish, wildlife, and related environmental values will be protected in accordance with R614-301-333, R614-301-342, and R614-301-358.

264.500. Support facilities related to the coal processing plant will comply with R614-301-526.220 and roads will comply with R614-301-358, R614-301-512.250, R614-301-527.100, R614-301-527.230, R614-301-514.100, R614-301-532.200, R614-301-534.300, R614-301-542.600, R614-301-542.110, R614-301-542.120, R614-301-552.200, and R614-301-562.

264.600. Cessation of operations will be in accordance with R614-301-513.500 and R614-301-541.100 through R614-301-541.300.

264.700. Erosion and air pollution attendant to erosion will be controlled in accordance with R614-301-244.100 and R614-301-244.300.

264.800. Adverse effects upon, or resulting from, nearby underground coal mining activities will be minimized by appropriate measures including, but not limited to, compliance with R614-301-513.500 and R614-301-523.200.

264.900. Reclamation will follow proper topsoil handling, backfilling and grading, revegetation and postmining and use procedures in accordance with R614-301-232 through R614-301-233.100, R614-301-234, R614-301-242, R614-301-244.200, R614-301-352 through R614-301-357, R614-301-413, R614-301-512.260, R614-301-537.200, R614-301-553, and R614-302-271.

270. Variances from Approximate Original Contour Restoration Requirements.

271. The Division may issue approval of an application, a permit for nonmountaintop removal mining in steep-slope areas which includes a variance from the requirements of R614-301-537.200, R614-301-552 through R614-301-553.230, R614-301-553.260 through R614-301-553.420, R614-301-553.600 through R614-301-553.900, and R614-302-234 to restore the disturbed areas to their approximate original contour. The permit may contain such a variance only if the Division finds, in writing, that the applicant has demonstrated, on the basis of a complete application, that the following requirements are satisfied:

271.100. The alternative postmining land use requirements of R614-301-413.300 are met.

271.200. All applicable requirements of the State Program, other than the requirements to restore disturbed areas to their appropriate original contour are met.

271.300. After consultation with the appropriate land use agencies, if any, the potential use is shown to constitute an equal or better economic or public use.

271.400. Federal, Utah, and local government agencies with an interest in the proposed land use have had an adequate period of time in which to review and comment on the proposed use.

271.500. After reclamation, the lands to be affected by the variance within the permit area will be suitable for an industrial, commercial, residential or public postmining land use including recreational facilities;

271.600. The surface landowner of the land within the permit area has knowingly requested, in writing, as part of the permit application, that a variance be granted so as to render the land, after reclamation, suitable for an industrial, commercial, residential or public use including recreational facilities. The request will be made separately from any surface owner consent given for the operations under R614-301-114 and will show an understanding that the variance could not be granted without the owner's request.

271 700 The watershed of lands within the proposed permit and adjacent areas will be improved by the coal mining and reclamation operations when compared with the condition of the watershed before mining or with its condition if the approximate original contour were to be restored. The watershed will be deemed improved only if

271 710 The amount of total suspended solids or other pollutants discharged to ground or surface water from the permit area will be reduced so as to improve the public or private uses or the ecology of such water or flood hazards within the watershed containing the permit area will be reduced by reduction of the peak flow discharge from precipitation events or thaws and

271 720 The total volume of flow from the proposed permit area during every season of the year will not vary in a way that adversely affects the ecology of any surface water or any existing or planned use of surface or ground water

271 800 Engineering The proposed design plan for the variance will be prepared and certified as described under R614 301 512 260. The proposed design plan will also meet the following requirements

271 810 Unless the highwall is determined to be retained under R614 301 512 650 the highwall will be completely backfilled with spoil material in a manner which results in a static factor of safety at least 1.3 using standard geotechnical analysis and

271 820 Only the amount of spoil as is necessary to achieve the postmining land use ensure the stability of spoil retained on the bench and meet all other requirements of the Act and R614 Rules will be placed on the mine bench. All spoil not retained on the bench will be placed in accordance with R614 301 211, R614 301 212, R614 301 412 300, R614 301 512 210, R614 301 512 220, R614 301 514 100, R614 301 528 310, R614 301 535 100 through R614 301 535 130, R614 301 535 300 through R614 301 535 500, R614 301 536 300, R614 301 542 720, R614 301 553 240, R614 301 745 100, R614 301 745 300 and R614 301 745 400 and

271 900 After Division approval the watershed of the permit and adjacent areas is shown to be improved

272 If a variance is granted under R614 302 270

272 100 The requirements of R614 302 270 will be included as a specific condition of the permit and

272 200 The permit will be specifically marked as containing a variance from approximate original contour

273 A permit incorporating a variance under R614 302 270 will be reviewed by the Division at least every 30 months following the issuance of the permit to evaluate the progress and development of the coal mining and reclamation operations to establish that the operator is proceeding in accordance with the terms of the variance

274 If the permittee demonstrates to the Division that the coal mining and reclamation operation has been and continues to be conducted in compliance with the terms and conditions of the permit the requirements of the Act, the R614 Rules and the State Program the review specified in R614 302 273 need not be held

275 The terms and conditions of a permit incorporating a variance under R614 302 270 may be modified at any time by the Division if it determines that more stringent measures are necessary to ensure that the operations involved are conducted in compliance with the requirements of the State Program

280 Variances for Delay in Contemporaneous Reclamation Requirement in Combined SURFACE MINING AND UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES

281 Applicability R614 302 280 applies to a person or persons conducting or intending to conduct combined SURFACE and UNDERGROUND MINING AND RECLAMATION ACTIVITIES if a variance is requested from the contemporaneous reclamation requirements of R614 301 352

282 Application Contents for Variances Any person desiring a variance under R614 302 280 will submit with the Division complete applications for both SURFACE COAL MINING AND RECLAMATION ACTIVITIES AND UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES which are combined. The reclamation and operation plans for these permits will contain appropriate narrative maps and plans which

282 100 Show why the proposed UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES are necessary or desirable to achieve maximum practical recovery of the coal

282 200 Show how multiple future disturbances of surface lands or waters will be avoided

282 300 Identify the specific surface areas in which a variance is sought and the sections of the State Program from which a variance is being sought

282 400 Show how the activities will comply with R614 301 513 700 and R614 301 523 200 and other applicable requirements of the State Program, and

282 500 Show why the variance sought is necessary for the implementation of the proposed UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES

282 600 Provide an assessment of the adverse environmental consequences and damages if any, that will result if the reclamation of disturbed areas is delayed and

282 700 Show how offsite storage of spoil will be conducted to comply with the requirements of the Act R614 301 211, R614 301 212, R614 301 412 300, R614 301 512 210, R614 301 512 220, R614 301 514 100, R614 301 528 310, R614 301 535 100 through R614 301 535 130, R614 301 535 300 through R614 301 535 500, R614 301 536 300, R614 301 542 720, R614 301 553 240, R614 301 745 100, R614 301 745 300, R614 301 745 400 and the State Program

283 Issuance of Permit A permit incorporating a variance under R614 302 280 may be issued by the Division if it first finds in writing upon the basis of a complete application filed in accordance with R614 302 280 that

283 100 The applicant has presented as part of the permit application specific feasible plans for the proposed UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES

283 200 The proposed UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES are necessary or desirable to assure maximum practical recovery of the mineral resource and will avoid multiple future disturbances of surface land or waters,

283 300 The applicant has satisfactorily demonstrated that the applications for the SURFACE COAL MINING AND RECLAMATION ACTIVITIES AND UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES conform to the requirements of the State Program

283 400 The disturbed area proposed for the variance has been shown by the applicant to be necessary for implementing the proposed UNDERGROUND

COAL MINING AND RECLAMATION ACTIVITIES

283 500 No substantial adverse environmental damage either onsite or offsite will result from the delay in completion of reclamation otherwise required by R614 301, R614 302 and the State Program

283 600 The operations will insulate a variance authorized to be conducted in compliance with the requirements of R614 301 513 700, R614 301 512 200 and the State Program

283 700 Provisions for offsite storage of spoil will comply with the requirements of R614 301 211, R614 301 212, R614 301 412 300, R614 301 512 210, R614 301 512 220, R614 301 514 100, R614 301 514 310, R614 301 535 100 through R614 301 535 130, R614 301 535 300 through R614 301 535 500, R614 301 536 300, R614 301 542 720, R614 301 553 240, R614 301 745 100, R614 301 745 300, R614 301 745 400 and the State Program

283 800 Liability under the performance bond required to be filed by the applicant with the Division pursuant to R614 301 600 and the State Program will be for the duration of the UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES and until all requirements of R614 301 500 and the State Program have been complied with and

283 900 The permit for the coal mining and reclamation operation contains specific conditions

283 910 Delineating the particular surface areas for which a variance is authorized

283 920 Identifying the applicable provisions of R614 Rules and the State Program and

283 930 Providing a detailed schedule for compliance with the provisions of R614 302 50

284 Review of Permits Containing Variances Permits to conduct coal mining and reclamation operations that contain variances granted under R614 302 280 will be reviewed by the Division no later than three years from the dates of issuance of the permit and any permit renewals

290 Small Operator Assistance Program (SOAP)

291 General Information on SOAP The rules in R614 302 290 describe the Small Operator Assistance Program (SOAP) and govern the procedures for providing assistance to eligible small mine operators who request assistance under Section 40 10 103 of the Act for

291 100 The determination of the probable hydrologic consequences of mining and reclamation under Section 40 10 102(c) of the Act and

291 200 The statement of physical and chemical analyses of test borings or core samples under Section 40 10 102(d) of the Act

292 Objectives The objectives of this part are to meet the intent of Section 40 10 103 of the Act by

292 100 Providing financial and other necessary assistance to qualified small operators and

292 200 Assuring that the Division will have sufficient information to make a reasonable assessment of the probable cumulative impacts of all anticipated mining upon the hydrology of the area and particularly upon water availability

293 Financial Assistance The Division will provide financial and other assistance under Section 40 10 103 of the Act contingent upon receipt of funding

293 100 Assistance Funding

293 110 Use of Funds Funds specifically authorized for SOAP will be used to provide the services specified in R614 302 299 and will not be used to cover administrative expenses

293 120 Allocation of Funds The Division Mined Land Reclamation Program Administrator hereinafter referred to as the Program Administrator will establish a formula for allocating funds to provide services for eligible small operators if available funds are less than those required to provide the services pursuant to R614 302 290

293 200 Applicability

293 300 The applicant will reimburse the Division for the cost of the financial services performed pursuant to R614 302 290 1

293 400 The applicant submits false information fails to submit a permit application within one year from the date of receipt of the approved laboratory report or fails to mine after obtaining a permit

293 500 The program administrator finds that the applicant's actual and attributed annual production of coal for all locations exceeds 100,000 tons during any consecutive 12-month period either during the term of the permit or which assistance is provided or during the first five years after issuance of the permit whichever is later

293 600 The permit is sold, transferred or is signed to another person and the transferee's total actual and attributed production exceeds the 100,000 ton annual production limit during any consecutive 12-month period of the remaining term of the permit under R614 302 290 1 the applicant and the transferee are jointly and severally obligated to reimburse the Division

293 700 The Division may waive the reimbursement obligation if it finds that the applicant at all times acted in good faith

291 Responsibilities of the Division The Division will

291 100 Review requests for assistance and determine qualified operators

291 200 Develop and maintain a list of qualified laboratories and select and pay laboratories for services rendered

291 300 Conduct periodic onsite evaluations of SOAP activities with the operator

291 400 Participate with the Office in data coordination activities with the U.S. Geological Survey, U.S. Environmental Protection Agency and other appropriate agencies or institutions and

291 500 Insure that applicable equal opportunity in employment provisions are included within any contract or other procurement documents

293 Qualified Laboratories

293 100 Basic Qualifications To be designated a qualified laboratory a firm will demonstrate that it

293 110 Is staffed with experienced professional or technical personnel in the fields applicable to the work to be performed

293 120 Has adequate space for material preparation and cleaning and sterilizing equipment and stationary equipment storage and space to accommodate workloads during peak periods

293 130 Meets applicable Federal or Utah safety and health requirements

293 140 Has analytical monitoring and measuring equipment capable of meeting applicable standards

293 150 Has the capability of collecting necessary field samples and making hydrologic field measurements and analytical laboratory determinations acceptable hydrologic, geologic or analytical method in accordance with the requirements of R614 301 62 through R614 301 623 200, R614 301 624 through R614 301 626, R614 301 723, R614 301 724 10 through R614 301 724 120, R614 301 724 300, R614

301-725 through R614-301-729.200, R614-301-731, R614-301-731.210 through R614-301-731.213, R614-301-731.220 through R614-301-731.223, and any other applicable provisions of the R614 Rules. Other appropriate methods or guidelines for data acquisition may be approved by the program administrator; and

295.160. Has the capability of performing services for either the determination or statement referenced in R614-302-299.200.

295.200. Subcontractors. Subcontractors may be used to provide some of the required services provided their use is identified at the time a determination is made that a firm is qualified and they meet requirements specified by the Division.

296. Eligibility for Assistance.

296.100. Applicants are eligible for assistance if they:

296.110. Intend to apply for a permit pursuant to the State Program;

296.120. Establish that their probable total actual and attributed production from all locations during any consecutive 12-month period either during the term of their permit or during the first five years after issuance of their permit, whichever period is shorter, will not exceed 100,000 tons. Production from the following operations will be attributed to the applicant:

296.121. The pro rata share, based upon percentage of ownership of applicant, of coal produced by operations in which the applicant owns more than a five percent interest;

296.122. The pro rata share, based upon percentage of ownership of applicant, of coal produced in other operations by persons who own more than five percent of the applicant's operation;

296.123. All coal produced by operations owned by persons who directly or indirectly control the applicant by reason of direction of the management; and

296.124. All coal produced by operations owned by members of the applicant's family and the applicant's relatives, unless it is established that there is no direct or indirect business relationship between or among them;

296.130. Are not restricted in any manner from receiving a permit under the State Program; and

296.140. Do not organize or reorganize their company solely for the purpose of obtaining assistance under the SOAP.

296.200. The Division may provide alternate criteria or procedures for determining the eligibility of an operator for assistance under SOAP, provided that such criteria may not be used as a basis for grant requests in excess of that which would be authorized under the criteria of R614-302-296.100.

297. Filing for Assistance. Each application for assistance will include the following information:

297.100. A statement of the operator's intent to file a permit application;

297.200. The names and addresses of:

297.210. The permit applicant; and

297.220. The operator if different from the applicant;

297.300. A schedule of the estimated total production of coal from the proposed permit area and all other locations from which production is attributed to the applicant under R614-302-296. The schedule will include for each location:

297.310. The operator or company name under which coal is or will be mined;

297.320. The permit number and MSHA number;

297.330. The actual coal production during the year preceding the year for which the applicant applies for assistance and production that may be attributed to the applicant under R614-302-296; and

297.340. The estimated coal production and any production which may be attributed to the applicant for each year of the proposed permit;

297.400. A description of:

297.410. The proposed method of coal mining;

297.420. The anticipated starting and termination dates of coal mining and reclamation operations;

297.430. The number of acres of land to be affected by the proposed coal mining and reclamation operation; and

297.440. A general statement on the probable depth and thickness of the coal resource including a statement of reserves in the permit area and the method by which they were calculated.

297.500. A U.S. Geological Survey topographic map at a scale of 1:24,000 or larger or other topographic map of equivalent detail which clearly shows:

297.510. The area of land to be affected;

297.520. The location of any existing or proposed test borings; and

297.530. The location and extent of known workings of any underground mines; and

297.600. Copies of documents which show that:

297.610. The applicant has a legal right to enter and commence mining within the permit area; and

297.620. A legal right of entry has been obtained for the program administrator and laboratory personnel to inspect the lands to be mined and adjacent areas to collect environmental data or to install necessary instruments.

298. Application Approval and Notice.

298.100. If the program administrator finds the applicant eligible, then the applicant will be informed in writing that the application is approved.

298.200. If the program administrator finds the applicant ineligible, then the applicant will be informed in writing that the application is denied. The notice of denial will state the reasons for denial.

299. Program Services and Data Requirements.

299.100. To the extent possible with available funds, the program administrator will select and pay a qualified laboratory to make the determination and statement referenced in R614-302-299.200 for eligible operators who request assistance.

299.200. The program administrator will determine the data needed for each applicant or group of applicants. Data collected and the results provided to the program administrator will be sufficient to satisfy the requirements for:

299.210. The determination of the probable hydrologic consequences of the coal mining and reclamation operations in the proposed permit area and adjacent areas in accordance with R614-301-728 and any other applicable provisions of the R614 Rules; and

299.220. The statement of the results of test borings or core samplings for the proposed permit area in accordance with R614-301-624 and any other applicable provisions of the R614 Rules.

299.300. Data collection and analysis may proceed concurrently with the development of mining and reclamation plans by the operator.

299.400. Data collected under this program will be made publicly available in accordance with R614-300-124.

R614-302-300. Special Areas of Mining.

The rules in R614-302-300 present the minimum requirements for information to be included in the

permit application to conduct coal mining and reclamation operations for mining in designated special areas and present procedures to process said permit applications.

310. Prime Farmland. R614-302-300 applies to any person who conducts or intends to conduct coal mining and reclamation operations on prime farmlands historically used for cropland.

311. The rules given under R614-302-300 do not apply to:

311.100. Lands on which coal mining and reclamation operations are conducted pursuant to any permit issued prior to August 3, 1977; or

311.200. Lands on which coal mining and reclamation operations are conducted pursuant to any renewal or revision of a permit issued prior to August 3, 1977; or

311.300. Lands included in any existing coal mining and reclamation operations for which a permit was issued for all or any part thereof prior to August 3, 1977, provided that:

311.310. Such lands are part of a single continuous coal mining and reclamation operation begun under a permit issued before August 3, 1977; and

311.320. The permittee had a legal right to mine the lands prior to August 3, 1977, through ownership, contract, or lease but not including an option to buy, lease, or contract; and

311.330. The lands contain part of a continuous recoverable coal seam that was being mined in a single continuous mining pit (or multiple pits if the lands are proven to be part of a single continuous surface coal mining and reclamation activity) begun under a permit issued prior to August 3, 1977.

312. For purposes of R614-302-300:

312.100. A pit will be deemed to be a single continuous mining pit even if portions of the pit are crossed by a road, pipeline, railroad, or powerline or similar crossing; and

312.200. A single continuous SURFACE COAL MINING AND RECLAMATION ACTIVITY is presumed to consist only of a single continuous mining pit under permit issued prior to August 3, 1977, but may include noncontiguous parcels if the operator can prove by clear and convincing evidence that, prior to August 3, 1977, the noncontiguous parcels were part of a single permitted operation. Clear and convincing evidence includes, but is not limited to, contracts, leases, deeds or other properly executed legal documents (not including options) that specifically treat physically separate parcels as one SURFACE COAL MINING AND RECLAMATION ACTIVITY.

313. Application Contents — Reconnaissance Inspection. All permit applications, whether or not prime farmland is present, will include the results of a reconnaissance inspection of the proposed permit area to indicate whether prime farmland exists. The Division in consultation with the SCS will determine the nature and extent of the required reconnaissance inspection.

313.100. If the reconnaissance inspection establishes that no land within the proposed permit area is prime farmland historically used for cropland, the applicant will submit a statement that no prime farmland is present. The statement will identify the basis upon which such a conclusion was reached.

313.200. If the reconnaissance inspection indicates that land within the proposed permit area may be prime farmland historically used for cropland, the applicant will determine if a soil survey exists for those lands and whether soil mapping units in the permit

area have been designated as prime farmland. If a soil survey exists, the applicant will have a soil survey made of the lands within the permit area which the reconnaissance inspection indicates could be prime farmland. Soil surveys of the detail used by the SCS for operational conservation planning will be used to identify and locate prime farmland soils.

313.210. If the soil survey indicates that no prime farmland soils are present within the proposed permit area, R614-302-313.100 will apply.

313.220. If the soil survey indicates that prime farmland soils are present within the proposed permit area, R614-302-314 will apply.

314. Application Contents — Prime Farmland. permit applications for areas in which prime farmland has been identified within the proposed permit area will include the following:

314.100. A soil survey of the permit area according to the standards of the National Cooperative Soil Survey and in accordance with the procedures set forth in U.S. Department of Agriculture Handbooks 436 "Taxonomy" U.S. Soil Conservation Service, 1975; amended on March 22, 1982 and October 5, 1982; 18, "Soil Survey Manual" U.S. Soil Conservation Service, 1951; as amended on December 18, 1951; May 7, 1950, May 9, 1980, September 11, 1980, June 9, 1981, June 29, 1981, November 16, 1982. The book establishes the standards of the National Cooperative Soil Survey and maintains a National Soils Handbook which gives current acceptable procedures for conducting soil surveys. This National Soils Handbook is available for review at area and Utah offices.

314.110. U.S. Department of Agriculture Handbooks 436 and 18 are incorporated by reference they exist on the date of adoption of the R614 Rules. Notices of changes made to these publications will be periodically published in the Federal Register.

314.120. The soil survey will include a description of soil mapping units and a representative soil profile as determined by the SCS, including, but not limited to, soil-horizon depths, pH, and the range of soil salinities for each prime farmland soil unit within the permit area. Other representative soil-profile descriptions from the locality, prepared according to standards of the National Cooperative Soil Survey may be used if their use is approved by the SCS. The Division may request operator to provide information on other physical chemical soil properties as needed to make a determination that the operator has the technological capability to restore the prime farmland within the permit area to the soil-reconstruction standard R614-302-317.

314.200. A plan for soil reconstruction, reclamation, and stabilization for the purpose of establishing the technological capability of the mine operator to comply with the requirements of R614-302-314.300. Scientific data, such as agricultural school studies, for areas with comparable soils, and management that demonstrate that proposed method of reclamation, including the use of soil mixtures or substitutes, if any, will achieve within a reasonable time, levels of yield equivalent to, or higher than, those of nonmined prime farmland in the surrounding area; and

314.400. The productivity prior to mining, including the average yield of food, fiber, forage, or products obtained under a high level of management.

315. Consultation with Secretary of Agriculture. The Secretary of Agriculture has responsibility with respect to prime farmland soils and has assisted

the prime farmland responsibilities arising under the Federal Act to the Chief of the SCS. The SCS will carry out consultation and review through the State Conservationist located in Utah.

315.100. The State Conservationist will provide to the Division a list of prime farmland soils, their location, physical and chemical characteristics, crop yields, and associated data necessary to support adequate prime farmland soil descriptions.

315.200. The State Conservationist will assist the Division in describing the nature and extent of the reconnaissance inspection required under R614-302-313.

315.300. Before any permit is issued for areas that include prime farmland, the Division will consult with the State Conservationist. The State Conservationist will provide for the review of, and comment on, the proposed method of soil reconstruction in the plan submitted under R614-302-314. If the State Conservationist considers those methods to be inadequate, then revisions will be suggested to the Division which result in more complete and adequate reconstruction.

316. Issuance of Permit. A permit to conduct coal mining and reclamation operations that include mining and reclamation on designated special areas of prime farmland may be granted by the Division, if it first finds, in writing, upon the basis of a complete application, that:

316.100. The approved proposed postmining land use of these prime farmlands will be cropland;

316.200. The permit incorporates as specific conditions the contents of the plan submitted under R614-302-314, after consideration of any revisions to that plan suggested by the State Conservationist under R614-302-315.300;

316.300. The applicant has the technological capability to restore the prime farmland, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management; and

316.400. The proposed coal mining and reclamation operations will be conducted in compliance with the requirements of R614-302-317 and other environmental protection performance and reclamation standards for mining and reclamation of prime farmland of the State Program.

317. Prime Farmland Performance Standards.

317.100. Scope and Purpose. The rules under R614-302-317 set forth special environmental protection performance, reclamation, and design standards for coal mining and reclamation operations on prime farmland.

317.200. Responsibilities of Agencies.

317.210. The SCS within Utah will establish specifications for prime farmland soil removal, storage, replacement, and reconstruction.

317.220. The Division will use the soil-reconstruction specifications of R614-302-317.210 to carry out its responsibilities under R614-302-310 through R614-302-316 and R614-301-800.

317.300. Applicability. The requirements of the R614-302-317 will not apply to prime farmland that has been excluded in accordance with R614-302-311 and R614-302-312.

317.400. Soil Removal and Stockpiling.

317.410. Prime farmland soils will be removed from the areas to be disturbed before drilling, blasting, or mining.

317.420. The minimum depth of soil and soil materials to be removed and stored for use in the recon-

struction of prime farmland will be sufficient to meet the requirements of R614-302-317.520.

317.430. Soil removal and stockpiling operations on prime farmland will be conducted to:

317.431. Separately remove the topsoil, or other suitable soil materials where such other materials will create a final soil having a greater productive capacity than that which exists prior to mining. If not utilized immediately, this material will be placed in stockpiles separate from the spoil and other excavated materials; and

317.432. Separately remove the B or C horizon, or other suitable soil material to provide the thickness of suitable soil required by R614-302-317.520. If not utilized immediately, each horizon or other material will be stockpiled separately from the spoil and other excavated materials. Where combinations of such soil materials created by mixing have been shown to be equally or more favorable for plant growth than the B horizon, separate handling is not necessary.

317.440. Stockpiles will be placed within the permit area where they will not be disturbed or be subject to excessive erosion. If left in place for more than 30 days, stockpiles will meet the requirements of R614-301-232, R614-301-233.100, R614-301-234, R614-301-242, and R614-301-243.

317.500. Soil Replacement.

317.510. Soil reconstruction specifications established by the SCS will be based upon the standards of the National Cooperative Soil Survey and will include, as a minimum, physical and chemical characteristics of reconstructed soils and soil descriptions containing soil-horizon depths, soil densities, soil pH, and other specifications such that reconstructed soils will have the capability of achieving levels of yield equal to, or higher than, those of nonmined prime farmland in the surrounding area.

317.520. The minimum depth of soil and substitute soil material to be reconstructed will be 48 inches, or a lesser depth equal to the depth to a subsurface horizon in the natural soil that inhibits or prevents root penetration, or a greater depth if determined necessary to restore the original soil productive capacity. Soil horizons will be considered as inhibiting or preventing root penetration if their physical or chemical properties or water-supplying capacities cause them to restrict or prevent penetration by roots of plants common to the vicinity of the permit area and if these properties or capacities have little or no beneficial effect on soil productive capacity.

317.530. The operator will replace and regrade the soil horizons or other root-zone material with proper compaction and uniform depth.

317.540. The operator will replace the B horizon, C horizon, or other suitable material specified in R614-302-317.432 to the thickness needed to meet the requirements of R614-302-317.520.

317.550. The operator will replace the topsoil or other suitable soil materials specified in R614-302-317.431 as the final surface soil layer. This surface soil layer will equal or exceed the thickness of the original, surface soil layer, as determined by the soil survey.

317.600. Revegetation and Restoration of Soil Productivity.

317.610. Following prime farmland soil replacement, the soil surface will be stabilized with a vegetative cover or other means that effectively controls soil loss by wind and water erosion.

317.620. Prime farmland soil productivity will be restored in accordance with the following provisions:

317.621. Measurement of soil productivity will be initiated within 10 years after completion of soil reconstruction;

317.622. Soil productivity will be measured on a representative sample or on all of the mined and reclaimed prime farmland area using the reference crop determined under R614-302-317.626. A statistically valid sampling technique at a 90-percent or greater statistical confidence level will be used as approved by the Division in consultation with the SCS;

317.623. The measurement period for determining average annual crop production (yield) will be a minimum of three crop years prior to release of the operator's performance bond;

317.624. The level of management applied during the measurement period will be the same as the level of management used on nonmined prime farmland in the surrounding area;

317.625. Restoration of soil productivity will be considered achieved when the average yield during the measurement period equals or exceeds the average yield of the reference crop established for the same period for nonmined soils of the same or similar texture or slope phase of the soil series in the surrounding area under equivalent management practices;

317.626. The reference crop on which restoration of soil productivity is proven will be selected from the crops most commonly produced on the surrounding prime farmland. Where row crops are the dominant crops grown on prime farmland in the area, the row crop requiring the greatest rooting depth will be chosen as one of the reference crops;

317.627. Reference crop yields for a given crop season are to be determined from:

317.627.1. The current yield records of representative local farms in the surrounding area, with concurrence by the SCS; or

317.627.2. The average county yields recognized by the U.S. Department of Agriculture, which have been adjusted by the SCS for local yield variation within the county that is associated with differences between nonmined prime farmland soil and all other soils that produce the reference crop; and

317.628. Under either procedure in R614-302-317.627, the average reference crop yield may be adjusted, with the concurrence of the SCS, for: 317.628.1. Disease, pest, and weather-induced seasonal variations; or

317.628.2. Differences in specific management practices where the overall management practices of the crops being compared are equivalent.

320. Alluvial Valley Floors. R614-302-320 applies to any person who conducts or intends to conduct coal mining and reclamation operations on areas or adjacent to areas designated as alluvial valley floors.

321. Alluvial Valley Floor Determination.

321.100. Before applying for a permit to conduct, or before conducting surface coal mining and reclamation operations within a valley holding a stream or in a location where the adjacent area includes any stream, the applicant shall either affirmatively demonstrate, based on available data, the presence of an alluvial valley floor, or submit to the Division the results of a field investigation of the proposed permit and adjacent area. The field investigations shall include sufficiently detailed geologic, hydrologic, land use, soils, and vegetation studies on areas required to be investigated by the Division, after consultation with the applicant, to enable the Division to make an evaluation regarding the existence of the probable alluvial valley floor in the proposed permit or adja-

cent area and to determine which areas, if any, require more detailed study in order to allow the Division to make a final determination regarding the existence of an alluvial valley floor.

321.200. Studies performed during the investigation by the applicant or subsequent studies as required of the applicant by the Division shall include an appropriate combination, adapted to site-specific conditions, of:

321.210. Mapping of unconsolidated stream-laid deposits holding streams including, but not limited to, geologic maps of unconsolidated deposits, and stream-laid deposits, maps of streams, delineation of surface watersheds and directions of shallow groundwater flows through and into the unconsolidated deposits, topography showing local and regional terrace levels, and topography of terraces, flood plains and channels showing surface drainage patterns;

321.220. Mapping of all lands included in the area in accordance with R614-302-321 and subject to agricultural activities, showing the area in which different types of agricultural lands, such as flood irrigated lands, pasture lands and undeveloped rangelands, exist, and accompanied by measurements of vegetation in terms of productivity and type;

321.230. Mapping of all lands that are currently or were historically flood irrigated, showing the location of each diversion structure, ditch, dam and related reservoir, irrigated land, and topography of those lands.

321.240. Documentation that areas identified in R614-302-321 are, or are not, subirrigated, based on groundwater monitoring data, representative water quality, soil moisture measurements, and measurements of rooting depth, soil mottling, and water requirements of vegetation.

321.250. Documentation, based on representative sampling, that areas identified under R614-302-321 are, or are not, flood irrigable, based on streamflow water quality, water yield, soils measurements, and topographic characteristics; and

321.260. Analysis of a series of aerial photographs including color infrared imagery flown at a time of year to show any late summer and fall difference between upland and valley floor vegetative growth and of a scale adequate for reconnaissance identification of areas that may be alluvial valley floors.

321.300. Based on the investigations conducted under R614-302-321.200, the Division will make a determination of the extent of any alluvial valley floor within the study area and whether any stream in the study area may be excluded from further consideration as lying within an alluvial valley floor. The Division will determine that an alluvial valley floor exists if it finds that:

321.310. Unconsolidated stream-laid deposits holding streams are present; and,

321.320. There is sufficient water to support agricultural activities as evidenced by

321.321. The existence of flood irrigation in the area in question or its historical use;

321.322. The capability of an area to be flood irrigated, based on streamflow water yield, soils, water quality, and topography; or

321.323. Subirrigation of the lands in question, derived from the groundwater system of the valley floor.

322. Application Contents for Operations Affecting Designated Alluvial Valley Floors.

322.100. If land within the permit area or adjacent area is identified as an alluvial valley floor and the proposed coal mining and reclamation operation ma-

affect an alluvial valley floor or waters supplied to an alluvial valley floor the applicant will submit a complete application for the proposed coal mining and reclamation operation to be used by the Division together with other relevant information including the information required by R614 302 321 as a basis for approval or denial of the permit.

322 200 The complete application will include detailed surveys and baseline data required by the Division for a determination of

322 210 The characteristics of the alluvial valley floor which are necessary to preserve the essential hydrologic functions throughout the mining and reclamation process

322 220 The significance of the area to be affected to agricultural activities

322 230 Whether the operation will cause or presents an unacceptable risk of causing material damage to the quantity or quality of surface or groundwaters that supply the alluvial valley floor

322 240 The effectiveness of proposed reclamation with respect to requirements of the State Program and

322 250 Specific environmental monitoring required to measure compliance with R614 302 324 during and after coal mining and reclamation operations

322 300 Information required under R614 302 322 shall include but not be limited to

322 310 Geologic data including geologic structure and surficial geologic maps and geologic cross sections

322 320 Soils and vegetation data including a detailed soil survey and chemical and physical analysis of soils a vegetation map and narrative descriptions of quantitative and qualitative surveys and land use data including an evaluation of crop yields

322 330 Surveys and data required under R614 302 322 for areas designated as alluvial valley floors because of their flood irrigation characteristics will also include at a minimum surface hydrologic data including streamflow runoff sediment yield and water quality analysis describing seasonal variations over at least one full year field geomorphic surveys and other geomorphic studies

322 340 Surveys and data required under R614 302 322 for areas designated as alluvial valley floors because of their subirrigation characteristics will also include at a minimum geohydrologic data including observation well establishment for purposes of water level measurements groundwater contour maps testing to determine aquifer characteristics that affect waters supplying the alluvial valley floors well and spring inventories and water quality analysis describing seasonal variations over at least one full year and physical and chemical analysis of overburden to determine the effect of the proposed coal mining and reclamation operations on water quality and quantity

322 350 Plans showing how the operations will avoid during mining and reclamation interruption discontinuance or preclusion of farming on the alluvial valley floors unless the premining land use has been undeveloped rangeland which is not significant to farming and will not materially damage the quantity or quality of water in surface and groundwater systems that supply alluvial valley floors

322 360 Maps showing farms that could be affected by the mining and if any farm includes an alluvial valley floor statements of the type and quantity of agricultural activity performed on the alluvial valley floor and its relationship to the farms total

agricultural activity including an economic analysis and

322 370 Such other data as the Division may require

322 400 The surveys required by R614 302 322 should identify those geologic hydrologic and hydrologic characteristics of the alluvial valley floor necessary to support the essential hydrologic functions of an alluvial valley floor Characteristics which support the essential hydrologic functions and must be evaluated in a complete application but are not limited to

322 410 Characteristics supporting the function of collecting water which include but are not limited to

322 411 The amount and rate of runoff and water balance analysis with respect to rain evapotranspiration infiltration and groundwater recharge

322 412 The relief slope and density of the work of drainage channels

322 413 The infiltration permeability porosity and transmissivity of unconsolidated deposits of valley floor that either constitute the aquifer associated with the stream or lie between the aquifer and the stream and

322 414 Other factors that affect the interchange of water between surface streams and groundwater systems including the depth to groundwater the direction of groundwater flow the extent to which the stream and associated alluvial groundwater aquifer provide recharge to or are recharged by bedrock aquifers

322 420 Characteristics supporting the function of storing water which include but are not limited to

322 421 Roughness slope and vegetation of the channel flood plain and low terraces that retard the flow of surface waters

322 422 Porosity permeability waterholding capacity saturated thickness and volume of aquifers associated with streams including alluvial aquifer perched aquifers and other water bearing zones found beneath valley floors and

322 423 Moisture held in soils or the plant growth medium within the alluvial valley floor and the physical and chemical properties of the subsoil that provide for sustained vegetation growth or cover during extended periods of low precipitation

322 430 Characteristics supporting the function of regulating the flow of water which include but are not limited to

322 431 The geometry and physical character of the valley expressed in terms of the longitudinal profile and slope of the valley and the channel the sinuosity of the channel the cross section slopes and proportions of the channels flood plains and low terraces the nature and stability of the stream banks and the vegetation established in the channels and along the stream banks and flood plains

322 432 The nature of surface flows as shown by the frequency and duration of flows of representative magnitude including low flows and floods and

322 433 The nature of interchange of water between streams their associated alluvial aquifers and any bedrock aquifers as shown by the rate and amount of water supplied by the stream to associated alluvial and bedrock aquifers (i.e. recharge) and by the rates and amounts of water supplied by aquifers to the stream (i.e. baseflow) and

322 500 Characteristics which make water available and which include but are not limited to the presence of land forms including flood plains and terraces suitable for agricultural activities

323 Findings

323 100 No permit or permit on large application for coal mining and reclamation operations in Utah will be approved by the Division unless the applicant demonstrates and the Division finds in writing on the basis of information set forth in the application that

323 110 The proposed operations would not interrupt discontinuance or preclude farming on an alluvial valley floor unless the premining land use has been undeveloped rangeland which is not significant to farming on the alluvial valley floor or unless the area of an affected alluvial valley floor is small and provides or may provide negligible support for production of one or more farms provided however R614 302 323 100 does not apply to those lands which were identified in a reclamation plan approved by the State Program prior to August 3 1977 for any coal mining and reclamation operation that in the year preceding August 3 1977

323 111 Produced coal in commercial quantities and was located within or adjacent to alluvial valley floors or

323 112 Obtained specific permit approval by the Division to conduct coal mining and reclamation operations within an alluvial valley floor

323 120 The proposed operations would not materially damage the quantity and quality of water in surface and underground water systems that supply those alluvial valley floors or portions of alluvial valley floors which are

323 121 Included in R614 302 323 110 or

323 122 Outside the permit area of an existing or proposed coal mining and reclamation operation

323 130 The proposed operations would be conducted in accordance with all applicable requirements of the State Program and

323 140 Any change in the land use of the lands covered by the proposed permit area from its premining use in or adjacent to alluvial valley floors will not interfere with or preclude the reestablishment of the essential hydrologic functions of the alluvial valley floor

323 200 The significance of the impact of the proposed operations on farming will be based on the relative importance of the vegetation and water of the developed grazed or hayed alluvial valley floor area to the farm's production or any more stringent criteria established by the Division as suitable for site specific protection of agricultural activities in alluvial valley floors The effect of the proposed operations on farming will be concluded to be significant if they would remove from production over the life of the mine a proportion of the farm's production that would decrease the expected annual income from agricultural activities normally conducted at the farm

323 300 Criteria for determining whether a coal mining and reclamation operation will materially damage the quantity or quality of waters subject to R614 302 323 110 and R614 302 323 120 include but are not limited to

323 310 Potential increases in the concentration of total dissolved solids of waters supplied to an alluvial valley floor as measured by specific conductance in millimhos to levels above the threshold value at which crop yields decrease as specified in Mias and Hoffman Crop Salt Tolerance - Current Assessment Table 1 Salt Tolerance of Agricultural Crops unless the applicant demonstrates compliance with R614 302 323 120

323 311 Salt tolerances for agricultural crops have been published by F V Mias and F Hoffman in a

paper titled Crop Salt Tolerance - Current Assessment continued in the Journal of the Irrigation and Drainage Division American Society of Civil Engineers pages 115 through 134 June 1970 Table 1 giving threshold salinity values is presented on page 22 through 23

323 312 The Mias and Hoffman publication is available and available for inspection and copying at the Division office

323 320 Potential increases in the concentration of total dissolved solids of waters supplied to an alluvial valley floor as measured by specific conductance reference in R614 302 323 310 will not be considered unless the applicant demonstrates through a mine reclamation plan that the mine reclamation will not materially reduce the amount of recharge to the alluvial valley floors

323 330 Potential increases in the concentration of total dissolved solids of waters supplied to an alluvial valley floor as measured by specific conductance reference in R614 302 323 310 will not be considered unless the applicant demonstrates through a mine reclamation plan that the mine reclamation will not materially reduce the amount of recharge to the alluvial valley floors

323 340 Potential increases in the average depth to water saturated zones during the growing cycle located within the permit area of the alluvial valley floor that would reduce the amount of recharge to and impair the premining conditions

323 350 Potential increases in the average depth to water saturated zones during the growing cycle located within the permit area of the alluvial valley floor that would reduce the amount of recharge to and impair the premining conditions

323 360 Potential increases in the average depth to water saturated zones during the growing cycle located within the permit area of the alluvial valley floor that would reduce the amount of recharge to and impair the premining conditions

323 370 Potential increases in the average depth to water saturated zones during the growing cycle located within the permit area of the alluvial valley floor that would reduce the amount of recharge to and impair the premining conditions

323 400 For the purposes of R614 302 323 110 the term "farm" means a unit of land on which agricultural activities are conducted A farm is generally considered to be the combination of land units with acreage at boundaries in existence prior to August 3 1977 or established after August 3 1977 with those boundaries based on enhancement of the farms agricultural productivity and not related to coal mining and reclamation operations

324 Performance Standards

324 100 Essential Hydrologic Functions

324 110 The operator of a coal mining and reclamation operation will minimize disturbances to the hydrologic balance by preserving throughout the mining and reclamation process the essential hydrologic functions of an alluvial valley floor not with the permit area

324 120 The operator of a coal mining and reclamation operation will minimize disturbances to the hydrologic balance within the permit area by reestablishing throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors

324 200 Protection of Agricultural Activities

324 210 Prohibitions Coal mining and reclamation operations will not

324 211 Interrupt discontinuance or preclude farming on alluvial valley floors or

324 212 Cause material damage to the quantity quality of water in surface or underground water systems that supply alluvial valley floors

324 220 Statutory Exclusions The prohibitions R614 302 324 210 will not apply

324 221 Where the premining land use of an alluvial valley floor is undeveloped rangeland which is not significant to farming

324 222 Where farming on the alluvial valley floor that would be affected by the coal mining and reclamation operation is of such small acreage as to be of negligible impact on the farm's agricultural production.

324 223 1 Produced coal in commercial quantities and was located within or adjacent to a alluvial alluv floor or

324 223 2 Obtained specific permit approval by the Division to conduct coal mining and reclamation operations within an alluvial valley floor or

324 224 To any land that is the subject of an application for renewal or revision of a permit issued pursuant to the Act which is an extension of the original permit insofar as

324 224 1 The land was previously identified in a reclamation plan submitted under R614 301 and

324 224 2 The original permit area was excluded from the protection of R614 302 324 210 for a reason set forth in R614 302 324 223

324 300 Monitoring

324 310 A monitoring system will be installed maintained and operated by the permittee on all alluvial valley floors during coal mining and reclamation operations and continued until all bonds are released in accordance with R614 301 800. The monitoring system will provide sufficient information to allow the Division to determine that

324 311 The essential hydrologic functions of alluvial valley floors are being preserved outside the permit area or reestablished within the permit area throughout the mining and reclamation process in accordance with R614 302 324 100

324 312 Farming on lands protected under R614 302 324 200 is not being interrupted discontinued or precluded and

324 313 The operation is not causing material damage to the quantity or quality of water in the surface or underground systems that supply alluvial valley floors protected under R614 302 324 200

324 320 Monitoring will be conducted at adequate frequencies to indicate long term trends that could affect compliance with R614 302 324 100 and R614 302 324 200

324 330 All monitoring data collected and analyses thereof will routinely be made available to the Division

1990

40-10-1 et seq

R614-303. Coal Mine Permitting: Change, Renewal, and Transfer, Assignment, or Sale of Permit Rights.

R614 303 100 General Information on the Change, Renewal, Assignment or Sale of Permit Rights
R614 303 200 Permit Review, Change and Renewal
R614 303 300 Transfer, Assignment, or Sale of Permit Rights

R614 303 100 General Information on the Change, Renewal, Assignment or Sale of Permit Rights

110 Objectives The objectives of R614 303 are to 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 permit without the prior approval of the Division

R614 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 mid-term or every five years, whichever is more frequent

211 200 Permits with variances granted in accordance with R614 302 220 and R614 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 R614 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 R614 302 210 and permits with a variance from approximate original contour requirements in accordance with R614 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 R614 302 217 and R614 302 273, respectively

212 After the review required by R614 303 211, or at any time the Division may by order require reasonable permit change in accordance with R614 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 R614 300 200. Copies of the order will be sent to the permittee

214 Permits may be suspended or revoked in accordance with R614 400

220 Permit Changes

221 At any time during the term of a permit the permittee may submit to the Division pursuant to R614 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 R614 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 R614 303 221 through R614 303 228

223 The Application for Permit Change will identify the proposed change or changes and include the information required under R614 301 and R614 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 R614 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 R614 303 212 and R614 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 R614 303 224 will be reviewed and processed by the Division in accordance with the requirements of R614 300 100 and R614 300 200 and the information requirements of R614 301 and R614 302 including requirements for notice public participation and notice of decision

227 Permit Amendments will be processed in accordance with the requirements of R614 300 100 and R614 300 200 and the information requirements of R614 301 and R614 302 except that permit amendments will not be subject to requirements for notice public participation or notice of decision of R614 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 guarantee under R614 301 800 will be provided by the applicant for the proposed period of renewal

232 300 Evidence that the performance bond in effect for the permit will continue in full force and effect for any renewal requested as well as any additional bond required by the Division pursuant to R614 301 800

232 400 A copy of the proposed newspaper notice and proof of publication of same as required by R614 300 121 100 and

232 500 Additional revised or updated information required by the Division

232 600 Application for renewal will be subject to the requirements for public notification and public participation contained in R614 300 120 and R614 300 152

232 100 If an application for renewal includes any proposed revisions to the permit such revisions will be identified and subject to the requirements of R614 303 220

232 300 In addition to any other R614 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 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 having liability insurance or self insurance as required in R614 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 R614 301 800 or

233 160 Additional revised or updated information required by the Division and R614 303 212 230 has not been provided by the applicant

233 200 Burden of Proof In the determination 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 a coal mining and reclamation operation authorized by the original permit was not subject to the standards contained in sections 10 10 112(a)(1) and (b) of the Act and R614 302 500 because the permittee complied with the exceptions in the provision 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 R614 302 320

234 Renewal Term Any permit renewal will be for a term not to exceed the period of the original permit established under R614 300 150

235 Notice of Decision The Division will send copies of its decision to the applicant to each person who filed comments or objections on the renewal to each party to any informal conference held on the permit renewal and to the Office

236 Administrative and Judicial Review Any person having an interest which is or may be adversely affected by the decision of the Division will have the right to administrative and judicial review set forth in R614 300 200

R614-303 300 Transfer, Assignment, or Sale of Permit Rights

310 General Information No transfer assignment or sale of rights granted by a permit will be made without the prior written approval of the Division

320 Application Requirements An applicant for approval of the transfer assignment or sale of permit rights will

321 Provide the Division with an application for approval of the proposed transfer assignment or sale including

321 100 The name and address of the existing permittee and permit number or other identifier

321 200 A brief description of the proposed action requiring approval and

321 300 The legal financial compliance and related information required by R614 301 100 for the applicant for approval of the transfer assignment or sale of permit rights

322 Advertise the filing of the application in a newspaper of general circulation in the locality of the operations involved indicating the name and address of the applicant the permittee the permit number or other identifier the geographic location of the permit and the address to which written comments may be sent and

323 Obtain appropriate performance bond coverage in an amount sufficient to cover the proposed operations as required under R614 301 800

330 Public Participation Any person having an interest which is or may be adversely affected by a decision on the transfer assignment or sale of permit rights including an official of any federal state or local government agency may submit written comments on the application to the Division within 30 days of the advertisement publication described under R614 303 322

340 Criteria for Approval The Division may allow a permittee to transfer assign or sell permit rights to a successor if it finds in writing that the successor

341 Is eligible to receive a permit in accordance with R614 300 132 and R614 300 133

342 Has submitted a performance bond or other guarantee or obtained the bond coverage of the original permittee as required by R614 301 800 and

343 Meets any other requirements specified by the Division

350 Notification

351 The Division will notify the permittee the successor commentators and the Office of its findings

352 The successor will immediately provide notice to the Division of the consummation of the transfer assignment or sale of permit rights

360 Continued Operation Under Existing Permit The successor in interest will assume the liability and reclamation responsibilities of the existing permit and will conduct the coal mining and reclamation operations in full compliance with the State Program and the terms and conditions of the existing permit unless the applicant has obtained a new or revised permit as provided in the R614 200 R614 300 R614 301 R614 302 100 through R614 302 290 R614 302 310 R614 302 320 and R614 303 1990

40-10-1 et seq.

R614-400 Inspection and Enforcement: Division Authority and Procedures.

R614 400 100 General Information on Authority and Procedures

R614 400 200 Information Related to Inspections

R614 400 300 Provisions of State Enforcement

R614-400-100 General Information on Authority and Procedures

110 Right of Entry

111 Within the State of Utah Division representatives may enter upon and through any coal exploration or coal mining and reclamation operation with out advance notice upon presentation of appropriate credentials No search warrant will be required except that the State may provide for its use with respect to entry into a building

112 Division representatives may inspect any monitoring equipment or method of exploration or operation and have access to and may copy any records required under the approved State Program Division representatives may exercise these rights at reasonable times without advance notice upon presentation of appropriate credentials No search warrant will be required except that the State may provide for its use with respect to entry into a building

120 Enforcement Authority Nothing in the Federal Act or the State Program will be construed as eliminating any additional enforcement rights or procedures which are available under State law to the Division but which are not specifically enumerated in Sections 40 10 20 and 40 10 22 of the Act

130 Inspection Program

131 The Division will conduct an average of at least one partial inspection per month of each active coal mining and reclamation operation under its jurisdiction and will conduct a partial inspection of each inactive coal mining and reclamation operation under its jurisdiction as are necessary to ensure effective enforcement of the State Program A partial inspection is an onsite or aerial review of a person's compliance with some of the permit conditions and requirements imposed under the State Program

132 The Division will conduct an average of at least one complete inspection per calendar quarter of each active or inactive coal mining and reclamation operation under its jurisdiction A complete inspection is an onsite review of a person's compliance with all permit conditions and requirements imposed under the State Program within the entire area disturbed or affected by the coal mining and reclamation operation

133 The Division will conduct inspections of coal explorations as are necessary to ensure compliance with the State Program

134 Aerial Inspection

134 100 Aerial inspections will be conducted in a manner which reasonably ensures the identification and documentation of conditions at each coal mining and reclamation operation inspected

134 200 Any potential violation observed during an aerial inspection will be investigated onsite within three (3) days provided that any indication of a condition practice or violation constituting cause for the issuance of a cessation order under section 40-10-22(1)(b) of the Act will be investigated on site immediately and provided further that an onsite investigation of a potential violation observed during an aerial inspection will not be considered to be an additional partial or complete inspection for the purposes of R614 400 131 and R614 400 132

135 The inspections required under R614 400 131 through R614 400 134 will

135 100 Be carried out on an irregular basis so as to monitor compliance at all operations including those which operate nights weekends or holidays

135 200 Occur without prior notice to the permittee or any agent or employee of such permittee except for necessary onsite meetings and

135 300 Include the prompt filing of inspection reports adequate to enforce the requirements of the approved State Program

136 For the purposes of R614 400 an inactive coal mining and reclamation operation is one for which

136 100 The Division has secured from the permittee the written notice provided for under R614 301 515 320 or

136 200 Reclamation Phase II as defined at R614 301 880 320 has been completed and the liability of the permittee has been reduced by the Division in accordance with the State Program

140 Availability of Records

141 The Division will make available to the Director of the Office upon request copies of all documents relating to applications for and approvals of existing new or revised coal exploration approvals or coal mining and reclamation operations permits and all documents relating to inspection and enforcement actions

142 Copies of all records reports inspection materials or information obtained by the Division will be made immediately available to the public in the area of mining until at least five years after expiration of the period during which the subject operation is active or is covered by any portion of a reclamation bond so that they are conveniently available to residents of that area except

142 100 As otherwise provided by federal law and

142 200 For information not required to be made available under R614 303 R614 300 124 or R614 400 144

143 The Division will ensure compliance with R614 400 142 by either

143 100 Making copies of all records reports inspection materials and other subject information available for public inspection at a federal Utah or local government office in the county where the mining is occurring or proposed to occur or

143 200 At the Division's option and expense providing copies of subject information promptly by mail at the request of any resident of the area where the mining is occurring or is proposed to occur Provided that the Division will maintain for public inspection at a federal Utah or local government office in the

county where the mining is occurring or proposed to occur a description of the information available to mailing and the procedure for obtaining such information

144 In order to protect preparation for hearing and enforcement proceedings the Director of the Office and the Division may enter into agreements regarding procedures for the special handling of investigative and enforcement reports and other such materials

150 Public Participation The State Program provides for public participation in the enforcement of the State Program in R614 400 200 R614 400 300 R614 401 and the Board's Procedural Rules

160 Compliance Conference

161 Compliance conferences between a permittee and an authorized representative of the Division are provided for and described in R614 400 162 through R614 400 165

162 A permittee may request an onsite compliance conference with an authorized representative of the Division to review the compliance status of an condition or practice proposed at any coal exploration or coal mining and reclamation operation Any such conference will not constitute an inspection with the meaning of UCA 40 10 22 and R614 400 130 any applicable permit or exploration approval

163 The Division may accept or refuse any request to conduct a compliance conference and R614 400 162

164 The authorized representative at any compliance conference will review such proposed conditions and practices in order to advise whether any such condition or practice may become a violation of a requirement of the Act the approved State Program or any applicable permit or exploration approval

165 Neither the holding of a compliance conference under this section nor any opinion given by the authorized representative at such a conference will affect

165 100 Any rights or obligations of the Division or of the permittee with respect to any inspection notice of violation or cessation order whether prior subsequent to such compliance conference or

165 200 The validity of any notice of violation cessation order issued with respect to any condition or practice reviewed at the compliance conference

R614 400 200 Information Related to Inspections

210 Requests for Inspections

211 A citizen may request a Division inspection under UCA 40 10 22 by furnishing to the Division signed written statement or an oral report followed by a signed written statement giving the Division reason to believe that a violation of the State Program or any applicable permit or exploration approval has occurred and including a phone number and address where the citizen can be contacted

212 The identity of any person supplying information to the Division relating to a possible violation imminent danger or harm will remain confidential with the Division if requested by that person unless that person elects to accompany the inspector on the inspection or unless disclosure is required under Utah or federal law

213 If a Division inspection is conducted as a result of information provided to the Division by a citizen as described in R614 400 211 the citizen will be notified as far in advance as practicable when the inspection is to occur and will be allowed to accompany the authorized representative of the Division

during the inspection. Such person has a right of entry to upon and through the coal exploration or coal mining and reclamation operation about which he or she provided information but only if he or she is in the presence of and is under control direction and supervision of the authorized representative while on the mine property. Such right of entry does not include a right to enter buildings without consent of the person in control of the building or without a search warrant. All citizens so visiting mine sites are required to comply with applicable MSHA safety standards.

214 Within 10 days of the Division inspection or if there is no inspection within 15 days of receipt of the citizen's written statement, the Division will send the citizen the following:

214.100 If an inspection was made, a description of the enforcement action taken, which may consist of copies of the Division inspection report and all notices of violation and cessation orders issued as a result of the inspection or an explanation of why no enforcement action was taken.

214.200 If no Division inspection was conducted, an explanation of the reason why.

214.300 An explanation of the citizen's right, if any, to informal review of the action or inaction of the Division under R614.400.240.

215 The Division will give copies of all materials in R614-400.214 within the time limits specified in that Rule to the person alleged to be in violation, except that the name of the citizen will be removed unless disclosure of the citizen's identity is permitted under R614.400.212.

220 Right of Entry

221 Each authorized representative of the Division conducting an inspection under R614.400 through R614.401.

221.100 Will have a right of entry to upon and through any coal exploration or coal mining and reclamation operation without advance notice or a search warrant upon presentation of appropriate credentials.

221.200 May at reasonable times and without delay have access to and copy any records and inspect any monitoring equipment or method of operation required under the State Program or any condition of an exploration approval or permit imposed under the State Program and.

221.300 Will have a right to gather physical and photographic evidence to document conditions, practices or violations at the site.

222 No search warrant will be required with respect to any activity under R614.400.221 except that a search warrant may be required for entry into a building.

230 Review of Adequacy and Completeness of Inspection. Any person who is or may be adversely affected by coal mining and reclamation operations or coal exploration operations may notify the Director in writing of any alleged failure on the part of the Division to make adequate and complete or periodic inspections as provided in R614.400.130 or R614.400.210. The notification will contain information to demonstrate the belief that the person is or may be adversely affected including the basis for his or her belief that the Division has failed to conduct the required inspections. The Director will within 15 days of receipt of the notification determine whether there is sufficient information to create a reasonable belief that R614.400.130 or R614.400.210 are not being complied with and if not will immediately order an inspection to remedy the noncompliance. The Di-

rector will also furnish the complainant with a written statement of the reasons for such determination and the actions, if any, taken to remedy the noncompliance.

240 Review of Decision Not to Inspect or Enforce. 241 Any person who is or may be adversely affected by coal exploration or coal mining and reclamation operations may ask the Director to review informally an authorized representative's decision not to inspect or take appropriate enforcement action with respect to any violation alleged by that person in a request for State inspection under R614.400.210. The request for review will be in writing and include a statement of how the person is or may be adversely affected and why the decision merits review.

242 The Director will conduct the review and inform the person in writing of the results of the review within 30 days of his or her receipt of the request. The person alleged to be in violation will also be given a copy of the results of the review, except that the name of the citizen will not be disclosed unless confidentiality has been waived or disclosure is required under Utah or federal law.

243 Informal review under this section will not affect any right to formal review or to a citizen's suit under the State Program.

R614-400.300 Provisions of State Enforcement.

310 Cessation Orders

311 The Division will immediately order a cessation of coal mining and reclamation operations or of the relevant portion thereof if it finds on the basis of any Division inspection any violation of the State Program or any condition of a permit or an exploration approval under the State Program which:

311.100 Creates an imminent danger to the health or safety of the public or

311.200 Is causing or can reasonably be expected to cause significant imminent environmental harm to land, air or water resources.

312 Coal mining and reclamation operations conducted by any person without a valid coal mining permit constitute a condition or practice which causes or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources unless such operations are an integral, uninterrupted extension of previously permitted operations, and the person conducting such operations has filed a timely and complete application for a permit to conduct such operations.

313 If the cessation ordered under R614.400.311 will not completely abate the imminent danger or harm in the most expeditious manner physically possible, the Division will impose affirmative obligations on the person to whom it is issued to abate the violation. The order will specify the time by which abatement will be accomplished.

314 When a notice of violation has been issued under R614.400.320 and the permittee fails to abate the violation within the abatement period fixed or subsequently extended by the Division, then the Division will immediately order a cessation of coal exploration or coal mining and reclamation operations or of the portion relevant to the violation. A cessation order issued under R614.400.314 will require the permittee to take all steps the Division deems necessary to abate the violations covered by the order in the most expeditious manner physically possible.

315 A cessation order issued under R614.400.311 or R614.400.314 will be in writing, signed by the authorized representative of the Division who issued it and will set forth with reasonable specificity

315.100 The nature of the violation.

315.200 The remedial action or affirmative obligation required, if any, including interim steps, if appropriate.

315.300 The time established for abatement, if appropriate, including the time for meeting any interim steps.

315.400 A reasonable description of the portion of the coal exploration or coal mining and reclamation operations to which it applies.

315.500 The order will remain in effect until the violation has been abated or until vacated, modified or terminated in writing by the Division.

316 Reclamation operations and other activities intended to protect public health and safety and the environment will continue during the period of any order unless otherwise provided in the order.

317 The Division may modify, terminate or vacate a cessation order for good cause, and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the permittee.

318 The Division will terminate a cessation order by written notice to the permittee when it is determined that all conditions, practices or violations listed in the order have been abated. Termination will not affect the right of the Board to assess civil penalties for those violations under R614.101.

319 Within sixty days after issuing a cessation order, the Division will notify in writing any person who has been identified under R614.300.147 and R614.301.112.300 and 112.400 as owning or controlling the permittee that the cessation order was issued and that the person has been identified as an owner or controller.

320 Notices of Violation

321 The Division will issue a notice of violation if on the basis of a Division inspection carried out during the enforcement of a State Program it finds a violation of the State Program or any condition of a permit or an exploration approval imposed under the State Program which does not create an imminent danger or harm for which a cessation order must be issued under R614.400.310.

322 When on the basis of any Division inspection other than one described in R614.400.321 the Division determines that there exists a violation of the State Program or any condition of a permit or an exploration approval required by the Act or the cessation order must be issued under R614.400.310, the Division will issue a notice of violation to the permittee or his agent fixing a reasonable time not to exceed 90 days for the abatement of the violation and providing opportunity for a conference before the Division.

323 A notice of violation issued under R614.400.320 will be in writing, signed by the authorized representative of the Division, and will set forth reasonable specificity.

323.100 The nature of the violation.

323.200 The remedial action required, which may include interim steps.

323.300 A reasonable time for abatement, which may include time for accomplishment of interim steps and.

323.400 A reasonable description of the portion of the coal exploration or coal mining and reclamation operations to which it applies.

324 The Division may extend the time set for abatement or for accomplishment of an interim step if the failure to meet the time previously set was not caused by lack of diligence on the part of the permittee. The total time for abatement under a notice of

violation, including all extensions, will not exceed 90 days from the date of issuance except upon a showing by the permittee that it is not feasible to abate the violation within 90 calendar days due to one or more of the circumstances in R614.400.327. An extended abatement date pursuant to this section will not be granted when the permittee's failure to abate within 90 days has been caused by lack of diligence or intention of delay by the permittee in completing the reclamation action required.

25 If the permittee fails to meet any time set for abatement or for accomplishment of an interim step, the Division will issue a cessation order under R614.400.311.

26 The Division will terminate a notice of violation by written notice to the permittee when the Division determines that all violations listed in the notice of violation have been abated. Termination will not affect the right of the Board to assess civil penalties for those violations which have been abated, nor will termination affect the right of the Board to assess civil penalties for those violations under R614.401.

327 Circumstances which may qualify a coal mining and reclamation operation for an abatement period of more than 90 days are:

327.100 Where the permittee, at an ongoing permitted operation, is timely applying for and diligently pursuing a permit renewal or other necessary approval of designs or plans but such permit or approval has not been or will not be issued within 90 days, a valid permit expires or is required for reasons within the control of the permittee.

327.200 Where there is a valid judicial order, including abatement within 90 days as to which the permittee has diligently pursued all rights of appeal and as to which he or she has no other effective remedy.

327.300 Where the permittee cannot abate within 90 days due to a labor strike.

327.400 Where climatic conditions preclude abatement within 90 days or where, due to climatic conditions, abatement within 90 days clearly would cause more environmental harm than it would prevent.

327.500 Where abatement within 90 days requires action that would violate safety standards established by statute or regulation under the Mine and Health Act of 1977.

328 Other information on abatement time tended beyond 90 days.

328.100 Whenever an abatement time in excess of 90 days is permitted, interim abatement measures will be imposed to the extent necessary to minimize harm to the public or the environment.

328.200 If any of the conditions in R614.400 exist, the permittee may request the authorized representative of the Division to grant an abatement period exceeding 90 days. The authorized representative will not grant such an abatement period without the concurrence of the Director or his or her designee. The abatement period granted will not exceed the shortest possible time necessary to abate the violation. The permittee will have the burden of establishing by clear and convincing proof that he or she is entitled to any extension under the provisions R614.400.321 and R614.400.327.

328.300 In determining whether or not to grant an abatement period exceeding 90 days, the authorized representative may consider any relevant written information from the permittee or any source. The authorized representative will prepare and fully document in the file his or her reasons

granting or denying the request. The Director or designee of the Director specified in R614 400 328 200 will review this document before concurring in or disapproving the extended abatement date and will promptly and fully document the reasons for his or her concurrence or disapproval in the file.

328 400 Any determination made under R614-400 328 200 or R614 400 328 300 will contain a right of appeal to the Board under R614 400 360.

328 500 No extension granted under R614 400 328 200 or R614 400 328 300 may exceed 90 days in length. Where the condition or circumstance which prevented abatement within 90 days exists at the expiration of any such extension, the permittee may request a further extension in accordance with the procedures of R614 400 328 200.

329 Enforcement actions at abandoned sites. The Division may refrain from using a notice of violation or cessation order for a violation at an abandoned site, as defined in R614 100-200, if abatement of the violation is required under any previously issued notice on order.

330 Suspension or Revocation of Permits

331 The Board will issue an order to a permittee requiring him or her to show cause why his or her permit and right to mine under the State Program should not be suspended or revoked, if the Board determines that a pattern of violations of any requirements of the State Program, or any permit condition required by the Act exists or has existed, and that each violation was caused by the permittee willfully or through an unwarranted failure to comply with those requirements or conditions. A finding of unwarranted failure to comply will be based upon a demonstration of greater than ordinary negligence on the part of the permittee. Violations by any person conducting coal mining and reclamation operations on behalf of the permittee will be attributed to the permittee, unless the permittee establishes that they were acts of deliberate sabotage.

332 Pattern of Violation

332 100 The Director may determine that a pattern of violations exists or has existed, based upon two or more Division inspections of the permit area within a 12 month period, after considering the circumstances, including

332 110 The number of violations, cited on more than one occasion, of the same or related requirements of the State Program or the permit, and

332 120 The number of violations, cited on more than one occasion, of different requirements of the State Program or the permit, and

332 130 The extent to which the violations were isolated departures from lawful conduct.

332 200 If after the review described in R614 400 332, the Director determines that a pattern of violation exists or has existed and that each violation was caused by the permittee willfully or through unwarranted failure to comply, he or she will recommend that the Board issue an order to show cause as provided in R614 400 331.

332 300 The Director will promptly review the history of violations of any permittee who has been cited for violations of the same or related requirements of the State Program, or the permit during three or more state inspections of the permit area within a 12 month period. If, after such review, the Director determines that a pattern of violations exists or has existed, he or she will recommend that the Board issue an order to show cause as provided in paragraph R614 400 331.

333 Number of Violations

333 100 In determining the number of violations within a 12 month period, the Director will consider only violations issued as a result of a state inspection carried out during enforcement of the State Program.

333 200 The Director may not consider violations issued as a result of inspections other than those mentioned in R614 400 133 100 in determining whether to exercise his or her discretion under R614 400 332 100, except as evidence of the willfully unwarranted nature of the permittee's failure to comply.

334 Whenever a permittee fails to abate a violation contained in a notice of violation or cessation order within the abatement period set in the notice or as subsequently extended, the Director will review the permittee's history of violations to determine whether a pattern of violations caused by the permittee's willful or unwarranted failure to comply exists pursuant to this section and will make a recommendation to the Board concerning whether or not an order to show cause should issue pursuant to R614 400-331.

335 Hearing Procedures

335 100 If the permittee files an answer to show cause order and requests a hearing, a formal public hearing on the record will be conducted pursuant to the R619 Rules before the Board or at the Board's option by an administrative hearing officer. The hearing officer will be a person who meets minimum requirements for a hearing officer under the law. At such hearing the Division will have the burden of establishing a prima facie case for suspension or revocation of the permit based upon clear and convincing evidence. The ultimate burden of persuasion that the permit should not be suspended or revoked will rest with the permittee.

The Board or Officer will give 30 days written notice of the date, time and place of the hearing to the Director, the permittee and any intervenor. Upon receipt of the notice the Director will publish it, if practicable, in a newspaper of general circulation in the area of the coal mining and reclamation operation and will post it at the Division office closest to the operations. Upon written request by the permittee, such hearing may at the Board's option be held near the mine site within the county in which the permittee's operations are located.

335 200 Within 60 days after the hearing, the Board will prepare a written determination, or the Officer will prepare a written determination to the Board, as to whether or not a pattern of violation exists. If the determination is prepared by the hearing officer, it will be reviewed by the Board which will make the final decision thereon. If the Board finds a pattern of violations and revokes or suspends the permit and the permittee's right to mine under the State Program, the permittee will immediately cease coal mining operations on the permit area and will

335 210 If the permit and the right to mine under the State Program are revoked, complete reclamation within the time specified in the order, or

335 220 If the permit and the right to mine under the State Program are suspended, complete all affirmative obligations to abate all conditions, practices or violations as specified in the order.

340 Service of Notices of Violation, Cessation Orders and Show Cause Orders

341 A notice of violation or cessation order will be served on the permittee or his designated agent promptly after issuance, as follows

341 100 By tendering a copy at the coal exploration or coal mining and reclamation operation to the designated agent or to the individual who based upon reasonable inquiry by the authorized representative appears to be in charge of the coal exploration or coal mining and reclamation operation referred to in the notice or order. If no such individual can be located at the site, a copy may be tendered to any individual at the site who appears to be an employee of the permittee. Service will be complete upon tender of the notice or order and will not be deemed incomplete because of refusal to accept.

341 200 As an alternative to R614 400 341 100, service may be made by sending a copy of the notice or order by certified mail or by hand to the permittee or his designated agent. Service will be complete upon tender of the notice or order by mail and will not be deemed incomplete because of refusal to accept.

342 A show cause order may be served on the permittee in either manner provided in R614 400 341 100 or 341 200.

343 Designation by any person of an agent for service of notices and orders will be made in writing to the Division.

350 Informal Public Hearing

351 Except as provided in R614 400 352 and R614 400 353, a notice of violation or cessation order which requires cessation of mining, expressly or by necessary implication, will expire within 30 days after it is served unless an informal public hearing has been held within that time. The hearing will be held at or reasonably close to the mine site so that it may be viewed during the hearing or at any other location acceptable to the Division and the permittee. The Division office nearest to the mine site will be deemed to be reasonably close to the mine site unless a closer location is requested and agreed to by the Division. Expiration of a notice or order will not affect the Board's right to assess civil penalties for the violations mentioned in the notice or order under R614 401.

352 A notice of violation or cessation order will not expire as provided in R614 400 351 if the condition, practice or violation in question has been abated or if the informal public hearing has been waived or if, with the consent of the permittee, the informal public hearing is held later than 30 days after the notice or order was served. For purposes of R614 400-352

352 100 The informal public hearing will be deemed waived if the permittee

352 110 Is informed by written notice served in the manner provided in R614 400 352 200 that he or she will be deemed to have waived an informal public hearing unless he or she requests one within 30 days after service of the notice, and

352 120 Fails to request an informal public hearing within that time.

352 200 The written notice referred to in R614 400 352 110 will be delivered to the permittee by an authorized representative or sent by certified mail to the permittee no later than five days after the notice or order is served on the permittee, and

352 300 The permittee will be deemed to have consented to an extension of the time for holding the informal public hearing if his or her request is received on or after the 21st day after service of the notice or order. The extension of time will be equal to the number of days elapsed after the 21st day.

353 The Division will give as much advance notice as is practicable of the time, place and subject matter of the informal public hearing to

353 100 The permittee and

353 200 Any person who filed a report which led to that notice or order.

354 The Division will also post notice of the hearing at the office closest to the mine site and publish it where practicable in a newspaper of general circulation in the area of the mine.

355 An informal public hearing will be conducted by a representative of the Board who may accept oral or written arguments and any other relevant information from any person attending.

356 Within five days after the close of the informal public hearing the Division will affirm, modify or vacate the notice or order in writing. The decision will be sent to

356 100 The permittee, and

356 200 Any person who filed a report which led to the notice or order.

357 The granting or waiver of an informal public hearing will not affect the right of any person to formal review under UCA 40 10 22 (3). At such formal review proceedings no evidence is to statements made or evidence produced at an informal public hearing will be introduced as evidence or to impeach a witness.

360 Board Review of Citations

361 Petition Process

361 100 A permittee issued a notice of violation or cessation order under R614 400 320 or R614 400 310 or a person having an interest which is or may be adversely affected by the issuance, modification, vacation or termination of a notice or order, may request review of the Division's action by filing an application for review and request for hearing pursuant to UCA 40 10 22 (3) and the Board's Rules within 30 days after receiving notice of the action.

361 200 Upon written petition by the operator or an interested party, the Board, at its discretion, or a hearing examiner appointed by the Board pursuant to UCA 40 6 10 (6) may be requested to hold a hearing at the site of the operation or within such reasonable proximity to the site that any viewings of the site can be conducted during the course of public hearing.

361 300 The Board will issue an order concerning the cessation order within 30 days after its next regularly scheduled hearing or receipt of the petition for review of the Division's cessation order.

362 The filing of a petition for review and request for a hearing under R614 400 360 will not operate as a stay of any notice or order or of any modification, termination or vacation of either.

370 Inability to Comply

371 No cessation order or notice of violation issued under R614 400 100 may be vacated because of inability to comply.

372 Inability to comply may not be considered in determining whether a pattern of violations exists.

373 Unless caused by lack of diligence, inability to comply may be considered only in mitigation of the amount of civil penalty under R614 401 and of the duration of the suspension of a permit under R614 400 330.

380 Compliance Conference

381 A permittee may request an onsite compliance conference with an authorized representative to review the compliance status of any condition or practice proposed at any coal exploration or coal mining and reclamation operation. Any such conference will not constitute an inspection within the meaning of UCA 40 10 22 or R614 400 100.

382 The Division may accept or refuse any request to conduct a compliance conference under

R614-400-381 Where the Division accepts such a request, reasonable notice of the scheduled date and time of the compliance conference will be given to the permittee.

383 The authorized representative at any compliance conference will review such proposed conditions and practices as the permittees may request in order to determine whether any such condition or practice may become a violation of any requirement of the Act or of any applicable permit or exploration proposal.

384 Neither the holding of any compliance conference under R614-400-380 nor any opinion given by the authorized representative at such a conference will affect:

384 100 Any rights or obligations of the Division or of the permittee with respect to any inspection, notice of violation or cessation order, whether prior or subsequent to such conference, or

384 200 The validity of any notice of violation or cessation order issued with respect to any condition or practice reviewed at the compliance conference.

390 Injunctive Relief

391 The Division may request the Utah Attorney General's office to institute a civil action for relief, including a permanent or temporary injunction, restraining order or any other order, in the district court for the district in which the coal exploration or coal mining and reclamation operation is located or in which the permittee has his principal office, whenever that permittee, in violation of the State Program or any condition of an exploration approval or permit:

391 100 Violates or fails or refuses to comply with any order or decision of the Division under the State Program,

391 200 Interferes with, hinders or delays the Division in carrying out the provisions of the State Program,

391 300 Refuses to admit the Division to a mine,

391 400 Refuses to permit inspection of a mine by the Division,

391 500 Refuses to furnish any required information or report,

391 600 Refuses to permit access to or copying of any required records, or

391 700 Refuses to permit inspection of monitoring equipment.

392 No citizen suits may be brought pursuant to UCA 40-10-21 if the Board, Division or State Attorney General has commenced and is diligently prosecuting a civil action under R614 400 391, however, in any such action in a state court any interested person may intervene as permitted by and in accordance with Rule 24 of the Utah Rules of Civil Procedure 1990

40-10-1 et seq

R614-401. Inspection and Enforcement: Civil Penalties.

R614 401-100 Information on Civil Penalties

R614 401-200 When Penalty Will Be Assessed

R614-401-300 Point System for Penalties

R614-401-400 Assessment of Separate Violations for Each Day

R614-401 500 Waiver of Use of Formula to Determine Civil Penalty

R614 401 600 Procedures for Assessment of Civil Penalties — Proposed Assessment

R614 401 700 Procedures for Informal Assessment Conference

R614 401 800 Requests for Formal Hearing

R614 401-900 Final Assessment and Payment of Penalty

R614-401-100. Information on Civil Penalties.

110 Objectives Civil penalties are assessed under UCA 40 10-20 of the State Program and R614 401 to deter violations and to ensure maximum compliance with the terms and purposes of the State Program on the part of the coal mining industry.

120 How Assessments Are Made The Board will appoint an assessment officer to review each notice of violation and cessation order in accordance with the assessment procedures described in R614 401 to determine whether a civil penalty will be assessed, the amount of the penalty, and whether each day of a continuing violation will be deemed a separate violation for purposes of the total penalty assessed.

R614-401-200. When Penalty Will Be Assessed.

210 The assessment officer will assess a penalty for each cessation order.

220 The assessment officer will assess a penalty for each notice of violation if the violation is assigned 51 points or more under the point system described in R614 401 300 and R614-401 400.

230 The assessment officer may assess a penalty for each notice of violation assigned 50 points or less under the point system described in R614 401-300 and R614-401-400. In determining whether to assess a penalty, the assessment officer will consider the factors listed in R614 401-310.

R614-401-300. Point System for Penalties.

310 Amount of Penalty In determining the amount of the penalty, if any, to be assessed, consideration will be given to:

311 The operator's history of previous violations at the particular coal mining and reclamation operation, regardless of whether any led to a civil penalty assessment. Special consideration will be given to violations contained in or leading to a cessation order. However, a violation will not be considered if the notice or order containing the violation meets the conditions described in R614 401 321 100 or R614 401 321 200.

312 The seriousness of the violation based on the likelihood and extent of the potential or actual impact on the public or environment, both within and outside the permit or exploration area.

313 The degree of fault of the operator in causing or failing to correct the violation, either through act or omission. Such degree will range from inadvertent action causing an event which was unavoidable by the exercise of reasonable care to reckless, knowing or intentional conduct.

314 The operator's demonstrated good faith, by considering whether he took extraordinary measures to abate the violation in the shortest possible time, or merely abated the violation within the time given for abatement. Consideration will also be given to whether the operator gained any economic benefit as a result of a failure to comply.

320 Assessment of Points

321 History of Previous Violations The assessment officer will assign up to 25 points based on the history of previous violations. One point will be assigned for each past violation contained in a notice of violation. Five points may be assigned for each violation contained in a cessation order. The history of previous violations, for the purpose of assigning points will be determined and the points assigned with respect to the particular coal exploration or coal

mining and reclamation operation. Points will be assigned as follows:

321 100 A violation will not be counted if the notice or order is the subject of pending administrative or judicial review or if the time to request such review, or to appeal any administrative or judicial decision has not expired and thereafter it will be counted for only one year.

321 200 No violation for which the notice or order has been vacated will be counted and

321 300 Each violation will be counted without regard to whether it led to a civil penalty assessment.

322 Seriousness The assessment officer will assign up to 45 points based on the seriousness of the violation as follows:

322 100 Probability of occurrence. The assessment officer will assign up to 20 points based on the probability of the occurrence of the event which a violated standard is designed to prevent. Points will be assigned according to the following schedule:

PROBABILITY OF OCCURRENCE	POINTS
None	0
Insignificant	1-4
Unlikely	5-9
Likely	10-19
Occurred	20

322 200 Extent of potential or actual damage. The assessment officer will assign up to 25 points, based on the extent of the potential or actual damage to the public health and safety or the environment, in terms of duration, area and impact of such damage.

322 300 Alternative to R614 401 322 100 and R614 401 322 200 for an Administrative Hindrance Violation. In the case of a violation of an administrative requirement, such as a requirement to keep records, the assessment officer will, in lieu of R614 401 322 100 and R614 401 322 200, assign up to 25 points for seriousness, based upon the extent to which enforcement is hindered by the violation.

323 Degree of Fault

323 100 The assessment officer will assign up to 30 points based on the degree of fault of the permittee in causing or failing to correct the violation condition, or practice which led to the notice or order, either through act or omission. Points will be assessed as follows:

323 110 A violation which occurs through no fault of the operator, or by inadvertence which was unavoidable by the exercise of reasonable care will be assigned no penalty points for degree of fault.

323 120 A violation which is caused by fault of the operator will be assigned 15 points or less depending on the degree of fault. Fault means the failure of a permittee to prevent the occurrence of any violation of his or her permit or any requirement of the State Program due to indifference, lack of diligence or lack of reasonable care, or the failure to abate any violation of such permit or the State Program due to indifference, lack of diligence or lack of reasonable care and

323 130 A violation which occurs through a greater degree of fault, meaning reckless, knowing or intentional conduct will be assigned 16 to 30 points, depending on the degree of fault.

323 200 In calculating points to be assigned for degree of fault, the acts of all persons working on the coal exploration or coal mining and reclamation operation will be attributed to the permittee unless that permittee establishes that they were acts of deliberate sabotage.

324 Good Faith in Attempting to Achieve Compliance The assessment officer will subtract points based on the degree of good faith of the permittee. Points will be assigned as follows:

324 100 Easy Abatement Situation. An easy abatement situation is one in which the operator has on-site the resources necessary to achieve compliance of the violated standard within the permit area.

DEGREE OF GOOD FAITH	POINTS
Immediate Compliance	11 to 20
Rapid Compliance	1 to 10
Normal Compliance	0

324 200 Difficult Abatement Situation. A difficult abatement situation is one which requires submission of plans prior to physical activity to achieve compliance or the permittee does not have the resources at hand to achieve compliance of the violated standard.

DEGREE OF GOOD FAITH	POINTS
Rapid Compliance	11 to 20
Normal Compliance	1 to 10
Extended Compliance	0

325 Definition of Compliance

325 100 Immediate Compliance requires evidence that the violation has been abated immediately (which is a question of fact) following issuance of the notice of violation.

325 200 Rapid Compliance requires evidence that the permittee used diligence to abate the violation.

325 300 Normal Compliance means that the operator complied within the abatement period required under the notice of violation or by the violated standard.

325 400 Extended Compliance means that the permittee took minimal actions for abatement to stay within the limits of the notice of violation or the violated standard or that the plan submitted for abatement was incomplete.

326 The Effect on the Operator's Ability to Continue in Business. Initially, it will be presumed that the operator's ability to continue in business will not be affected by the order of assessment. The operator may submit to the assessment officer information concerning the operator's financial status to show that payment of the civil penalty will affect the permittee's ability to continue in business. A reduction of the penalty or a special payment plan may be ordered if the information provided by the operator demonstrates that the civil penalty will substantially reduce the likelihood of the permittee's ability to continue in business or will create undue hardship on the permittee's operation.

330 Determination of Amount of Penalty. The assessment officer will determine the amount of a civil penalty converting the total number of points assigned under R614 401 320 to a dollar amount, according to the following schedule:

POINTS	DOLLARS	POINTS	DOLLARS	POINTS	DOLLARS
1	10	30	400	59	1360
2	20	31	420	60	1400
3	30	32	440	61	1440
4	40	33	460	62	1500
5	50	34	480	63	1560
6	60	35	500	64	1620
7	70	36	520	65	1680
8	80	37	540	66	1740
9	90	38	560	67	1800
10	100	39	580	68	1860
11	110	40	600	69	1920
12	120	41	620	70	1980
13	130	42	640	71	2040
14	140	43	660	72	2100

R614-401-400

NATURAL RESOURCES

662

POINTS	DOLLARS	POINTS	DOLLARS	POINTS	DOLLARS
15	150	44	400	74	520
16	160	45	400	75	600
17	170	46	440	76	680
18	180	47	480	77	760
19	190	48	520	78	840
20	200	49	560	79	920
21	210	50	600	80	1000
22	220	51	640	81	1080
23	230	52	680	82	1160
24	240	53	720	83	1240
25	250	54	760	84	1320
26	260	55	800	85	1400
27	270	56	840	86	1480
28	280	57	880	87	1560
29	290	58	920		

R614-401-400 Assessment of Separate Violations for Each Day

410 The assessment officer may assess separately a civil penalty for each day from the date of issuance of the notice of violation or cessation order to the date set for abatement of the violation. In determining whether to make such an assessment, the assessment officer will consider the factors listed in R614 401 300 and may consider the extent to which the permittee gained any economic benefit as a result of a failure to comply. For any violation which continues for two or more days and which is assigned more than 80 points under R614 401 320, the Board or assessment officer will assess a civil penalty for a minimum of two separate days.

420 Whenever a violation contained in a notice of violation or cessation order has not been abated within the abatement period set in the notice or order, a civil penalty of not less than \$750.00 will be assessed for each day during which such failure continues except that if the permittee initiates review proceedings with respect to the violation, the abatement period will be extended as follows:

421 If suspension of the abatement requirements of the notice or order is ordered in a temporary relief proceeding under the State Program after determination that the permittee will suffer irreparable loss or damage from the application of the requirements, the extended period permitted for abatement will not end until the date on which the Board issues a final order, and

422 If the permittee initiates review proceedings under the State Program with respect to the violation in which the obligations to abate are suspended by the court pursuant to the State Program, the daily assessment of a penalty will not be made for any period before entry of a final order by the court.

430 Such penalty for the failure to abate the violation will not be assessed for more than 30 days for each violation. If the permittee has not abated the violation within the 30 day period, the Division will within 30 days appeal such noncompliance to the Board for resolution under 40 10 20(5), 40 10 20(6), 40 10 22(1)(d) or 40 10 22(2) of the Act, or by other appropriate means.

R614 401 500 Waiver of Use of Formula to Determine Civil Penalty

510 The assessment officer upon his or her own initiative or upon written request received by the Division within 15 days of receipt of a notice of violation or a cessation order, may waive the use of the formula contained in R614 401 330 to set the civil penalty if they determine that taking into account exceptional factors present in the particular case, the penalty is demonstrably unjust. However, the assessment officer will not waive the use of the formula or reduce the proposed assessment on the basis of an argument that a reduction in the proposed penalty could be used to

abate violations of the State Program or any condition of any permit or exploration approval. The basis for every waiver will be fully explained and documented in the records of the case.

520 If the assessment officer waives the use of the formula, he or she will use the criteria set forth in R614 401 320 to determine the appropriate penalty. When the assessment officer has elected to waive the use of the formula, he or she will give a written explanation of the basis for the assessment made to the permittee.

R614-401-600 Procedures for Assessment of Civil Penalties — Proposed Assessment

610 Within 15 days of service of a notice or order, the permittee may submit written information about the violation to the assessment officer at the Division offices. The assessment officer will consider any information so submitted in determining the facts surrounding the violation and the amount of the penalty.

620 The assessment officer will serve a copy of the proposed assessment and of the worksheet showing the computation of the proposed assessment on the permittee by certified mail within 30 days of the issuance of the notice or order.

621 If the mail is tendered at the address of that permittee set forth in the sign required under R614 401 321 200 or at any address at which that permittee is in fact located, and he or she refuses to accept delivery of or to collect such mail, the requirements of R614 401 620 will be deemed to have been complied with upon such tender.

622 Failure by the Division to serve any proposed assessment within 30 days will not be grounds for dismissal of all or any part of such assessment unless the permittee

622 100 Proves actual prejudice as a result of the delay, and

622 200 Makes a timely objection to the delay. 630 Unless an assessment conference has been requested, the assessment officer will review and reassess any penalty if necessary to consider facts which were not reasonably available on the date of issuance of the proposed assessment because of the length of the abatement period. The assessment officer will serve a copy of any such reassessment and of the worksheet showing the computation of the reassessment in the manner provided in R614-401 620 within 30 days after the date the violation is abated.

R614-401 700 Procedures for Informal Assessment Conference

710 The Division will arrange for a conference to review the fact of the violation and/or the proposed assessment or reassessment upon written request of the permittee if the request is received within 30 days from the date the proposed assessment or reassessment is received by the violator.

720 Informal Assessment Conference Scheduling and Findings

721 The Board will assign an assessment conference officer to hold assessment conferences. The assessment conference will be informal. The assessment conference will be held within 60 days from the date of issuance of the proposed assessment or the end of the abatement period, whichever is later. PROVIDED that a failure by the Division to hold such a conference within 60 days will not be grounds for dismissal of all or part of an assessment unless the permittee proves actual prejudice as a result of the delay.

722 The Division will post notice of the time and place of the conference at all Division offices at least

653

five days before the conference. Any person will have a right to attend and participate in the conference.

723 The assessment conference officer will consider all relevant information on the violation. Within 30 days after the conference is held, the conference officer will either

723 100 Settle the issues in which case a settlement agreement will be prepared and signed by the assessment conference officer on behalf of the Board and by the permittee, or

723 200 Affirm, raise, lower or vacate the penalty.

730 The assessment conference officer will promptly serve the permittee with a notice of his or her action in the manner provided in R614 401 620 and will include a worksheet if the penalty has been raised or lowered. The reasons for the conference officer's action will be fully documented in the file.

740 Informal Conference Settlement Agreement

741 If a settlement agreement is entered into, the permittee will be deemed to have waived all rights to further review of the violation or penalty in question except as otherwise expressly provided for in the settlement agreement. The settlement agreement will contain a clause to this effect.

742 If full payment of the amount specified in the settlement agreement is not received by the Division within 30 days after the date of signing, the Board may enforce the agreement or rescind it and proceed according to R614 401 23 200 within 30 days from the date of the rescission.

750 The assessment conference officer may terminate the conference when he or she determines that the issues cannot be resolved or that the permittee is not diligently working toward resolution of the issues.

760 At formal review proceedings before the Board, no evidence as to statements made or evidence produced by one party at an assessment conference will be introduced as evidence by another party or to impeach a witness.

R614-401 800 Requests for Formal Hearing

810 A permittee charged with a violation may contest the proposed penalty or the fact of the violation by submitting (a) a petition to the Board and (b) an amount equal to the proposed penalty or, if a conference has been held, the reassessed or affirmed penalty to the Division (to be held in escrow as provided in R614 401 820) within 30 days of the proposed assessment or reassessment or 15 days from the date of service of the conference officer's action, whichever is later, but in every case the penalty must be escrowed prior to commencement of the formal hearing.

820 The Division will transfer all funds submitted under R614 401 810 to an escrow fund pending completion of the administrative and judicial review process at which time it will disburse them as provided in R614 401 920 or R614 401 930.

830 The fact of the violation may not be contested if the fact has been finally decided before the Board under R614 400 360.

R614 401 900 Final Assessment and Payment of Penalty

910 If the permittee fails to request a hearing as provided in R614 401 810, the proposed assessment will become a final order of the Board and the penalty assessed will become due and payable upon expiration of the time allowed to request a hearing.

920 If any party requests judicial review of a final order of the Board, the proposed penalty will be held

OIL, GAS AND MINING COAL

R614-402 300

in escrow until completion of the review. Otherwise, subject to R614 401 930, the escrowed funds will be transferred to the Division in payment of the penalty and the escrow will end.

930 If the final decision of the administrative or judicial review results in an order reducing or eliminating the proposed penalty assessed under R614 401, the Division will within 10 days of receipt of the order refund to the permittee all or part of the escrowed amount, with interest from the date of payment into escrow to the date of the refund at the legal rate applicable as provided in section 15 111 U.C.A.

940 If the review results in an order increasing the penalty, the permittee will pay the difference. The Division will within 15 days after the order becomes final, pay the permittee.

1989

R614 402 Inspection and Enforcement of Individual Civil Penalties

R614 402 100 Information on Individual Civil Penalties

R614 402 200 When an Individual Civil Penalty May Be Assessed

R614 402 300 Amount of the Individual Civil Penalty

R614 402 400 Procedure for Assessment of Individual Civil Penalty

R614 402 500 Payment of Penalty

R614-402 100 Information on Individual Civil Penalties

110 The rules in R614 402 provide guidance to exercise the authority set forth in U.C.A. 40 10 20 6.

120 Individual civil penalties will be assessed by Board appointed assessment officer using the procedure described in R614 402.

R614-402 200 When an Individual Civil Penalty May Be Assessed

210 Except as provided in R614 402 220, the assessment officer may assess an individual civil penalty against any corporate director, officer, or agent of a corporate permittee who knowingly and willfully authorized, ordered or carried out a violation, failure or refusal.

220 The assessment officer will not assess an individual civil penalty in situations resulting from permit violation by a corporate permittee until a cessation order has been issued by the Division to the corporate permittee for the violation, and the cessation order has remained unabated for 30 days.

R614 402 300 Amount of the Individual Civil Penalty

310 In determining the amount of an individual civil penalty assessed under R614 402 200, the assessment officer will consider the criteria specified in U.C.A. 40 10 20, including

311 The individual's history of authorizing, ordering, or carrying out previous violations, failures or refusals at the particular coal mining and reclamation operations.

312 The seriousness of the violation, failure or refusal as indicated by the extent of damage and/or the cost of reclamation, including any irreparable harm to the environment and any hazard to the health, safety of the public, and

313 The demonstrated good faith of the individual charged in attempting to achieve rapid compliance after notice of the violation, failure or refusal.

320 The individual civil penalty will not exceed \$5 000 for each violation. Each day of continuing violation may be deemed a separate violation and the assessment officer may assess a separate individual civil penalty for each day the violation failure or refusal continues from the date of service of the underlying notice of violation cessation order or other order incorporated in a final decision issued by the board until abatement or compliance is achieved.

R614-402 400 Procedure for Assessment of Individual Civil Penalty

410 Notice. The assessment officer will serve on each individual to be assessed an individual civil penalty a notice of proposed individual civil penalty assessment including a narrative explanation of the reasons for the penalty the amount to be assessed and a copy of any underlying notice of violation and cessation order.

420 Final order and opportunity for review. The notice of proposed individual civil penalty assessment shall become a final order of the board 30 days after service upon the individual unless:

421 The individual files within 30 days of service of the notice of proposed individual civil penalty assessment a petition for review with the board or

422 The board and the individual or responsible corporate permittee agree within 30 days of service of the notice of proposed individual civil penalty assessment to a schedule or plan for the abatement or correction of the violation failure or refusal.

430 Service. Service of notice under R614 402 400 will satisfy the standard of the R619 Rules of the board.

R614-402 500 Payment of Penalty

510 No abatement or appeal. If a notice of proposed individual civil penalty assessment becomes a final order in the absence of a petition for review or abatement agreement the penalty will be due upon issuance of the final order.

520 Appeal. If an individual named in a notice of proposed individual civil penalty assessment files a petition for review in accordance with the R619 Rules of the board the penalty will be due upon issuance of a final board order affirming increasing or decreasing the proposed penalty.

530 Abatement agreement. Where the board and the corporate permittee or individual have agreed in writing on a plan for the abatement of or compliance with the unabated order an individual named in a notice of proposed individual civil penalty assessment may postpone payment until receiving either a final order from the Board stating that the penalty is due on the date of such final order or written notice that abatement or compliance is satisfactory and the penalty has been withdrawn.

540 Delinquent payment. Following the expiration of 30 days after the issuance of a final order assessing an individual civil penalty any delinquent penalty will be subject to interest at the rate established quarterly by the U.S. Department of the Treasury for use in applying late charges on late payments to the Federal Government pursuant to Treasury Financial Manual 6 8020 20. The Treasury current value of funds rate is published by the Fiscal Service in the notices section of the Federal Register. Interest on unpaid penalties will run from the date payment first was due until the date of payment. Failure to pay overdue penalties will result in referral to the Utah Attorney General for appropriate collection action.

1990

40-10-1 et seq

R615 Oil, Gas and Mining; Oil and Gas.

R615 1 Oil and Gas General Rules

R615 2 General Rules

R615 3 Drilling And Operating Practices

R615 4 Determination of Well Categories Under the Natural Gas Policy Act of 1978

R615 5 Underground Injection Control of Recovery Operations and Class II Injection Wells

R615 6 Gas Processing and Waste Crude Oil Treatment

R615 7 Oil Retreating

R615 8 Reporting and Report Forms

R615 9 Disposal of Produced Water

R615 10 Administrative Procedures

R615-1. Oil and Gas General Rules.

R615 1 1 Definitions

R615 1 1 Definitions

1 Authorized Agent means a representative of the director as authorized by the board.

2 Aquifer means a geological formation including a group of formations or part of a formation which is capable of yielding a significant amount of water to a well or spring.

3 Artificial Liner means a pit liner made of material other than clay or other insitu material and which meets the requirements of R615 9 5 2 1 2 2 and 2 3.

4 Barrel means 42 (US) gallons at 60 degrees Fahrenheit at atmospheric pressure.

5 Board means the Board of Oil Gas and Mining.

6 Carrier Transporter or Taker means any person moving or transporting oil or gas away from a well or lease or from any pool.

7 Casing Pressure means the pressure within the casing or between the casing and tubing at the wellhead.

8 Class II Injection Well means a well which is used for:

8 1 The disposal of fluids which are brought to the surface in connection with conventional oil or natural gas production and which may be commingled with wastewater produced from the operation of a gas plant that is an integral part of production operations unless that wastewater is classified as a hazardous waste at the time of injection or

8 2 Enhanced recovery of oil or gas or

8 3 Storage of hydrocarbons which are liquids at standard temperature and pressure conditions.

9 Completion of a Well means that the well has been adequately worked to be capable of producing oil or gas or that well testing as required by the division has been concluded.

10 Confining Strata refers to a body of material that is relatively impervious to the passage of liquids or gases and that occurs either below above or lateral to a more permeable material in such a way that it confines or limits the movement of liquids or gases that may be present.

11 Correlative Rights means the opportunity of each owner in a pool to produce his just and equitable share of the oil and gas in the pool without waste.

12 Cubic Foot of Gas means the volume of gas contained in one cubic foot of space at a standard

pressure base of 14.73 psia and a standard temperature base of 60 degrees Fahrenheit.

13 Day means a period of 24 consecutive hours.

14 Development Wells means all oil and gas producing wells other than wildcat wells.

15 Director means the executive and administrative head of the division.

16 Division means the Division of Oil Gas and Mining.

17 Drilling Fluid means a circulating fluid usually called mud which is introduced in a drill hole to lubricate the action of the rotary bit remove the drilling cuttings and control formation pressures.

18 Emergency Pit means a pit used for containing fluids at an operating well during an actual emergency or for a temporary period of time.

19 Enhanced Recovery means the process of introducing fluid or energy into a pool for the purpose of increasing the recovery of hydrocarbons from the pool.

20 Entity means a well or a group of wells that have identical division of interest have the same operator produce from the same formation have product sales from a common tank LACT meter gas meter or are in the same participating area of a properly designated unit. Entity number assignments are made by the division in cooperation with the Division of State Lands and Forestry and the State Tax Commission.

21 Establishment means every automobile service station boat marina industrial operation airport trucking terminal or federal state or local government facility which generates at least 500 gallons of used oil annually.

22 Field means the general area underlain by one or more pools.

23 Gas means natural gas or natural gas liquids or other gas or any mixture thereof defined as follows:

23 1 Natural Gas means those hydrocarbons other than oil and other than natural gas liquids separated from natural gas that occur naturally in the gaseous phase in the reservoir and are produced and recovered at the wellhead in gaseous form.

23 2 Other Gas means hydrogen sulfide carbon dioxide helium nitrogen and other nonhydrocarbon gases that occur naturally in the gaseous phase in the reservoir or are injected into the reservoir in connection with pressure maintenance gas cycling or other secondary or enhanced recovery projects.

23 3 Natural Gas Liquids means those hydrocarbons initially in reservoir natural gas regardless of gravity that are separated in gas processing plants from the natural gas as liquids at the surface through the process of condensation absorption adsorption or other methods.

24 Gas Oil Ratio means the ratio of the number of cubic feet of natural gas produced to the number of barrels of oil concurrently produced during any stated period. The term GOR is synonymous with gas oil ratio.

25 Gas Processing Plant means a facility in which liquefiable hydrocarbons are removed from natural gas including wet gas or casinghead gas and the remaining residue gas is conditioned for delivery for sale recycling or other use.

26 Gas Well means any well capable of producing gas in substantial quantities that is not an oil well.

27 Ground Water means water in a zone of saturation below the ground surface.

28 Hearing means any matter heard before the board or its designated hearing examiner.

29 Illegal Oil or Illegal Gas means oil or gas that has been produced from any well within the state in violation of Chapter 6 of Title 40 or any rule or order of the board.

30 Illegal Product means any product derived in whole or in part from illegal oil or illegal gas.

31 Injection or Disposal Well means any Class II Injection Well used for the injection of air gas water or other substance into any underground stratum.

32 Interest Owner means a person owning an interest working interest royalty interest payment out of production or any other interest in oil or gas or in the proceeds thereof.

33 Load Oil means any oil or liquid hydrocarbon which is used in any remedial operation in an oil or gas well.

34 Log or Well Log means the written record progressively describing the strata water oil or gas encountered in drilling a well with such additional information as is usually recorded in the normal procedure of drilling including electrical radioactivity or other similar conventional logs a lithologic description of samples and drill stem test information.

35 Lubricating Oil means the fraction of oil which is used to reduce friction in an industrial or mechanical device.

36 Manifest means the form used for identifying the quantity and composition and the origin routing and destination of used oil during its transportation from the point of generation to the point of treatment storage or disposal.

37 Multiple Zone Completion means a well completion in which two or more separate zones mechanically segregated one from the other are produced simultaneously from the same well.

38 New Production means any increased production resulting from a recompletion workover and new well drilling between January 1 1990 and December 31 1991 as approved by the division.

39 Oil means crude oil or condensate or any mixture thereof defined as follows:

39 1 Crude Oil means those hydrocarbons regardless of gravity that occur naturally in the liquid phase in the reservoir and are produced and recovered at the wellhead in liquid form.

39 2 Condensate means those hydrocarbons regardless of gravity that occur naturally in the gaseous phase in the reservoir that are separated from the natural gas as liquids through the process of condensation either in the reservoir in the well bore or at the surface in field separators.

40 Oil and Gas shall not include gaseous or liquid substances derived from coal oil shale tar sands or other hydrocarbons classified as synthetic fuel.

41 Oil Well means any well capable of producing oil in substantial quantities.

42 Operator or Designated Agent means the person who has been designated by the owners or the board to operate a well or unit.

43 Owner means the person who has the right to drill into and produce from a reservoir and to appropriate the oil and gas that he produces either for himself or for himself and others.

43 1 Working Interest Owner means the owner of an interest in oil or gas burdened with a share of the expenses of developing and operating the property.

44 Person means and includes any natural person bodies politic and corporate partnerships associations and companies.

45 Pit means an earthen surface impoundment constructed to retain fluids and oil field wastes.

Tab D

40-7-1 Interstate compact to conserve oil and gas — Authority for governor to join.

The governor of the state of Utah is authorized and directed for and in the name of the state of Utah to join with the other states in the Interstate Oil Compact to Conserve Oil and Gas which was executed in Dallas, Texas, on the 16th day of February, 1935, and has been extended to the 1st day of September, 1959 with the consent of Congress, and that said compact and all extensions are now on deposit with the department of state of the United States. 1957

40-7-2. Authority for governor to execute extensions or withdraw from compact.

The governor of the state of Utah is authorized and empowered, for and in the name of the state of Utah to execute agreements for further extension of the expiration date of said compact to conserve oil and gas and to determine if and when it shall be to the best interest of the state of Utah to withdraw from said compact upon sixty days' notice as provided by its terms. In the event that he shall determine that the state shall withdraw from said compact he shall have the power and authority to give necessary notice and to take any and all steps necessary and proper to effect the withdrawal of the state of Utah from said compact. 1957

40-7-3. Official representative — Assistant representative.

The governor shall be the official representative of the state of Utah on the "Interstate Oil Compact Commission" provided for in the compact to conserve oil and gas, and shall exercise and perform for the state all of the powers and duties as members of the Interstate Oil Compact Commission, provided, however, that he shall have the authority to appoint an assistant representative who shall act in his stead as the official representative of the state of Utah as a member of said commission. 1957

CHAPTER 8

MINED LAND RECLAMATION

Section	
40-8-1	Short title
40-8-2	Legislative findings.
40-8-3	Purpose
40-8-4	Definitions
40-8-5	Authority to enforce chapter — Coordination of procedures — Department of Environmental Quality
40-8-6	Board — Powers, functions and duties
40-8-7	Board and division — Authority — No retroactive effect for rules
40-8-8	Board authority to act — Entry of order — Confidential data — Proceedings in case of violations.
40-8-9	Evasion of chapter or rules — Penalties — Limitations of actions.
40-8-10	Notice
40-8-11	Budget of administrative expenses — Procedure — Division authority to appoint or employ consultants.
40-8-12	Objectives
40-8-12.5	Reclamation required
40-8-13	Notice of intention required prior to mining operations — Assurance of reclamation required in notice of intention — When contents confidential — Approval of notice of intention not required for small mining

Section

	operations — Procedure for reviewing notice of intention
40-8-14	Surety requirement — Liability of small mining operations for failure to reclaim — Forfeiture of surety
40-8-15	Notice of commencement to division — Operations and progress report
40-8-16	Approved notice of intention valid for life of operation — Withdrawal, withholding, or refusal of approval — Procedure and basis
40-8-17	Responsibility of operator to comply with applicable rules, regulations and ordinances — Inspections
40-8-18	Revised notice of intention authorized — Procedure
40-8-19	Transfer of mining operation under approved notice of intention
40-8-20	Applicability
40-8-21	Temporary suspension or termination of operations — Notice to division — Evaluation and inspection — Release of surety — Evidence of compliance
40-8-22	Division cooperation — Agreements
40-8-23	Effective dates — Exceptions

40-8-1. Short title

This act shall be known and may be cited as the "Utah Mined Land Reclamation Act" 1975

40-8-2. Legislative findings.

The Utah Legislature finds that

(1) A mining industry is essential to the economic and physical well being of the state of Utah and the nation

(2) It is necessary to alter the surface of the earth to extract minerals required by our society, but this should be done in such a way as to minimize undesirable effects on the surroundings

(3) Mined land should be reclaimed so as to prevent conditions detrimental to the general safety and welfare of the citizens of the state and to provide for the subsequent use of the lands affected. Reclamation requirements must be adapted to the diversity of topographic, chemical, climatic, biologic, geologic, economic, and social conditions in the areas where mining takes place. 1975

40-8-3. Purpose.

The purpose of this act is to provide that from the effective date of the act, except as otherwise provided in this act, all mining in the state shall include plans for reclamation of the land affected. 1975

40-8-4. Definitions.

As used in this chapter:

(1) (a) "Approved notice of intention" means a formally filed notice of intention to commence mining operations, including revisions to it, which has been approved under Section 40-8-13

(b) An approved notice of intention is not required for small mining operations

(2) "Board" means the Board of Oil, Gas and Mining

(3) (a) "Deposit" or "mineral deposit" means an accumulation of mineral matter in the form of consolidated rock, unconsolidated material, solutions, or otherwise occurring on the surface, beneath the surface, or in the

waters of the land from which any product useful to man may be produced, extracted, or obtained or which is extracted by underground mining methods for underground storage.

(b) "Deposit" or "mineral deposit" excludes sand, gravel, rock aggregate, water, geothermal steam, and oil and gas as defined in Title 40, Chapter 6, but includes oil shale and bituminous sands extracted by mining operations.

(4) "Development" means the work performed in relation to a deposit following its discovery but prior to and in contemplation of production mining operations, aimed at, but not limited to, preparing the site for mining operations, defining further the ore deposit by drilling or other means, conducting pilot plant operations, constructing roads or ancillary facilities, and other related activities.

(5) "Division" means the Division of Oil, Gas and Mining.

(6) (a) "Exploration" means surface-disturbing activities conducted for the purpose of discovering a deposit or mineral deposit, delineating the boundaries of a deposit or mineral deposit, and identifying regions or specific areas in which deposits or mineral deposits are most likely to exist.

(b) "Exploration" includes, but is not limited to: sinking shafts; tunneling; drilling holes and digging pits or cuts; building of roads, and other access ways; and constructing and operating other facilities related to these activities.

(7) "Land affected" means the surface and subsurface of an area within the state where mining operations are being or will be conducted, including, but not limited to: (a) on-site private ways, roads, and railroads; (b) land excavations; (c) exploration sites; (d) drill sites or workings; (e) refuse banks or spoil piles; (f) evaporation or settling ponds; (g) stockpiles; (h) leaching dumps; (i) placer areas; (j) tailings ponds or dumps; and (k) work, parking, storage, or waste discharge areas, structures, and facilities. All lands shall be excluded that would otherwise be includable as land affected but which have been reclaimed in accordance with an approved plan or otherwise, as may be approved by the board, and lands in which mining operations have ceased prior to July 1, 1977.

(8) (a) "Mining operation" means those activities conducted on the surface of the land for the exploration for, development of, or extraction of a mineral deposit, including, but not limited to, surface mining and the surface effects of underground and in situ mining, on-site transportation, concentrating, milling, evaporation, and other primary processing.

(b) "Mining operation" does not include: the extraction of sand, gravel, and rock aggregate; the extraction of oil and gas as defined in Title 40, Chapter 6; the extraction of geothermal steam; smelting or refining operations; off-site operations and transportation; or reconnaissance activities and activities which will not cause significant surface resource disturbance or involve the use of mechanized earth-moving equipment such as bulldozers or backhoes.

(9) "Notice of intention" means a notice to commence mining operations, including revisions to the notice.

(10) "Off-site" means the land areas that are outside of or beyond the on-site land.

(11) "On-site" means the surface lands on or under which surface or underground mining operations are conducted. A series of related properties under the control of a single operator but separated by small parcels of land controlled by others will be considered a single site unless excepted by the division.

(12) "Operator" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other organization or representative of any kind, either public or private, owning, controlling, or managing a mining operation or proposed mining operation.

(13) "Owner" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other organization or representative of any kind, either public or private, owning, controlling, or managing a mineral deposit or the surface of lands employed in mining operations.

(14) "Reclamation" means actions performed during or after mining operations to shape, stabilize, revegetate, or otherwise treat the land affected in order to achieve a safe, stable, ecological condition and use which will be consistent with local environmental conditions.

(15) "Small mining operations" means mining operations which disturb or will disturb five or less surface acres at any given time. 1987

40-8-5. Authority to enforce chapter — Coordination of procedures — Department of Environmental Quality.

(1) The board and the division have jurisdiction and authority over all persons and property, both public and private, necessary to enforce the provisions of this chapter. Any delegation of authority to any other state officer, board, division, commission, or agency to administer any or all other laws of this state relating to mined land reclamation is withdrawn and the authority is unqualifiedly conferred upon the board and division as provided in this chapter. Nothing in this chapter, however, shall affect in any way the right of the landowner or the Board of State Lands or other agency having proprietary authority, under other provisions of law to administer lands within the state, to include in any lease, license, bill of sale, deed, right-of-way, permit, contract, or other instrument, conditions as appropriate, provided that the conditions are not inconsistent with this chapter and the rules adopted under it.

(2) Where federal or local laws or regulations require operators to comply with mined land reclamation procedures separate from those provided for in this chapter, the board and division will make every effort to have its rules and procedures accepted by the other governing bodies as complying with their respective requirements. The objective in coordination is to minimize the need for operators and prospective operators to undertake duplicating, overlapping, or conflicting compliance procedures.

(3) Nothing in this chapter is intended to abrogate or interfere with any powers or duties of the Department of Environmental Quality. 1991

40-8-6. Board — Powers, functions and duties.

In addition to those provided in Title 40, Chapter 6, the board has the following powers, functions, and duties:

- (1) To enact rules according to the procedures and requirements of Title 63, Chapter 46a, that are reasonably necessary to carry out the purposes of this chapter.
- (2) To hold hearings and to issue orders or other appropriate instruments based upon the results of those hearings.
- (3) To issue emergency orders according to the requirements and provisions of Title 63, Chapter 46b.
- (4) To do all other things and take such other actions within the purposes of this act as may be necessary to enforce its provisions. 1987

40-8-7. Board and division — Authority — No retroactive effect for rules.

- (1) The board and the division may require:
 - (a) identification of the ownership of all interests in mineral deposits included within a notice of intention, including surface ownership of all land affected in the notice;
 - (b) the making and filing, with the division, of true and correct copies of underground and surface mine maps; drill hole locations; area maps of existing and proposed operations; and information relating to volumes of materials moved or proposed to be moved or extracted, which are related to mined land reclamation;
 - (c) the plugging or capping of drill holes and the closing of shafts and tunnels, made in mining operations after those facilities have served their intended purposes;
 - (d) the reclamation of lands affected by mining operations after the effective date of this chapter having due regard for innate differences in mineral deposits;
 - (e) for mining operations other than small mining operations, the furnishing and maintenance of reasonable surety to guarantee the performance of the duty to reclaim the land affected in accordance with approved plans based upon on-site conditions; to treat each drill hole, shaft, or tunnel as may be required; and to pay legally determined public liability and property damage claims resulting from mining operations. The board shall promulgate rules concerning surety for mining operations;
 - (f) that every operator who conducts mining operations in the state maintain suitable records and make periodic reports to the division in furtherance of the purposes of this chapter;
 - (g) that with respect to all mining operations, a notice of intention is filed with and, if required by this chapter, approved by the division before any such mining operations are commenced or continued pursuant to Section 40-8-23;
 - (h) the suspension of mining operations in case of emergency conditions;
 - (i) the payment of fixed, uniform, non-escalating permit fees; or
 - (j) that mining operations be conducted so as to minimize or prevent hazards to public health and safety.

- (2) No rule established by the board with respect to mined land reclamation shall have retroactive effect on existing reclamation plans included as a part of an approved notice of intention to commence mining operations which was approved prior to the effective date of the rule. 1987

40-8-8. Board authority to act — Entry of order — Confidential data — Proceedings in case of violations.

- (1) The board may act by:
 - (a) filing a notice of agency action; or
 - (b) responding to a request for agency action initiated by any affected person.
- (2) (a) The board shall enter its order within 60 days after the hearing.
- (b) All orders entered by the board shall be:
 - (i) entered in books to be kept by the board for that purpose;
 - (ii) indexed; and
 - (iii) public records open for inspection at all times during reasonable office hours.
- (c) Confidential data disclosed under this chapter shall be protected and not become public records, except as provided in Subsection 40-8-13(2).
- (3) (a) Whenever it appears that any person, owner, or operator is violating any provision of this chapter, or any rule or order made under the authority of this chapter, the board shall file a notice of agency action, and shall hold an adjudicative proceeding.
- (b) All persons known to be affected by the violation, and the alleged violators, shall be given opportunity to be heard.
- (c) If, following this hearing, the board finds a violation, it may:
 - (i) issue an abatement or compliance order; or
 - (ii) bring suit in the name of the state to restrain the violator from continuing the violation in any court in the state having jurisdiction in the county of residence of any defendant or in the county where the violation is alleged to have occurred.
- (d) In that suit, the court may grant injunctions, prohibitory and mandatory, including temporary restraining orders and temporary injunctions.
- (e) Failure to comply with the terms of any injunction or order issued by the court is prima facie evidence of contempt and is punishable by the imposition of a penalty not to exceed \$1,000 per day for each day of contempt, in addition to any fine otherwise imposed for the violation of this chapter.
- (4) If a suit is filed against an operator, and a preliminary injunction or temporary restraining order is issued that would result in an operator being ordered to close his mining operation, the party instituting the lawsuit shall give security according to Rule 65A(c) of the Utah Rules of Civil Procedure. 1987

40-8-9. Evasion of chapter or rules — Penalties — Limitations of actions.

- (1) (a) Any person, owner, or operator who willfully or knowingly evades this chapter, or who for the purpose of evading this chapter or any rule or order issued under this chapter, willfully or knowingly makes or causes to be made any false entry in any report, record, account, or memorandum required by this chapter, or by the rule or order, or who willfully or knowingly omits or causes to be omitted from any report, record, account, or memorandum, full, true, and correct entries as required by this chapter, or by the rule or order, or who willfully or knowingly removes from this state or destroys, mutilates, alters, or falsifies any record, account, or memorandum, is

guilty of a misdemeanor and, upon conviction, is subject to a fine of not more than \$10,000 for each violation.

(b) Each day of willful failure to comply with an emergency order is a separate violation.

(2) No suit, action, or other proceeding based upon a violation of this chapter, or any rule or order issued under this chapter, may be commenced or maintained unless the suit, action, or proceeding is commenced within two years from date of the alleged violation.

1987

40-8-10. Notice.

Except as otherwise provided in this chapter, any notification required by this chapter shall be given by the board or division by personal service to individuals directly affected and by one publication in a daily newspaper of general circulation in Salt Lake City, Utah, and in all newspapers of general circulation published in the county or counties in which the land affected is situated.

1987

40-8-11. Budget of administrative expenses — Procedure — Division authority to appoint or employ consultants.

(1) The division, with the approval of the board, shall prepare a budget of the administrative expenses in carrying out the provisions of this act for the fiscal year next following the convening of the Legislature. This budget shall be submitted to the executive director of the Department of Natural Resources for inclusion in the governor's appropriation request to the Legislature.

(2) The division shall have authority to appoint or employ technical support or consultants in the pursuit of the objectives of this act and shall be responsible for coordination with other agencies in matters relating to mined land reclamation and the application of related laws.

1983

40-8-12. Objectives.

The objectives of mined land reclamation are:

(1) to return the land, concurrently with mining or within a reasonable amount of time thereafter, to a stable ecological condition compatible with past, present, and probable future local land uses;

(2) to minimize or prevent present and future on-site or off-site environmental degradation caused by mining operations to the ecologic and hydrologic regimes and to meet other pertinent state and federal regulations regarding air and water quality standards and health and safety criteria; and

(3) to minimize or prevent future hazards to public safety and welfare.

1987

40-8-12.5. Reclamation required.

Every operator shall be obligated to conduct reclamation and shall be responsible for the costs and expenses thereof.

1987

40-8-13. Notice of intention required prior to mining operations — Assurance of reclamation required in notice of intention — When contents confidential — Approval of notice of intention not required for small mining operations — Procedure for reviewing notice of intention.

(1) (a) Before any operator begins mining operations, or continues mining operations pursuant to Section 40-8-23, he shall file a notice of intention

for each individual mining operation with the division.

(b) The notice of intention for small mining operations shall include a statement that the operator shall conduct reclamation as required by rules promulgated by the board.

(c) The notice of intention for mining operations other than small mining operations shall include a plan for reclamation of the lands affected as required by rules promulgated by the board.

(2) Information provided in the notice of intention and its attachments relating to the location, size, or nature of the deposit that is marked confidential by the operator shall be protected as confidential information by the board and the division and is not a matter of public record unless the board or division obtains a written release from the operator, or until the mining operation has been terminated as provided in Subsection 40-8-21(2).

(3) (a) Within 30 days from the receipt of a notice of intention, the division shall complete its review of the notice and shall make further inquiries, inspections, or examinations that are necessary to properly evaluate the notice.

(b) The division shall notify the operator of any objections to the notice and shall grant the operator a reasonable opportunity to take action that may be required to remove the objections or obtain a ruling relative to the objections from the board.

(4) Approval of a notice of intention for small mining operations is not required.

(5) The notice of intention for mining operations other than small mining operations, shall be reviewed as provided in this subsection.

(a) Within 30 days after receipt of a notice of intention or within 30 days following the last action of the operator or the division on the notice of intention, the division shall make a tentative decision to approve or disapprove the notice of intention.

(b) The division shall:

(i) mail the information relating to the land affected and the tentative decision to the operator; and

(ii) publish the information and the decision, in abbreviated form, one time only, in all newspapers of general circulation published in the county where the land affected is situated, and in a daily newspaper of general circulation in Salt Lake City, Utah.

(c) The division shall also mail a copy of the abbreviated information and tentative decision to the zoning authority of the county in which the land affected is situated and to the owner of record of the land affected.

(d) (i) Any person or agency aggrieved by the tentative decision may file a request for agency action with the division.

(ii) If no requests for agency action are received by the division within 30 days after the last date of publication, the tentative decision on the notice of intention is final and the division shall notify the operator.

(iii) If written objections of substance are received, the division shall hold a formal adjudicative proceeding.

(e) Subsection (5) does not apply to exploration.

(6) Within 30 days after receipt of a notice of intention concerning exploration operations other than

small mining operations, the division will review the notice of intention and approve or disapprove it. 1987

40-8-14. Surety requirement — Liability of small mining operations for failure to reclaim — Forfeiture of surety.

(1) After receiving notification that a notice of intention for mining operations other than small mining operations has been approved, but prior to commencement of such operations, the operator shall provide surety to the division, in a form and amount determined by the board.

(2) In determining the amount of surety to be provided, the board shall consider factual information and recommendations provided by the division as to the magnitude, type, and costs of approved reclamation activities planned for the land affected and the nature, extent, and duration of operations under the approved notice. The board shall approve a fixed amount estimated as required at any point in time covered by the notice of intent to complete reclamation to an acceptable standard.

(3) In determining the form of surety to be provided by the operator, the board shall approve a method acceptable to the operator and consistent with the requirements of this chapter which may be one or a combination of but not limited to: a written contractual agreement, collateral, a bond or other form of insured guarantee, deposited securities, or cash. In making this decision the board shall, with respect to the operator, consider such factors as his financial status, his assets within the state, his past performance on contractual agreements, and his facilities available to carry out the planned work.

(4) In determining the amount and form of surety to be provided under this section, consideration shall be given to other similar requirements made effective on the operator by landowners, governmental agencies, or otherwise, with the intent that such surety requirements shall be coordinated and not duplicated.

(5) The liability under surety provisions shall continue until such time as released as to part or in its entirety, by the division.

(6) If the operator of a small mining operation fails or refuses to carry out the necessary land reclamation as required by this chapter and the rules of the board, the board, after notice and hearing, may order that:

(a) reclamation be conducted by the division; and

(b) the costs and expenses of reclamation, together with costs of collection including attorney's fees, be recovered in a civil action brought by the attorney general against the operator in any appropriate court.

(7) If the operator of a mining operation other than a small mining operation fails or refuses to carry out the necessary land reclamation as outlined in the approved notice of intention, the board may, after notice and hearing, declare any surety filed for this purpose forfeited. With respect to the surety filed with the division, the board shall request the attorney general to take the necessary legal action to enforce and collect the amount of liability. Where surety or a bond has been filed with the Division of State Lands and Forestry or an agency of the federal government, the board shall certify a copy of the transcript of the hearing to the division or such agency, together with a request that the necessary forfeiture action be taken. The forfeited surety shall be used only for the reclamation of the land to which it relates, and any residual amount returned to the rightful claimant. 1989

40-8-15. Notice of commencement to division — Operations and progress report.

(1) Within 30 days after commencement of mining operations under an approved notice of intention, the operator shall give notice of such commencement to the division.

(2) At the end of each calendar year, unless waived by the division, each operator conducting mining operations under an approved notice of intention shall file an operations and progress report with the division on a form prescribed in the rules promulgated by the board. 1987

40-8-16. Approved notice of intention valid for life of operation — Withdrawal, withholding, or refusal of approval — Procedure and basis.

(1) An approved notice of intention or approved revision of it remains valid for the life of the mining operation, as stated in it, unless the board withdraws the approval as provided in Subsection (2).

(2) The board or the division shall not withdraw approval of a notice of intention or revision of it, except as follows:

(a) Approval may be withdrawn in the event that the operator substantially fails to perform reclamation or conduct mining operations so that the approved reclamation plan can be accomplished.

(b) Approval may be withdrawn in the event that the operator fails to provide and maintain surety as may be required under this chapter.

(c) Approval may be withdrawn in the event that mining operations are continuously shut down for a period in excess of five years, unless the extended period is accepted upon application of the operator.

(3) Approval of a notice of intention may not be refused, withheld, nor withdrawn by the division until the operator, who holds or has applied for such approval, has had an opportunity to request a hearing before the board, present evidence, cross-examine, and participate fully in the proceedings. Based on the record of the hearing, the board will issue an order concerning the refusal, withholding, or withdrawal of the notice of intention. If no hearing is requested, the division may refuse, withhold, or withdraw approval of a notice of intention.

(4) In the event that the division or the board withdraws approval of a notice of intention or its revision, all mining operations included under the notice shall be suspended in accordance with procedures and schedule approved by the division. 1989

40-8-17. Responsibility of operator to comply with applicable rules, regulations and ordinances — Inspections.

(1) The approval of a notice of intention shall not relieve the operator from responsibility to comply with all other applicable statutes, rules, regulations, and ordinances, including but not limited to, those applying to safety, air and water pollution, and public liability and property damage.

(2) As a condition of consideration and approval of a notice of intention, each applicant or operator under a notice of intention shall permit members of the board, the division, or other state agency having lawful interest in the administration of this act, to have the right, at all reasonable times, to enter the affected land and all related properties included in the notice of intention, whether or not approved, to make inspections for the purposes of this act. 1975

40-8-18. Revised notice of intention authorized — Procedure.

(1) In recognition that mining operations and related reclamation plans may require revision to fit changing conditions or developing technology, an operator who is conducting mining operations under an approved notice of intention shall submit to the division a notice of intention when revising mining operations. This notice of intention to revise mining operations shall be submitted in the form provided for in the rules promulgated by the board.

(2) The notice of intention to revise mining operations will be designated as an amendment to the existing notice of intention by the division, based on rules promulgated by the board. An amendment of a notice of intention will be reviewed and considered for approval or disapproval by the division within 30 days of receipt of a notice of intention to revise mining operations.

(3) A notice of intention to revise mining operations, if not designated as an amendment of a notice of intention, as set forth in Subsection 40-8-18(2), shall be processed and considered for approval by the division in the same manner and within the same time period as an original notice of intention. The operator shall be authorized and bound by the requirements of his existing notice until the revision is acted upon and any revised surety requirements are established and satisfied.

(4) Small mining operations shall submit an amendment to the notice of intention when changes in the operations occur. Approval of an amendment of small mining operations is not required. 1987

40-8-19. Transfer of mining operation under approved notice of intention.

Whenever an operator succeeds to the interest of another operator who holds an approved notice of intention or revision covering a mining operation, by sale, assignment, lease, or other means, the division may release the first operator from his responsibilities under his approved notice of intention, including surety, provided the successor assumes all of the duties of the former operator, to the satisfaction of the division, under this approved notice of intention, including its then approved reclamation plan and the posting of surety. Upon the satisfactory assumption of such responsibilities by the successor operator, under conditions approved by the division, the approved notice of intention shall be transferred to the successor operator. 1975

40-8-20. Applicability.

This act shall apply to all lands in the state of Utah lawfully subject to its police power. No political subdivision of this state shall enact laws, regulations, or ordinances which are inconsistent with this act. 1975

40-8-21. Temporary suspension or termination of operations — Notice to division — Evaluation and inspection — Release of surety — Evidence of compliance.

(1) In the case of a temporary suspension of mining operations, excluding labor disputes, expected to be in excess of five years' duration, the operator shall, within 30 days, notify the division.

(2) In the case of a termination of mining operations or a suspension of such operations expected to extend for a period in excess of two years, the operator shall furnish the division with such data as it may require in order to evaluate the status of the mining operation, performance under the reclamation plan,

and the probable future status of the mineral deposit and condition of the land affected.

(3) Upon receipt of notification of termination or extended suspension, the division shall, within 30 days, cause an inspection to be made of the property and take whatever action may be appropriate in furtherance of the purposes of this chapter.

(4) The full release by the division of surety posted under an approved notice of intention shall be prima facie evidence that the operator has fully complied with the provisions of this chapter. 1987

40-8-22. Division cooperation — Agreements.

(1) The division shall cooperate with other state agencies, local governmental bodies, agencies of the federal government, and appropriate private interest in the furtherance of the purposes of this act.

(2) The division is authorized to enter into cooperative agreements with these agencies, as may be approved by the board, in furtherance of the purposes of this act and may accept or commit funds in connection thereto as may be appropriated or otherwise provided for the purpose and as specifically approved by the board, except that such actions shall not result in any delegation of powers, responsibility, or authority conferred upon the board or division by this act. 1975

40-8-23. Effective dates — Exceptions.

This act shall become effective sixty days after adjournment of the Legislature except as follows:

(1) Mining operations which are active on the effective date of this act will be required to prepare and submit a notice of intention on or before July 1, 1977, and shall be authorized to continue such existing operations until the operator obtains approval of his notice of intention. Such approval shall be obtained by the operator within 36 months from the date of submission of this notice. Subsequent to approval of the notice of intention, the operator shall be bound by the provisions of the approved notice of intention and surety requirements as provided in Section 40-8-13 [and Section 40-8-14].

(2) Mining operations which are active on the effective date of this act and which are suspended or terminated on or before July 1, 1977, shall advise the division of this fact before July 10, 1977, and shall not be required to submit a notice of intention.

(3) Mining operations which are inactive on the effective date of this act and which resume operations on or before July 1, 1977, shall be required to prepare and submit a notice of intention within twelve months following the effective date of this act or within six months of the resumption of such operations, whichever is earlier, and shall be authorized to conduct operations as described in the notice of intention until the operator obtains approval of his notice of intention. Such approval shall be obtained by the operator within 36 months from the date of submission of the notice. Subsequent to approval of the notice of intention the operator shall be bound by the provisions of the approved notice of intention and surety requirements as provided in Section 40-8-13 [and Section 40-8-14].

(4) The board and division, in the initial application of this act and until July 1, 1977, shall not be bound by the thirty-day time limitation within which to take action on a notice of intention; but all notices of intention filed before July 1, 1977, shall be acknowledged as received

within thirty days of receipt and action shall be commenced by the division within twelve months from the date of receipt.

(5) This act and the rules and regulations promulgated under it shall be fully effective for all operators and mining operations active on the effective date of this act or commenced or reactivated on and after July 1, 1977. 1975

CHAPTER 9

OIL REREFINEMENT ACT

Section	Short title.
40-9-1.	Legislative findings — Purpose.
40-9-2.	Definitions.
40-9-3.5.	Powers and duties of board and division.
40-9-4.	Permits for rerefiners, reclaimers and collectors of used oil — Information required of applicants.
40-9-5.	Disposal of used oil.
40-9-6.	Violations — Adjudicative proceedings — Injunctions — Misdemeanors — Limitation of actions.

40-9-1. Short title.

This act shall be known and may be cited as the "Utah Oil Rerefinement Act." 1977

40-9-2. Legislative findings — Purpose.

(1) It is in the interest of the state to assure that used oil will be recycled in a manner which does not constitute a threat to public health and preserves the quality of air, water and land.

(2) Inform the public that used oil is collected, treated and reused in a manner which conserves energy and does not present a hazard to public health or the environment. 1981

40-9-3. Definitions.

As used in this act:

(1) "Board" means the Board of Oil, Gas and Mining.

(2) "Division" means the Division of Oil, Gas and Mining.

(3) "Establishment" means every automobile service station, boat marina, industrial operation, airport, trucking terminal or federal, state or local government facility which generates at least 500 gallons of used oil annually.

(4) "Lubricating oil" means the fraction of crude oil which is used to reduce friction in an industrial or mechanical device. This term includes rerefined oil.

(5) "Manifest" means the form used for identifying the quantity and composition and the origin, routing and destination of used oil during its transportation from the point of generation to the point of treatment, storage or disposal.

(6) "Reclaimed oil" means used oil which has been treated by a method other than that of rerefining.

(7) "Reclaimer" means a person who uses treatment methods other than those of rerefining, to convert used oil into finished petroleum products suitable for reuse. Those methods may include dehydration, settling, filtering, centrifuging or distillation or any combination thereof.

(8) "Recycled oil" means oil which is reused following its original use, for any purpose, including the purpose for which the oil was origi-

nally used. This term includes oil which is rerefined, reclaimed, burned or reprocessed.

(9) "Rerefined oil" means used oil which is rerefined to remove the physical and chemical contaminants acquired through use which, by itself or when blended with new oil or additives, is substantially identical or superior to new oil intended for the same purposes.

(10) "Rerefiner" means any person who rerefines used oil to remove its physical and chemical contaminants.

(11) "Used oil" means oil which has been refined from crude oil, used, and as a result of that use, contaminated by physical or chemical impurities.

(12) "Used oil collector" means any person who collects used oil for resale to an oil rerefining facility or for disposal by other methods approved by the board. 1981

40-9-3.5. Powers and duties of board and division.

(1) The board and division shall conduct a program to encourage the use of recycled oil so as to achieve the purposes of this act.

(2) The board and division shall adopt rules and regulations to implement the provisions of this act.

(3) The division may license persons and require the use, where appropriate, of manifests.

(4) The division may:

(a) enter at reasonable times any establishment or other place maintained by any person where used oil is collected, treated or disposed of, for the purposes of inspection or obtaining samples of used oil;

(b) have access to records relating to the collection, treatment or disposal of used oil.

(5) The board may hold hearings to investigate any alleged violation of this act. 1981

40-9-4. Permits for rerefiners, reclaimers and collectors of used oil — Information required of applicants.

(1) No person may act as a rerefiner or reclaimer without securing a permit from the division. Before issuing a permit, the division shall require information pertaining to the sources and quantities of used oil received for rerefining or reclaiming or both rerefining and reclaiming, the rerefining or reclaiming or both the rerefining and reclaiming facility's plant size and operation capacity, the specific rerefining or reclaiming or both rerefining and reclaiming technologies to be used, the quantities and grades of rerefined or reclaimed or both rerefined and reclaimed oil to be produced, and the methods of disposing of the waste byproducts, together with such other information as the division deems necessary.

(2) No person may act as a used oil collector without having filed an application with and having obtained a permit from the division. The division shall require as part of the application, to the extent available to the applicant, information pertaining to the methods utilized or to be utilized for collecting and storing used oil, the quantities and types of all used oil collected, or to be collected the quantities and types of used oil delivered or to be delivered to rerefiners or reclaimers or both or otherwise disposed of, including the place of disposal, the methods of transferring, the identity of persons from whom used oil was or is to be received or purchased or to whom it was or is to be transferred or sold and such other information as the division deems necessary. 1981

Tab E

license issued to that person that indicates completion of hunter education (number or other state verification).

In lieu of the above documentation, a resident may apply by mail or in person to obtain a duplicate certificate of completion card at a Division office by completing an affidavit and request for records' search. Upon verification of that person's satisfactory completion of the hunter education course, that person will be issued a duplicate certificate for a charge.

If a person who has completed a hunter education course in another state, province or country moves into the state and becomes a resident, that person must obtain a Utah-issued certificate of completion prior to purchasing a license. The person, at a Division office, must present certification of having successfully completed an approved hunter education course. A Utah certificate of completion card with a number on it will be issued in exchange for the card or document from the other entity.

Nonresidents, without proper documentation in hand, may obtain a license by the following: telephone verification may be obtained through a Division office; or the Division may call the appropriate agency, obtain verification and charge for the service. Upon verification, the Division may issue a license.

Persons whose records cannot be found or who cannot be verified as having completed the hunter education course will be required to take the complete course and pass it satisfactorily.

1990

23-19-11

R608-24. Compensation for Mountain Lion and Bear Damage.

R608-24-1. Purpose and Authority.

R608-24-2. Definitions.

R608-24-3. General Rules.

R608-24-1. Purpose and Authority.

Under authority of UCA 23-24-1, these rules provide the procedures, standards, requirements and limits for payment for damages to livestock by mountain lion and black bear.

R608-24-2. Definitions.

(1) Agriculture. The Utah Department of Agriculture.

(2) Black bear. *Ursus americanus*.

(3) Mountain lion. *Felis concolor*.

(4) Damage. UCA 23-24-1(1)(a).

(5) Division. UCA 23-24-1(1)(b).

(6) Livestock. Calves (less than 12 months of age), sheep, or lambs (less than six months of age).

(7) Fair market value. Average commercial livestock prices from the July 1 through June 30 period as determined by the Utah Livestock and Auction Reporting Service.

(8) UCA. Utah Code Annotated.

(9) Injury. An act by mountain lion or bear resulting in death within 30 days or permanent damage to the animal.

R608-24-3. General Rules.

(1) UCA 23-24-1(2).

Notification must be made in writing to one of the Division regional offices within four working days. Notification may be made orally to expedite field investigations, and must be followed in writing within four working days after damage is discovered.

(2) UCA 23-24-1(3).

(3) UCA 23-24-1(4)(a). Claims received from July 1 through June 30 will be assessed and accepted or denied for damage payments based on information reported on the livestock damage form. Claims accepted for damage payments will be held until all damage claims for the July 1 through June 30 period have been collected. If the total damage claims exceed the appropriated funds for this purpose, damage payments will be prorated for all eligible claims. Damage payments will be paid only for confirmed losses.

The Division or Animal Damage Control specialists will document on approved livestock damage forms the type and magnitude of livestock losses experienced by livestock producers. Where agreement with the type or magnitude of losses is not achieved by Animal Damage Control specialists, a Division representative will follow up with additional field investigation to assess damage claims.

(b) UCA 23-24-1(4)(b).

(c) UCA 23-24-1(4)(c).

(4) UCA 23-24-1(5).

1990

23-24-1, 4-23-7

R613. Oil, Gas and Mining; Non Coal.

R613-1. Minerals Regulatory Program.

R613-2. Exploration.

R613-3. Small Mining Operations.

R613-4. Large Mining Operations.

R613-5. Administrative Procedures.

R613-1. Minerals Regulatory Program.

R613-1-101. Preamble.

R613-1-102. Introduction.

R613-1-103. General Rules.

R613-1-104. Violations and Enforcement.

R613-1-105. Forms.

R613-1-106. Definitions.

R613-1-101. Preamble.

These Rules and all subsequent revisions as approved and promulgated by the Board of Oil, Gas, & Mining (Board) of the State of Utah, are developed pursuant to the requirements of the Utah Mined Land Reclamation Act of 1975, Title 40, Chapter 8 of the Utah Code Annotated as amended (the Act). Paragraph 40-8-2 of the Act states:

"The Utah Legislature finds that: (1) A mining industry is essential to the economic and physical well-being of the State of Utah and the nation. (2) It is necessary to alter the surface of the earth to extract minerals required by our society, but this should be done in such a way as to minimize undesirable effects on the surroundings. (3) Mined land should be reclaimed so as to prevent conditions detrimental to the general safety and welfare of the citizens of this state and to provide for the subsequent use of the lands affected. Reclamation requirements must be adapted to the diversity of topographic, chemical, biologic, geologic, economic and social conditions in the areas in which mining takes place."

In accordance with this legislative direction, these Rules recognize the necessity to balance the reclamation objectives of the Act with the physical, biological and economical constraints which may exist on successful reclamation. The Act and its revisions are hereby expressly incorporated herein by reference and made a part of these Rules.

There is intentional duplication in these rules. For example, the rule on hole plugging requirements is repeated in the section on Exploration, Small Mining Operations, and Large Mining Operations. This repetition is intended to benefit the operator by putting all the rules relevant to a type of operation in the introductory section and in the section on that type of operation.

R613-1-102. Introduction.

1. Effective Dates, Applicability, Type of Operations Affected:

1.11. Effective November 1, 1988, the following rules apply to all previously exempted mining operations and to mining operations planning to commence, or resume operations within the state of Utah. These rules will not apply to existing mining operations approved prior to the effective date of these rules, or to notices of intention or amendments filed prior to these rules. However, these rules will apply to any revisions to an approved notice of intention filed subsequent to the effective date of these rules.

1.12. Operators should refer to the section of these rules which applies to the type of mining operation (e.g., exploration, small mining operation, or large mining operation) being conducted or proposed.

1.13. These rules apply to all lands within the state of Utah lawfully subject to its police power, regardless of surface or mineral ownership, and regardless of the type of mining operation conducted.

2. Cooperative Agreements/Memoranda of Understanding:

The Division of Oil, Gas and Mining (Division) will cooperate with other state agencies, local governmental bodies, agencies of the federal government, and private interests in the furtherance of the purposes of the Utah Mined Land Reclamation Act. The Division is authorized to enter into cooperative agreements and develop memoranda of understanding with agencies in furtherance of the purposes of the Act. The objective is to minimize the need for operators to undertake duplicative, overlapping, excessive, or conflicting procedures.

3. Operator Responsibilities. Compliance with other Local, State & Federal Laws:

The approval or acceptance of a complete notice of intention shall not relieve an operator from his responsibility to comply with the applicable statutes, rules, regulations, and ordinances of all local, state and federal agencies with jurisdiction over any aspect of the operator's mining operations, including, but not limited to: Utah State Division of Water Rights, the Utah Department of Business Regulation, the Utah State Industrial Commission, the Utah Division of Environmental Health, the Utah Division of State History, the Utah Division of State Lands and Forestry, the Utah Division of Wildlife Resources, the U. S. Fish and Wildlife Service, the United States Bureau of Land Management, the United States Forest Service, the United States Environmental Protection Agency, and local county or municipal governments.

4. Division Guidelines, Operator Assistance in Application Preparation:

Each operator who conducts mining operations on any lands within the state of Utah is responsible for compliance with the following rules. The Division shall provide guidelines to aid the operator in complying with the rules.

R613-1-103. General Rules.

The following are general rules for statewide application. Special rules, regulations and orders will be

issued when necessary or advisable, after notice and hearing, and shall prevail as against these general rules, if in conflict therewith.

R613-1-104. Violations and Enforcement.

If after notice and hearing, the Board finds that a violation of the Act, these rules, a notice of intention, or a Board or Division order has occurred, the Board may take any enforcement action authorized by law including requiring, compliance, abatement, mitigation, cessation of operations, a civil suit, forfeiture of surety, reclamation, or any other lawful action.

R613-1-105. Forms.

The attached forms are intended for the convenience of the operator and the Division, and may be changed from time to time. The forms are not part of these rules and use of a particular form, though encouraged, is not required, as long as all of the necessary information is provided in a reasonable manner.

R613-1-106. Definitions.

'Act' means the Utah Mined Land Reclamation Act, enacted in 1975, as amended. 40-8-1, et seq., UCA.

'Adjudicative proceeding' means an agency action or proceeding that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all agency actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license; and judicial review of all of such actions. Those matters not governed by Title 63, Chapter 46b, Administrative Procedures Act, of the Utah Code annotated (1953, as amended) shall not be included within this definition.

'Agency' means a board, commission, department, division, officer, council, office, committee, commission, bureau, or other administrative unit of this state, including the agency head, agency employees, or other persons acting on behalf of or under the authority of the agency head, but does not mean the Legislature, the courts, the governor, any political subdivision of the state, or any administrative unit of a political subdivision of the state.

'Agency head' means an individual or body of individuals in whom the ultimate legal authority of the agency is vested by statute.

'Amendment' is an insignificant change in the approved notice of intention.

'Approved Notice of Intention' means a formally filed notice of intention to commence mining operations, including any amendments or revisions thereto, which has been approved by the Division. An approved notice of intention is not required for exploration having a disturbed area of five or less surface acres, or for small mining operations.

'Board' means the Utah Board of Oil, Gas and Mining. The Board shall hear all appeals of adjudicative proceedings which commenced before the Division as well as all adjudicative proceedings and other proceedings which commence before the Board. The Board may appoint a Hearing Examiner for its hearings in accordance with the Rules of Practice and Procedure before the Board of Oil, Gas and Mining.

'Deleterious Materials' means earth, waste or introduced materials exposed by mining operations to air, water, weather or microbiological processes, which would likely produce chemical or physical conditions in the soils or water that are detrimental to the biota or hydrologic systems.

'Deposit' or 'mineral deposit' means an accumulation of mineral matter in the form of consolidated

rock, unconsolidated materials, solutions, or otherwise occurring on the surface, beneath the surface, or in the waters of the land from which any useful product may be produced, extracted or obtained, or which is extracted by underground mining methods for underground storage. "Deposit" or "mineral deposit" excludes sand, gravel, rock aggregate, water, geothermal steam, and oil and gas, but includes oil shale and bituminous sands extracted by mining operations.

"Development" means the work performed in relation to a deposit following its discovery, but prior to and in contemplation of production mining operations. Development includes, but is not limited to, preparing the site for mining operations, further defining the ore deposit by drilling or other means, conducting pilot plant operations, and constructing roads or ancillary facilities.

"Disturbed Area" means the surface land disturbed by mining operations. The disturbed area for small mining operations shall not exceed five acres. The disturbed area for large mining operations shall not exceed the acreage described in the approved notice of intention.

"Division" means the Utah Division of Oil, Gas and Mining. The Division Director or designee is the Presiding Officer for all informal adjudicative proceedings which commence before the Division in accordance with Rule R613-5.

"Exempt Mining Operations" means those mining operations which were previously exempt from the Act because less than 500 tons of material was mined in a period of twelve consecutive months or less than two acres of land was excavated or used as a disposal site in a period of twelve consecutive months. These exemptions were eliminated by statutory amendments in 1986 and are no longer available.

"Exploration" means surface disturbing activities conducted for the purpose of discovering a deposit or mineral deposit, delineating the boundaries of a deposit or mineral deposit, and identifying regions or specific areas in which deposits or mineral deposits are most likely to exist. "Exploration" includes, but is not limited to, sinking shafts, tunneling, drilling holes, digging pits or cuts, building roads and other access ways.

"Land affected" means the surface and subsurface of an area within the state where mining operations are being or will be conducted, including, but not limited to: (a) onsite private ways, roads, and railroads, (b) land excavations, (c) exploration sites, (d) drill sites or workings, (e) refuse banks or spoil piles, (f) evaporation or settling ponds, (g) stockpiles, (h) leaching dumps, (i) placer areas, (j) tailings ponds or dumps, (k) work, parking, storage, or waste discharge areas, structures, and facilities. Land affected does not include: (x) lands which have been reclaimed in accordance with an approved plan or as otherwise approved by the Board, (y) lands on which mining operations ceased prior to July 1, 1977, or (z) lands on which previously exempt mining operations ceased prior to April 29, 1989.

"Large Mining Operations" means mining operations which have a disturbed area of more than five surface acres at any time.

"License" means a franchise, permit, certification, approval, registration, charter, or similar form of authorization required by statute.

"Mining operations" means those activities conducted on the surface of the land for the exploration for, development of, or extraction of a mineral deposit including, but not limited to, surface mining and the surface effects of underground and in situ

mining, onsite transportation, concentrating, milling, evaporation, and other primary processing. "Mining operation" does not include the extraction of sand, gravel, and rock aggregate, the extraction of oil and gas, the extraction of geothermal steam, smelting or refining operations, offsite operations and transportation, or reconnaissance activities which will not cause significant surface resource disturbance and do not involve the use of mechanized earth moving equipment such as bulldozers or backhoes.

"Notice of Intention" means a notice of intention to commence mining operations, including any amendments or revisions thereto.

"Offsite" means the land areas that are outside of or beyond the onsite land.

"Onsite" means the surface lands on or under which surface or underground mining operations are conducted. A series of related properties under the control of a single operator but separated by small parcels of land controlled by others will be considered a single site unless excepted by the Division.

"Operator" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other organization or representative of any kind, either public or private, owning, controlling, conducting, or managing a mining operation or proposed mining operation.

"Owner" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other organization or representative of any kind, either public or private, owning, controlling, conducting, or managing a mineral deposit or the surface of lands employed in mining operations.

"Party" means the Board, Division or other person commencing an adjudicative proceeding, all respondents, all persons permitted by the Board to intervene in the proceeding, and all persons authorized by statute or agency rule to participate as parties in an adjudicative proceeding.

"Person" means an individual, group of individuals, partnership, corporation, association, political subdivision or its units, governmental subdivision or its units, public or private organization or entity of any character, or another agency.

"Presiding Officer" means an agency head or an individual or body of individuals designated by the agency head, by the agency's rules, or by statute to conduct an adjudicative proceeding. For the purpose of these rules, the Board, or its appointed Hearing Examiner, shall be considered the Presiding Officer of all appeals of informal adjudicative proceedings which commenced before the Division as well as all adjudicative proceedings which commence before the Board. The Division Director or his/her designee shall be considered a Presiding Officer for all informal adjudicative proceedings which commence before the Division in accordance with this Rule R613-5. If fairness to the parties is not compromised, an agency may substitute one Presiding Officer for another during any proceeding.

"Reclamation" means actions performed during or after mining operations to shape, stabilize, revegetate, or otherwise treat the land affected in order to achieve a safe and ecologically stable condition and use which will be consistent with local environmental conditions and land management practices.

"Regrade or Grade" means to physically alter the topography of any land surface.

"Respondent" means any person against whom an adjudicative proceeding is initiated, whether by an agency or any other person.

"Revision" means a change to an approved Notice of Intention to Conduct Mining Operations which will increase or decrease the amount of land affected or alter the location and type of onsite surface facilities such that the nature of the reclamation plan will differ substantially from that in the approved Notice of Intention.

"Small Mining Operations" means mining operations which have a disturbed area of five or less surface acres at any time.

"Surface Mining" means mining conducted on the surface of the land including open pit, strip or auger mining, dredging, quarrying, leaching, surface evaporation operations, reworking abandoned dumps and tailings and activities related thereto.

"Underground Mining" means mining carried out beneath the surface by means of shafts, tunnels or other underground mine openings.

1988 10-2-1 et seq

R613-2. Exploration.

R613-2-101 Filing Requirements and Review Procedures

R613-2-102 Duration of the Notice of Intention

R613-2-103 Notice of Intention to Conduct Exploration

R613-2-104 Operator(s), Surface and Mineral Owner(s)

R613-2-105 Maps and Drawings

R613-2-106 Project Description

R613-2-107 Operation Practices

R613-2-108 Hole Plugging Requirements

R613-2-109 Reclamation Practices

R613-2-110 Variance

R613-2-111 Surety

R613-2-112 Failure to Reclaim

R613-2-113 Confidential Information

R613-2-114 Revised Notice

R613-2-115 Reports

R613-2-116 Practices and Procedures Appeals

R613-2-101 Filing Requirements and Review Procedures

1. A complete Notice of Intention to Conduct Exploration (FORM MR EXP) or a letter containing all the required information must be filed with the Division before exploration begins. It is recommended that the notice of intention be filed with the Division at least 30 days prior to the planned commencement of exploration.

2. Within 15 days after receipt of a Notice of Intention to Conduct Exploration (FORM MR EXP) or comparable letter, the Division will review the proposal and notify the operator in writing.

2.11 That the notice of intention is complete, or
2.12 That the notice of intention is incomplete, and that additional information as identified by the Division will be required.

2.13 The Division will review any subsequent filings of information within 10 working days of receipt.

3. A notice of intention to conduct exploration will not require Division approval unless more than five surface acres of disturbance is proposed. However, all of the required information must be provided to the Division. Division approval is required for all variances from Rule R613-2-107, 108, or 109 regardless

of the number of surface acres of disturbance planned.

4. Exploration that will disturb more than five surface acres at any given time will require Division approval and a reclamation surety before exploration begins. See Rule R613-2-103.

5. Development of a mine is conducted within the disturbed area of an approved surface mining operation or within the five-acre disturbed area of a small mining operation does not require submission of a Notice of Intention to Conduct Exploration (FORM MR EXP) or comparable letter.

R613-2-102 Duration of the Notice of Intention

A complete Notice of Intention to Conduct Exploration or comparable letter must be filed with the Division by July 1 of the year following the start of a mine. All exploration and reclamation activities should be completed within this time frame. An operator desiring to extend the duration of a notice of intention must notify the Division in writing prior to expiration of the notice of intention, stating the reasons an extension is required and an anticipated length of time required to complete exploration and reclamation.

R613-2-103 Notice of Intention to Conduct Exploration

The notice of intention must address the requirements of the following rules:

Rule # Subrule

R613-2-104 Operator(s), Surface and Mineral Owner(s)

R613-2-105 Maps and Drawings

R613-2-106 Project Description

R613-2-107 Operation Practices

R613-2-108 Hole Plugging Requirements

R613-2-109 Reclamation Practices

R613-2-110 Variance

R613-2-104 Operator(s), Surface and Mineral Owner(s).

The notice of intention shall include the following general information:

1. The name, permanent mailing address and telephone number of the operator responsible for exploration.

2. The name and permanent mailing address of the surface land owner(s) and mineral owner(s) of all land to be affected by the operations.

3. The federal mining claim number(s), lease number(s), or permit number(s) of any mining claims, federal or state leases or permits included in the land affected.

R613-2-105 Maps and Drawings

A topographic base map showing the location of the proposed exploration project must be submitted with the notice of intention. A USGS 7.5 minute series map is preferred. The areas to be disturbed should be plotted on the map in sufficient detail so that they can be located on the ground. It is recommended that the operator also plot and label any previously disturbed areas in the immediate vicinity of the proposed exploration project for which the operator is not responsible.

R613-2-106 Project Description

The notice of intention should include the following information:

1. A statement giving general details of the type or method of exploration proposed, including the pro-

posed dates during which exploration will be conducted;

2. The type of minerals to be explored for;

3. The general dimensions of all drill holes, including total depth and diameter;

4. The general dimensions of all trenches, pits, shafts, cuts, or other types of disturbances;

5. The width and length of any new roads constructed; and

6. An estimate of the total number of surface acres to be disturbed.

R613-2-107. Operation Practices.

The operator shall conform to the following practices while conducting exploration unless the Division grants a variance in writing:

1. **Public Safety and Welfare** — The operator shall minimize hazards to the public safety and welfare during operations. Methods to minimize hazards shall include but not be limited to:

1.11. The closing or guarding of shafts and tunnels to prevent unauthorized or accidental entry in accordance with MSHA regulations;

1.12. The disposal of trash, scrap metal and wood, and extraneous debris;

1.13. The plugging or capping of drill, core, or other exploratory holes as set forth in Rule R613-2-108;

1.14. The posting of appropriate warning signs in locations where public access to operations is readily available; and

1.15. The construction of berms, fences and/or barriers above highwalls or other excavations when required by the Division.

2. **Drainages** — If natural channels are to be affected by exploration, then the operator shall take appropriate measures to avoid or minimize environmental damage.

3. **Erosion Control** — Operations shall be conducted in a manner such that sediment from disturbed areas is adequately controlled. The degree of erosion control shall be appropriate for the site-specific and regional conditions of topography, soil, drainage, water quality or other characteristics.

4. **Deleterious Materials** — All deleterious or potentially deleterious material, shall be safely removed from the site or kept in an isolated condition such that adverse environmental effects are eliminated or controlled.

5. **Soils** — Suitable soil material shall be removed and stored in a stable condition where practical so as to be available for reclamation.

6. **Concurrent Reclamation** — During operations, disturbed areas shall be reclaimed when no longer needed, except to the extent necessary to preserve evidence of mineralization for proof of discovery. Areas which have been disturbed but are not routinely or currently utilized shall be kept in a safe, environmentally stable condition.

R613-2-108. Hole Plugging Requirements.

Drill holes shall be properly plugged as soon as practical and not be left unplugged for more than 30 days without approval of the Division. The procedures outlined below are required for the surface and subsurface plugging of drill holes. The Division may approve an alternate plan, if the operator can prove to the satisfaction of the Division that another method will provide adequate protection to the groundwater resources and long term stability of the land. Dry holes and nonartesian holes which do not produce significant amounts of water may be tempo-

rarily plugged with a surface cap to permit the operator to re-enter the hole for the duration of operations.

1. **Surface plugging of drill holes** shall be accomplished by:

1.11. Setting a nonmetallic permaplug at a minimum of five (5) feet below the surface, or returning the cuttings to the hole and tamping the returned cuttings to within five (5) feet of ground level. The hole above the permaplug or tamped cuttings will be filled with a cement plug. If cemented casing is to be left in place, a concrete surface plug is not required provided that a permanent cap is secured on top of the casing.

1.12. If the area is tilled farmland, a five (5) foot cement plug must be placed above a permaplug or tamped cuttings so that the top of the cement plug is a minimum of three (3) feet below the ground surface. The hole above the cement plug is to be filled with soil. If cemented casing is to be left in place, a concrete surface plug is not required provided that a permanent cap is secured on top of the casing. The top of the casing and cap must be a minimum of three (3) feet below the ground surface.

2. **Drill holes that encounter water, oil, gas or other potential migratory substances** and are 2 1/4 inches or greater in surface diameter shall be plugged in the subsurface to prevent the migration of fluid from one strata to another. If water is encountered, plugging shall be accomplished as outlined below:

2.11. If artesian flow (i.e., water flowing to the surface from the hole) is encountered during or upon cessation of drilling, a cement plug shall be placed to prevent water from flowing between geologic formations and at the surface. The cement mix should consist of API Class A or H cement with additives as needed. It should weigh at least 13.5 lbs./gal., and be placed under the supervision of a person qualified in proper drill hole cementing of artesian flow. Artesian bore holes must be plugged in the described manner, prior to removal of the drilling equipment from the well site. If the surface owner of the land affected desires to convert an artesian drill hole to a water well, the owner must notify the Division in writing accepting responsibility for the ultimate plugging of the drill hole.

2.12. **Holes that encounter significant amounts of nonartesian water** shall be plugged by:

2.12.111 Placing a 50 foot cement plug immediately above and below the aquifer(s); or

2.12.112 Filling from the bottom up (through the drill stem) with a high grade bentonite/water slurry mixture. The slurry shall have a Marsh funnel viscosity of at least 50 seconds per quart prior to the adding of any cuttings.

R613-2-109. Reclamation Practices.

The operator shall conform to the following practices while conducting reclamation unless the Division grants a variance in writing:

1. **Public Safety and Welfare** — The operator shall minimize hazards to the public safety and welfare following completion of operations. Methods to minimize hazards shall include but not be limited to:

1.11. The permanent sealing of shafts and tunnels;

1.12. Appropriate disposal of trash, scrap metal and wood, buildings, extraneous debris, and other materials incident to mining;

1.13. The plugging of drill, core, or other exploratory holes as set forth in Rule R613-2-108;

1.14. The posting of appropriate warning signs in locations where public access to operations is readily available;

1.15. The construction of berms, fences and/or barriers above highwalls or other excavations when required by the Division.

2. **Drainages** — If natural channels have been affected by exploration, then reclamation must be performed such that the channels will be left in a stable condition with respect to actual and reasonably expected water flow so as to avoid or minimize future damage to the hydrologic system.

3. **Erosion Control** — Reclamation shall be conducted in a manner such that sediment from disturbed areas is adequately controlled. The degree of erosion control shall be appropriate for the site-specific and regional conditions of topography, soil, drainage, water quality or other characteristics.

4. **Deleterious Materials** — All deleterious or potentially deleterious material shall be safely removed from the site or left in an isolated or neutralized condition such that adverse environmental effects are eliminated or controlled.

5. **Land Use** — The operator shall leave the onsite area in a condition which is capable of supporting the postmining land use.

6. **Slopes** — Waste piles, spoil piles and fills shall be regraded to a stable configuration and shall be sloped to minimize safety hazards and erosion while providing for successful revegetation.

7. **Highwalls** — In surface mining and in open cuts for pads or roadways, highwalls shall be reclaimed and stabilized by backfilling against them or by cutting the wall back to achieve a slope angle of 45 degrees or less.

8. **Roads and Pads** — Onsite roads and pads shall be reclaimed when they are no longer needed for operations. When a road or pad is to be turned over to the property owner or managing agency for continuing use, the operator shall turn over the property with adequate surface drainage structures and in a condition suitable for continued use.

9. **Dams and Impoundments** — Water impounding structures shall be reclaimed so as to be self-draining and mechanically stable unless shown to have sound hydrologic design and to be beneficial to the postmining land use.

10. **Trenches and Pits** — Trenches and small pits shall be reclaimed.

11. **Structures and Equipment** — Structures, rail lines, utility connections, equipment, and debris shall be buried or removed.

12. **Topsoil Redistribution** — After final grading, soil materials shall be redistributed on a stable surface so as to minimize erosion, prevent undue compaction and promote revegetation.

13. **Revegetation** — The species seeded shall include adaptable perennial species that will grow on the site, provide basic soil and watershed protection, and support the postmining land use.

Revegetation shall be considered accomplished when:

13.11. The revegetation has achieved 70 percent of the premining vegetative ground cover; and the vegetation has survived three growing seasons following the last seeding, fertilization or irrigation, unless such practices are to continue as part of the postmining land use; or

13.12. The Division determines that the revegetation work has been satisfactorily completed within practical limits; where reseeding has occurred and the vegetation has survived one growing season, the reseeded area shall not be included for purposes of determining whether future exploration or mining

operations involve a disturbed area of five acres or less.

*Note: If the premining vegetative ground cover is unknown, the ground cover of adjacent undisturbed area that is representative of the premining ground cover will be used as standard.

R613-2-110. Variance.

1. The operator may request variance from Rule R613-2-107, 108, or 109, by submitting the following information, which shall be considered by the Division on a site-specific basis:

1.11. The rules as to which a variance is requested;

1.12. The variance requested and description of the area that would be affected by the variance;

1.13. Justification for the variance;

1.14. Alternate methods or measures to be utilized.

2. A variance shall be granted if the alternative method or measure proposed will be consistent with the Act.

3. Any variance must be specifically approved by the Division in writing.

R613-2-111. Surety.

1. The operator of an exploration project that will result in more than five surface acres being disturbed at any given time must post a reclamation surety prior to commencement of exploration. Disturbed areas which have been reclaimed are not included within the cumulative five acres for purposes of the reclamation surety.

2. The Division will not require a separate surety where a reclamation surety on a form and amount acceptable to the Board is held by the Division of State Lands and Forestry, or an agency of the federal government.

3. As part of the review of the notice of intention, the Division shall determine the required surety amount based on site-specific calculations reflecting the Division's cost to reclaim the site. An operator's reclamation estimate will be accepted if it is accurate and verifiable.

4. The operator shall submit a completed Reclamation Contract (FORM MR-RC) with the required surety. The form and amount of the surety must be approved by the Board. Acceptable forms may include:

4.11. Corporate surety bond.

4.12. Federally-insured certificate of deposit payable to the State of Utah, Division of Oil, Gas and Mining.

4.13. Cash.

4.14. An irrevocable letter of credit issued by a bank organized to do business in the United States, or

4.15. Escrow accounts.

4.16. In addition, the Board may accept a written self-bonding agreement in the case of operators showing sufficient financial strength.

5. Surety shall be required until such time as reclamation is deemed complete by the Division. The Division shall promptly conduct an inspection when notified by the operator that reclamation is complete. The full release of surety shall be evidence that the operator has reclaimed as required by the Act.

6. Adjustments or revisions made in the surety amount shall be in accordance with the terms and conditions outlined in the Reclamation Contract.

R613-2-112. Failure to Reclaim.

If the operator fails or refuses to conduct reclamation as outlined in the complete notice of intention,

the Board may, after notice and hearing, order that reclamation be conducted by the Division and that:

1. The costs and expenses of reclamation, together with costs of collection including attorney's fees, be recovered in a civil action brought by the attorney general against the operator in any appropriate court; or,

2. The surety filed for this purpose be forfeited. With respect to the surety filed with the Division, the Board shall request the Attorney General to take the necessary legal action to enforce and collect the amount of liability. Where surety or a bond has been filed with the Division of State Lands and Forestry or an agency of the federal government, the Board shall notify such agency of the hearing findings and request that the necessary forfeiture action be taken.

R613-2-113. Confidential Information.

Information provided in the notice of intention and in the Mineral Exploration Progress Report (FORM MR-EPR) that relates to the location, size, and nature of the mineral deposit, shall be protected as confidential information by the Board and the Division. The information will not be a matter of public record until a written release is received from the operator.

R613-2-114. Revised Notice.

Minor additions or changes in the location of exploration operations do not require the submittal of a revised notice of intention. A new or revised Notice of Intention to Conduct Exploration (FORM MR-EXP) or comparable letter must be submitted when:

1. The proposed additions or changes will occur outside the originally designated quarter section; or,
2. The proposed additions will cause the total unreclaimed surface disturbance to exceed five (5) acres.

R613-2-115. Reports.

On or before December 31st of the year of filing of a Notice of Intention to Conduct Exploration (FORM MR-EXP) or comparable letter, the operator must submit a Mineral Exploration Progress Report (FORM MR-EPR), which describes any unusual drilling conditions, water encountered, hole plugging measures, and reclamation activities conducted.

R613-2-116. Practices and Procedures; Appeals.

The Administrative Procedures, as outlined in R613-5, shall be applicable to minerals regulatory proceedings.

1988

40-8-1 et seq.

R613-3. Small Mining Operations.

R613-3-101. Filing Requirements & Review Procedures.

R613-3-102. Duration of the Notice of Intention.

R613-3-103. Notice of Intention to Commence Small Mining Operations.

R613-3-104. Operator(s), Surface and Mineral Owner(s).

R613-3-105. Project Location & Map.

R613-3-106. Operation Plan.

R613-3-107. Operation Practices.

R613-3-108. Hole Plugging Requirements.

R613-3-109. Reclamation Practices.

R613-3-110. Variance.

R613-3-111. Failure to Reclaim.

R613-3-112. Suspension or Termination of Operations.

R613-3-113. Mine Enlargement.

R613-3-114. Revisions.

R613-3-115. Transfer of a Notice of Intention.

R613-3-116. Reports.

R613-3-117. Practices and Procedures; Appeals.

R613-3-118. Confidential Information.

R613-3-101. Filing Requirements & Review Procedures.

1. A Notice of Intention to Commence Small Mining Operations (FORM MR-SMD) or a letter containing all the required information must be filed with the Division before a small mining operation begins. It is recommended that the notice of intention be filed with the Division at least thirty (30) days prior to the planned commencement of operations.

Previously exempt mining operations, as defined by Rule 613-1-109, which have a disturbed area of five (5) acres or less and which will continue or resume mining operations, must submit a complete Notice of Intention to Commence Small Mining Operations (FORM MR-SMO) by April 29, 1989.

2. Within 15 days after receipt of a Notice of Intention, the Division will review the proposal and notify the operator in writing;

2.11. that the notice of intention is complete, or

2.12. that the notice of intention is incomplete, and that additional information as identified by the Division will be required.

3. The Division will review any subsequent filings of information within 10 working days of receipt.

4. A notice of intention to commence small mining operations will not require Division approval. However, all of the required information must be provided to the Division.

Division approval is required for all variances from Rules R613-3-107, 108, and 109, regardless of the number of surface acres of disturbance planned.

5. Filing of the complete notice of intention shall enable the operator to conduct small mining operations. The operator is responsible for conducting mining and reclamation activities in compliance with the requirements of the notice of intention, the Act, and these Rules.

6. The operator must notify the Division no later than 30 days after beginning small mining operations.

R613-3-102. Duration of the Notice of Intention.

The notice of intention, including any subsequent amendments or revisions, shall remain in effect for the life of the small mining operation.

R613-3-103. Notice of Intention to Commence Small Mining Operations.

The notice of intention shall address the requirements of the following rules:

RULE # SUBJECT

R613-3-104 Operator(s), Surface and Mineral Owner(s)

R613-3-105 Map

R613-3-106 Operation Plan

R613-3-107 Operation Practices

R613-3-109 Reclamation Practices

R613-3-110 Variance

R613-3-104. Operator(s), Surface and Mineral Owner(s).

The notice of intention shall include the following general information:

1. The name, permanent mailing address, and telephone number of the operator responsible for the small mining operation and reclamation of the site.

2. The name, and permanent mailing address of the surface landowner(s) and mineral owner(s) of all land to be affected by the mining operation.

3. The federal mining claim number(s), lease number(s) or permit number(s) of all mining claims, federal or state leases or permits included in the land affected.

R613-3-105. Project Location & Map.

A topographic base map showing the location of the proposed small mining operation must be submitted with the notice of intention. A USGS 7.5 minute series map is preferred. The areas to be disturbed should be plotted on the map in sufficient detail so that they can be located on the ground. It is recommended that the operator also plot and label any previously disturbed areas in the immediate vicinity of the proposed small mining operation for which the operator is not responsible.

R613-3-106. Operation Plan.

The operator shall provide a brief narrative description of the proposed mining operation as part of the notice of intention. The description should include the following information:

1. A statement giving general details of the type or method of mining operations proposed, and the type of minerals to be mined;
2. Estimated width and length of any new roads to be constructed;
3. An estimate of the total number of surface acres to be disturbed by the mining operation.

R613-3-107. Operation Practices.

During operations, the operator shall conform to the following practices unless the Division grants a variance in writing:

1. Public Safety and Welfare — The operator shall minimize hazards to the public safety and welfare during operations. Methods to minimize hazards shall include but not be limited to:

1.11. The closing or guarding of shafts and tunnels to prevent unauthorized or accidental entry in accordance with MSHA regulations;

1.12. The disposal of trash, scrap metal and wood, and extraneous debris;

1.13. The plugging or capping of drill, core, or other exploratory holes as set forth in Rule R613-3-108;

1.14. The posting of appropriate warning signs in locations where public access to operations is readily available;

1.15. The construction of berms, fences and or barriers above highwalls or other excavations when required by the Division.

2. Drainages — If natural channels are to be affected by the mining operation, then the operator shall take appropriate measures to avoid or minimize environmental damage.

3. Erosion Control — Operations shall be conducted in a manner such that sediment from disturbed areas is adequately controlled. The degree of erosion control shall be appropriate for the site-specific and regional conditions of topography, soil, drainage, water quality or other characteristics.

4. Deleterious Materials — All deleterious or potentially deleterious material shall be safely removed from the site or left in an isolated or neutralized condition such that adverse environmental effects are eliminated or controlled.

5. Soils — Suitable soil material shall be removed and stored in a stable condition where practical so as to be available for reclamation.

6. Concurrent Reclamation — During operations, disturbed areas shall be reclaimed when no longer needed, except to the extent necessary to preserve evidence of mineralization for proof of discovery. Areas which have been disturbed but are not routinely or currently utilized shall be kept in a safe environmentally stable condition.

R613-3-108. Hole Plugging Requirements.

Drill holes shall be properly plugged as soon as practical and shall not be left unplugged for more than 30 days without approval of the Division. The procedures outlined below are required for the surface and subsurface plugging of drill holes. The Division may approve an alternate plan, if the operator can prove to the satisfaction of the Division that another method will provide adequate protection to the groundwater resources and long term stability of the land. Dry holes and nonartesian holes which do not produce significant amounts of water may be temporarily plugged with a surface cap to permit the operator to re-enter the hole for the duration of the operations.

1. Surface plugging of drill holes shall be accomplished by:

1.11. Setting a nonmetallic permaplug at a minimum of five (5) feet below the surface, or returning the cuttings to the hole and tamping the returned cuttings to within five (5) feet of ground level. The hole above the permaplug or tamped cuttings will be filled with a cement plug. If cemented casing is to be left in place, a concrete surface plug is not required provided that a permanent cap is secured on top of the casing.

1.12. If the area is tilled farmland, a five (5) foot cement plug must be placed above a permaplug or tamped cuttings so that the top of the cement plug is a minimum of three (3) feet below the ground surface. The hole above the cement plug is to be filled with soil. If cemented casing is to be left in place, a concrete surface plug is not required provided that a permanent cap is secured on top of the casing. The top of the casing and cap must be a minimum of three (3) feet below the ground surface.

2. Drill holes that encounter water, oil, gas or other potential migratory substances and are 2 1/2 inches or greater in surface diameter shall be plugged in the subsurface to prevent the migration of fluid from one strata to another. If water is encountered, plugging shall be accomplished as outlined below:

2.11. If artesian flow (i.e., water flowing to the surface from the hole) is encountered during or upon cessation of drilling, a cement plug shall be placed to prevent water from flowing between geologic formations and at the surface. The cement mix should consist of API Class A or H cement with additives as needed. It should weigh at least 13.5 lbs./gal., and be placed under the supervision of a person qualified in proper drill hole cementing of artesian flow. Artesian bore holes must be plugged in the described manner, prior to removal of the drilling equipment from the well site. If the surface owner of the land affected desires to convert an artesian drill hole to a water well, he must notify the Division in writing that he accepts responsibility for the ultimate plugging of the drill hole.

2.12. Holes that encounter significant amounts of nonartesian water shall be plugged by

2.12.11. Placing a 50 foot cement plug immediately above and below the aquifers, or

2.12.12. Filling from the bottom up (through the drill stem) with a high grade bentonite water slurry

mixture. The slurry shall have a Marsh funnel viscosity of at least 50 seconds per quart prior to the adding of any cuttings.

R613-3-109. Reclamation Practices.

During reclamation, the operator shall conform to the following practices unless the Division grants a variance in writing:

1. Public Safety and Welfare — The operator shall minimize hazards to the public safety and welfare following completion of operations. Methods to minimize hazards shall include but not be limited to:
 - 1.11. The permanent sealing of shafts and tunnels;
 - 1.12. The disposal of trash, scrap metal and wood, buildings, extraneous debris, and other materials incident to mining;
 - 1.13. The plugging of drill, core, or other exploratory holes as set forth in Rule R613-3-108;
 - 1.14. The posting of appropriate warning signs in locations where public access to operations is readily available;
 - 1.15. The construction of berms, fences and/or barriers above highwalls or other excavations when required by the Division.
2. Drainages — If natural channels have been affected by mining operations, then reclamation must be performed such that the channels will be left in a stable condition with respect to actual and reasonably expected water flow so as to avoid or minimize future damage to the hydrologic system.
3. Erosion Control — Reclamation shall be conducted in a manner such that sediment from disturbed areas is adequately controlled. The degree of erosion control shall be appropriate for the site-specific and regional conditions of topography, soil, drainage, water quality or other characteristics.
4. Deleterious Materials — All deleterious or potentially deleterious material shall be safely removed from the site or left in an isolated or neutralized condition such that adverse environmental effects are eliminated or controlled.
5. Land Use — The operator shall leave the onsite area in a condition which is capable of supporting the postmining land use.
6. Slopes — Waste piles, spoil piles and fills shall be regraded to a stable configuration and shall be sloped to minimize safety hazards and erosion while providing for successful revegetation.
7. Highwalls — In surface mining and in open cuts for pads or roadways, highwalls shall be reclaimed and stabilized by backfilling against them or by cutting the wall back to achieve a slope angle of 45 degrees or less.
8. Roads and Pads — Onsite roads and pads shall be reclaimed when they are no longer needed for operations. When a road or pad is to be turned over to the property owner or managing agency for continuing use, the operator shall turn over the property with adequate surface drainage structures and in a condition suitable for continued use.
9. Dams and Impoundments — Water impounding structures shall be reclaimed so as to be self-draining and mechanically stable unless shown to have sound hydrologic design and to be beneficial to the postmining land use.
10. Trenches and Pits — Trenches and small pits shall be reclaimed.
11. Structures and Equipment — Structures, rail lines, utility connections, equipment, and debris shall be buried or removed.
12. Topsoil Redistribution — After final grading, soil materials shall be redistributed on a stable sur-

face, so as to minimize erosion, prevent undue compaction and promote revegetation.

13. Revegetation — The species seeded shall include adaptable perennial species that will grow on the site, provide basic soil and watershed protection, and support the postmining land use.

Revegetation shall be considered accomplished when:

13.11. The vegetation has achieved 70 percent of the premining vegetative ground cover*; and the vegetation has survived three growing seasons following the last seeding, fertilization or irrigation, unless such practices are to continue as part of the postmining land use; or

13.12. The Division determines that the revegetation work has been satisfactorily completed within practical limits; where reseeding has occurred and the vegetation has survived one growing season, the reseeded area shall not be included for purposes of determining whether a mining operation is a small mining operation.

* Note: If the premining vegetative ground cover of the disturbed area is unknown, then the ground cover of an adjacent undisturbed area that is representative of the premining conditions will be used as a standard.

R613-3-110. Variance.

1. The operator may request a variance from Rule R613-3-107, 108, or 109 by submitting the following information which shall be considered by the Division on a site-specific basis:

- 1.11. The rule(s) as to where a variance is requested;
 - 1.12. The variance requested and a description of the area that would be affected by the variance;
 - 1.13. Justification for the variance;
 - 1.14. Alternate methods or measures to be utilized.
2. A variance shall be granted if the alternative method or measure proposed will be consistent with the Act.
3. Any variance must be specifically approved by the Division in writing.

R613-3-111. Failure to Reclaim.

If the operator of a small mining operation fails or refuses to conduct reclamation as required by the Act and these rules, the Board may, after notice and hearing, order that:

1. Reclamation be conducted by the Division; and
2. The costs and expenses of reclamation, together with costs of collection including attorney's fees, be recovered in a civil action brought by the attorney general against the operator in any appropriate court.

R613-3-112. Suspension or Termination of Operations.

1. All mine operations are required to be maintained in a safe, clean, and environmentally stable condition. Active and inactive operations must continue to submit annual reports unless waived in writing by the Division.

2. The operator need not notify the Division of the temporary suspension of small mining operations.

3. In the case of a termination or a suspension of mining operations that has exceeded, or is expected to exceed two (2) years, the operator shall, upon request, furnish the Division with such data as it may require to evaluate the status of the small mining operation, the status of compliance with these rules, and the probable future status of the land affected. Upon review of such data, the Division will take such action

as may be appropriate. The Division may grant an extended suspension period if warranted.

4. The operator shall give the Division prompt written notice of a termination or suspension of small mining operations expected to exceed five (5) years. Upon receipt of notification the Division shall, within 30 days, make an inspection of the property.

5. Small mining operations that have been approved for an extended suspension period will be re-evaluated on a regular basis. Additional interim reclamation or stabilization measures may be required in order for a small mining operation to remain in a continued state of suspension. Reclamation of a small mining operation may be required after five (5) years of continued suspension. The Division will require complete reclamation of the mine site when the suspension period exceeds 10 years, unless the operator appeals to the Board prior to the expiration of said 10-year period for a longer suspension period.

R613-3-113. Mine Enlargement.

Before enlarging a small mining operation beyond five (5) acres of surface disturbance, the operator must file a Notice of Intention to Commence Large Mining Operations (FORM MR-LMO) and receive Division approval.

R613-3-114. Revisions.

Small mining operators are required to submit a revision to the complete notice of intention when a significant change(s) in the small mining operation occurs. A revision can be made by submitting a revised FORM MR-SMO (or similar form) and indicating the portion(s) of the operation which is being revised. Division approval of a revision of small mining operations is not required before the operational change occurs.

R613-3-115. Transfer of a Notice of Intention.

If an operator wishes to transfer a small mining operation to another party, an application form entitled, Transfer of Notice of Intention — Small Mining Operations (FORM MR-TRS) must be completed and filed with the Division. The new mine operator must assume full responsibility for continued mining operations and reclamation obligations for the small mining operation.

R613-3-116. Reports.

1. On or before January 31 of each year, unless waived in writing by the Division, each operator conducting small mining operations must file an operations and progress report (FORM MR-AR) describing its operations during the preceding calendar year, including:

- 1.11. The location of the operation and the number and date of the applicable Notice of Intention.
- 1.12. The gross amounts of ore and waste materials moved during the year, as well as the disposition of such materials.
- 1.13. New surface disturbances created during the year.
- 1.14. The reclamation work performed during the year.
2. The operator shall keep and maintain timely records relating to his performance under the Act and still make these records available to the Division upon request.

R613-3-117. Practices and Procedures; Appeals.

The Administrative Procedures, as outlined in the R613-5 Rules, shall be applicable to minerals regulatory proceedings.

R613-3-118. Confidential Information.

Information provided in the notice of intention relating to the location, size, and nature of the mineral deposit, and marked confidential by the operator, shall be protected as confidential information by the Board and the Division. The information will not be a matter of public record until a written release is received from the operator, or until the notice of intention is terminated.

R613-4. Large Mining Operations.

R613-4-101. Filing Requirements and Review Procedures.

R613-4-102. Duration of the Notice of Intention.

R613-4-103. Notice of Intention to Commence Large Mining Operations.

R613-4-104. Operators; Surface and Mineral Owners.

R613-4-105. Maps, Drawings and Photographs.

R613-4-106. Operation Plan.

R613-4-107. Operation Practices.

R613-4-108. Hole Plugging Requirements.

R613-4-109. Impact Assessment.

R613-4-110. Reclamation Plan.

R613-4-111. Reclamation Practices.

R613-4-112. Variance.

R613-4-113. Surety.

R613-4-114. Failure to Reclaim.

R613-4-115. Confidential Information.

R613-4-116. Public Notice and Appeals.

R613-4-117. Notification of Suspension or Termination of Operations.

R613-4-118. Revisions.

R613-4-119. Amendments.

R613-4-120. Transfer of Notice of Intention.

R613-4-121. Reports.

R613-4-122. Practices and Procedures; Appeals.

R613-4-101. Filing Requirements and Review Procedures.

A Notice of Intention to Commence Large Mining Operations (FORM MR-LMO) or a letter containing all the required information must be approved by the Division before mining operations begin.

Previously exempt mining operations as defined by Rule 613-1-109 which have a disturbed area greater than five (5) surface acres and which will continue or resume mining operations, must submit a Notice of Intention to Commence Large Mining Operations (FORM MR-LMO) by April 29, 1989. Upon Division receipt of the notice of intention, the operator will be authorized to continue such existing operations until approval of the notice of intention is obtained. Such approval shall be obtained by the operator within one (1) year from the date of submission of the notice of intention unless an extension is granted by the Division.

1. Within 30 days after receipt of a Notice of Intention, or within 30 days after receipt of any subsequent submittal, the Division will complete its review and notify the operator in writing:

- 1.11. That the notice of intention is complete, or
- 1.12. That the notice of intention is incomplete, and that additional information as identified by the Division will be required.

2. Within 30 days after receipt of the notice of intention or within 30 days following the last action of the operator or Division on the notice of intention, the

4. Projected impacts of mining operations on slope stability, erosion control, air quality, and public health and safety, and
5. Actions which are proposed to mitigate any of the above referenced impacts.

R613-4-110. Reclamation Plan.

Each notice of intention shall include a reclamation plan, including maps or drawings as necessary, consisting of a narrative description of the proposed reclamation including, but not limited to:

1. A statement of the current land use and the proposed postmining land use for the disturbed area;
2. A description of the manner and the extent to which roads, highwalls, slopes, impoundments, drainages, pits and ponds, piles, shafts and adits, drill holes, and similar structures will be reclaimed;
3. A detailed description of any surface facilities to be left as part of the postmining land use, including but not limited to buildings, utilities, roads, pads, ponds, pits and surface equipment;
4. A description of the treatment, location and disposition of any deleterious or acid-forming materials generated and left onsite, including a map showing the location of such materials upon the completion of reclamation.
5. A planting program as best calculated to revegetate the disturbed area;
- 5.11. Plans shall include, at a minimum, grading and/or stabilization procedures, topsoil replacement, seed bed preparation, seed mixtures and rates, and timing of seeding (fall seeding is preferred timing);
- 5.12. Where there is no original protective cover, an alternate practical procedure must be proposed to minimize or control erosion or siltation.

R613-4-111. Reclamation Practices.

During reclamation, the operator shall conform to the following practices unless the Division grants a variance in writing:

1. **Public Safety and Welfare** — The operator shall minimize hazards to the public safety and welfare following completion of operations. Methods to minimize hazards shall include but not be limited to:
 - 1.11. The permanent sealing of shafts and tunnels;
 - 1.12. The disposal of trash, scrap metal and wood, buildings, extraneous debris, and other materials incident to mining;
 - 1.13. The plugging of drill, core, or other exploratory holes as set forth in Rule R613-4-108;
 - 1.14. The posting of appropriate warning signs in locations where public access to operations is readily available;
 - 1.15. The construction of berms, fences and/or barriers above highwalls or other excavations when required by the Division.
2. **Drainages** — If natural channels have been affected by mining operations, then reclamation must be performed such that the channels will be left in a stable condition with respect to actual and reasonably expected water flow so as to avoid or minimize future damage to the hydrologic system.
3. **Erosion Control** — Reclamation shall be conducted in a manner such that sediment from disturbed areas is adequately controlled. The degree of erosion control shall be appropriate for the site-specific and regional conditions of topography, soil, drainage, water quality or other characteristics.
4. **Deleterious Materials** — All deleterious or potentially deleterious material shall be safely removed from the site or left in an isolated or neutralized condition such that adverse environmental effects are eliminated or controlled.

dition such that adverse environmental effects are eliminated or controlled.

5. **Land Use** — The operator shall leave the onsite area in a condition which is capable of supporting the postmining land use.
 6. **Slopes** — Waste piles, spoil piles and fills shall be regraded to a stable configuration and shall be sloped to minimize safety hazards and erosion while providing for successful revegetation.
 7. **Highwalls** — In surface mining and in open cuts for pads or roadways, highwalls shall be reclaimed and stabilized by backfilling against them or by cutting the wall back to achieve a slope angle of 45 degrees or less.
 8. **Roads and Pads** — Onsite roads and pads shall be reclaimed when they are no longer needed for operations. When a road or pad is to be turned over to the property owner or managing agency for continuing use, the operator shall turn over the property with adequate surface drainage structures and in a condition suitable for continued use.
 9. **Dams and Impoundments** — Water impounding structures shall be reclaimed so as to be self-draining and mechanically stable unless shown to have sound hydrologic design and to be beneficial to the postmining land use.
 10. **Trenches and Pits** — Trenches and small pits shall be reclaimed.
 11. **Structures and Equipment** — Structures, rail lines, utility connections, equipment, and debris shall be buried or removed.
 12. **Topsoil Redistribution** — After final grading, soil materials shall be redistributed on a stable surface, so as to minimize erosion, prevent undue compaction and promote revegetation.
 13. **Revegetation** — The species seeded shall include adaptable perennial species that will grow on the site, provide basic soil and watershed protection, and support the postmining land use.
- Revegetation shall be considered accomplished when:
- 13.11. The revegetation has achieved 70 percent of the premining vegetative ground cover; and the vegetation has survived three growing seasons following the last seeding, fertilization or irrigation, unless such practices are to continue as part of the postmining land use; or
 - 13.12. The Division determines that the revegetation work has been satisfactorily completed within practical limits.
- *Note: If the premining vegetative ground cover is unknown, the ground cover of an adjacent undisturbed area that is representative of the premining ground cover will be used as a standard.

R613-4-112. Variance.

1. The operator may request a variance from Rule R613-4-107, 108, or 111, by submitting the following information which will be considered by the Division on a site-specific basis:
 - 1.11. The rule(s) as to which a variance is requested;
 - 1.12. The variance requested and a description of the area that would be affected by the variance;
 - 1.13. Justification for the variance;
 - 1.14. Alternate methods or measures to be utilized.
2. A variance shall be granted if the alternative method or measure proposed will be consistent with the Act.
3. Any variance must be specifically approved by the Division in writing.

R613-4-113. Surety.

1. After receiving notification that the notice of intention has been approved, but prior to commencement of operations, the operator shall provide the reclamation surety to the Division.
2. The Division will not require a separate surety when a reclamation surety in a form and amount acceptable to the Board is held by the Division of State Lands and Forestry, or an agency of the federal government.
3. As part of the review of the notice of intention, the Division shall determine the required surety amount based on site specific calculations reflecting the Division's cost to reclaim the site. An operator's estimate will be accepted if it is accurate and verifiable.
4. The operator shall submit a completed Reclamation Contract (FORM MR-RC) with the required surety. The form and amount of the surety must be approved by the Board. Acceptable forms may include:
 - 4.11. Corporate surety bond,
 - 4.12. Federally-insured certificate of deposit payable to the State of Utah, Division of Oil, Gas and Mining,
 - 4.13. Cash,
 - 4.14. An irrevocable letter of credit issued by a bank organized to do business in the United States, or
 - 4.15. Escrow accounts.
- 4.16. In addition, the Board may accept a written self-bonding agreement in the case of operators showing sufficient financial strength.
5. Surety shall be required until such time as reclamation is deemed complete by the Division. The Division shall promptly conduct an inspection when notified by the operator that reclamation is complete. The full release of surety shall be evidence that the operator has reclaimed as required by the Act.
6. Adjustments or revisions made in the surety amount shall be in accordance with the terms and conditions outlined in the Reclamation Contract.

R613-4-114. Failure to Reclaim.

- If the operator fails or refuses to conduct reclamation as outlined in the approved notice of intention, the Board may, after notice and hearing, order that reclamation be conducted by the Division and that:
1. The costs and expenses of reclamation, together with costs of collection including attorney's fees, be recovered in a civil action brought by the attorney general against the operator in any appropriate court; or,
 2. Any surety filed for this purpose be forfeited.
- With respect to the surety filed with the Division, the Board shall request the Attorney General to take the necessary legal action to enforce and collect the amount of liability. Where surety or a bond has been filed with the Division of State Lands and Forestry or an agency of the federal government, the Board shall notify such agency of the hearing findings, and request that the necessary forfeiture action be taken.

R613-4-115. Confidential Information.

Information provided in the notice of intention relating to the location, size, and nature of the mineral deposit, and marked confidential by the operator, shall be protected as confidential information by the Board and the Division. The information will not be a matter of public record until a written release is received from the operator, or until the notice of intention is terminated.

R613-4-116. Public Notice and Appeals.

1. Public notice will be deemed complete when the following actions have been taken:
 - (1.) A description of the disturbed area and the tentative decision to approve or disapprove the notice of intention shall be published by the Division in abbreviated form, one time only, in all newspapers of general circulation published in the county or counties where the land affected is situated, and in a daily newspaper of general circulation in Salt Lake City, Utah.
 - (2.) A copy of the abbreviated information and tentative decision shall also be mailed by the Division to the zoning authority of the county or counties in which the land affected is situated and to the owner or owners of record of the land affected, as described in the notice of intention.
2. Any person or agency aggrieved by the tentative decision may file a written protest with the Division during the public comment period identified in the notice, setting forth factual reasons for the complaint.
3. If no responsive written protests are received by the Division within 30 days after the last date of publication, the tentative decision of the Division on the notice of intention shall be final and the operator will be so notified.
4. If written objections of substance are received by the Division during the public comment period, a hearing shall be held before the Board in accordance with UCA 40-8-9, following which hearing the Board shall issue its decision.

R613-4-117. Notification of Suspension or Termination of Operations.

1. The operator need not notify the Division of the temporary suspension of mining operations.
2. In the case of a termination or a suspension of mining operations that has exceeded, or is expected to exceed two (2) years, the operator shall, upon request, furnish the Division with such data as it may require to evaluate the status of the mining operation, the status of compliance with these rules, and the probable future status of the land affected. Upon review of such data, the Division will take such action as may be appropriate. The Division may grant an extended suspension period if warranted.
3. The operator shall give the Division prompt written notice a termination or suspension of large mining operations expected to exceed five (5) years. Upon receipt of notification, the Division shall within 30 days, make an inspection of the property.
4. Large mining operations that have been approved for an extended suspension period will be re-evaluated on a regular basis. Additional interim reclamation or stabilization measures may be required in order for a large mining operation to remain in continued state of suspension. Reclamation of a large mining operation may be required after five (5) years of continued suspension. The Division will require complete reclamation of the mine site when the suspension period exceeds 10 years, unless the operator appeals to the Board prior to the expiration of said 10-year period for a longer suspension period.

R613-4-118. Revisions.

1. In order to revise a notice of intention, an operator shall file a Notice of Intention to Revise (Lar, Mining Operations (FORM MR-REV). This notice of intention will include all information concerning the revision that would have been required in the original notice of intention.

2. A Notice of Intention to Revise Large Mining Operations (FORM MR-REV) will be processed and considered for approval by the Division in the same manner as an original notice of intention. The operator will be authorized and bound by the requirements of the existing approved notice until the revision is acted upon and any revised surety requirements are satisfied. Those portions of the approved notice of intention not subject to the revision will not be subject to review under this provision.

3. Large mining operations which have a disturbed area of five (5) acres or less may refile as a small mining operation. Reclaimed areas must meet full bond release requirements before they can be excluded from the disturbed acreage.

R613-4-119. Amendments.

1. An amendment is an insignificant change to the approved notice of intention. The Division will review the change and make the determination of significance on a case-by-case basis.

2. A request for an amendment should be filed on the Notice of Intention to Revise Large Mining Operations (FORM MR-REV). An amendment of a large mining operation requires Division approval but does not require public notice.

R613-4-120. Transfer of Notice of Intention.

If an operator wishes to transfer a mining operation to another party, an application for Transfer of Notice of Intention — Large Mining Operations (FORM MR-TRL), must be completed and filed with the Division. The new mine operator will be required to post a new reclamation surety and must assume full responsibility for continued mining operations and reclamation.

R613-4-121. Reports.

1. On or before January 31 of each year, unless waived in writing by the Division, each operator conducting large mining operations must file an Annual Report of Mining Operations (FORM MR-AR) describing its operations during the preceding calendar year. Form MR-AR, includes:

1.11. The location of the operation and file number of the approved notice of intention;

1.12. The gross amounts of ore and waste materials moved during the year, as well as the disposition of such materials;

1.13. The reclamation work performed during the year and new surface disturbances created during the year.

2. The operator shall include an updated map depicting surface disturbance and reclamation performed during the year, prepared in accordance with Rule R613-4-105.

3. The operator shall keep and maintain timely records relating to his performance under the Act, and shall make these records available to the Division upon request.

R613-4-122. Practices and Procedures; Appeals.

The Administrative Procedures, as outlined in the R613-5 Rules, shall be applicable to minerals regulatory proceedings.

1988

R613-5. Administrative Procedures.

R613-5-101. Formal and Informal Proceeding.

R613-5-102. Informal Process.

R613-5-103. Definitions.

R613-5-104. Commencement of Adjudicative Proceedings.

R613-5-105. Conversion of Informal to Formal Phase.

R613-5-106. Procedures for Informal Phase.

R613-5-107. Exhaustion of Administrative Remedies.

R613-5-108. Waivers.

R613-5-109. Severability.

R613-5-110. Construction.

R613-5-111. Time Periods.

R613-5-101. Formal and Informal Proceeding.

1. Adjudicative proceedings which shall commence formally before the Board in accordance with the rules of Practice and Procedure before the Board of Oil, Gas and Mining include the following: R614-2-112, Failure to Reclaim, Forfeiture of Surety; R613-3-111, Failure to Reclaim, Forfeiture of Surety; R613-3-112.5, Over 10-Year Suspension; R613-4-114, Failure to Reclaim, R613-4-117.5, Over 10-Year Suspension.

2. Adjudicative proceedings which shall commence informally before the Division in accordance with this Rule R613-5 include the following: R613-2-101, Notice of Intent to Commence Mining Operations, Variance Request; R613-2-102, Extension; R613-2-107, Variance; R613-2-108, Unplugged Over 30 Days Alternative Plan; R613-2-109, Reclamation Practices Variance; R613-2-109.13, Revegetation Approval; R613-2-110, Variance, Revocation or Adjustment of Variance; R613-2-111, Release of Surety; R613-2-114, New or Revised Notice of Intention; R613-3-101, Notice of Intention to Commence Small Mining Operations, Variance Requests; R613-3-107, Variances; R613-3-108, Unplugged over 30 Days/Alternate Plan; R613-3-109, Reclamation Practices Variance; R613-3-109.13, Revegetation Approval; R613-3-110, Variance, Revocation, or Adjustment of Variance; R613-3-112, Waiver, Annual Report; R613-3-112.3 and R613-3-112.4, Termination or Suspension; R613-3-112.5, Revaluations, Reclamation; R613-3-113, Mine Enlargement; R613-3-114, Amendments; R613-3-116, Report Waiver; R613-4-101, Notice of Intention to Commence Large Mining Operation, Variance Request; R613-4-102, Updated Information or Modifications; R613-4-107, Variances; R613-4-108, Unplugged over 30 Days/Alternate Plan; R613-4-111, Reclamation Practice, Variance; R613-4-111.13, Revegetation Approval; R613-4-112, Variances, Revocation or Adjustment; R613-4-113, Release of Surety; R613-4-117, Annual Report, Waiver; R613-4-117.3 and R613-4-117.4, Termination or Suspension; R613-4-117.5, Revaluations, Reclamation; R613-4-118, Revisions; R613-4-119, Amendments; R613-4-121, Annual Report, Waiver.

3. Adjudicative proceedings which shall commence before the Board but follow the procedures for the informal process in this Rule R613-5 include the following:

R613-2-111, Surety, Form and Amount; and R613-4-113, Surety, Form and Amount.

R613-5-102. Informal Process.

Adjudicative proceedings declared by these rules hereinabove to commence in the informal phase shall be processed according to Rule R613-5 et seq. below. All other requirements of the Mineral Rules shall apply when they supplement these rules governing the informal phase and when not in conflict with any of the rules of R613-5. Notwithstanding this, any longer

time periods provided for in the Mineral Rules shall apply.

R613-5-103. Definitions.

Definitions as used in these rules may be found under R613-1-106.

R613-5-104. Commencement of Adjudicative Proceedings.

1. Except for emergency orders described further in these rules, all adjudicative proceedings that commence in the informal phase shall be commenced by either:

1.11. A Notice of Agency Action, if proceedings are commenced by the Board or Division; or

1.12. A Request for Agency Action, if proceedings are commenced by persons other than the Board or Division.

2. A Notice of Agency Action shall be filed and served according to the following requirements:

2.11. The Notice of Agency Action shall be in writing and shall be signed on behalf of the Board if the proceedings are commenced by the Board, or by or on behalf of the Division Director if the proceedings are commenced by the Division. A Notice shall include:

2.11.111 The names and mailing addresses of all persons to whom notice is being given by the Board or Division, and the name, title, and mailing address of any attorney or employee who has been designated to appear for the Board or Division;

2.11.112 The Division's file number or other reference number;

2.11.113 The name of the adjudicative proceeding;

2.11.114 The date that the Notice of Agency Action was mailed;

2.11.115 A statement that the adjudicative proceeding is to be conducted informally according to the provisions of these Rules and Sections 63-46b-4 and 63-46b-5 of the Utah Code Annotated (1953, as amended), if applicable;

2.11.116 A statement that the parties may request an informal hearing before the Division within ten (10) days of the date of mailing or publication and that failure to make such a request for hearing may preclude that party from any further participation, appeal or judicial review in regard to the subject adjudicative proceeding;

2.11.117 A statement of the legal authority and jurisdiction under which the adjudicative proceeding is to be maintained;

2.11.118 The name, title, mailing address, and telephone number of the Division Director; and

2.11.119 A statement of the purpose of the adjudicative proceeding and, to the extent known by the Division Director, the questions to be decided.

2.12. Unless waived, the Division shall:

2.12.111 Mail the Notice of Agency Action to each party and any other person who has a right to notice under statute or rule; and

2.12.112 Publish the Notice of Agency Action if required by statute or by the Mineral Rules.

2.13. All the listed adjudicative processes that commence informally may be petitioned for by a person other than the Division or Board. That person's Request for Agency Action shall be in writing and signed by the person invoking the jurisdiction of the Division or by his or her attorney, and shall include:

2.13.111 The names and addresses of all persons to whom a copy of the Request for Agency Action is being sent;

2.13.112 A space for the Division's file number or other reference number.

2.13.113 Certificate of mailing of the Request for Agency Action;

2.13.114 A statement of the legal authority and jurisdiction under which Division action is requested.

2.13.115 A statement of the relief or action sought from the Division; and

2.13.116 A statement of the facts and reasons forming the basis for relief or action.

2.14. The person requesting the Division action shall use the forms of the Division with the additional information required by Rule R613-5-104 2.13 above. The Division is hereby authorized to codify said forms in conformance with this rule. Said forms shall be deemed a Request for Agency Action. The person requesting agency action shall file the request with the Division and shall, unless waived, send a copy by mail to each person known to have a direct interest in the requested agency action.

2.15. In the case of a Request for Agency Action the Division shall, unless waived, insure that notice by mail has been promptly given to all parties, or by publication when required by statute or the Mineral Rules. The written notice shall:

2.15.111 Give the Division's file number or other reference number;

2.15.112 Give the name of the proceeding;

2.15.113 Designate that the proceeding is to be conducted informally according to the provisions of these Rules and Section 63-46b-4 and 63-46b-5 of the Utah Code Annotated (1953, as amended), if applicable;

2.15.114 A statement that the parties may request an informal hearing before the Division within ten (10) days of the date of mailing or publication and that failure to make such a request may preclude that party from any further participation, appeal or judicial review in regard to the subject adjudicative proceeding;

2.15.115 Give the name, title, mailing address, and telephone number of the Division Director; and

2.15.116 If the purpose of the adjudicative proceeding is to award a license or other privilege as to which there are multiple competing applicants, the Division may, by rule or order, conduct a single adjudicative proceeding to determine the award of that license or privilege.

R613-5-105. Conversion of Informal to Formal Phase.

1. Any time before a final order is issued in an adjudicative proceeding before the Division, the Division Director may convert an informal adjudicative proceeding to a formal adjudicative proceeding if:

1.11. Conversion of the proceeding is in the public interest; and

1.12. Conversion of the proceeding does not unfairly prejudice the rights of any party.

2. An adjudicative proceeding which commences informally shall also be processed formally if an appeal to the Board is filed under the rules hereinabove. Such an appeal changes the character of the adjudicative process to a contested case which requires a formal hearing process before the Board or its designated Hearing Examiner to best protect the interest of the public as well as the parties involved.

R613-5-106. Procedures for Informal Phase.

1. A Request for Agency Action or Notice of Agency Action shall be the method of commencement of an adjudicative process as previously discussed in these rules.

2 The mailing requirements of Rule R613 5 104(b)(2)(i) and R613 5 104(b)(4) whichever is applicable shall be met

3 The Notice of Agency Action shall be published in a newspaper of general circulation likely to give notice to interested persons when required by statute or by these Mineral Rules

4 All notices required herein shall indicate the date of publication or mailing and specify that any affected person may file with the Division within ten (10) days of said date a written objection and request for informal hearing before the Division and that failure to make such a request may preclude that person from further participation appeal or judicial review in regard to the subject adjudicative proceeding Said ten (10) day period shall be waived if the Division receives a waiver signed by those entitled to notice under these rules

5 In any hearing the parties named in the Notice of Agency Action or in the Request for Agency action shall be permitted to testify present evidence and comment on the issues

6 Hearings will be held only after timely notice to all parties

7 Discovery is prohibited but the Division Director may issue subpoenas or other orders to compel production of necessary evidence

8 All parties shall have access to information contained in the Division's files and to all materials and information gathered in by investigation or to the extent permitted by law

9 Intervention is prohibited except where required by federal statute or rule

10 All hearings shall be open to all parties

11 Within a reasonable time after the close of the hearing or after the parties failure to request a hearing within said ten (10) day period the Division Director shall issue a written signed order that states the following

11 11 The decision

11 12 The reasons for the decision

11 13 A notice of the right to appeal to the Board and

11 14 The time limits for filing an appeal

12 The Division Director's order shall be based on the facts appearing in the Division's files and on the facts presented in evidence at any hearings

13 Unless waived a copy of the Division Director's order shall be promptly mailed to each of the parties

14 The Division may record any hearing Any party at his or her own expense may have a reporter approved by the Division prepare a transcript from the Division's record of the hearing

15 Nothing in this section restricts or precludes any investigative right or power given to the Division by another statute

16 Default The Division Director may enter an order of default against a party if the party fails to participate in the adjudicative proceeding The order of default shall include a statement of the grounds for default and shall be mailed to all parties A defaulted party may seek to have the Division Director set aside the default order and any order in the adjudicative proceeding issued subsequent to the default order by following the procedures outlined in the Utah Rules of Civil Procedure After issuing the order of default the Division shall conduct any further proceedings necessary to complete the adjudicative proceeding without the participation of the party in default and shall determine all issues in the adjudicative proceeding including those affecting the defaulting party Notwithstanding this in an adjudicative

proceeding that has no parties other than the Division and the party in default the Division Director shall after issuing the order of default dismiss the proceeding

17 Appeal of Division Order Any aggrieved party that participated at a hearing before the Division or an applicant who is aggrieved by a denial or approval with conditions may file a written appeal to the Board within ten (10) days of the issuance of the order The written appeal shall be in the form of a Request for Agency Action for a formal hearing before the Board or its designated Hearing Examiner in conformance with the Rules of Practice and Procedure before the Board of Oil Gas and Mining and shall also state the grounds for the appeal and the relief requested

18 Emergency Orders Notwithstanding the other provisions of these rules the Division Director or any member of the Board is authorized to issue an emergency order without notice and hearing in accordance with applicable law The emergency order shall remain in effect no longer than until the next regular meeting of the Board or such shorter period of time as shall be prescribed by statute

18 11 Prerequisites for Emergency Order The following must exist to allow an emergency order

18 11 11 The facts known to the Division Director or Board member or presented to the Division Director or Board member show that an immediate and significant danger or waste or other danger to the public health safety or welfare exists and

18 11 12 The threat requires immediate action by the Division Director or Board member

18 12 Limitations In issuing its Emergency Order the Division Director or Board member shall

18 12 11 Limit its order to require only the action necessary to prevent or avoid the danger to the public health safety or welfare

18 12 12 Issue promptly a written order effective immediately that includes a brief statement of findings of fact conclusions of law and reasons for the Division Director's or Board member's utilization of emergency adjudicative proceedings

18 12 13 Give immediate notice to the persons who are required to comply with the order and

18 12 14 If the emergency order issued under this section will result in the continued infringement or impairment of any legal right or interest of any party the Division shall commence a formal adjudicative proceeding before the Board of Oil Gas and Mining

R613 5-107 Exhaustion of Administrative Remedies

1 Persons must exhaust their administrative remedies in accordance with Section 63 46b 14 Utah Code Annotated (1953 as amended) prior to seeking judicial review

2 In any informal proceeding before the Division there is an opportunity given to request an informal hearing before the Division If a timely request is made the Division will conduct an informal hearing and issue a decision thereafter Only those aggrieved parties that participated in any hearing or an applicant who is aggrieved by a denial or an approval with conditions will then be entitled to appeal such Division decision to the Board within ten (10) days of issuance of the Division order Such appeal shall be treated as a contested case which is processed as a formal proceeding under the Rules of Practice and Procedure before the Board of Oil Gas and Mining Such rights to request an informal hearing before the

Division or to appeal the Division order and have the matter be contested and processed formally are available and adequate administrative remedies and should be exercised prior to seeking judicial review

R613 5 108 Waivers

Notwithstanding any other provision of these rules any procedural matter including any right to notice or hearing may be waived by the affected person or by a signed written waiver in a form acceptable to the Division

R613 5 109 Severability

In the event that any provision section subsection or phrase of these rules is determined by a court or body of competent jurisdiction to be invalid unconstitutional or unenforceable other remaining provisions sections subsections or phrases shall remain in full force and effect

R613 5 110 Construction

The Utah Administrative Procedures Act described in Title 63 Chapter 46b of the Utah Code Annotated 1953 as amended shall supersede any conflicting provision of these rules These rules should be construed to be in compliance with said Act

R613 5 111 Time Periods

Nothing in these rules may be interpreted to restrict the Division Director or Board member from lengthening or shortening any time period prescribed herein

1998

U-2-1 et seq

R614 Oil, Gas and Mining, Coal

R614 1A Chapter I — Subchapter A — General — UMC Regulations Pertaining to Surface Effects of Underground Coal Mining Activities

R614 1F Subchapter F — Areas Unsuitable for Surface Effects of Underground Coal Mining Activities

R614 1G Subchapter G — Underground Coal Mining Activities Permits and Coal Exploration Procedures Systems

R614 1J Subchapter J — Bonding and Insurance Requirements for Surface Coal Mining and Reclamation Operations

R614 1K Subchapter K — UMC Permanent Program Performance Standards

R614 1L Subchapter L — Inspection and Enforcement Procedures

R614 1M Subchapter M — Training Examination and Certification of Blasters

R614 1P Subchapter P — Protection of Employees

R614 1Q Subchapter Q — Applicability of 40 8 1 et seq and Rules M 1 through M 10

R614 2A Chapter II — Subchapter A — General — UMC Regulations Pertaining to Surface Coal Mining Activities

R614 2F Subchapter F — Areas Unsuitable for Surface Coal Mining Activities

R614 2G Subchapter G — Surface Coal Mining and Reclamation Activities Permits and Coal Exploration Procedures Systems

R614 2J Subchapter J — Bonding and Insurance Requirements for Surface Coal Mining and Reclamation Operations

R614 2K Subchapter K — Permanent Program Performance Standards

R614 2L Subchapter L — Inspection and Enforcement Procedures

R614 2M Subchapter M — Training Examination and Certification of Blasters

R614 2P Subchapter P — Protection of Employees

R614 2Q Subchapter Q — Applicability of 40 8 1 et seq and Rules M 1 through M 10

R614 100 Administrative Introduction

R614 101 Restrictions on State Employees

R614 102 Exemption for Coal Extraction Incident to Government Financed Highway or Other Construction

R614 103 Areas Unsuitable for Coal Mining and Reclamation Operations

R614 104 Protection of Employees

R614 105 Administrative Blaster Training Examination and Certification

R614 200 Coal Exploration Introduction

R614 201 Coal Exploration Requirements for Exploration Approval

R614 202 Coal Exploration Compliance Duties

R614 203 Coal Exploration Public Availability of Information

R614 300 Coal Mine Permitting Administrative Procedures

R614 301 Coal Mine Permitting Permit Application Requirements

R614 302 Coal Mine Permitting Special Categories and Areas of Mining

R614 303 Coal Mine Permitting Change Renewal and Transfer Assignment or Site Permit Rights

R614 400 Inspection and Enforcement Division Authority and Procedures

R614 401 Inspection and Enforcement Civil Penalties

R614 402 Inspection and Enforcement Individual Civil Penalties

R614-1A Chapter I — Subchapter A —

General — UMC Regulations Pertaining to Surface Effects of Underground Coal Mining Activities

R614 1A 700 Part UMC 700 General

R614 1A 705 Part UMC 705 Restrictions on State Employees Financial Interest

R614 1A 707 Part UMC 707 Exemption for Coal Extraction Incident to Government Financed Highway or Other Construction

R614 1A 700 Part UMC 700 — General

UMC 700 1 Scope
This Chapter I consisting of Parts UMC 700 900 establishes the procedures through which the Utah State Division of Oil Gas and Mining will implement those provisions of the Coal Mining Reclamation Act of 1979 (U.C.A. 40 10 1 et seq) pertaining to surface effects of underground coal mining activities and includes regulations implementing U.C.A. 40 10 8 of the Act pertaining to coal exploration Regulations pertaining to coal exploration are also set forth in Chapter II Chapter I is divided into the following subchapters

(a) Subchapter A contains general introductory information intended to serve as a guide to the rest of the chapter and to the regulatory requirements and definitions generally applicable to the program and persons covered by the provisions of the Act that are applicable to coal exploration and surface effects of underground coal mining activities

Tab F

§ 1164. Authorization of appropriations

(a) Fiscal years ending June 30, 1976, and September 30, 1977, through September 30, 1980

For the fiscal years ending June 30, 1976, and September 30, 1977, 1978, 1979, and 1980, only such sums may be appropriated as the Congress may hereafter authorize by law.

(b) Fiscal year ending June 30, 1975

There are authorized to be appropriated to the National Aeronautics and Space Administration not to exceed \$2,500,000 for the fiscal year ending June 30, 1975, for the purpose of preparing the program definition under section 1122(a) of this title.

(c) Additional sums for Project

In addition to sums authorized to be appropriated by subsection (b) of this section, there are authorized to be appropriated to the fund not to exceed \$50,000,000 annually, such sums to carry out the provisions of the loan guaranty program by the Project under subchapter II of this chapter.

(Pub. L. 93-410, title III, § 304, Sept. 3, 1974, 88 Stat. 1089.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1144 of this title.

CHAPTER 25—SURFACE MINING CONTROL AND RECLAMATION

SUBCHAPTER I—STATEMENT OF FINDINGS AND POLICY

- Sec.
1201. Congressional findings.
1202. Statement of purpose.

SUBCHAPTER II—OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

1211. Office of Surface Mining Reclamation and Enforcement.
(a) Establishment.
(b) Appointment, compensation, duties, etc., of Director; employees.
(c) Duties of Secretary.
(d) Restriction on use of Federal coal mine health and safety inspectors.
(e) Repealed.
(f) Conflict of interest; penalties; rules and regulations; report to Congress.
(g) Petition for issuance, amendment, or repeal of rule; filing; hearing or investigation; notice of denial.

SUBCHAPTER III—STATE MINING AND MINERAL RESOURCES AND RESEARCH INSTITUTES

1221. State allotments to Institutes; authorization of appropriations.
1222. Research funds to Institutes.
(a) Authorization of appropriations.
(b) Application for grant; contents.
(c) Research facilities; selection of Institutes; designation of funds for scholarships and fellowships.
(d) Requirements for grants.
(e) Restriction on application of grants.
1223. Funding criteria.

- Sec.
1224. Duties of Secretary.
(a) Consulting with other agencies; prescribing rules and regulations; furnishing advice and assistance; coordinating research.
(b) Annual ascertainment of compliance.
(c) Annual report to Congress.
1225. Effect on colleges and universities.
1226. Research.
(a) Coordination with existing programs; availability of information to public.
(b) Effect on Federal agencies.
(c) Contracts.
(d) Availability of results to public; authorization of appropriation.
1227. Center for cataloging.
1228. Interagency cooperation.
1229. Advisory Committee on Mining and Mineral Research.
(a) Appointment; composition.
(b) Designation of chairman; consultation and recommendations.
(c) Compensation and travel expenses.

SUBCHAPTER IV—ABANDONED MINE RECLAMATIONS

1231. Abandoned Mine Reclamation Fund.
(a) Establishment; administration; State funds.
(b) Sources of deposits to fund.
(c) Use of moneys.
(d) Moneys available upon appropriation; no fiscal year limitation.
1232. Reclamation fee.
(a) Payment; rate.
(b) Due date.
(c) Submission of statement.
(d) Penalty.
(e) Civil action to recover fee.
(f) Cooperation from other agencies.
(g) Allocation of funds.
1233. Objectives of fund.
1234. Eligible lands and water.
1235. State reclamation program.
(a) Promulgation of regulations.
(b) Submission of State Reclamation Plan and annual projects.
(c) Restriction.
(d) Approval of State program; withdrawal.
(e) Contents of State Reclamation Plan.
(f) Annual application for support; contents.
(g) Costs.
(h) Grant of funds.
(i) Program monitoring.
(j) Annual report to Secretary.
(k) Eligible lands of Indian tribes.
1236. Reclamation of rural lands.
(a) Agreements with landowners for conservation treatment.
(b) Conservation and development plans.
(c) Agreement to effect plan.
(d) Financial and other assistance; determination of Secretary.
(e) Termination of agreements.
(f) Preservation and surrender of history and allotments.
(g) Rules and regulations.
(h) Utilization of Soil Conservation Service.
(i) Availability of funds.
1237. Acquisition and reclamation of land adversely affected by past coal mining practices.
(a) Findings of fact; notice; right of entry.

- Sec.
1255. Studies or exploratory work.
1256. Requirements for acquisition of affected land.
(d) Title to affected land; value.
(e) State participation; grants.
(f) Rules and regulations.
(g) Public sale; notice and hearing.
(h) Construction or rehabilitation of housing for disabled, displaced, or dislocated persons; grants.
1238. Liens.
(a) Filing of statement and appraisal.
(b) Petition.
(c) Recordation.
1239. Filling roads and sealing tunnels.
(a) Congressional declaration of hazardous conditions.
(b) Limitation on funds.
(c) Expenditures in States or Indian reservation.
(d) Disposal of mine wastes.
(e) Land acquisition.
1240. Emergency powers.
1241. Annual report to Congress.
1242. Powers of Secretary or State.
(a) Engage in work, promulgate rules and regulations, etc., to implement and administer this subchapter.
(b) Engage in cooperative projects.
(c) Request for action to restrain interference with regard to this subchapter.
(d) Construct and operate plants for control and treatment of water pollution resulting from mine drainage.
(e) Transfer funds.
1243. Interagency cooperation.
SUBCHAPTER V—CONTROL OF THE ENVIRONMENTAL IMPACTS OF SURFACE COAL MINING
1251. Environmental protection standards.
1252. Initial regulatory procedures.
(a) State regulation.
(b) Interim standards.
(c) Full compliance with environmental protection performance standards.
(d) Permit application.
(e) Federal enforcement program.
(f) Interim period.
1253. State programs.
(a) Regulation of surface coal mining and reclamation operations; submission to Secretary; time limit; demonstration of effectiveness.
(b) Approval of program.
(c) Notice of disapproval.
(d) Inability of State to take action.
1254. Federal programs.
(a) Promulgation and implementation by Secretary for State.
(b) Federal enforcement of State program.
(c) Notice and hearing.
(d) Review of permits.
(e) Submission of State program after implementation of Federal program.
(f) Validity of Federal program permits under superseding State program.
(g) Preemption of State statutes or regulations.
(h) Coordination of issuance and review of Federal program permits with any other Federal or State permit process.
1255. State laws.
1256. Permits.
(a) Persons engaged in surface coal mining within State; time limit; exception.
(b) Term.
(c) Termination.
(d) Renewal.
1257. Application requirements.
(a) Fee.
(b) Submittal; contents.
(c) Determination of probable hydrologic consequences and statement of results of test borings and core samplings.
(d) Reclamation plan.
(e) Public inspection.
(f) Insurance certificate.
(g) Blasting plan.
1258. Reclamation plan requirements.
1259. Performance bonds.
(a) Filing with regulatory authority; scope, number and amount.
(b) Liability period; execution.
(c) Bond of applicant without separate surety; alternate system.
(d) Deposit of cash or securities.
(e) Adjustments.
1260. Permit approval or denial.
(a) Basis for decision; notification of applicant and local government officials; burden of proof.
(b) Requirements for approval.
(c) Schedule of violations.
(d) Prime farmland mining permit.
1261. Revision of permits.
(a) Application and revised reclamation plan; requirements; extensions to area covered.
(b) Transfer, assignment, or sale of rights under permit.
(c) Review of outstanding permits.
1262. Coal exploration permits.
(a) Regulations; contents.
(b) Confidential information.
(c) Penalties.
(d) Limitation on removal of coal.
(e) Law governing exploration of Federal lands.
1263. Public notice and public hearings.
(a) Submission of advertisement to regulatory authority; notification of local governmental bodies.
(b) Objections to permit applications; informal conference; record.
(c) Prior Federal coal lease hearing as evidence.
1264. Decisions of regulatory authority and appeals.
(a) Issuance of findings within 60 days after informal conference.
(b) Decision without informal conference; notification within a reasonable time.
(c) Request for rehearing on reasons for final determination; time; issuance of decision.
(d) Temporary relief.
(e) Power of regulatory authority with respect to rehearing.
(f) Right to appeal in accordance with section 1276 of this title.
1265. Environmental protection performance standards.
(a) Permit requirement.
(b) General standards.
(c) Procedures, exception to original contour restoration requirements.

- Sec. (d) Steep-slope surface coal mining standards.
(e) Variances to original contour restoration requirements.
(f) Standards and criteria for coal mine waste piles.
1266. Surface effects of underground coal mining operations.
(a) Rules and regulations.
(b) Permit requirements.
(c) Suspension of underground coal mining operations in urbanized areas.
(d) Applicability of this subchapter to surface operations and surface impacts incident to underground coal mining operations.
1267. Inspections and monitoring.
(a) Inspections of surface coal mining and reclamation operations.
(b) Records and reports; monitoring systems; evaluation of results.
(c) Inspection intervals.
(d) Maintenance of sign.
(e) Violations.
(f) Availability of information to public.
(g) Conflict of interest; penalty; publication of regulations; report to Congress.
(h) Review; procedures for inspections.
1268. Penalties.
(a) Civil penalties for violations of permit conditions and provisions of this subchapter.
(b) Hearing.
(c) Notice of violation; action required of violator; waiver of legal rights.
(d) Civil action to recover civil penalties.
(e) Willful violations.
(f) Corporate violations.
(g) False statements, representations, or certifications.
(h) Failure to correct violation.
(i) Effect on additional enforcement right or procedure available under State law.
1269. Release of performance bonds or deposits.
(a) Filing of request; submittal of copy of advertisement; notification by letter of intent to seek release.
(b) Inspection and evaluation; notification of decision.
(c) Requirements for release.
(d) Notice of disapproval.
(e) Notice to municipality.
(f) Objections to release; hearing.
(g) Informal conference.
(h) Power of regulatory authority with respect to informal conference.
1270. Citizens suits.
(a) Civil action to compel compliance with this chapter.
(b) Limitation on bringing of action.
(c) Venue; intervention.
(d) Costs; filing of bonds.
(e) Effect on other enforcement methods.
(f) Action for damages.
1271. Enforcement.
(a) Notice of violation; Federal inspection; waiver of notification period; cessation order; affirmative obligation on operator; suspension or revocation of permits; contents of notices and orders.
(b) Inadequate State enforcement; notice and hearing.
(c) Civil action for relief.
(d) Sanctions; effect on additional enforcement rights under State law.
- Sec. 1272. Designating areas unsuitable for surface coal mining.
(a) Establishment of State planning process; standards; State process requirements; integration with present and future land use planning and regulation processes; savings provisions.
(b) Review of Federal lands.
(c) Petition; intervention; decision.
(d) Statement.
(e) Prohibition on certain Federal public and private surface coal mining operations.
1273. Federal lands.
(a) Promulgation and implementation of Federal lands program.
(b) Incorporation of requirements into any lease, permit, or contract issued by Secretary which may involve surface coal mining and reclamation operations.
(c) State cooperative agreements.
(d) Development of program to assure no unreasonable denial to any class of coal purchasers.
1274. Public agencies, public utilities, and public corporations.
1275. Review by Secretary.
(a) Application for review of order or notice; investigation; hearing; notice.
(b) Findings of fact; issuance of decision.
(c) Temporary relief; issuance of order or decision granting or denying relief.
(d) Notice and hearing with respect to section 1271 order to show cause.
(e) Costs.
1276. Judicial review.
(a) Review by United States District Court; venue; filing of petition; time.
(b) Evidence; conclusiveness of findings; orders.
(c) Temporary relief; prerequisites.
(d) Stay of action, order, or decision of Secretary.
1277. Special bituminous coal mines.
(a) Issuance of separate regulations; criteria.
(b) New bituminous coal surface mines.
(c) Scope of alternative regulations.
1278. Surface mining operations not subject to this chapter.
1279. Anthracite coal mines.
- SUBCHAPTER VI—DESIGNATION OF LANDS UNSUITABLE FOR NONCOAL MINING**
1281. Designation procedures.
(a) Review of Federal land areas for unsuitability for noncoal mining.
(b) Criteria considered in determining designations.
(c) Petition for exclusion; contents; hearing; temporary land withdrawal.
(d) Limitation on designations; rights preservation; regulations.
(e) Statement.
(f) Area withdrawal.
(g) Right to appeal.
- SUBCHAPTER VII—ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS**
1291. Definitions.
1292. Other Federal laws.
(a) Construction of chapter as superseding, amending, modifying, or repealing certain laws.

- Sec. (b) Effect on authority of Secretary or heads of other Federal agencies.
(c) Cooperation.
(d) Major Federal action.
1293. Employee protection.
(a) Retaliatory practices prohibited.
(b) Review by Secretary; investigation; notice; hearing; findings of fact; judicial review.
(c) Costs.
1294. Penalty.
1295. Grants to States.
(a) Assisting any State in development, administration, and enforcement of State programs under this chapter.
(b) Assisting any State in development, administration, and enforcement of its State programs.
(c) Increases in annual grants.
(d) Annual report to President and Congress.
(e) Separability of provisions.
1296. Alaskan surface coal mine study.
(a) Contract with National Academy of Sciences-National Academy of Engineering.
(b) Report to President and Congress.
(c) Draft of legislation.
(d) Modification of applicability of environmental protection provisions of this chapter to surface coal mining operations in Alaska; publication in Federal Register; hearing.
(e) Interim regulations.
(f) Authorization of appropriations.
1299. Study of reclamation standards for surface mining of other minerals.
(a) Contract with National Academy of Sciences-National Academy of Engineering; requirements.
(b) Submittal of study with legislative recommendation to President and Congress.
(c) Authorization of appropriations.
1300. Indian lands.
(a) Study of regulation of surface mining; consultation with tribe; proposed legislation.
(b) Submittal of study to Congress.
(c) Compliance with interim environmental protection standards of this chapter.
(d) Compliance with permanent environmental protection standards of this chapter.
(e) Inclusion and enforcement of terms and conditions of leases.
(f) Approval of changes in terms and conditions of leases.
(g) Participation of tribes.
(h) Jurisdictional status.
1301. Environmental practices.
1302. Authorization of appropriations.
1303. Coordination of regulatory and inspection activities.
1304. Surface owner protection.
(a) Applicability.
(b) Lease of coal deposits governed by section 201 of this title.
(c) Consent to lease by surface owner.
(d) Preferences.
(e) "Surface owner" defined.
(f) Exception.
(g) Effect on property rights of United States or any other landowner.
1305. Federal lessee protection.
1306. Effect on rights of owner of coal in Alaska to conduct surface mining operations.
1307. Water rights and replacement.
1308. Advance appropriations.
1309. Certification and training of blasters.
- SUBCHAPTER VIII—UNIVERSITY COAL RESEARCH LABORATORIES**
1311. Establishment of university coal research laboratories.
(a) Designation by Secretary of Energy.
(b) Criteria.
(c) Location of coal laboratories.
(d) Period for submission of applications for designation; contents.
(e) Time limit.
1312. Financial assistance.
1313. Limitation on payments.
1314. Payments; Federal share of operating expenses.
1315. Advisory Council on Coal Research.
(a) Establishment; members.
(b) Furnishing advice to Secretary of Energy.
(c) Annual report to President, transmittal to Congress.
(d) Compensation and travel expenses.
(e) Alternate members.
1316. Authorization of appropriations.
- SUBCHAPTER IX—ENERGY RESOURCE GRADUATE FELLOWSHIPS**
1321. Fellowship awards.
(a) Graduate study and research in areas of applied science and engineering relating to production, conservation, and utilization of fuels and energy.
(b) Term.
(c) Replacement awards.
1322. Fellowship recipients.
1323. Distribution of fellowships.
1324. Stipends and allowances.
1325. Limitation on fellowships.
1326. Fellowship conditions.
1327. Authorization of appropriations.
1328. Research, development projects, etc., relating to alternative coal mining technologies.
(a) Authority of Secretary of the Interior to conduct, promote, etc.
(b) Contracts and grants.
(c) Authorization of appropriations.
(d) Publication in Federal Register; report to Congress.
(e) Availability of information to public.
- CHAPTER REFERRED TO IN OTHER SECTIONS**
This chapter is referred to in title 42 sections 6905, 6925.
- SUBCHAPTER I—STATEMENT OF FINDINGS AND POLICY**
- § 1201. Congressional findings
The Congress finds and declares that—
(a) extraction of coal and other minerals from the earth can be accomplished by various methods of mining, including surface mining;
(b) coal mining operations presently contribute significantly to the Nation's energy requirements; surface coal mining constitutes one method of extraction of the resource; the overwhelming percentage of the Nation's coal reserves can only be extracted by underground mining methods, and it is, therefore,

essential to the national interest to insure the existence of an expanding and economically healthy underground coal mining industry.

(c) many surface mining operations result in disturbances of surface areas that burden and adversely affect commerce and the public welfare by destroying or diminishing the utility of land for commercial, industrial, residential, recreational, agricultural and forestry purposes by causing erosion and landslides by contributing to floods by polluting the water by destroying fish and wildlife habitats by impairing natural beauty by damaging the property of citizens by creating hazards dangerous to life and property by degrading the quality of life in local communities and by counteracting governmental programs and efforts to conserve soil water and other natural resources.

(d) the expansion of coal mining to meet the Nation's energy needs makes even more urgent the establishment of appropriate standards to minimize damage to the environment and to productivity of the soil and to protect the health and safety of the public.

(e) surface mining and reclamation technology are now developed so that effective and reasonable regulation of surface coal mining operations by the States and by the Federal Government in accordance with the requirements of this chapter is an appropriate and necessary means to minimize so far as practicable the adverse social, economic and environmental effects of such mining operations.

(f) because of the diversity in terrain climate biologic chemical, and other physical conditions in areas subject to mining operations the primary governmental responsibility for developing, authorizing, issuing, and enforcing regulations for surface mining and reclamation operations subject to this chapter should rest with the States.

(g) surface mining and reclamation standards are essential in order to insure that competition in interstate commerce among sellers of coal produced in different States will not be used to undermine the ability of the several States to improve and maintain adequate standards on coal mining operations within their borders.

(h) there are a substantial number of acres of land throughout major regions of the United States disturbed by surface and underground coal on which little or no reclamation was conducted, and the impacts from these unreclaimed lands impose social and economic costs on residents in nearby and adjoining areas as well as continuing to impair environmental quality.

(i) while there is a need to regulate surface mining operations for minerals other than coal, more data and analyses are needed to serve as a basis for effective and reasonable regulation of such operations.

(j) surface and underground coal mining operations affect interstate commerce, contribute to the economic well being, security, and general welfare of the Nation and should be conducted in an environmentally sound manner and

(k) the cooperative effort established in this chapter is necessary to prevent or mitigate adverse environmental effects of present and future surface coal mining operations.

(Pub. L. 95-87 title I, § 101, Aug. 3, 1977, Stat. 447.)

REFERENCES IN TEXT

This chapter referred to in subsections (e) (f) and (h) was in the original this Act meaning Pub. L. 95-87, Aug. 3, 1977, 91 Stat. 445 as amended which enacted this chapter and amended section 1114 of Title 18, Crimes and Criminal Procedure. For complete classification of this Act to the Code see Short Title note set out below and Tables.

SHORT TITLE

Section 1 of Pub. L. 95-87 provided: That this Act (enacting this chapter and amending section 1114 of Title 18, Crimes and Criminal Procedure) may be cited as the Surface Mining Control and Reclamation Act of 1977.

§ 1202 Statement of purpose

It is the purpose of this chapter to—

(a) establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations,

(b) assure that the rights of surface land owners and other persons with a legal interest in the land or appurtenances thereto are fully protected from such operations,

(c) assure that surface mining operations are not conducted where reclamation as required by this chapter is not feasible,

(d) assure that surface coal mining operations are so conducted as to protect the environment,

(e) assure that adequate procedures are undertaken to reclaim surface areas as contemporaneously as possible with the surface coal mining operations,

(f) assure that the coal supply essential to the Nation's energy requirements, and to its economic and social well being is provided and strike a balance between protection of the environment and agricultural productivity and the Nation's need for coal as an essential source of energy,

(g) assist the States in developing and implementing a program to achieve the purposes of this chapter,

(h) promote the reclamation of mined areas left without adequate reclamation prior to August 3, 1977, and which continue, in their unreclaimed condition, to substantially degrade the quality of the environment, prevent or damage the beneficial use of land or water resources, or endanger the health or safety of the public.

(i) assure that appropriate procedures are provided for the public participation in the development, revision, and enforcement of regulations, standards, reclamation plans, or programs established by the Secretary or any State under this chapter,

(j) provide a means for development of the data and analyses necessary to establish effective and reasonable regulation of surface mining operations for other minerals,

(k) encourage the full utilization of coal resources through the development and application of underground extraction technologies.

(l) stimulate, sponsor, provide for and/or supplement present programs for the conduct of research investigations, experiments and demonstrations in the exploration, extraction, processing, development and production of minerals and the training of mineral engineers and scientists in the field of mining minerals resources, and technology and the establishment of an appropriate research and training center in various States and

(m) wherever necessary exercise the full reach of Federal constitutional powers to insure the protection of the public interest through effective control of surface coal mining operations.

(Pub. L. 95-87 title I, § 102, Aug. 3, 1977, 91 Stat. 448.)

SUBCHAPTER II—OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 1291 of this title.

§ 1211 Office of Surface Mining Reclamation and Enforcement

(a) Establishment

There is established in the Department of the Interior, the Office of Surface Mining Reclamation and Enforcement (hereinafter referred to as the "Office").

(b) Appointment, compensation, duties, etc., of Director; employees

The Office shall have a Director who shall be appointed by the President by and with the advice and consent of the Senate, and shall be compensated at the rate provided for level V of the Executive Schedule under section 5315 of title 5, and such other employees as may be required. Pursuant to section 5108 of title 5, and after consultation with the Secretary, the Director of the Office of Personnel Management shall determine the necessary number of positions in general schedule employees in grade 16, 17, and 18 to perform functions of this subchapter and shall allocate such positions to the Secretary. The Director shall have the responsibilities provided under subsection (c) of this section and those duties and responsibilities relating to the functions of the Office which the Secretary may assign, consistent with this chapter. Employees of the Office shall be recruited on the basis of their professional competence and capacity to administer the provisions of this chapter. The Office may use on a reimbursable basis when appropriate employees of the Department and other Federal agencies to administer the provisions of this chapter, providing that no legal authority, program or function in any Federal agency which has as its purpose promoting the development or use of coal or other mineral resources or regulating

the health and safety of miners under provisions of the Federal Coal Mine Health and Safety Act of 1969 (83 Stat. 742) (30 USC 801 et seq.) shall be transferred to the Office.

(c) Duties of Secretary

The Secretary acting through the Office shall—

(1) administer the programs for controlling surface coal mining operations which are required by this chapter; review and approve or disapprove State programs for controlling surface coal mining operations and reclaiming abandoned mined lands; make those investigations and inspections necessary to insure compliance with this chapter; conduct hearings; administer oaths; issue subpoenas; and compel the attendance of witnesses and production of written or printed material as provided for in this chapter; issue cease and desist orders; review and vacate or modify or approve orders and decisions; and order the suspension, revocation or withholding of any permit for failure to comply with any of the provisions of this chapter or any rules and regulations adopted pursuant thereto.

(2) publish and promulgate such rules and regulations as may be necessary to carry out the purposes and provisions of this chapter.

(3) administer the State grant-in-aid program for the development of State programs for surface and mining and reclamation operations provided for in subchapter V of this chapter.

(4) administer the program for the purchase and reclamation of abandoned and unreclaimed mined areas pursuant to subchapter IV of this chapter.

(5) administer the surface mining and reclamation research and demonstration project authority provided for in this chapter.

(6) consult with other agencies of the Federal Government having expertise in the control and reclamation of surface mining operations and assist States, local governments and other eligible agencies in the coordination of such programs.

(7) maintain a continuing study of surface mining and reclamation operations in the United States.

(8) develop and maintain an Information and Data Center on Surface Coal Mining Reclamation and Surface Impacts of Underground Mining which will make such data available to the public and the Federal, regional, State and local agencies conducting or concerned with land use planning and agencies concerned with surface and underground mining and reclamation operations.

(9) assist the States in the development of State programs for surface coal mining and reclamation operations which meet the requirements of this chapter and at the same time reflect local requirements and local environmental and agricultural conditions.

(10) assist the States in developing objective scientific criteria and appropriate procedures and institutions for determining those areas of a State to be designated unsuitable for all

or certain types of surface coal mining pursuant to section 1272 of this title;

(11) monitor all Federal and State research programs dealing with coal extraction and use and recommend to Congress the research and demonstration projects and necessary changes in public policy which are designated to (A) improve feasibility of underground coal mining, and (B) improve surface mining and reclamation techniques directed at eliminating adverse environmental and social impacts;

(12) cooperate with other Federal agencies and State regulatory authorities to minimize duplication of inspections, enforcement, and administration of this chapter; and

(13) perform such other duties as may be provided by law and relate to the purposes of this chapter.

(d) Restriction on use of Federal coal mine health and safety inspectors

The Director shall not use either permanently or temporarily any person charged with responsibility of inspecting coal mines under the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. 801 et seq.), unless he finds and publishes such finding in the Federal Register, that such activities would not interfere with such inspections under the 1969 Act.

(e) Repealed. Pub. L. 96-511, § 4(b), Dec. 11, 1980, 94 Stat. 2826

(f) Conflict of interest; penalties; rules and regulations; report to Congress

No employee of the Office or any other Federal employee performing any function or duty under this chapter shall have a direct or indirect financial interest in underground or surface coal mining operations. Whoever knowingly violates the provisions of the above sentence shall, upon conviction, be punished by a fine of not more than \$2,500, or by imprisonment for not more than one year, or both. The Director shall (1) within sixty days after August 3, 1977, publish regulations, in accordance with section 553 of title 5, to establish the methods by which the provisions of this subsection will be monitored and enforced, including appropriate provisions for the filing by such employees and the review of statements and supplements thereto concerning their financial interests which may be affected by this subsection, and (2) report to the Congress as part of the annual report (section 1296 of this title) on the actions taken and not taken during the preceding calendar year under this subsection.

(g) Petition for issuance, amendment, or repeal of rule; filing; hearing or investigation; notice of denial

(1) After the Secretary has adopted the regulations required by section 1251 of this title, any person may petition the Director to initiate a proceeding for the issuance, amendment, or repeal of a rule under this chapter.

(2) Such petitions shall be filed in the principal office of the Director and shall set forth the facts which it is claimed established that it is necessary to issue, amend, or repeal a rule under this chapter.

(3) The Director may hold a public hearing or may conduct such investigation or proceeding

as the Director deems appropriate in order to determine whether or not such petition should be granted.

(4) Within ninety days after filing of a petition described in paragraph (1), the Director shall either grant or deny the petition. If the Director grants such petition, the Director shall promptly commence an appropriate proceeding in accordance with the provisions of this chapter. If the Director denies such petition, the Director shall so notify the petitioner in writing setting forth the reasons for such denial.

(Pub. L. 95-87, title II, § 201, Aug. 3, 1977, 91 Stat. 449; Pub. L. 95-240, title I, § 100, Mar. 1, 1978, 92 Stat. 109; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783; Pub. L. 96-511, § 4(b), Dec. 11, 1980, 94 Stat. 2826.)

REFERENCES IN TEXT

The Federal Coal Mine Health and Safety Act of 1969, referred to in subsections (b) and (d), is Pub. L. 91-173, Dec. 30, 1969, 83 Stat. 742, as amended, which was redesignated the Federal Mine Safety and Health Act of 1977 by Pub. L. 95-164, title I, § 101, Nov. 9, 1977, 91 Stat. 1290, and is classified principally to chapter 22, § 801 et seq., of this title. For complete classification of this Act to the Code, see Short Title note set out under section 801 of this title and Tables. The general schedule, referred to in subsection (b), is set out under section 5332 of Title 5, Government Organization and Employees.

AMENDMENTS

1980—Subsec. (e). Pub. L. 96-511 struck subsec. (e) which provided for consideration of Office of Surface Mining Reclamation and Enforcement as an independent Federal regulatory agency. See section 3502(10) of Title 44, Public Printing and Documents.

1978—Subsec. (b). Pub. L. 95-240 substituted "V" for "IV".

TRANSFER OF FUNCTIONS

"The Director of the Office of Personnel Management" was substituted for "a majority of members of the Civil Service Commission" in subsec. (b) pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred all functions vested by statute in the United States Civil Service Commission to the Director of the Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

SUBCHAPTER III—STATE MINING AND MINERAL RESOURCES AND RESEARCH INSTITUTES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 43 section 1457a.

§ 1221. State allotments to institutes; authorization of appropriations

(a) There are authorized to be appropriated to the Secretary of the Interior sums adequate for fiscal year 1978, \$300,000 for fiscal year 1979, and \$400,000 for each fiscal year thereafter for five years, to assist the States in carry-

on the work of a competent and qualified mining and mineral resources research institute, or center (hereinafter referred to as "institute") at one public college or university in the State which has in existence at the time of enactment of this subchapter a school of mines, division, or department conducting a program of substantial instruction and research in mining or minerals extraction or which establishes such a school of mines, or division, or department subsequent to August 3, 1977, and which school of mines, or division or department shall have been in existence for at least two years. The Advisory Committee on Mining and Minerals Resources Research as created by this subchapter shall determine a college or university to have an eligible school of mines, or division or department conducting a program of substantial instruction and research in mining or minerals extraction wherein education and research in the minerals engineering fields are being carried out and wherein at least four full-time permanent faculty members are employed: *Provided, That—*

(1) such moneys when appropriated shall be made available to match, on a dollar-for-dollar basis, non-Federal funds which shall be at least equal to the Federal share to support the institute;

(2) if there is more than one such eligible college or university in a State, funds under this subchapter shall, in the absence of a designation to the contrary by act of the legislature of the State, be paid to one such college or university designated by the Governor of the State; and

(3) where a State does not have a public college or university with an eligible school of mines, or division, or department conducting a program of substantial instruction and research in mining or mineral extraction, said advisory committee may allocate the State's allotment to one private college or university which it determines to have an eligible school of mines, or division, or department as provided herein.

(b) It shall be the duty of each such institute to plan and conduct and/or arrange for a component or components of the college or university with which it is affiliated to conduct competent research, investigations, demonstrations, and experiments of either a basic or practical nature, or both, in relation to mining and mineral resources and to provide for the training of mineral engineers and scientists through such research, investigations, demonstrations, and experiments. Such research, investigations, demonstrations, experiments, and training may include, without being limited: exploration; extraction; processing; and development; production of mineral resources; mining and mineral technology; supply and demand for minerals; conservation and best use of available supplies of minerals; the economic, legal, social, engineering, recreational, biological, geographic, ecological, and other aspects of mining, mineral resources, and mineral reclamation, having due regard to the interrelation on the natural envi-

ronment, the varying conditions and needs of the respective States, and to mining and mineral resources research projects being conducted by agencies of the Federal and State governments, and other institutes.

(Pub. L. 95-87, title III, § 301, Aug. 3, 1977, 91 Stat. 451.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1222, 1223 of this title.

§ 1222. Research funds to institutes

(a) Authorization of appropriations

There is authorized to be appropriated annually for seven years to the Secretary of the Interior the sum of \$15,000,000 in fiscal year 1978, said sum increased by \$2,000,000 each fiscal year thereafter for six years, which shall remain available until expended. Such moneys when appropriated shall be made available to institutes to meet the necessary expenses for purposes of:

(1) specific mineral research and demonstration projects of industrywide application, which could not otherwise be undertaken, including the expenses of planning and coordinating regional mining and mineral resources research projects by two or more institutes, and

(2) research into any aspects of mining and mineral resources problems related to the mission of the Department of the Interior, which may be deemed desirable and are not otherwise being studied.

(b) Application for grant; contents

Each application for a grant pursuant to subsection (a) of this section shall, among other things, state the nature of the project to be undertaken, the period during which it will be pursued, the qualifications of the personnel who will direct and conduct it, the estimated costs, the importance of the project to the Nation, region, or State concerned, and its relation to other known research projects theretofore pursued or being pursued, and the extent to which it will provide opportunity for the training of mining and mineral engineers and scientists, and the extent of participation by nongovernmental sources in the project.

(c) Research facilities; selection of institutes; designation of funds for scholarships and fellowships

The Secretary shall, insofar as it is practicable, utilize the facilities of institutes designated in section 1221 of this title to perform such special research, authorized by this section, and shall select the institutes for the performance of such special research on the basis of the qualifications without regard to race or sex of the personnel who will conduct and direct it, and on the basis of the facilities available in relation to the particular needs of the research project, special geographic, geologic, or climatic conditions within the immediate vicinity of the institute in relation to any special requirements of the research project, and the extent to which it will provide opportunity for training individuals as mineral engineers and scientists.

*So in original. The semicolon probably should be a comma.

The Secretary may designate and utilize such portions of the funds authorized to be appropriated by this section as he deems appropriate for the purpose of providing scholarships, graduate fellowships, and postdoctoral fellowships.

(d) Requirements for grants

No grant shall be made under subsection (a) of this section except for a project approved by the Secretary of the Interior and all grants shall be made upon the basis of merit of the project, the need for the knowledge which it is expected to produce when completed, and the opportunity it provides for the training of individuals as mineral engineers and scientists.

(e) Restriction on application of grants

No portion of any grant under this section shall be applied to the acquisition by purchase or lease of any land or interests therein or the rental purchase construction preservation or repair of any building.

(Pub L 95 87 title III § 302 Aug 3 1977 91 Stat 452)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1223 of this title

§ 1223 Funding criteria

(a) Sums available to institutes under the terms of sections 1221 and 1222 of this title shall be paid at such times and in such amounts during each fiscal year as determined by the Secretary and upon vouchers approved by him. Each institute shall set forth its plan to provide for the training of individuals as mineral engineers and scientists under a curriculum appropriate to the field of mineral resources and mineral engineering and related fields set forth policies and procedures which assure that Federal funds made available under this subchapter for any fiscal year will supplement and to the extent practicable increase the level of funds that would in the absence of such Federal funds be made available for purposes of this subchapter, and in no case supplant such funds have an officer appointed by its governing authority who shall receive and account for all funds paid under the provisions of this subchapter and shall make an annual report to the Secretary on or before the first day of September of each year on work accomplished and the status of projects underway together with a detailed statement of the amounts received under any provisions of this subchapter during the preceding fiscal year and of its disbursements on schedules prescribed by the Secretary. If any of the moneys received by the authorized receiving officer of any institute under the provisions of this subchapter shall by any action or contingency be found by the Secretary to have been improperly diminished lost or misapplied it shall be replaced by the State concerned and until so replaced no subsequent appropriation shall be allotted or paid to any institute of such State.

(b) Moneys appropriated pursuant to this subchapter shall be available for expenses for research investigations experiments and training conducted under authority of this subchapter.

The institutes are hereby authorized and encouraged to plan and conduct programs under this subchapter in cooperation with each other and with such other agencies and individuals as may contribute to the solution of the mining and mineral resources problems involved and moneys appropriated pursuant to this subchapter shall be available for paying the necessary expenses of planning coordinating and conducting such cooperative research.

(Pub L 95 87 title III § 303 Aug 3 1977 91 Stat 453)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1224 of this title

§ 1224 Duties of Secretary

(a) Consulting with other agencies prescribing rules and regulations furnishing advice and assistance coordinating research

The Secretary of the Interior is hereby charged with the responsibility for the proper administration of this subchapter and after full consultation with other interested Federal agencies shall prescribe such rules and regulations as may be necessary to carry out its provisions. The Secretary shall furnish such advice and assistance as will best promote the purposes of this subchapter participate in coordinating research initiated under this subchapter by the institutes indicate to them such lines of inquiry as to him seem most important and encourage and assist in the establishment and maintenance of cooperation by and between the institutes and between them and other research organizations the United States Department of the Interior and other Federal establishments.

(b) Annual ascertainment of compliance

On or before the 1st day of July in each year after the passage of this subchapter the Secretary shall ascertain whether the requirements of section 1223(a) of this title have been met as to each institute and State.

(c) Annual report to Congress

The Secretary shall make an annual report to the Congress of the receipts, expenditures and work of the institutes in all States under the provisions of this subchapter. The Secretary's report shall indicate whether any portion of an appropriation available for allotment to any State has been withheld and if so the reason therefor.

(Pub L 95 87 title III § 304 Aug 3 1977 91 Stat 454)

§ 1225 Effect on colleges and universities

Nothing in this subchapter shall be construed to impair or modify the legal relationship existing between any of the colleges or universities under whose direction an institute is established and the government of the State in which it is located and nothing in this subchapter shall in any way be construed to authorize Federal control or direction of education at any college or university.

(Pub L 95 87 title III § 305 Aug 3 1977 91 Stat 454)

§ 1226 Research

(a) Coordination with existing programs availability of information to public

The Secretary of the Interior shall obtain the continuing advice and cooperation of all agencies of the Federal Government concerned with mining and mineral resources of State and local governments and of private institutions and individuals to assure that the programs authorized in this subchapter will supplement and not duplicate established mining and minerals research programs to stimulate research in otherwise neglected areas and to contribute to a comprehensive nationwide program of mining and minerals research having due regard for the protection and conservation of the environment. The Secretary shall make generally available information and reports on projects completed in progress or planned under the provisions of this subchapter in addition to any direct publication of information by the institutes themselves.

(b) Effect on Federal agencies

Nothing in this subchapter is intended to be construed as giving the Secretary of the Interior any authority over mining and mineral resources research conducted by any agency of the Federal Government or as repealing superseding or diminishing existing authorities or responsibilities of any agency of the Federal Government to plan and conduct contract for or assist in research in its area of responsibility and concern with mining and mineral resources.

(c) Contracts

Contracts or other arrangements for mining and mineral resources research work authorized under this subchapter with an institute, educational institution or nonprofit organization may be undertaken without regard to the provisions of section 3324(a) and (b) of title 31 when in the judgment of the Secretary of the Interior advance payments of initial expense are necessary to facilitate such work. Provided That authority to make payments under this subsection shall be effective only to such extent or in such amounts as are provided in advance by appropriation Acts.

(d) Availability of results to public authorization of appropriation

No research demonstration or experiment shall be carried out under this chapter by an institute financed by grants under this chapter unless all uses products processes patents and other developments resulting therefrom with such exception or limitation if any as the Secretary may find necessary in the public interest be available promptly to the general public. Nothing contained in this section shall deprive the owner of any background patent relating to any such activities of any rights which that owner may have under that patent. There are authorized to be appropriated such sums as are necessary for the printing and publishing of the results of activities carried out by institutes

under the provisions of this chapter and for administrative planning and direction but such appropriations shall not exceed \$1,000,000 in any fiscal year. Provided That no new budget authority is authorized to be appropriated for fiscal year 1977.

(Pub L 95 87 title III § 306 Aug 3 1977 91 Stat 454)

CODIFICATION

Subsection (c) section 3324(a) and (b) of title 31 is substituted for section 3684 (3648) of the Revised Statutes, 31 U.S.C. 529, on authority of Pub L 95 87 4(b) Sept 13 1982 96 Stat 1067 the first section of which enacted Title 31 Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1328 of this title title 35 section 210.

1.27 Center for cataloging

The Secretary shall establish a center for cataloging current and projected scientific research in all fields of mining and mineral resources. Each Federal agency doing mining and mineral resources research shall cooperate by providing the cataloging center with information on work underway or scheduled by it. The cataloging center shall classify and maintain or public use a catalog of mining and mineral resources research and investigation projects in progress or scheduled by all Federal agencies and by such non-Federal agencies of government colleges universities private institutions firms and individuals as may make such information available.

(Pub L 95 87 title III § 307 Aug 3 1977 91 Stat 455)

§ 1228 Interagency cooperation

The President shall by such means as he deems appropriate clarify agency responsibility for Federal mining and mineral resources research and provide for interagency coordination of such research including the research authorized by this subchapter. Such coordination shall include—

(a) continuing review of the adequacy of the Government wide program in mining and mineral resources research

(b) identification and elimination of duplication and overlap between two or more agency programs

(c) identification of technical needs in various mining and mineral resources research categories

(d) recommendations with respect to allocation of technical effort among Federal agencies

(e) review of technical manpower needs and findings concerning management policies to improve the quality of the Government wide research effort and

(f) actions to facilitate interagency communication at management levels.

(Pub L 95 87 title III § 308 Aug 3 1977 91 Stat 455)

§ 1229. Advisory Committee on Mining and Mineral Research

(a) Appointment; composition

The Secretary of the Interior shall appoint an Advisory Committee on Mining and Mineral Research composed of—

- (1) the Director, Bureau of Mines, or his delegate, with his consent;
- (2) the Director of the National Science Foundation, or his delegate, with his consent;
- (3) the President, National Academy of Sciences, or his delegate, with his consent;
- (4) the President, National Academy of Engineering, or his delegate, with his consent;
- (5) the Director, United States Geological Survey, or his delegate, with his consent; and
- (6) not more than four other persons who are knowledgeable in the fields of mining and mineral resources research, at least one of whom shall be a representative of working coal miners.

(b) Designation of chairman; consultation and recommendations

The Secretary shall designate the Chairman of the Advisory Committee. The Advisory Committee shall consult with, and make recommendations to, the Secretary of the Interior on all matters involving or relating to mining and mineral resources research and such determinations as provided in this subchapter. The Secretary of the Interior shall consult with, and consider recommendations of such Committee in the conduct of mining and mineral resources research and the making of any grant under this subchapter.

(c) Compensation and travel expenses

Advisory Committee members, other than officers or employees of Federal, State, or local governments, shall be, for each day (including traveltime) during which they are performing committee business, entitled to receive compensation at a rate fixed by the Secretary but not in excess of the maximum rate of pay for grade GS-18 as provided in the General Schedule under section 5332 of title 5, and shall, notwithstanding the limitations of sections 5703 and 5704 of title 5, be fully reimbursed for travel, subsistence, and related expenses.

(Pub. L. 95-87, title III, § 309, Aug. 3, 1977, 91 Stat. 455.)

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

SUBCHAPTER IV—ABANDONED MINE RECLAMATIONS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1211, 1253 of this title.

§ 1231. Abandoned Mine Reclamation Fund

(a) Establishment; administration; State funds

There is created on the books of the Treasury of the United States a trust fund to be known as the Abandoned Mine Reclamation Fund (hereinafter referred to as the "fund") which shall be administered by the Secretary of the Interior. State abandoned mine reclamation funds (State funds) generated by grants from this subchapter shall be established by each State pursuant to an approved State program.

(b) Sources of deposits to fund

The fund shall consist of amounts deposited in the fund, from time to time derived from—

- (1) the reclamation fees levied under section 1232 of this title: *Provided*, That an amount not to exceed 10 per centum of such reclamation fees collected for any calendar quarter shall be reserved beginning in the first calendar year in which the fee is imposed and continuing for the remainder of that fiscal year and for the period in which such fee is imposed by law, for the purpose of section 1257(c) of this title, subject to appropriation pursuant to authorization under section 1302 of this title: *Provided further*, That not more than \$10,000,000 shall be available for such purposes;
- (2) any user charge imposed on or for land reclaimed pursuant to this subchapter after expenditures for maintenance have been deducted;
- (3) donations by persons, corporations, associations, and foundations for the purposes of this subchapter; and
- (4) recovered moneys as provided for in this subchapter.

(c) Use of moneys

Moneys in the fund may be used for the following purposes:

- (1) reclamation and restoration of land and water resources adversely affected by past coal mining, including but not limited to reclamation and restoration of abandoned surface mine areas, abandoned coal processing areas, and abandoned coal refuse disposal areas; sealing and filling abandoned deep mine entries and voids; planting of land adversely affected by past coal mining to prevent erosion and sedimentation; prevention, abatement, treatment, and control of water pollution created by coal mine drainage including restoration of stream beds, and construction and operation of water treatment plants; prevention, abatement, and control of burning coal refuse disposal areas and burning coal in situ; and prevention, abatement, and control of coal mine subsidence;
- (2) for use under section 1236 of this title, by the Secretary of Agriculture, of up to one-fifth of the money deposited in the funds annually and transferred by the Secretary of the Interior to the Secretary of Agriculture for such purposes;
- (3) acquisition and filling of voids and sealing of tunnels, shafts, and entryways under section 1239 of this title;

- (4) acquisition of land as provided for in this subchapter;
- (5) enforcement and collection of the reclamation fee provided for in section 1232 of this title;
- (6) studies by the Department of the Interior or by contract to such extent or in such amounts as are provided in appropriation Acts with public and private organizations to provide information, advice, and technical assistance, including research and demonstration projects, conducted for the purposes of this subchapter;
- (7) restoration, reclamation, abatement, control, or prevention of adverse effects of coal mining which constitutes an emergency as provided for in this subchapter;
- (8) grants to the States to accomplish the purposes of this subchapter;
- (9) administrative expenses of the United States and each State to accomplish the purposes of this subchapter; and
- (10) all other necessary expenses to accomplish the purposes of this subchapter.

- (d) Moneys available upon appropriation; no fiscal year limitation

Moneys from the fund shall be available for the purposes of this subchapter, only when appropriated therefor, and such appropriations shall be made without fiscal year limitations.

(Pub. L. 95-87, title IV, § 401, Aug. 3, 1977, 91 Stat. 456.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1236, 1291, 1302 of this title.

§ 1232. Reclamation fee

(a) Payment; rate

All operators of coal mining operations subject to the provisions of this chapter shall pay to the Secretary of the Interior, for deposit in the fund, a reclamation fee of 35 cents per ton of coal produced by surface coal mining and 15 cents per ton of coal produced by underground mining or 10 per centum of the value of the coal at the mine, as determined by the Secretary, whichever is less, except that the reclamation fee for lignite coal shall be at a rate of 2 per centum of the value of the coal at the mine, or 10 cents per ton, whichever is less.

(b) Due date

Such fee shall be paid no later than thirty days after the end of each calendar quarter beginning with the first calendar quarter occurring after August 3, 1977, and ending fifteen years after August 3, 1977, unless extended by an Act of Congress.

(c) Submission of statement

Together with such reclamation fee, all operators of coal mine operations shall submit a statement of the amount of coal produced during the calendar quarter, the method of coal removal and the type of coal, the accuracy of which shall be sworn to by the operator and notarized.

(d) Penalty

Any person, corporate officer, agent or director, on behalf of a coal mine operator, who

knowingly makes any false statement, representation or certification, or knowingly fails to make any statement, representation or certification required in this section shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than one year, or both.

(e) Civil action to recover fee

Any portion of the reclamation fee not properly or promptly paid pursuant to this section shall be recoverable, with statutory interest, from coal mine operators, in any court of competent jurisdiction in any action at law to compel payment of debts.

(f) Cooperation from other agencies

All Federal and State agencies shall fully cooperate with the Secretary of the Interior in the enforcement of this section.

(g) Allocation of funds

1. The geographic allocation of expenditures from the fund shall reflect both the area from which the revenue was derived as well as the national program needs for the funds.

2. Fifty per centum of the funds collected annually in any State or Indian reservation shall be allocated to that State or Indian reservation by the Secretary pursuant to any approved abandoned mine reclamation program to accomplish the purposes of this subchapter. Where the Governor of a State or the head of a governing body of a tribe certifies that (i) objectives of the fund set forth in sections 1233 and 1239 of this title have been achieved, (ii) there is a need for construction of specific public facilities in communities impacted by coal development, (iii) impact funds which may be available under provisions of the Federal Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 et seq.), or chapter 69 of title 31, are inadequate for such construction, and (iv) the Secretary concurs in such certification, then the Secretary may continue to allocate all or part of the 50 per centum share to that State or tribe for such construction: *Provided, however*, That if funds under this subparagraph (2) have not been expended within three years after their allocation, they shall be available for expenditure in any eligible area as determined by the Secretary.

(3) The balance of funds collected on an annual basis may be expended in any State at the discretion of the Secretary in order to meet the purposes of this subchapter. Such funds may be expended directly by the Secretary or by making additional grants to approved State reclamation programs pursuant to section 1235 of this title when the Secretary finds that such programs are the best means of accomplishing the specific reclamation projects. The Secretary shall consult and coordinate with the respective States those projects funded directly or in conjunction with other Federal agencies.

(Pub. L. 95-87, title IV, § 402, Aug. 3, 1977, 91 Stat. 457.)

REFERENCES IN TEXT

The Federal Mineral Leasing Act of 1920, as amended, referred to in subsec. (g)(2), probably means the

Mineral Leasing Act of 1920, act Feb. 25, 1920, ch. 85, 41 Stat. 437, as amended, which is classified principally to chapter 3A (§ 181 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 181 of this title and Tables.

CODIFICATION

In subsec. (g)(2), "chapter 69 of title 31" was substituted for "the Act of October 20, 1976, Public Law 94-565 (90 Stat. 2662) (31 U.S.C. 1601 et seq.)" on authority of Pub. L. 97-258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1231, 1235, 1239 of this title.

§ 1233. Objectives of fund

Expenditure of moneys from the fund on lands and water eligible pursuant to section 1234 of this title for the purposes of this subchapter shall reflect the following priorities in the order stated:

- (1) the protection of public health, safety, general welfare, and property from extreme danger of adverse effects of coal mining practices;
- (2) the protection of public health, safety, and general welfare from adverse effects of coal mining practices;
- (3) the restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices including measures for the conservation and development of soil, water (excluding channelization), woodland, fish and wildlife, recreation resources, and agricultural productivity;
- (4) research and demonstration projects relating to the development of surface mining reclamation and water quality control program methods and techniques;
- (5) the protection, repair, replacement, construction, or enhancement of public facilities such as utilities, roads, recreation, and conservation facilities adversely affected by coal mining practices;
- (6) the development of publicly owned land adversely affected by coal mining practices including land acquired as provided in this subchapter for recreation and historic purposes, conservation, and reclamation purposes and open space benefits.

(Pub. L. 95-87, title IV, § 403, Aug. 3, 1977, 91 Stat. 458.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1232 of this title.

§ 1234. Eligible lands and water

Lands and water eligible for reclamation or drainage abatement expenditures under this subchapter are those which were mined for coal or which were affected by such mining, waste-banks, coal processing, or other coal mining processes, and abandoned or left in an inadequate reclamation status prior to August 3,

¹So in original. The period probably should be a semicolon.

1977, and for which there is no continuing reclamation responsibility under State or other Federal laws.

(Pub. L. 95-87, title IV, § 404, Aug. 3, 1977, 91 Stat. 459.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1233, 1235, 1239 of this title.

§ 1235. State reclamation program

(a) Promulgation of regulations

Not later than the end of the one hundred and eighty-day period immediately following August 3, 1977, the Secretary shall promulgate and publish in the Federal Register regulations covering implementation of an abandoned mine reclamation program incorporating the provisions of this subchapter and establishing procedures and requirements for preparation, submission, and approval of State programs consisting of the plan and annual submissions of projects.

(b) Submission of State Reclamation Plan and annual projects

Each State having within its borders coal mined lands eligible for reclamation under this subchapter, may submit to the Secretary a State Reclamation Plan and annual projects to carry out the purposes of this subchapter.

(c) Restriction

The Secretary shall not approve, fund, or continue to fund a State abandoned mine reclamation program unless that State has an approved State regulatory program pursuant to section 1253 of this title.

(d) Approval of State program; withdrawal

If the Secretary determines that a State has developed and submitted a program for reclamation of abandoned mines and has the ability and necessary State legislation to implement the provisions of this subchapter, sections 1232 and 1240 of this title excepted, the Secretary shall approve such State program and shall grant to the State exclusive responsibility and authority to implement the provisions of the approved program: *Provided*, That the Secretary shall withdraw such approval and authorization if he determines upon the basis of information provided under this section that the State program is not in compliance with the procedures, guidelines, and requirements established under subsection (a) of this section.

(e) Contents of State Reclamation Plan

Each State Reclamation Plan shall generally identify the areas to be reclaimed, the purposes for which the reclamation is proposed, the relationship of the lands to be reclaimed and the proposed reclamation to surrounding areas, the specific criteria for ranking and identifying projects to be funded, and the legal authority and programmatic capability to perform such work in conformance with the provisions of this subchapter.

¹So in original. Probably should be "preparation."

(f) Annual application for support; contents

On an annual basis, each State having an approved State Reclamation Plan may submit to the Secretary an application for the support of the State program and implementation of specific reclamation projects. Such annual requests shall include such information as may be requested by the Secretary including:

- (1) a general description of each proposed project;
- (2) a priority evaluation of each proposed project;
- (3) a statement of the estimated benefits in such terms as: number of acres restored, miles of stream improved, acres of surface lands protected from subsidence, population protected from subsidence, air pollution, hazards of mine and coal refuse disposal area fires;
- (4) an estimate of the cost for each proposed project;
- (5) in the case of proposed research and demonstration projects, a description of the specific techniques to be evaluated or objective to be attained;
- (6) an identification of lands or interest therein to be acquired and the estimated cost; and
- (7) in each year after the first in which a plan is filed under this subchapter, an inventory of each project funded under the previous year's grant: which inventory shall include details of financial expenditures on such project together with a brief description of each such project, including project locations, landowner's name, acreage, type of reclamation performed.

(g) Costs

The costs for each proposed project under this section shall include: actual construction costs, actual operation and maintenance costs of permanent facilities, planning and engineering costs, construction inspection costs, and other necessary administrative expenses.

(h) Grant of funds

Upon approved¹ of State Reclamation Plan by the Secretary and of the surface mine regulatory program pursuant to section 1253 of this title, the Secretary shall grant, on an annual basis, funds to be expended in such State pursuant to section 1232(g) of this title and which are necessary to implement the State reclamation program as approved by the Secretary.

(i) Program monitoring

The Secretary, through his designated agents, will monitor the progress and quality of the program. The States shall not be required at the start of any project to submit complete copies of plans and specifications.

(j) Annual report to Secretary

The Secretary shall require annual and other reports as may be necessary to be submitted by each State administering the approved State reclamation program with funds provided under this subchapter. Such reports shall include that information which the Secretary deems necessary to fulfill his responsibilities under this subchapter.

¹So in original. Probably should be "approval."

(k) Eligible lands of Indian tribes

Indian tribes having within their jurisdiction eligible lands pursuant to section 1234 of this title or from which coal is produced, shall be considered as a "State" for the purposes of this subchapter.

(Pub. L. 95-87, title IV, § 405, Aug. 3, 1977, 91 Stat. 459.)

GRANT OF FUNDS TO STATES UNDER SURFACE MINING CONTROL AND RECLAMATION ACT

Pub. L. 97-377, title I, § 150, Dec. 21, 1982, 96 Stat. 1918, provided that: "Within 60 days of receipt of a complete abandoned mine reclamation fund grant application from any eligible State under the provisions of the Surface Mining Control and Reclamation Act (91 Stat. 460) (Pub. L. 95-87, see Short Title note set out under section 1201 of this title) the Secretary of Interior shall grant to such State any and all funds available for such purposes in the applicable appropriations Act."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1232 of this title.

§ 1236. Reclamation of rural lands

(a) Agreements with landowners for conservation treatment

In order to provide for the control and prevention of erosion and sediment damages from unreclaimed mined lands, and to promote the conservation and development of soil and water resources of unreclaimed mined lands and lands affected by mining, the Secretary of Agriculture is authorized to enter into agreements of not more than ten years with landowners including owners of water rights, residents, and tenants, and individually or collectively, determined by him to have control for the period of the agreement of lands in question therein, providing for land stabilization, erosion, and sediment control, and reclamation through conservation treatment, including measures for the conservation and development of soil, water (excluding stream channelization), woodland, wildlife, and recreation resources, and agricultural productivity of such lands. Such agreements shall be made by the Secretary with the owners, including owners of water rights, residents, or tenants (collectively or individually) of the lands in question.

(b) Conservation and development plans

The landowner, including the owner of water rights, resident, or tenant shall furnish to the Secretary of Agriculture a conservation and development plan setting forth the proposed land uses and conservation treatment which shall be mutually agreed by the Secretary of Agriculture and the landowner, including owner of water rights, resident, or tenant to be needed on the lands for which the plan was prepared. In those instances where it is determined that the water rights or water supply of a tenant, landowner, including owner of water rights, resident, or tenant have been adversely affected by a surface or underground coal mine oper-

¹So in original. Probably should be "including."

ation which has removed or disturbed a stratum so as to significantly affect the hydrologic balance such plan may include proposed measures to enhance water quality or quantity by means of joint action with other affected land owners including owner of water rights residents or tenants in consultation with appropriate State and Federal agencies

(c) Agreement to effect plan

Such plan shall be incorporated in an agreement under which the landowner including owner of water rights resident or tenant shall agree with the Secretary of Agriculture to effect the land uses and conservation treatment provided or in such plan on the lands described in the agreement in accordance with the terms and conditions thereof

(d) Financial and other assistance determination by Secretary

In return or such agreement by the landowner including owner of water rights resident or tenant the Secretary of Agriculture is authorized to furnish financial and other assistance to such landowner including owner of water rights resident or tenant in such amounts and subject to such conditions as the Secretary of Agriculture determines are appropriate in the public interest for carrying out the land use and conservation treatment set forth in the agreement. Grants made under this section depending on the income producing potential of the land after reclaiming shall provide up to 80 per centum of the cost of carrying out such land uses and conservation treatment on not more than one hundred and twenty acres of land occupied by such owner including water rights owners resident or tenant or on not more than one hundred and twenty acres of land which has been purchased jointly by such landowners including water rights owners residents or tenants under an agreement for the enhancement of water quality or quantity or on land which has been acquired by an appropriate State or local agency for the purpose of implementing such agreement except the Secretary may reduce the matching cost share where he determines that (1) the main benefits to be derived from the project are related to improving offsite water quality offsite esthetic values or other offsite benefits and (2) the matching share requirement would place a burden on the landowner which would probably prevent him from participating in the program. *Provided, however* That the Secretary of Agriculture may allow for land use and conservation treatment on such lands occupied by any such owner in excess of such one hundred and twenty acre limitation up to three hundred and twenty acres but in such event the amount of the grant to such landowner to carry out such reclamation on such lands shall be reduced proportionately. Notwithstanding any other provision of this section with regard to acreage limitations the Secretary of Agriculture may carry out experimental reclamation treatment projects to control erosion and improve water quality on all lands within a hydrologic unit consisting of not more than 25 000 acres if the Secretary determines that treatment of such lands as a hydrologic unit will achieve greater reduction in the adverse effects of past surface mining practices than would be achieved if reclamation was done on individual parcels of land

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(e) Termination of agreements

The Secretary of Agriculture may terminate any agreement with a landowner including water rights owners operator or occupier by mutual agreement if the Secretary of Agriculture determines that such termination would be in the public interest and may agree to such modification of agreements previously entered into hereunder as he deems desirable to carry out the purposes of this section or to facilitate the practical administration of the program authorized herein

(f) Preservation and surrender of history and allotments

Notwithstanding any other provision of law the Secretary of Agriculture to the extent he deems it desirable to carry out the purposes of this section may provide in any agreement hereunder for (1) preservation for a period not to exceed the period covered by the agreement and an equal period thereafter of the cropland crop acreage and allotment history applicable to land covered by the agreement for the purpose of any Federal program under which such history is used as a basis for an allotment or other limitation on the production of such crop or (2) surrender of any such history and allotments

(g) Rules and regulations

The Secretary of Agriculture shall be authorized to issue such rules and regulations as he determines are necessary to carry out the provisions of this section

(h) Utilization of Soil Conservation Service

In carrying out the provisions of this section the Secretary of Agriculture shall utilize the services of the Soil Conservation Service

(i) Availability of funds

Funds shall be made available to the Secretary of Agriculture for the purposes of this section as provided in section 1231 of this title

(Pub L 95 87 title IV § 406, Aug 3 1977 91 Stat 460 Pub L 97 98 title XV § 1551 Dec 22 1981 95 Stat 1344)

AMENDMENTS

1981—Subsec (d) Pub L 97 98 added provisions that notwithstanding any other provision of this section with regard to acreage limitations the Secretary may carry out experimental reclamation treatment projects to control erosion and improve water quality on all lands within a hydrologic unit consisting of not more than 25 000 acres if the Secretary determines that treatment of such lands as a hydrologic unit will achieve greater reduction in the adverse effects of past surface mining practices than would be achieved if reclamation was done on individual parcels of land

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub L 97 98 effective Dec 22 1981 see section 1801 of Pub L 97 98 set out as an Effective Date note under section 4301 of Title 7 Agriculture

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1231 of this title title 26 section 128

§ 1237 Acquisition and reclamation of land adversely affected by past coal mining practices

(a) Findings of fact notice right of entry

If the Secretary or the State pursuant to an approved State program makes a finding of fact that—

(1) land or water resources have been adversely affected by past coal mining practices and

(2) the adverse effects are at a stage where in the public interest action to restore reclaim abate control or prevent should be taken and

(3) the owners of the land or water resources where entry must be made to restore reclaim abate control or prevent the adverse effects of past coal mining practices are not known or readily available or

(4) the owners will not give permission for the United States the States political subdivisions their agents employees or contractors to enter upon such property to restore reclaim abate control or prevent the adverse effects of past coal mining practices

Then 'upon giving notice by mail to the owners if known or if not known by posting notice upon the premises and advertising once in a newspaper of general circulation in the municipality in which the land lies the Secretary his agents employees or contractors or the State pursuant to an approved State program shall have the right to enter upon the property adversely affected by past coal mining practices and any other property to have access to such property to do all things necessary or expedient to restore reclaim abate control or prevent the adverse effects. Such entry shall be construed as an exercise of the police power for the protection of public health safety and general welfare and shall not be construed as an act of condemnation of property nor of trespass thereon. The moneys expended for such work and the benefits accruing to any such premises so entered upon shall be chargeable against such land and shall mitigate or offset any claim in or any action brought by any owner of any interest in such premises for any alleged damages by virtue of such entry. *Provided, however* That this provision is not intended to create new rights of action or eliminate existing immunities

(b) Studies or exploratory work

The Secretary his agents employees or contractors or the State pursuant to an approved State program shall have the right to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past coal mining practices and to determine the feasibility of restoration reclamation abatement control or prevention of such adverse effects. Such entry shall be construed as an exercise of the

police power for the protection of public health safety and general welfare and shall not be construed as an act of condemnation of property nor trespass thereon

(c) Requirements for acquisition of affected land

The Secretary or the State pursuant to an approved State program may acquire any land by purchase donation or condemnation which is adversely affected by past coal mining practices if the Secretary determines that acquisition of such land is necessary to successful reclamation and that—

(1) the acquired land after restoration reclamation abatement control or prevention of the adverse effects of past coal mining practices will serve recreation and historic purposes conservation and reclamation purposes or provide open space benefits and

(2) permanent facilities such as a treatment plant or a relocated stream channel will be constructed on the land for the restoration reclamation abatement control or prevention of the adverse effects of past coal mining practices or

(3) acquisition of coal refuse disposal sites and all coal refuse thereon will serve the purposes of this subchapter or that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal mining practices

(d) Title to affected land value

Title to all lands acquired pursuant to this section shall be in the name of the United States or if acquired by a State pursuant to an approved program title shall be in the name of the State. The price paid for land acquired under this section shall reflect the market value of the land as adversely affected by past coal mining practices

(e) State participation grants

States are encouraged as part of their approved State programs to reclaim abandoned and unreclaimed mined lands within their boundaries and if necessary to acquire or to transfer such lands to the Secretary or the appropriate State regulatory authority under appropriate Federal regulations. The Secretary is authorized to make grants on a matching basis to States in such amounts as he deems appropriate for the purpose of carrying out the provisions of this subchapter but in no event shall any grant exceed 90 per centum of the cost of acquisition of the lands for which the grant is made. When a State has made any such land available to the Federal Government under this subchapter such State shall have a preference right to purchase such lands after reclamation at fair market value less the State portion of the original acquisition price. Notwithstanding the provisions of paragraph (1) of this subsection 'reclaimed land may be sold to the State

¹So in original. The period probably should be a semicolon.
²So in original. Probably should not be capitalized.

³So in original. Probably refers to paragraph (1) of subsection (c) of this section.

or local government in which it is located at a price less than fair market value, which in no case shall be less than the cost to the United States of the purchase and reclamation of the land, as negotiated by the Secretary, to be used for a valid public purpose. If any land sold to a State or local government under this paragraph is not used for a valid public purpose as specified by the Secretary in the terms of the sales agreement then all right, title, and interest in such land shall revert to the United States. Money received from such sale shall be deposited in the fund.

(f) Rules and regulations

The Secretary, in formulating regulations for making grants to the States to acquire land pursuant to this section, shall specify that acquired land meet the criteria provided for in subsections (c) and (d) of this section. The Secretary may provide by regulation that money derived from the lease, rental, or user charges of such acquired land and facilities thereon will be deposited in the fund.

(g) Public sale; notice and hearing

(1) Where land acquired pursuant to this section is deemed to be suitable for industrial, commercial, residential, or recreational development, the Secretary may sell or authorize the States to sell such land by public sale under a system of competitive bidding, at not less than fair market value and under such other regulations promulgated to insure that such lands are put to proper use consistent with local and State land use plans, if any, as determined by the Secretary.

(2) The Secretary or the State pursuant to an approved State program, when requested after appropriate public notice shall hold a public hearing, with the appropriate notice, in the county or counties or the appropriate subdivisions of the State in which lands acquired pursuant to this section are located. The hearings shall be held at a time which shall afford local citizens and governments the maximum opportunity to participate in the decision concerning the use of a disposition of the lands after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.

(h) Construction or rehabilitation of housing for disabled, displaced, or dislocated persons; grants

In addition to the authority to acquire land under subsection (d) of this section the Secretary is authorized to use money in the fund to acquire land by purchase, donation, or condemnation, and to reclaim and transfer acquired land to any State or to a political subdivision thereof, or to any person, firm, association, or corporation, if he determines that such is an integral and necessary element of an economically feasible plan for the project to construct or rehabilitate housing for persons disabled as the result of employment in the mines or work incidental thereto, persons displaced by acquisition of land pursuant to this section, or persons dislocated as the result of adverse effects of coal mining practices which constitute an emergen-

cy as provided in section 1240 of this title. Such activities shall be accomplished under such terms and conditions as the Secretary shall require, which may include transfers of land with or without monetary consideration. Provided, That to the extent that the consideration is below the fair market value of the land transferred, no portion of the difference between the fair market value and the consideration shall accrue as a profit to such persons, firm, association, or corporation. No part of the funds provided under this subchapter may be used to pay the actual construction costs of housing. The Secretary may carry out the purposes of this subsection directly or he may make grants and commitments for grants, and may advance money under such terms and conditions as he may require to any State, or any department, agency, or instrumentality of a State, or any public body or nonprofit organization designated by a State.

(Pub. L. 95-87, title IV, § 407, Aug. 3, 1977, 91 Stat. 462.)

§ 1238. Liens

(a) Filing of statement and appraisal

Within six months after the completion of projects to restore, reclaim, abate, control, or prevent adverse effects of past coal mining practices on privately owned land, the Secretary or the State, pursuant to an approved State program, shall itemize the moneys so expended and may file a statement thereof in the office of the county in which the land lies which has the responsibility under local law for the recording of judgments against land, together with a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control, or prevention of adverse effects of past coal mining practices. If the moneys so expended shall result in a significant increase in property value. Such statement shall constitute a lien upon the said land. The lien shall not exceed the amount determined by the appraisal to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices. No lien shall be filed against the property of any person, in accordance with this subsection, who owned the surface prior to May 2, 1977, and who neither consented to nor participated in nor exercised control over the mining operation which necessitated the reclamation performed hereunder.

(b) Petition

The landowner may proceed as provided by local law to petition within sixty days of the filing of the lien, to determine the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices. The amount reported to be the increase in value of the premises shall constitute the amount of the lien and shall be re-

corded with the statement herein provided. Any party aggrieved by the decision may appeal as provided by local law.

(c) Recordation

The lien provided in this section shall be entered in the county office in which the land lies and which has responsibility under local law for the recording of judgments against land. Such statement shall constitute a lien upon the said land as of the date of the expenditure of the moneys and shall have priority as a lien second only to the lien of real estate taxes imposed upon said land.

(Pub. L. 95-87, title IV, § 408, Aug. 3, 1977, 91 Stat. 465.)

§ 1239. Filling voids and sealing tunnels

(a) Congressional declaration of hazardous conditions

The Congress declares that voids, and open and abandoned tunnels, shafts, and entryways resulting from any previous mining operation, constitute a hazard to the public health or safety and that surface impacts of any underground or surface mining operation may degrade the environment. The Secretary, at the request of the Governor of any State, or the chairman of any tribe, is authorized to fill such voids, seal such abandoned tunnels, shafts, and entryways, and reclaim surface impacts of underground or surface mines which the Secretary determines could endanger life and property, constitute a hazard to the public health and safety, or degrade the environment. State regulatory authorities are authorized to carry out such work pursuant to an approved abandoned mine reclamation program.

(b) Limitation on funds

Funds available for use in carrying out the purpose of this section shall be limited to those funds which must be allocated to the respective States or Indian reservations under the provisions of section 1232(g) of this title.

(c) Expenditures in States or Indian reservation

The Secretary may make expenditures and carry out the purposes of this section without regard to provisions of section 1234 of this title in such States or Indian reservations where requests are made by the Governor or tribal chairman and only after all reclamation with respect to abandoned coal lands or coal development impacts have been met, except for those reclamation projects relating to the protection of the public health or safety.

(d) Disposal of mine wastes

In those instances where mine waste piles are being reworked for conservation purposes, the incremental costs of disposing of the wastes from such operations by filling voids and sealing tunnels may be eligible for funding providing that the disposal of these wastes meets the purposes of this section.

(e) Land acquisition

The Secretary may acquire by purchase, donation, easement, or otherwise such interest in land as he determines necessary to carry out the provisions of this section.

(Pub. L. 95-87, title IV, § 409, Aug. 3, 1977, 91 Stat. 465.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1231, 1232 of this title.

§ 1240. Emergency powers

(a) The Secretary is authorized to expend moneys from the fund for the emergency restoration, reclamation, abatement, control, or prevention of adverse effects of coal mining practices, on eligible lands, if the Secretary makes a finding of fact that—

(1) an emergency exists constituting a danger to the public health, safety, or general welfare; and

(2) no other person or agency will act expeditiously to restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices.

(b) The Secretary, his agents, employees, and contractors shall have the right to enter upon any land where the emergency exists and any other land to have access to the land where the emergency exists to restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices and to do all things necessary or expedient to protect the public health, safety, or general welfare. Such entry shall be construed as an exercise of the police power and shall not be construed as an act of condemnation of property nor of trespass thereof. The moneys expended for such work and the benefits accruing to any such premises so entered upon shall be chargeable against such land and shall mitigate or offset any claim in or any action brought by any owner of any interest in such premises for any alleged damages by virtue of such entry. *Provided, however,* That this provision is not intended to create new rights of action or eliminate existing immunities.

(Pub. L. 95-87, title IV, § 410, Aug. 3, 1977, 91 Stat. 466.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1235, 1237 of this title.

§ 1241. Annual report to Congress

Not later than January 1, 1978, and annually thereafter, the Secretary or the State pursuant to an approved State program, shall report to the Congress on operations under the fund to together with his recommendations as to future uses of the fund.

(Pub. L. 95-87, title IV, § 411, Aug. 3, 1977, 91 Stat. 466.)

§ 1212. Powers of Secretary or State

(a) Engage in work, promulgate rules and regulations, etc., to implement and administer this subchapter

The Secretary or the State pursuant to an approved State program, shall have the power and authority, if not granted it otherwise, to engage in any work and to do all things neces-

*So in original. Probably should be "or".

sary or expedient, including promulgation of rules and regulations, to implement and administer the provisions of this subchapter.

(b) Engage in cooperative projects

The Secretary or the State pursuant to an approved State program, shall have the power and authority to engage in cooperative projects under this subchapter with any other agency of the United States of America, any State and their governmental agencies.

(c) Request for action to restrain interference with regard to this subchapter

The Secretary or the State pursuant to an approved State program, may request the Attorney General, who is hereby authorized to initiate, in addition to any other remedies provided for in this subchapter, in any court of competent jurisdiction, an action in equity for an injunction to restrain any interference with the exercise of the right to enter or to conduct any work provided in this subchapter.

(d) Construct and operate plants for control and treatment of water pollution resulting from mine drainage

The Secretary or the State pursuant to an approved State program, shall have the power and authority to construct and operate a plant or plants for the control and treatment of water pollution resulting from mine drainage. The extent of this control and treatment may be dependent upon the ultimate use of the water: *Provided*, That the above provisions of this paragraph shall not be deemed in any way to repeal or supersede any portion of the Federal Water Pollution Control Act (33 U.S.C.A. 1151, et seq. as amended) (33 U.S.C. 1251 et seq.) and no control or treatment under this subsection shall in any way be less than that required under the Federal Water Pollution Control Act. The construction of a plant or plants may include major interceptors and other facilities appurtenant to the plant.

(e) Transfer funds

The Secretary may transfer funds to other appropriate Federal agencies, in order to carry out the reclamation activities authorized by this subchapter.

(Pub. L. 95-87, title IV, § 412, Aug. 3, 1977, 91 Stat. 468.)

REFERENCES IN TEXT

The Federal Water Pollution Control Act (33 U.S.C.A. 1151, et seq. as amended), referred to in subsec. (d), is act June 30, 1948, ch. 758, 62 Stat. 1155, formerly classified to chapter 23 (§ 1151 et seq.) of Title 33, Navigation and Navigable Waters, which was completely revised by Pub. L. 92-500, § 2, Oct. 18, 1972, 86 Stat. 816, and is classified generally to chapter 28 (§ 1251 et seq.) of Title 33. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

§ 1243. Interagency cooperation

All departments, boards, commissioners, and agencies of the United States of America shall cooperate with the Secretary by providing technical expertise, personnel, equipment, materials, and supplies to implement and administer the provisions of this subchapter.

(Pub. L. 95-87, title IV, § 413, Aug. 3, 1977, 91 Stat. 467.)

SUBCHAPTER V—CONTROL OF THE ENVIRONMENTAL IMPACTS OF SURFACE COAL MINING

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 1211 of this title.

§ 1251. Environmental protection standards

(a) Not later than the end of the ninety-day period immediately following August 3, 1977, the Secretary shall promulgate and publish in the Federal Register regulations covering an interim regulatory procedure for surface coal mining and reclamation operations setting mining and reclamation performance standards based on and incorporating the provisions set out in section 1252(c) of this title. The issuance of the interim regulations shall be deemed not to be a major Federal action within the meaning of section 4332(2)(c) of title 42. Such regulations, which shall be concise and written in plain, understandable language shall not be promulgated and published by the Secretary until he has—

(A) published proposed regulations in the Federal Register and afforded interested persons and State and local governments a period of not less than thirty days after such publication to submit written comments thereon;

(B) obtained the written concurrence of the Administrator of the Environmental Protection Agency with respect to those regulations promulgated under this section which relate to air or water quality standards promulgated under the authority of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1151-1175) (33 U.S.C. 1251 et seq.); and the Clean Air Act, as amended (42 U.S.C. 1857 et seq.); and

(C) held at least one public hearing on the proposed regulations.

The date, time, and place of any hearing held on the proposed regulations shall be set out in the publication of the proposed regulations. The Secretary shall consider all comments and relevant data presented at such hearing before final promulgation and publication of the regulations.

(b) Not later than one year after August 3, 1977, the Secretary shall promulgate and publish in the Federal Register regulations covering a permanent regulatory procedure for surface coal mining and reclamation operations performance standards based on and conforming to the provisions of this subchapter and establishing procedures and requirements for preparation, submission, and approval of State programs; and development and implementation of Federal programs under the subchapter. The Secretary shall promulgate these regulations, which shall be concise and written in plain, understandable language in accordance with the procedures in subsection (a) of this section.

(Pub. L. 95-87, title V, § 501, Aug. 3, 1977, 91 Stat. 467.)

REFERENCES IN TEXT

The Federal Water Pollution Control Act, as amended (33 U.S.C. 1151-1175), referred to in subsec. (a)(B), is act June 30, 1948, ch. 758, 62 Stat. 1155, formerly classified to chapter 23 (§ 1151 et seq.) of Title 33, Navigation and Navigable Waters, which was completely revised by Pub. L. 92-500, § 2, Oct. 18, 1972, 86 Stat. 816, and is classified generally to chapter 28 (§ 1251 et seq.) of Title 33. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Clean Air Act, as amended (42 U.S.C. 1857 et seq.), referred to in subsec. (a)(B), is act July 14, 1955, ch. 360, as amended generally by Pub. L. 48-206, Dec. 17, 1963, 77 Stat. 392, and later by Pub. L. 95-95, Aug. 7, 1977, 91 Stat. 685. The Clean Air Act was originally classified to chapter 15B (§ 1857 et seq.) of Title 42, The Public Health and Welfare. On enactment of Pub. L. 95-95, the Act was reclassified to chapter 85 (§ 7401 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1211, 1254, 1265, 1266, 1276, 1292, 1298 of this title.

§ 1252. Initial regulatory procedures

(a) State regulation

No person shall open or develop any new or previously mined or abandoned site for surface coal mining operations on lands on which such operations are regulated by a State unless such person has obtained a permit from the State's regulatory authority.

(b) Interim standards

All surface coal mining operations on lands on which such operations are regulated by a State which commence operations pursuant to a permit issued on or after six months from August 3, 1977, shall comply, and such permits shall contain terms requiring compliance with, the provisions set out in subsection (c) of this section. Prior to final disapproval of a State program or prior to promulgation of a Federal program or a Federal lands program pursuant to this chapter, a State may issue such permits.

(c) Full compliance with environmental protection performance standards

On and after nine months from August 3, 1977, all surface coal mining operations on lands on which such operations are regulated by a State shall comply with the provisions of subsections (b)(2), (b)(3), (b)(5), (b)(10), (b)(13), (b)(15), (b)(19), and (d) of section 1265 of this title or, where a surface coal mining operation will remove an entire coal seam or seams running through the upper fraction of a mountain, ridge, or hill by removing all of the overburden and creating a level plateau or a gently rolling contour with no highwalls remaining, such operation shall comply with the requirements of section 1265(c)(4) and (5) of this title without regard to the requirements of section 1265(b)(3) or (d)(2) and (3) of this title, with respect to lands from which overburden and the coal seam being mined have not been removed: *Provided*, however, That surface coal mining operations in operation pursuant to a permit issued by a

State before August 3, 1977, issued to a person as defined in section 1291(19) of this title in existence prior to May 2, 1977 and operated by a person whose total annual production of coal from surface and underground coal mining operations does not exceed one hundred thousand tons shall not be subject to the provisions of this subsection except with reference to the provision of section 1265(c)(1) of this title until January 1, 1979.

(d) Permit application

Not later than two months following the approval of a State program pursuant to section 1253 of this title or the implementation of a Federal program pursuant to section 1254 of this title, regardless of litigation contesting that approval or implementation, all operators of surface coal mines in expectation of operating such mines after the expiration of eight months from the approval of a State program or the implementation of a Federal program, shall file an application for a permit with the regulatory authority. Such application shall cover those lands to be mined after the expiration of eight months from the approval of a State program or the implementation of a Federal program. The regulatory authority shall process such applications and grant or deny a permit within eight months after the date of approval of the State program or the implementation of the Federal program, unless specially enjoined by a court of competent jurisdiction, but in no case later than forty-two months from August 3, 1977.

(e) Federal enforcement program

Within six months after August 3, 1977, the Secretary shall implement a Federal enforcement program which shall remain in effect in each State as surface coal mining operations are required to comply with the provisions of this chapter, until the State program has been approved pursuant to this chapter or until a Federal program has been implemented pursuant to this chapter. The enforcement program shall—

(1) include inspections of surface coal mine sites which may be made (but at least one inspection for every site every six months), without advance notice to the mine operator and for the purpose of ascertaining compliance with the standards of subsections (b) and (c) above. The Secretary shall order any necessary enforcement action to be implemented pursuant to the Federal enforcement provision of this subchapter to correct violations identified at the inspections;

(2) provide that upon receipt of inspection reports indicating that any surface coal mining operation has been found in violation of subsections (b) and (c) above, during not less than two consecutive State inspections or upon receipt by the Secretary of information which would give rise to reasonable belief that such standards are being violated by any surface coal mining operation, the Secretary shall order the immediate inspection of such operation by Federal inspectors and the necessary enforcement actions, if any, to be implemented pursuant to the Federal enforcement

ment provisions of this subchapter. When the Federal inspection results from information provided to the Secretary by any person, the Secretary shall notify such person when the Federal inspection is proposed to be carried out and such person shall be allowed to accompany the inspector during the inspection;

(3) provide that the State regulatory agency file with the Secretary and with a designated Federal office centrally located in the county or area in which the inspected surface coal mine is located copies of inspection reports made;

(4) provide that moneys authorized by section 1302 of this title shall be available to the Secretary prior to the approval of a State program pursuant to this chapter to reimburse the State for conducting those inspections in which the standards of this chapter are enforced and for the administration of this section.¹

(5) for purposes of this section, the term "Federal inspector" means personnel of the Office of Surface Mining Reclamation and Enforcement and such additional personnel of the United States Geological Survey, Bureau of Land Management, or of the Mining Enforcement and Safety Administration so designated by the Secretary, or such other personnel of the Forest Service, Soil Conservation Service, or the Agricultural Stabilization and Conservation Service as arranged by appropriate agreement with the Secretary on a reimbursable or other basis;²

(f) Interim period

Following the final disapproval of a State program, and prior to promulgation of a Federal program or a Federal lands program pursuant to this chapter, including judicial review of such a program, existing surface coal mining operations may continue surface mining operations pursuant to the provisions of this section. During such period no new permits shall be issued by the State whose program has been disapproved. Permits which lapse during such period may continue in full force and effect until promulgation of a Federal program or a Federal lands program.

(Pub. L. 95-87, title V, § 502, Aug. 3, 1977, 91 Stat. 468.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1251, 1253, 1256, 1268, 1271, 1273, 1302 of this title.

§ 1253. State programs

(a) Regulation of surface coal mining and reclamation operations; submittal to Secretary; time limit; demonstration of effectiveness

Each State in which there are or may be conducted surface coal mining operations on non-Federal lands, and which wishes to assume exclusive jurisdiction over the regulation of surface coal mining and reclamation operations, except as provided in sections 1271 and 1273 of this title and subchapter IV of this chapter,

shall submit to the Secretary, by the end of the eighteen-month period beginning on August 3, 1977, a State program which demonstrates that such State has the capability of carrying out the provisions of this chapter and meeting its purposes through—

(1) a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this chapter;

(2) a State law which provides sanctions for violations of State laws, regulations, or conditions of permits concerning surface coal mining and reclamation operations, which sanctions shall meet the minimum requirements of this chapter, including civil and criminal actions, forfeiture of bonds, suspensions, revocations, and withholding of permits, and the issuance of cease-and-desist orders by the State regulatory authority or its inspectors;

(3) a State regulatory authority with sufficient administrative and technical personnel, and sufficient funding to enable the State to regulate surface coal mining and reclamation operations in accordance with the requirements of this chapter;

(4) a State law which provides for the effective implementations, maintenance, and enforcement of a permit system, meeting the requirements of this subchapter for the regulations of surface coal mining and reclamation operations for coal on lands within the State;

(5) establishment of a process for the designation of areas as unsuitable for surface coal mining in accordance with section 1272 of this title provided that the designation of Federal lands unsuitable for mining shall be performed exclusively by the Secretary after consultation with the State; and

(6) establishment for the purposes of avoiding duplication, of a process for coordinating the review and issuance of permits for surface coal mining and reclamation operations with any other Federal or State permit process applicable to the proposed operations; and

(7) rules and regulations consistent with regulations issued by the Secretary pursuant to this chapter.

(b) Approval of program

The Secretary shall not approve any State program submitted under this section until he has—

(1) solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies concerned with or having special expertise pertinent to the proposed State program;

(2) obtained the written concurrence of the Administrator of the Environmental Protection Agency with respect to those aspects of a State program which relate to air or water quality standards promulgated under the authority of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1151-1175) (33 U.S.C. 1251 et seq.), and the Clean Air Act, as

¹So in original.

amended (42 U.S.C. 1857 et seq.) 142 U.S.C. 7401 et seq.;

(3) held at least one public hearing on the State program within the State; and

(4) found that the State has the legal authority and qualified personnel necessary for the enforcement of the environmental protection standards.

The Secretary shall approve or disapprove a State program, in whole or in part, within six full calendar months after the date such State program was submitted to him.

(c) Notice of disapproval

If the Secretary disapproves any proposed State program in whole or in part, he shall notify the State in writing of his decision and set forth in detail the reasons therefor. The State shall have sixty days in which to resubmit a revised State program or portion thereof. The Secretary shall approve or disapprove the resubmitted State program or portion thereof within sixty days from the date of resubmission.

(d) Inability of State to take action

For the purposes of this section and section 1254 of this title, the inability of a State to take any action the purpose of which is to prepare, submit or enforce a State program, or any portion thereof, because the action is enjoined by the issuance of an injunction by any court of competent jurisdiction shall not result in a loss of eligibility for financial assistance under subchapters IV and VII of this chapter or in the imposition of a Federal program. Regulation of the surface coal mining and reclamation operations covered or to be covered by the State program subject to the injunction shall be conducted by the State pursuant to section 1252 of this title, until such time as the injunction terminates or for one year, whichever is shorter, at which time the requirements of this section and section 1254 of this title shall again be fully applicable.

(Pub. L. 95-87, title V, § 503, Aug. 3, 1977, 91 Stat. 470.)

REFERENCES IN TEXT

The Federal Water Pollution Control Act, as amended (33 U.S.C. 1151-1175), referred to in subsec. (b)(2), is act June 30, 1948, ch. 758, 62 Stat. 1155, formerly classified to chapter 23 (§ 1151 et seq.) of Title 33, Navigation and Navigable Waters, which was completely revised by Pub. L. 92-500, § 2, Oct. 18, 1972, 86 Stat. 816, and is classified generally to chapter 28 (§ 1251 et seq.) of Title 33. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Clean Air Act, as amended (42 U.S.C. 1857 et seq.), referred to in subsec. (b)(2), is act July 14, 1955, ch. 360, as amended generally by Pub. L. 88-208, Dec. 17, 1963, 77 Stat. 392, and later by Pub. L. 95-95, Aug. 7, 1977, 91 Stat. 685. The Clean Air Act was originally classified to chapter 15B (§ 1857 et seq.) of Title 42, The Public Health and Welfare. On enactment of Pub. L. 95-95, the Act was reclassified to chapter 85 (§ 7401 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1235, 1252, 1254, 1256, 1268, 1271, 1272, 1291, 1292, 1309 of this title.

§ 1251. Federal programs

(a) Promulgation and implementation by Secretary for State

The Secretary shall prepare and, subject to the provisions of this section, promulgate and implement a Federal program for a State no later than thirty-four months after August 3, 1977, if such State—

(1) fails to submit a State program covering surface coal mining and reclamation operations by the end of the eighteen-month period beginning on August 3, 1977;

(2) fails to resubmit an acceptable State program within sixty days of disapproval of a proposed State program; *Provided*, That the Secretary shall not implement a Federal program prior to the expiration of the initial period allowed for submission of a State program as provided for in clause (1) of this subsection; or

(3) fails to implement, enforce, or maintain its approved State program as provided for in this chapter.

If State compliance with clause (1) of this subsection requires an act of the State legislature, the Secretary may extend the period of submission of a State program up to an additional six months. Promulgation and implementation of a Federal program vests the Secretary with exclusive jurisdiction for the regulation and control of surface coal mining and reclamation operations taking place on lands within any State not in compliance with this chapter. After promulgation and implementation of a Federal program the Secretary shall be the regulatory authority. If a Federal program is implemented for a State, section 1272(a), (c), and (d) of this title shall not apply for a period of one year following the date of such implementation. In promulgating and implementing a Federal program for a particular State the Secretary shall take into consideration the nature of that State's terrain, climate, biological, chemical, and other relevant physical conditions.

(b) Federal enforcement of State program

In the event that a State has a State program for surface coal mining, and is not enforcing any part of such program, the Secretary may provide for the Federal enforcement, under the provisions of section 1271 of this title, of that part of the State program not being enforced by such State.

(c) Notice and hearing

Prior to promulgation and implementation of any proposed Federal program, the Secretary shall give adequate public notice and hold a public hearing in the affected State.

(d) Review of permits

Permits issued pursuant to a previously approved State program shall be valid but reviewable under a Federal program. Immediately following promulgation of a Federal program, the Secretary shall undertake to review such permits to determine that the requirements of this chapter are not violated. If the Secretary determines any permit to have been granted contrary to the requirements of this chapter,

he shall so advise the permittee and provide him an opportunity for hearing and a reasonable opportunity for submission of a new application and reasonable time, within a time limit prescribed in regulations promulgated pursuant to section 1251(b) of this title, to conform ongoing surface mining and reclamation operations to the requirements of the Federal program.

(e) Submission of State program after implementation of Federal program

A State which has failed to obtain the approval of a State program prior to implementation of a Federal program may submit a State program at any time after such implementation. Upon the submission of such a program, the Secretary shall follow the procedures set forth in section 1253(b) of this title and shall approve or disapprove the State program within six months after its submittal. Approval of a State program shall be based on the determination that the State has the capability of carrying out the provisions of this chapter and meeting its purposes through the criteria set forth in section 1253(a)(1) through (6) of this title. Until a State program is approved as provided under this section, the Federal program shall remain in effect and all actions taken by the Secretary pursuant to such Federal program, including the terms and conditions of any permit issued thereunder shall remain in effect.

(f) Validity of Federal program permits under superseding State program

Permits issued pursuant to the Federal program shall be valid under any superseding State program: *Provided*, That the Federal permittee shall have the right to apply for a State permit to supersede his Federal permit. The State regulatory authority may review such permits to determine that the requirements of this chapter and the approved State program are not violated. Should the State program contain additional requirements not contained in the Federal program, the permittee will be provided opportunity for hearing and a reasonable time, within a time limit prescribed in regulations promulgated pursuant to section 1251 of this title, to conform ongoing surface mining and reclamation operations to the additional State requirements.

(g) Preemption of State statutes or regulations

Whenever a Federal program is promulgated for a State pursuant to this chapter, any statutes or regulations of such State which are in effect to regulate surface mining and reclamation operations subject to this chapter shall, insofar as they interfere with the achievement of the purposes and the requirements of this chapter and the Federal program, be preempted and superseded by the Federal program. The Secretary shall set forth any State law or regulation which is preempted and superseded by the Federal program.

(h) Coordination of issuance and review of Federal program permits with any other Federal or State permit process

Any Federal program shall include a process for coordinating the review and issuance of per-

mits for surface mining and reclamation operations with any other Federal or State permit process applicable to the proposed operation.

(Pub. L. 95-87, title V, § 504, Aug. 3, 1977, 91 Stat. 471.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1252, 1253, 1256, 1271, 1272, 1291, 1292 of this title.

§ 1255. State laws

(a) No State law or regulation in effect on August 3, 1977, or which may become effective thereafter, shall be superseded by any provision of this chapter or any regulation issued pursuant thereto, except insofar as such State law or regulation is inconsistent with the provisions of this chapter.

(b) Any provision of any State law or regulation in effect upon August 3, 1977, or which may become effective thereafter, which provides for more stringent land use and environmental controls and regulations of surface coal mining and reclamation operation than do the provisions of this chapter or any regulation issued pursuant thereto shall not be construed to be inconsistent with this chapter. The Secretary shall set forth any State law or regulation which is construed to be inconsistent with this chapter. Any provision of any State law or regulation in effect on August 3, 1977, or which may become effective thereafter, which provides for the control and regulation of surface mining and reclamation operations for which no provision is contained in this chapter shall not be construed to be inconsistent with this chapter.

(Pub. L. 95-87, title V, § 505, Aug. 3, 1977, 91 Stat. 473.)

§ 1256. Permits

(a) Persons engaged in surface coal mining within State; time limit; exception

No later than eight months from the date on which a State program is approved by the Secretary, pursuant to section 1253 of this title, or no later than eight months from the date on which the Secretary has promulgated a Federal program for a State not having a State program pursuant to section 1254 of this title, no person shall engage in or carry out on lands within a State any surface coal mining operations unless such person has first obtained a permit issued by such State pursuant to an approved State program or by the Secretary pursuant to a Federal program; except a person conducting surface coal mining operations under a permit from the State regulatory authority, issued in accordance with the provisions of section 1252 of this title, may conduct such operations beyond such period if an application for a permit has been filed in accordance with the provisions of this chapter, but the initial administrative decision has not been rendered.

(b) Term

All permits issued pursuant to the requirements of this chapter shall be issued for a term not to exceed five years: *Provided*, That 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 such specified longer term, the regulatory authority may grant a permit for such longer term. A successor in interest to a permittee who applies for a new permit within thirty days of succeeding to such 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 such successor's application is granted or denied.

(c) Termination

A permit shall terminate if the permittee has not commenced the surface coal mining operations covered by such permit within three years of the issuance of the permit: *Provided*, That the regulatory authority may grant reasonable extensions of time upon a showing that such extensions are necessary by reason of litigation precluding such 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: *Provided further*, That in the case of a coal lease issued under the Federal Mineral Leasing Act, as amended [30 U.S.C. 181 et seq.], extensions of time may not extend beyond the period allowed for diligent development in accordance with section 7 of that Act [30 U.S.C. 207]: *Provided further*, That 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.

(d) Renewal

(1) 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 such renewal shall be issued (provided that on application for renewal the burden shall be on the opponents of renewal), subsequent to fulfillment of the public notice requirements of sections 1263 and 1264 of this title unless it is established that and written findings by the regulatory authority are made that—

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

(B) the present surface coal mining and reclamation operation is not in compliance with the environmental protection standards of this chapter and the approved State plan or Federal program pursuant to this chapter; or

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

(D) the operator has not provided evidence that the performance bond in effect for said operation will continue in full force and effect for any renewal requested in such application as well as any additional bond the

regulatory authority might require pursuant to section 1259 of this title; or

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

(2) 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: *Provided, however*, That if the surface coal mining operations authorized by a permit issued pursuant to this chapter were not subject to the standards contained in section 1260(b)(5)(A) and (B) of this title by reason of complying with the proviso of section 1260(b)(5) of this title, 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 1258 of this title shall not be subject to the standards contained in section 1260(b)(5)(A) and (B) of this title.

(3) 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 one hundred and twenty days prior to the expiration of the valid permit.

(Pub. L. 95-87, title V, § 506, Aug. 3, 1977, 91 Stat. 473.)

REFERENCES IN TEXT

The Federal Mineral Leasing Act, as amended, referred to in subsec. (c), probably means act Feb. 25, 1920, ch. 85, 41 Stat. 437, as amended, known as the Mineral Lands Leasing Act, which is classified principally to chapter 3A (§ 181 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 181 of this title and Tables.

§ 1257. Application requirements

(a) Fee

Each application for a surface coal mining and reclamation permit pursuant to an approved State program or a Federal program under the provisions of this chapter shall be accompanied by a fee as determined by the regulatory authority. Such fee may be less than but shall not exceed the actual or anticipated cost of reviewing, administering, and enforcing such permit issued pursuant to a State or Federal program. The regulatory authority may develop procedures so as to enable the cost of the fee to be paid over the term of the permit.

(b) Submittal; contents

The permit application shall be submitted in a manner satisfactory to the regulatory authority and shall contain, among other things—

(1) the names and addresses of (A) the permit applicant; (B) every legal owner of record of the property (surface and mineral), to be mined; (C) the holders of record of any

leasehold interest in the property; (D) any purchaser of record of the property under a real estate contract; and (E) the operator if he is a person different from the applicant; and (F) if any of these are business entities other than a single proprietor, the names and addresses of the principals, officers, and resident agent;

(2) the names and addresses of the owners of record of all surface and subsurface areas adjacent to any part of the permit area;

(3) a statement of any current or previous surface coal mining permits in the United States held by the applicant and the permit identification and each pending application;

(4) if the applicant is a partnership, corporation, association, or other business entity, the following where applicable: the names and addresses of every officer, partner, director, or person performing a function similar to a director, of the applicant, together with the name and address of any person owning, of record 10 per centum or more of any class of voting stock of the applicant and a list of all names under which the applicant, partner, or principal shareholder previously operated a surface mining operation within the United States within the five-year period preceding the date of submission of the application;

(5) a statement of whether the applicant, any subsidiary, affiliate, or persons controlled by or under common control with the applicant, has ever held a Federal or State mining permit which in the five-year period prior to the date of submission of the application has been suspended or revoked or has had a mining bond or similar security deposited in lieu of bond forfeited and, if so, a brief explanation of the facts involved;

(6) a copy of the applicant's advertisement to be published in a newspaper of general circulation in the locality of the proposed site at least once a week for four successive weeks, and which includes the ownership, a description of the exact location and boundaries of the proposed site sufficient so that the proposed operation is readily locatable by local residents, and the location of where the application is available for public inspection;

(7) a description of the type and method of coal mining operation that exists or is proposed, the engineering techniques proposed or used, and the equipment used or proposed to be used;

(8) the anticipated or actual starting and termination dates of each phase of the mining operation and number of acres of land to be affected;

(9) the applicant shall file with the regulatory authority on an accurate map or plan, to an appropriate scale, clearly showing the land to be affected as of the date of the application, the area of land within the permit area upon which the applicant has the legal right to enter and commence surface mining operations and shall provide to the regulatory authority a statement of those documents upon which the applicant bases his legal right to enter and commence surface mining operations on the area affected, and whether that right is the subject of pending court litigation.

tion: *Provided*, That nothing in this chapter shall be construed as vesting in the regulatory authority the jurisdiction to adjudicate property title disputes.*

(10) the name of the watershed and location of the surface stream or tributary into which surface and pit drainage will be discharged;

(11) a determination of the probable hydrologic consequences of the mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, quantity and quality of water in surface and ground water systems including the dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the mine site and surrounding areas so that an assessment can be made by the regulatory authority of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability: *Provided, however*, That this determination shall not be required until such time as hydrologic information on the general area prior to mining is made available from an appropriate Federal or State agency: *Provided further*, That the permit shall not be approved until such information is available and is incorporated into the application;

(12) when requested by the regulatory authority, the climatological factors that are peculiar to the locality of the land to be affected, including the average seasonal precipitation, the average direction and velocity of prevailing winds, and the seasonal temperature ranges;

(13) accurate maps to an appropriate scale clearly showing (A) the land to be affected as of the date of application and (B) all types of information set forth on topographical maps of the United States Geological Survey of a scale of 1:24,000 or 1:25,000 or larger, including all manmade features and significant known archeological sites existing on the date of application. Such a map or plan shall among other things specified by the regulatory authority show all boundaries of the land to be affected, the boundary lines and names of present owners of record of all surface areas abutting the permit area, and the location of all buildings within one thousand feet of the permit area;

(14) cross-section maps or plans of the land to be affected including the actual area to be mined, prepared by or under the direction of and certified by a qualified registered professional engineer, or professional geologist with assistance from experts in related fields such as land surveying and landscape architecture, showing pertinent elevation and location of test borings or core samplings and depicting the following information: the nature and depth of the various strata of overburden; the location of subsurface water, if encountered, and its quality; the nature and thickness of any coal or rider seam above the coal seam to be mined; the nature of the stratum immediately

*So in original. The period probably should be a semicolon.

ately beneath the coal seam to be mined; all mineral crop lines and the strike and dip of the coal to be mined, within the area of land to be affected; existing or previous surface mining limits; the location and extent of known workings of any underground mines, including mine openings to the surface; the location of aquifers; the estimated elevation of the water table; the location of spoil, waste, or refuse areas and top-soil preservation areas; the location of all impoundments for waste or erosion control; any settling or water treatment facility; constructed or natural drainways and the location of any discharges to any surface body of water on the area of land to be affected or adjacent thereto; and profiles at appropriate cross sections of the anticipated final surface configuration that will be achieved pursuant to the operator's proposed reclamation plan;

(15) a statement of the result of test borings or core samplings from the permit area, including logs of the drill holes; the thickness of the coal seam found, an analysis of the chemical properties of such coal; the sulfur content of any coal seam; chemical analysis of potentially acid or toxic forming sections of the overburden; and chemical analysis of the stratum lying immediately underneath the coal to be mined except that the provisions of this paragraph (15) may be waived by the regulatory authority with respect to the specific application by a written determination that such requirements are unnecessary;

(16) for those lands in the permit application which a reconnaissance inspection suggests may be prime farm lands, a soil survey shall be made or obtained according to standards established by the Secretary of Agriculture in order to confirm the exact location of such prime farm lands, if any; and

(17) information pertaining to coal seams, test borings, core samplings, or soil samples as required by this section shall be made available to any person with an interest which is or may be adversely affected: *Provided*, That information which pertains only to the analysis of the chemical and physical properties of the coal (excepting information regarding such mineral or elemental content which is potentially toxic in the environment) shall be kept confidential and not made a matter of public record.

(c) Determination of probable hydrologic consequences and statement of results of test borings and core samplings

If the regulatory authority finds that the probable total annual production at all locations of any coal surface mining operator will not exceed 100,000 tons, the determination of probable hydrologic consequences required by subsection (b)(11) of this section and the statement of the result of test borings or core samplings required by subsection (b)(15) of this section shall, upon the written request of the operator be performed by a qualified public or private laboratory designated by the regulatory authority and the cost of the preparation of such determination and statement shall be assumed by the regulatory authority.

(d) Reclamation plan

Each applicant for a permit shall be required to submit to the regulatory authority as part of the permit application a reclamation plan which shall meet the requirements of this chapter.

(e) Public inspection

Each applicant for a surface coal mining and reclamation permit shall file a copy of his application for public inspection with the recorder at the courthouse of the county or an appropriate public office approved by the regulatory authority where the mining is proposed to occur, except for that information pertaining to the coal seam itself.

(f) Insurance certificate

Each applicant for a permit shall be required to submit to the regulatory authority as part of the permit application a certificate issued by an insurance company authorized to do business in the United States certifying that the applicant has a public liability insurance policy in force for the surface mining and reclamation operations for which such permit is sought, or evidence that the applicant has satisfied other State or Federal self-insurance requirements. Such policy shall provide for personal injury and property damage protection in an amount adequate to compensate any persons damaged as a result of surface coal mining and reclamation operations including use of explosives and entitled to compensation under the applicable provisions of State law. Such policy shall be maintained in full force and effect during the terms of the permit or any renewal, including the length of all reclamation operations.

(g) Blasting plan

Each applicant for a surface coal mining and reclamation permit shall submit to the regulatory authority as part of the permit application a blasting plan which shall outline the procedures and standards by which the operator will meet the provisions of section 1265(b)(15) of this title.

(Pub. L. 95-87, title V, § 507, Aug. 3, 1977, 91 Stat. 474.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1231, 1258, 1280, 1265, 1289, 1300, 1302 of this title.

§ 1258. Reclamation plan requirements

(a) Each reclamation plan submitted as part of a permit application pursuant to any approved State program or a Federal program under the provisions of this chapter shall include, in the degree of detail necessary to demonstrate that reclamation required by the State or Federal program can be accomplished, a statement of:

(1) the identification of the lands subject to surface coal mining operations over the estimated life of those operations and the size, sequence, and timing of the subareas for which it is anticipated that individual permits for mining will be sought;

(2) the condition of the land to be covered by the permit prior to any mining including:

(A) the uses existing at the time of the application, and if the land has a history of previous mining, the uses which preceded any mining; and

(B) the capability of the land prior to any mining to support a variety of uses giving consideration to soil and foundation characteristics, topography, and vegetative cover, and, if applicable, a soil survey prepared pursuant to section 1257(b)(16) of this title; and

(C) the productivity of the land prior to mining, including appropriate classification as prime farm lands, as well as the average yield of food, fiber, forage, or wood products from such lands obtained under high levels of management;

(3) the use which is proposed to be made of the land following reclamation, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses and the relationship of such use to existing land use policies and plans, and the comments of any owner of the surface, State and local governments or agencies thereof which would have to initiate, implement approve or authorize the proposed use of the land following reclamation;

(4) a detailed description of how the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use;

(5) the engineering techniques proposed to be used in mining and reclamation and a description of the major equipment; a plan for the control of surface water drainage and of water accumulation; a plan, where appropriate, for backfilling, soil stabilization, and compacting, grading, and appropriate revegetation; a plan for soil reconstruction, replacement, and stabilization, pursuant to the performance standards in section 1265(b)(7)(A), (B), (C), and (D) of this title, for those food, forage, and forest lands identified in section 1265(b)(7) of this title; an estimate of the cost per acre of the reclamation, including a statement as to how the permittee plans to comply with each of the requirements set out in section 1265 of this title;

(6) the consideration which has been given to maximize the utilization and conservation of the solid fuel resource being recovered so that re-affecting the land in the future can be minimized;

(7) a detailed estimated timetable for the accomplishment of each major step in the reclamation plan;

(8) the consideration which has been given to making the surface mining and reclamation operations consistent with surface owner plans, and applicable State and local land use plans and programs;

(9) the steps to be taken to comply with applicable air and water quality laws and regulations and any applicable health and safety standards;

(10) the consideration which has been given to developing the reclamation plan in a

manner consistent with local physical environmental, and climatological conditions;

(11) all lands, interests in lands, or options on such interests held by the applicant or pending bids on interests in lands by the applicant, which lands are contiguous to the area to be covered by the permit;

(12) the results of test boring which the applicant has made at the area to be covered by the permit, or other equivalent information and data in a form satisfactory to the regulatory authority, including the location of subsurface water, and an analysis of the chemical properties including acid forming properties of the mineral and overburden: *Provided*, That information which pertains only to the analysis of the chemical and physical properties of the coal (excepting information regarding such mineral or elemental contents which is potentially toxic in the environment) shall be kept confidential and not made a matter of public record;

(13) a detailed description of the measures to be taken during the mining and reclamation process to assure the protection of:

(A) the quality of surface and ground water systems, both on- and off-site, from adverse effects of the mining and reclamation process;

(B) the rights of present users to such water; and

(C) the quantity of surface and ground water systems, both on- and off-site, from adverse effects of the mining and reclamation process or to provide alternative sources of water where such protection of quantity cannot be assured;

(14) such other requirements as the regulatory authority shall prescribe by regulations.

(b) Any information required by this section which is not on public file pursuant to State law shall be held in confidence by the regulatory authority.

(Pub. L. 95-87, title V, § 508, Aug. 3, 1977, 91 Stat. 478.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1256, 1291, 1300 of this title.

§ 1259. Performance bonds

(a) Filing with regulatory authority; scope; number and amount

After a surface coal mining and reclamation permit application has been approved but before such a permit is issued, the applicant shall file with the regulatory authority, on a form prescribed and furnished by the regulatory authority, a bond for performance payable, as appropriate, to the United States or to the State, and conditional upon faithful performance of all the requirements of this chapter and the permit. The bond shall cover that area of land within the permit area upon which the operator will initiate and conduct surface coal mining and reclamation operations within the initial term of the permit. As succeeding increments of surface coal mining and reclama-

tion operations are to be initiated and conducted within the permit area, the permittee shall file with the regulatory authority an additional bond or bonds to cover such increments in accordance with this section. The amount of the bond required for each bonded area shall depend upon the reclamation requirements of the approved permit; shall reflect the probable difficulty of reclamation giving consideration to such factors as topography, geology of the site, hydrology, and revegetation potential, and shall be determined by the regulatory authority. The amount of the bond shall be sufficient to assure the completion of the reclamation plan if the work had to be performed by the regulatory authority in the event of forfeiture and in no case shall the bond for the entire area under one permit be less than \$10,000.

(b) Liability period; execution

Liability under the bond shall be for the duration of the surface coal mining and reclamation operation and for a period coincident with operator's responsibility for revegetation requirements in section 1265 of this title. The bond shall be executed by the operator and a corporate surety licensed to do business in the State where such operation is located, except that the operator may elect to deposit cash, negotiable bonds of the United States Government or such State, or negotiable certificates of deposit of any bank organized or transacting business in the United States. The cash deposit or market value of such securities shall be equal to or greater than the amount of the bond required for the bonded area.

(c) Bond of applicant without separate surety; alternative system

The regulatory authority may accept the bond of the applicant itself without separate surety when the applicant demonstrates to the satisfaction of the regulatory authority the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient for authorization to self-insure or bond such amount or in lieu of the establishment of a bonding program. As set forth in this section, the Secretary may approve as part of a State or Federal program an alternative system that will achieve the objectives and purposes of the bonding program pursuant to this section.

(d) Deposit of cash or securities

Cash or securities so deposited shall be deposited upon the same terms as the terms upon which surety bonds may be deposited. Such securities shall be security for the repayment of such negotiable certificate of deposit.

(e) Adjustments

The amount of the bond or deposit required and the terms of each acceptance of the applicant's bond shall be adjusted by the regulatory authority from time to time as affected land acreages are increased or decreased or where the cost of future reclamation changes.

(Pub. L. 95-87, title V, § 509, Aug. 3, 1977, 91 Stat. 479.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1256, 1265, 1279, 1291, 1300 of this title.

§ 1260. Permit approval or denial

(a) Basis for decision; notification of applicant and local government officials; burden of proof

Upon the basis of a complete mining application and reclamation plan or a revision or renewal thereof, as required by this chapter and pursuant to an approved State program or Federal program under the provisions of this chapter, including public notification and an opportunity for a public hearing as required by section 1263 of this title, the regulatory authority shall grant, require modification of, or deny the application for a permit in a reasonable time set by the regulatory authority and notify the applicant in writing. The applicant for a permit, or revision of a permit, shall have the burden of establishing that his application is in compliance with all the requirements of the applicable State or Federal program. Within ten days after the granting of a permit, the regulatory authority shall notify the local governmental officials in the local political subdivision in which the area of land to be affected is located that a permit has been issued and shall describe the location of the land.

(b) Requirements for approval

No permit or revision application shall be approved unless the application affirmatively demonstrates and the regulatory authority finds in writing on the basis of the information set forth in the application or from information otherwise available which will be documented in the approval, and made available to the applicant, that—

(1) the permit application is accurate and complete and that all the requirements of this chapter and the State or Federal program have been complied with;

(2) the applicant has demonstrated that reclamation as required by this chapter and the State or Federal program can be accomplished under the reclamation plan contained in the permit application;

(3) the assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance specified in section 1257(b) of this title has been made by the regulatory authority and the proposed operation thereof has been designed to prevent material damage to hydrologic balance outside permit area;

(4) the area proposed to be mined is not included within an area designated unsuitable for surface coal mining pursuant to section 1272 of this title or is not within an area under study for such designation in an administrative proceeding commenced pursuant to section 1272(a)(4)(D) or section 1272(c) of this title (unless in such an area as to which an administrative proceeding has commenced pursuant to section 1272(a)(4)(D) of this title, the operator making the permit application demonstrates that, prior to January 1, 1977, he has made substantial legal and financial

commitments in relation to the operation for which he is applying for a permit);

(5) the proposed surface coal mining operation, if located west of the one hundredth meridian west longitude, would—

(A) not interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally subirrigated, but, excluding undeveloped range lands which are not significant to farming on said alluvial valley floors and those lands as to which the regulatory authority finds that if the farming that will be interrupted, discontinued, or precluded is of such small acreage as to be of negligible impact on the farm's agricultural production, or

(B) not materially damage the quantity or quality of water in surface or underground water systems that supply these valley floors in (A) of subsection (b)(5) of this section;

Provided, That this paragraph (5) shall not affect those surface coal mining operations which in the year preceding August 3, 1977, (I) produced coal in commercial quantities, and were located within or adjacent to alluvial valley floors or (II) had obtained specific permit approval by the State regulatory authority to conduct surface coal mining operations within said alluvial valley floors.

With respect to such surface mining operations which would have been within the purview of the foregoing proviso but for the fact that no coal was so produced in commercial quantities and no such specific permit approval was so received, the Secretary, if he determines that substantial financial and legal commitments were made by an operator prior to January 1, 1977, in connection with any such operation, is authorized, in accordance with such regulations as the Secretary may prescribe, to enter into an agreement with that operator pursuant to which the Secretary may, notwithstanding any other provision of law, lease other Federal coal deposits to such operator in exchange for the relinquishment by such operator of his Federal lease covering coal deposits involving such mining operations, or pursuant to section 1716 of title 43, convey to the fee holder of any such coal deposits involving such mining operations the fee title to other available Federal coal deposits in exchange for the fee title to such deposits so involving such mining operations. It is the policy of the Congress that the Secretary shall develop and carry out a coal exchange program to acquire private fee coal precluded from being mined by the restrictions of this paragraph (5) in exchange for Federal coal which is not so precluded. Such exchanges shall be made under section 1716 of title 43;

(6) in cases where the private mineral estate has been severed from the private surface estate, the applicant has submitted to the regulatory authority—

(A) the written consent of the surface owner to the extraction of coal by surface mining methods; or

(B) a conveyance that expressly grants or reserves the right to extract the coal by surface mining methods; or

(C) if the conveyance does not expressly grant the right to extract coal by surface mining methods, the surface-subsurface legal relationship shall be determined in accordance with State law: *Provided*, That nothing in this chapter shall be construed to authorize the regulatory authority to adjudicate property rights disputes.

(c) Schedule of violations

The applicant shall file with his permit application a schedule listing any and all notices of violations of this chapter and any law, rule, regulation of the United States, or of any department or agency in the United States pertaining to air or water environmental protection incurred by the applicant in connection with any surface coal mining operation during the three-year period prior to the date of application. The schedule shall also indicate the final resolution of any such notice of violation. Where the schedule or other information available to the regulatory authority indicates that any surface coal mining operation owned or controlled by the applicant is currently in violation of this chapter or such other laws referred to in this subsection, the permit shall not be issued until the applicant submits proof that such violation has been corrected or is in the process of being corrected to the satisfaction of the regulatory authority, department, or agency which has jurisdiction over such violation and no permit shall be issued to an applicant after a finding by the regulatory authority, after opportunity for hearing, that the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violations of this chapter of such nature and duration with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of this chapter.

(d) Prime farmland mining permit

(1) In addition to finding the application in compliance with subsection (b) of this section, if the area proposed to be mined contains prime farmland pursuant to section 1257(b)(16) of this title, the regulatory authority shall, after consultation with the Secretary of Agriculture, and pursuant to regulations issued hereunder by the Secretary of Interior with the concurrence of the Secretary of Agriculture, grant a permit to mine on prime farmland if the regulatory authority finds in writing that the operator has the technological capability to restore such mined area, within a reasonable time, to equivalent or higher levels of yield as non-mined prime farmland in the surrounding area under equivalent levels of management and can meet the soil reconstruction standards in section 1265(b)(7) of this title. Except for compliance with subsection (b) of this section, the requirements of this paragraph (1) shall apply to all permits issued after August 3, 1977.

(2) Nothing in this subsection shall apply to any permit issued prior to August 3, 1977, or to

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any revisions or renewals thereof, or to any existing surface mining operations for which a permit was issued prior to August 3, 1977.

(Pub. L. 95-87, title V, § 510, Aug. 3, 1977, 91 Stat. 480.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1256, 1253, 1300 of this title.

§ 1261. Revision of permits

(a) Application and revised reclamation plan; requirements; extensions to area covered

(1) During the term of the permit the permittee may submit an application for a revision of the permit, together with a revised reclamation plan, to the regulatory authority.

(2) An application for a revision of a permit shall not be approved unless the regulatory authority finds that reclamation as required by this chapter and the State or Federal program can be accomplished under the revised reclamation plan. The revision shall be approved or disapproved within a period of time established by the State or Federal program. The regulatory authority shall establish guidelines for a determination of the scale or extent of a revision request for which all permit application information requirements and procedures, including notice and hearings, shall apply: *Provided*, That any revisions which propose significant alterations in the reclamation plan shall, at a minimum, be subject to notice and hearing requirements.

(3) Any extensions to the area covered by the permit except incidental boundary revisions must be made by application for another permit.

(b) Transfer, assignment, or sale of rights under permit

No transfer, assignment, or sale of the rights granted under any permit issued pursuant to this chapter shall be made without the written approval of the regulatory authority.

(c) Review of outstanding permits

The regulatory authority shall within a time limit prescribed in regulations promulgated by the regulatory authority, review outstanding permits and may require reasonable revision or modification of the permit provisions during the term of such permit: *Provided*, That such revision or modification shall be based upon a written finding and subject to notice and hearing requirements established by the State or Federal program.

(Pub. L. 95-87, title V, § 511, Aug. 3, 1977, 91 Stat. 483.)

§ 1262. Coal exploration permits

(a) Regulations; contents

Each State or Federal program shall include a requirement that coal exploration operations which substantially disturb the natural land surface be conducted in accordance with exploration regulations issued by the regulatory authority. Such regulations shall include, at a minimum (1) the requirement that prior to conducting any exploration under this section, any

person must file with the regulatory authority notice of intention to explore and such notice shall include a description of the exploration area and the period of supposed exploration and (2) provisions for reclamation in accordance with the performance standards in section 1265 of this title of all lands disturbed in exploration, including excavations, roads, drill holes, and the removal of necessary facilities and equipment.

b) Confidential information

Information submitted to the regulatory authority pursuant to this subsection as confidential concerning trade secrets or privileged commercial or financial information which relates to the competitive rights of the person or entity intended to explore the described area shall not be available for public examination.

c) Penalties

Any person who conducts any coal exploration activities which substantially disturb the natural land surface in violation of this section or regulations issued pursuant thereto shall be subject to the provisions of section 1268 of this title.

d) Limitation on removal of coal

No operator shall remove more than two hundred and fifty tons of coal pursuant to an exploration permit without the specific written approval of the regulatory authority.

e) Law governing exploration of Federal lands

Coal exploration on Federal lands shall be governed by section 4 of the Federal Coal Leasing Amendments Act of 1975 (90 Stat. 1085).

(Pub. L. 95-87, title V, § 512, Aug. 3, 1977, 91 Stat. 483.)

REFERENCES IN TEXT

Section 4 of the Federal Coal Leasing Amendments Act of 1975 (90 Stat. 1085), referred to in subsec. (e), is section 4 of Pub. L. 94-377, Aug. 4, 1976, 90 Stat. 1085, redesignated the Federal Coal Leasing Amendments Act of 1976, which amended section 201(b) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1291 of this title.

§ 1263. Public notice and public hearings

(a) Submittal of advertisement to regulatory authority; notification of local governmental bodies

At the time of submission of an application for a surface coal mining and reclamation permit, or revision of an existing permit, pursuant to the provisions of this chapter or an approved State program, the applicant shall submit to the regulatory authority a copy of his advertisement of the ownership, precise location, and boundaries of the land to be affected. At the time of submission such advertisement shall be placed by the applicant in a local newspaper of general circulation in the locality of the proposed surface mine at least once a week for four consecutive weeks. The regulatory authority shall notify various local governmental bodies, planning agencies, and sewage and water treatment authorities, of water

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companies in the locality in which the proposed surface mining will take place, notifying them of the operator's intention to surface mine a particularly described tract of land and indicating the application's permit number and where a copy of the proposed mining and reclamation plan may be inspected. These local bodies, agencies, authorities, or companies may submit written comments within a reasonable period established by the regulatory authority on the mining applications with respect to the effect of the proposed operation on the environment which are within their area of responsibility. Such comments shall immediately be transmitted to the applicant by the regulatory authority and shall be made available to the public at the same locations as are the mining applications.

(b) Objections to permit applications; informal conference; record

Any person having an interest which is or may be adversely affected or the officer or head of any Federal, State, or local governmental agency or authority shall have the right to file written objections to the proposed initial or revised application for a permit for surface coal mining and reclamation operation with the regulatory authority within thirty days after the last publication of the above notice. Such objections shall immediately be transmitted to the applicant by the regulatory authority and shall be made available to the public. If written objections are filed and an informal conference requested, the regulatory authority shall then hold an informal conference in the locality of the proposed mining, if requested within a reasonable time of the receipt of such objections or request. The date, time and location of such informal conference shall be advertised by the regulatory authority in a newspaper of general circulation in the locality at least two weeks prior to the scheduled conference date. The regulatory authority may arrange with the applicant upon request by any party to the administrative proceeding access to the proposed mining area for the purpose of gathering information relevant to the proceeding. An electronic or stenographic record shall be made of the conference proceeding, unless waived by all parties. Such record shall be maintained and shall be accessible to the parties until final release of the applicant's performance bond. In the event all parties requesting the informal conference stipulate agreement prior to the requested informal conference and withdraw their request, such informal conference need not be held.

(c) Prior Federal coal lease hearing as evidence

Where the lands included in an application for a permit are the subject of a Federal coal lease in connection with which hearings were held and determinations were made under section 201(a)(3)(A), (B) and (C) of this title, such hearings shall be deemed as to the matters covered to satisfy the requirements of this section and section 1264 of this title and such determinations shall be deemed to be a part of the record and conclusive for purposes of sections 1260, 1264 of this title and this section.

(Pub. L. 95-87, title V, § 513, Aug. 3, 1977, 91 Stat. 484.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1256, 1260, 1264, 1269 of this title.

§ 1264. Decisions of regulatory authority and appeals

(a) Issuance of findings within 60 days after informal conference

If an informal conference has been held pursuant to section 1263(b) of this title, the regulatory authority shall issue and furnish the applicant for a permit and persons who are parties to the administrative proceedings with the written finding of the regulatory authority, granting or denying the permit in whole or in part and stating the reasons therefor, within the sixty days of said hearings.

(b) Decision without informal conference; notification within a reasonable time

If there has been no informal conference held pursuant to section 1263(b) of this title, the regulatory authority shall notify the applicant for a permit within a reasonable time as determined by the regulatory authority and set forth in regulations, taking into account the time needed for proper investigation of the site, the complexity of the permit application, and whether or not written objection to the application has been filed, whether the application has been approved or disapproved in whole or part.

(c) Request for rehearing on reasons for final determination; time; issuance of decision

If the application is approved, the permit shall be issued. If the application is disapproved, specific reasons therefor must be set forth in the notification. Within thirty days after the applicant is notified of the final decision of the regulatory authority on the permit application, the applicant or any person with an interest which is or may be adversely affected may request a hearing on the reasons for the final determination. The regulatory authority shall hold a hearing within thirty days of such request and provide notification to all interested parties at the time that the applicant is so notified. If the Secretary is the regulatory authority the hearing shall be of record and governed by section 554 of title 5. Where the regulatory authority is the State, such hearing shall be of record, adjudicatory in nature and no person who presided at a conference under section 1263(b) of this title shall either preside at the hearing or participate in this decision thereon or in any administrative appeal therefrom. Within thirty days after the hearing the regulatory authority shall issue and furnish the applicant, and all persons who participated in the hearing, with the written decision of the regulatory authority granting or denying the permit in whole or in part and stating the reasons therefor.

(d) Temporary relief

Where a hearing is requested pursuant to subsection (c) of this section, the Secretary, where the Secretary is the regulatory authority, or the State hearing authority may, under such conditions as it may prescribe, grant such

temporary relief as it deems appropriate pending final determination of the proceedings if—

(1) all parties to the proceedings have been notified and given an opportunity to be heard on a request for temporary relief;

(2) the person requesting such relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceeding; and

(3) such relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air, or water resources.

(e) Power of regulatory authority with respect to rehearing

For the purpose of such hearing, the regulatory authority may administer oaths, subpoena witnesses, or written or printed materials, compel attendance of the witness, or production of the materials, and take evidence including but not limited to site inspections of the land to be affected and other surface coal mining operations carried on by the applicant in the general vicinity of the proposed operation. A verbatim record of each public hearing required by this chapter shall be made, and a transcript made available on the motion of any party or by order of the regulatory authority.

(f) Right to appeal in accordance with section 1276 of this title

Any applicant or any person with an interest which is or may be adversely affected who has participated in the administrative proceedings as an objector, and who is aggrieved by the decision of the regulatory authority, or if the regulatory authority fails to act within the time limits specified in this chapter shall have the right to appeal in accordance with section 1276 of this title.

(Pub. L. 95-87, title V, § 514, Aug. 3, 1977, 91 Stat. 485.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1256, 1263 of this title.

§ 1265. Environmental protection performance standards

(a) Permit requirement

Any permit issued under any approved State or Federal program pursuant to this chapter to conduct surface coal mining operations shall require that such surface coal mining operations will meet all applicable performance standards of this chapter, and such other requirements as the regulatory authority shall promulgate.

(b) General standards

General performance standards shall be applicable to all surface coal mining and reclamation operations and shall require the operation as a minimum to—

(1) conduct surface coal mining operations so as to maximize the utilization and conservation of the solid fuel resource being recovered so that reforesting the land in the future through surface coal mining can be minimized;

(2) restore the land affected to a condition capable of supporting the uses which it was

capable of supporting prior to any mining, or higher or better uses of which there is reasonable likelihood, so long as such use or uses do not present any actual or probable hazard to public health or safety or pose any actual or probable threat of water diminution or pollution, and the permit applicants' declared proposed land use following reclamation is not deemed to be impractical or unreasonable, inconsistent with applicable land use policies and plans, involves unreasonable delay in implementation, or is violative of Federal, State, or local law;

(3) except as provided in subsection (c) of this section with respect to all surface coal mining operations backfill, compact (where advisable to insure stability or to prevent leaching of toxic materials), and grade in order to restore the approximate original contour of the land with all highwalls, spoil piles, and depressions eliminated (unless small depressions are needed in order to retain moisture to assist revegetation or as otherwise authorized pursuant to this chapter); *Provided, however*, That in surface coal mining which is carried out at the same location over a substantial period of time where the operation transects the coal deposit, and the thickness of the coal deposits relative to the volume of the overburden is large and where the operator demonstrates that the overburden and other spoil and waste materials at a particular point in the permit area or otherwise available from the entire permit area is insufficient, giving due consideration to volumetric expansion, to restore the approximate original contour, the operator, at a minimum, shall backfill, grade, and compact (where advisable) using all available overburden and other spoil and waste materials to attain the lowest practicable grade but not more than the angle of repose, to provide adequate drainage and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region; *And provided further*, That in surface coal mining where the volume of overburden is large relative to the thickness of the coal deposit and where the operator demonstrates that due to volumetric expansion the amount of overburden and other spoil and waste materials removed in the course of the mining operation is more than sufficient to restore the approximate original contour, the operator shall after restoring the approximate contour, backfill, grade, and compact (where advisable) the excess overburden and other spoil and waste materials to attain the lowest grade but not more than the angle of repose, and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region and that such overburden or spoil shall be shaped and graded in such a way as to prevent slides, erosion, and water pollution and is revegetated in accordance with the requirements of this chapter;

(4) stabilize and protect all surface areas including spoil piles affected by the surface coal

mining and reclamation operation to effectively control erosion and attendant air and water pollution;

(5) remove the topsoil from the land in a separate layer, replace it on the backfill area, or if not utilized immediately, segregate it in a separate pile from other spoil and when the topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, maintain a successful cover by quick growing plant or other means thereafter so that the topsoil is preserved from wind and water erosion, remains free of any contamination by other acid or toxic material, and is in a usable condition for sustaining vegetation when restored during reclamation, except if topsoil is of insufficient quantity or of poor quality for sustaining vegetation, or if other strata can be shown to be more suitable for vegetation requirements; then the operator shall remove, segregate, and preserve in a like manner such other strata which is best able to support over vegetation;

(6) restore the topsoil or the best available subsoil which is best able to support vegetation;

(7) for all prime farm lands as identified in section 1257(b)(16) of this title to be mined and reclaimed, specifications for soil removal, storage, replacement, and reconstruction shall be established by the Secretary of Agriculture, and the operator shall, as a minimum, be required to—

(A) segregate the A horizon of the natural soil, except where it can be shown that other available soil materials will create a final soil having a greater productive capacity; and if not utilized immediately, stockpile this material separately from other spoil, and provide needed protection from wind and water erosion or contamination by other acid or toxic material;

(B) segregate the B horizon of the natural soil, or underlying C horizons or other strata, or a combination of such horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon, in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that which existed in the natural soil; and if not utilized immediately, stockpile this material separately from other spoil, and provide needed protection from wind and water erosion or contamination by other acid or toxic material;

(C) replace and regrade the root zone material described in (B) above with proper compaction and uniform depth over the regraded spoil material; and

(D) redistribute and grade in a uniform manner the surface soil horizon described in subparagraph (A);

(8) create, if authorized in the approved mining and reclamation plan and permit, permanent impoundments of water on mining sites as part of reclamation activities only when it is adequately demonstrated that—

(A) the size of the impoundment is adequate for its intended purposes;

(B) the impoundment dam construction will be so designed as to achieve necessary stability with an adequate margin of safety compatible with that of structures constructed under Public Law 83-566 (16 U.S.C. 1006);

(C) the quality of impounded water will be suitable on a permanent basis for its intended use and that discharges from the impoundment will not degrade the water quality below water quality standards established pursuant to applicable Federal and State law in the receiving stream;

(D) the level of water will be reasonably stable;

(E) final grading will provide adequate safety and access for proposed water users; and

(F) such water impoundments will not result in the diminution of the quality or quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses;

(9) conducting any augering operation associated with surface mining in a manner to maximize recoverability of mineral reserves remaining after the operation and reclamation are complete; and seal all auger holes with an impervious and noncombustible material in order to prevent drainage except where the regulatory authority determines that the resulting impoundment of water in such auger holes may create a hazard to the environment or the public health or safety; *Provided*, That the permitting authority may prohibit augering if necessary to maximize the utilization, recoverability or conservation of the solid fuel resources or to protect against adverse water quality impacts;

(10) minimize the disturbances to the prevailing hydrologic balance at the mine-site and in associated offsite areas and to the quality and quantity of water in surface and ground water systems both during and after surface coal mining operations and during reclamation by—

(A) avoiding acid or other toxic mine drainage by such measures as, but not limited to—

(i) preventing or removing water from contact with toxic producing deposits;

(ii) treating drainage to reduce toxic content which adversely affects downstream water upon being released to water courses;

(iii) casing, sealing, or otherwise managing boreholes, shafts, and wells and keep acid or other toxic drainage from entering ground and surface waters;

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(B)(i) conducting surface coal mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow, or runoff outside the permit area, but in no event shall contributions be in excess of requirements set by applicable State or Federal law;

(ii) constructing any siltation structures pursuant to subparagraph (B)(i) of this subsection prior to commencement of surface coal mining operations, such structures to be certified by a qualified registered engineer to be constructed as designed and as approved in the reclamation plan;

(C) cleaning out and removing temporary or large settling ponds or other siltation structures from drainways after disturbed areas are revegetated and stabilized; and depositing the silt and debris at a site and in a manner approved by the regulatory authority;

(D) restoring recharge capacity of the mined area to approximate premining conditions;

(E) avoiding channel deepening or enlargement in operations requiring the discharge of water from mines;

(F) preserving throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors in the arid and semiarid areas of the country; and

(G) such other actions as the regulatory authority may prescribe;

(11) with respect to surface disposal of mine wastes, tailings, coal processing wastes, and other wastes in areas other than the mine working or excavations, stabilize all waste piles in designated areas through construction in compacted layers including the use of incombustible and impervious materials if necessary and assure the final contour of the waste pile will be compatible with natural surroundings and that the site can and will be stabilized and revegetated according to the provisions of this chapter;

(12) refrain from surface coal mining within five hundred feet from active and abandoned underground mines in order to prevent breakthroughs and to protect health or safety of miners: *Provided*, That the regulatory authority shall permit an operator to mine near, through or partially through an abandoned underground mine or closer to an active underground mine if (A) the nature, timing, and sequencing of the approximate coincidence of specific surface mine activities with specific underground mine activities are jointly approved by the regulatory authorities concerned with surface mine regulation and the health and safety of underground miners, and (B) such operations will result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public;

(13) design, locate, construct, operate, maintain, enlarge, modify, and remove or abandon, in accordance with the standards and criteria developed pursuant to subsection (f) of this section, all existing and new coal mine waste piles consisting of mine wastes, tailings, coal

processing wastes, or other liquid and solid wastes, and used either temporarily or permanently as dams or embankments;

(14) insure that all debris, acid-forming materials, toxic materials, or materials constituting a fire hazard are treated or buried and compacted or otherwise disposed of in a manner designed to prevent contamination of ground or surface waters and that contingency plans are developed to prevent sustained combustion;

(15) insure that explosives are used only in accordance with existing State and Federal law and the regulations promulgated by the regulatory authority, which shall include provisions to—

(A) provide adequate advance written notice to local governments and residents who might be affected by the use of such explosives by publication of the planned blasting schedule in a newspaper of general circulation in the locality and by mailing a copy of the proposed blasting schedule to every resident living within one-half mile of the proposed blasting site and by providing daily notice to resident/occupiers in such areas prior to any blasting;

(B) maintain for a period of at least three years and make available for public inspection upon request a log detailing the location of the blasts, the pattern and depth of the drill holes, the amount of explosives used per hole, and the order and length of delay in the blasts;

(C) limit the type of explosives and detonating equipment, the size, the timing and frequency of blasts based upon the physical conditions of the site so as to prevent (i) injury to persons, (ii) damage to public and private property outside the permit area, (iii) adverse impacts on any underground mine, and (iv) change in the course, channel, or availability of ground or surface water outside the permit area;

(D) require that all blasting operations be conducted by trained and competent persons as certified by the regulatory authority;

(E) provide that upon the request of a resident or owner of a man-made dwelling or structure within one-half mile of any portion of the permitted area the applicant or permittee shall conduct a pre-blasting survey of such structures and submit the survey to the regulatory authority and a copy to the resident or owner making the request. The area of the survey shall be decided by the regulatory authority and shall include such provisions as the Secretary shall promulgate.

(16) insure that all reclamation efforts proceed in an environmentally sound manner and as contemporaneously as practicable with the surface coal mining operations: *Provided*, however, That where the applicant proposes to combine surface mining operations with underground mining operations to assure maximum practical recovery of the mineral resources, the regulatory authority may grant a variance for specific areas within the reclama-

mation plan from the requirement that reclamation efforts proceed as contemporaneously as practicable to permit underground mining operations prior to reclamation:

(A) if the regulatory authority finds in writing that:

(i) the applicant has presented, as part of the permit application, specific, feasible plans for the proposed underground mining operations;

(ii) the proposed underground mining operations are necessary or desirable to assure maximum practical recovery of the mineral resource and will avoid multiple disturbance of the surface;

(iii) the applicant has satisfactorily demonstrated that the plan for the underground mining operations conforms to requirements for underground mining in the jurisdiction and that permits necessary for the underground mining operations have been issued by the appropriate authority;

(iv) the areas proposed for the variance have been shown by the applicant to be necessary for the implementing of the proposed underground mining operations;

(v) no substantial adverse environmental damage, either on-site or off-site, will result from the delay in completion of reclamation as required by this chapter;

(vi) provisions for the off-site storage of spoil will comply with paragraph (22);

(B) if the Secretary has promulgated specific regulations to govern the granting of such variances in accordance with the provisions of this subsection and section 1251 of this title, and has imposed such additional requirements as he deems necessary;

(C) if variances granted under the provisions of this subsection are to be reviewed by the regulatory authority not more than three years from the date of issuance of the permit; and

(D) if liability under the bond filed by the applicant with the regulatory authority pursuant to section 1259(b) of this title shall be for the duration of the underground mining operations and until the requirements of this subsection and section 1269 of this title have been fully complied with."

(17) insure that the construction, maintenance, and postmining conditions of access roads into and across the site of operations will control or prevent erosion and siltation, pollution of water, damage to fish or wildlife or their habitat, or public or private property;

(18) refrain from the construction of roads or other access ways up a stream bed or drainage channel or in such proximity to such channel so as to seriously alter the normal flow of water;

(19) establish on the regraded areas, and all other lands affected, a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area of land to be affected and capable of self-regeneration and

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plant succession at least equal in extent cover to the natural vegetation of the area, except, that introduced species may be used in the revegetation process where desirable and necessary to achieve the approved postmining land use plan;

(20) assume the responsibility for successful revegetation, as required by paragraph (19) above, for a period of five full years after the last year of augmented seeding, fertilizing, irrigation, or other work in order to assure compliance with paragraph (19) above, except in those areas or regions of the country where the annual average precipitation is twenty-six inches or less, then the operator's assumption of responsibility and liability will extend for a period of ten full years after the last year of augmented seeding, fertilizing, irrigation, or other work: *Provided*, That when the regulatory authority approves a long-term intensive agricultural postmining land use, the applicable five- or ten-year period of responsibility for revegetation shall commence at the date of initial planting for such long-term intensive agricultural postmining land use: *Provided further*, That when the regulatory authority issues a written finding approving a long-term, intensive, agricultural postmining land use as part of the mining and reclamation plan, the authority may grant exception to the provisions of paragraph (19) above;

(21) protect offsite areas from slides or damage occurring during the surface coal mining and reclamation operations, and not deposit spoil material or locate any part of the operations or waste accumulations outside the permit area;

(22) place all excess spoil material resulting from coal surface mining and reclamation activities in such a manner that—

(A) spoil is transported and placed in a controlled manner in position for concurrent compaction and in such a way to assure mass stability and to prevent mass movement;

(B) the areas of disposal are within the bonded permit areas and all organic matter shall be removed immediately prior to spoil placement;

(C) appropriate surface and internal drainage systems and diversion ditches are used so as to prevent spoil erosion and movement;

(D) the disposal area does not contain springs, natural water courses or wet weather seeps unless lateral drains are constructed from the wet areas to the main underdrains in such a manner that filtration of the water into the spoil pile will be prevented;

(E) if placed on a slope, the spoil is placed upon the most moderate slope among those upon which, in the judgment of the regulatory authority, the spoil could be placed in compliance with all the requirements of this chapter, and shall be placed, where possible, upon, or above, a natural terrace, bench, or berm, if such placement provides

additional stability and prevents mass movement;

(F) where the toe of the spoil rests on a downslope, a rock toe buttress, of sufficient size to prevent mass movement, is constructed;

(G) the final configuration is compatible with the natural drainage pattern and surroundings and suitable for intended uses;

(H) design of the spoil disposal area is certified by a qualified registered professional engineer in conformance with professional standards; and

(I) all other provisions of this chapter are met.¹²

(23) meet such other criteria as are necessary to achieve reclamation in accordance with the purposes of this chapter, taking into consideration the physical, climatological, and other characteristics of the site; and¹³

(24) to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values, and achieve enhancement of such resources where practicable;

(25) provide for an undisturbed natural barrier beginning at the elevation of the lowest coal seam to be mined and extending from the outslope for such distance as the regulatory authority shall determine shall be retained in place as a barrier to slides and erosion.

(c) Procedures; exception to original contour restoration requirements

(1) Each State program may and each Federal program shall include procedures pursuant to which the regulatory authority may permit surface mining operations for the purposes set forth in paragraph (3) of this subsection.

(2) Where an applicant meets the requirements of paragraphs (3) and (4) of this subsection a permit without regard to the requirement to restore to approximate original contour set forth in subsection (b)(3) or (d)(2) and (3) of this section may be granted for the surface mining of coal where the mining operation will remove an entire coal seam or seams running through the upper fraction of a mountain, ridge, or hill (except as provided in subsection (c)(4)(A) hereof) by removing all of the overburden and creating a level plateau or a gently rolling contour with no highwalls remaining, and capable of supporting postmining uses in accord with the requirements of this subsection.

(3) In cases where an industrial, commercial, agricultural, residential or public facility (including recreational facilities) use is proposed or the postmining use of the affected land,

the regulatory authority may grant a permit for a surface mining operation of the nature described in subsection (c)(2) of this section where—

(A) after consultation with the appropriate land use planning agencies, if any, the proposed postmining land use is deemed to constitute an equal or better economic or public use of the affected land, as compared with premining use;

(B) the applicant presents specific plans for the proposed postmining land use and appropriate assurances that such use will be—

(i) compatible with adjacent land uses;

(ii) obtainable according to data regarding expected need and market;

(iii) assured of investment in necessary public facilities;

(iv) supported by commitments from public agencies where appropriate;

(v) practicable with respect to private financial capability for completion of the proposed use;

(vi) planned pursuant to a schedule attached to the reclamation plan so as to integrate the mining operation and reclamation with the postmining land use; and

(vii) designed by a registered engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site;

(C) the proposed use would be consistent with adjacent land uses, and existing State and local land use plans and programs;

(D) the regulatory authority provides the governing body of the unit of general-purpose government in which the land is located and any State or Federal agency which the regulatory agency, in its discretion, determines to have an interest in the proposed use, an opportunity of not more than sixty days to review and comment on the proposed use;

(E) all other requirements of this chapter will be met.

(4) In granting any permit pursuant to this subsection the regulatory authority shall require that—

(A) the toe of the lowest coal seam and the overburden associated with it are retained in place as a barrier to slides and erosion;

(B) the reclaimed area is stable;

(C) the resulting plateau or rolling contour drains inward from the out slopes except at specified points;

(D) no damage will be done to natural watercourses;

(E) spoil will be placed on the mountaintop bench as is necessary to achieve the planned postmining land use: *Provided*, That all excess spoil material not retained on the mountaintop shall be placed in accordance with the provisions of subsection (b)(22) of this section;

(F) insure stability of the spoil retained on the mountaintop and meet the other requirements of this chapter;¹⁴

¹²So in original. The Period probably should be a semicolon.

¹³So in original. The word "and" probably should appear at end of par. (24).

¹⁴So in original. Probably should be "for".

¹⁵So in original. The semicolon probably should be a period.

where an applicant meets the requirements of paragraphs (3) and (4) of this subsec-

the Secretary, with the written concurrence of the Chief of Engineers, shall establish within a period of one hundred and thirty-five days from August 1, 1977, standards and criteria regulating the design, location, construction, operation, maintenance, enlargement, modification, removal, and abandonment of new and existing coal waste piles referred to in subsection (b)(13) of this section and section 1268(b)(5) of title 30, United States Code, known as the title. Such standards and criteria shall conform to the standards and criteria shall conform to the standards and criteria used by the Chief of Engineers to insure that flood control structures are safe and effectively perform their intended function. In addition to engineering and other technical specifications the standards and criteria developed pursuant to this subsection must include provisions for review and approval of plans and specifications prior to construction, enlargement, modification, or abandonment; performance of periodic inspections during construction; issuance of certificates of approval upon comple-

REFERENCES IN TEXT

CONFERRED TO IN OTHER SECTIONS

1266. Surface effects of underground coal mining operations

(c) Rules and regulations

(b) Permit requirements

(1) adopt measures consistent with known technology in order to prevent subsidence

causing material damage to life, economic, technologically and economically feasible, maximize mine stability, and maintain the value and reasonably foreseeable use of such surface lands, except in those instances where the mining technology used requires planned subsidence. *Provided*, That nothing in this subsection shall be construed to prohibit the standard method of room and pillar mining.

(2) seal all portals, entryways, drifts, shafts, or other openings between the surface and underground mine working when no longer needed for the conduct of the mining operations;

(3) fill or seal exploratory holes no longer necessary for mining, maximizing to the extent technologically and economically feasible return of mine and processing waste, tailings, and any other waste incident to the mining operation, to the mine workings or excavations;

repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities, operate in accordance with the standards established under section 1265 of this title for such effects which result from surface coal mining operations: *Provided*, That the Secretary shall make such modifications in the requirements imposed by this paragraph as are necessary to accommodate the distinct difference between surface and underground coal mining;

(11) to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values, and achieve enhancement of such resources where practicable;

(12) locate openings for all new drift mines working acid-producing or iron-producing coal seams in such a manner as to prevent a gravity discharge of water from the mine.

(c) **Suspension of underground coal mining operations in urbanized areas**

In order to protect the stability of the land, the regulatory authority shall suspend underground coal mining under urbanized areas, cities, towns, and communities and adjacent to industrial or commercial buildings, major impoundments, or permanent streams if he finds imminent danger to inhabitants of the urbanized areas, cities, towns, and communities.

(d) **Applicability of this subchapter to surface operations and surface impacts incident to underground coal mining operations**

The provisions of this subchapter relating to State and Federal programs, permits, bonds, inspections and enforcement, public review, and administrative and judicial review shall be applicable to surface operations and surface impacts incident to an underground coal mine with such modifications to the permit application requirements, permit approval or denial procedures, and bond requirements as are necessary to accommodate the distinct difference between surface and underground coal mining. The Secretary shall promulgate such modifications in accordance with the rulemaking procedure established in section 1251 of this title.

(Pub. L. 95-87, title V, § 516, Aug. 3, 1977, 91 Stat. 495.)

REFERENCES IN TEXT

The Federal Coal Mine Health and Safety Act of 1969, referred to in subsec. (a), is Pub. L. 91-173, Dec. 30, 1969, 83 Stat. 742, as amended, which was redesignated the Federal Mine Safety and Health Act of 1977 by Pub. L. 95-164, title I, § 101, Nov. 9, 1977, 91 Stat. 1290, and is classified principally to chapter 22 (§ 801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 801 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1265, 1276, 1279, 1291, 1300, 1301 of this title.

§ 1267. Inspections and monitoring

(a) **Inspections of surface coal mining and reclamation operations**

The Secretary shall cause to be made such inspections of any surface coal mining and reclamation operations as are necessary to evaluate the administration of approved State programs or to develop or enforce any Federal program, and for such purposes authorized representatives of the Secretary shall have a right of entry to, upon, or through any surface coal mining and reclamation operations.

(b) **Records and reports; monitoring systems; evaluation of results**

For the purpose of developing or assisting in the development, administration, and enforcement of any approved State or Federal program under this chapter or in the administration and enforcement of any permit under this chapter, or of determining whether any person is in violation of any requirement of any such State or Federal program or any other requirement of this chapter—

(1) the regulatory authority shall require any permittee to (A) establish and maintain appropriate records, (B) make monthly reports to the regulatory authority, (C) install, use, and maintain any necessary monitoring equipment or methods, (D) evaluate results in accordance with such methods, at such locations, intervals, and in such manner as a regulatory authority shall prescribe, and (E) provide such other information relative to surface coal mining and reclamation operations as the regulatory authority deems reasonable and necessary;

(2) for those surface coal mining and reclamation operations which remove or disturb strata that serve as aquifers which significantly insure the hydrologic balance of water use either on or off the mining site, the regulatory authority shall specify those—

(A) monitoring sites to record the quantity and quality of surface drainage above and below the minesite as well as in the potential zone of influence;

(B) monitoring sites to record level, amount, and samples of ground water and aquifers potentially affected by the mining and also directly below the lowermost (deepest) coal seam to be mined;

(C) records of well logs and borehole data to be maintained; and

(D) monitoring sites to record precipitation.

The monitoring data collection and analysis required by this section shall be conducted according to standards and procedures set forth by the regulatory authority in order to assure their reliability and validity; and

(3) the authorized representatives of the regulatory authority, without advance notice and upon presentation of appropriate credentials (A) shall have the right of entry to, upon, or through any surface coal mining and reclamation operations or any premises in which any records required to be maintained under paragraph (1) of this subsection are lo-

cated; and (B) may at reasonable times, and without delay, have access to and copy any records, inspect any monitoring equipment or method of operation required under this chapter.

(c) **Inspection intervals**

The inspections by the regulatory authority shall (1) occur on an irregular basis averaging not less than one partial inspection per month and one complete inspection per calendar quarter for the surface coal mining and reclamation operation covered by each permit; (2) occur without prior notice to the permittee or his agents or employees except for necessary onsite meetings with the permittee; and (3) include the filing of inspection reports adequate to enforce the requirements of and to carry out the terms and purposes of this chapter.

(d) **Maintenance of sign**

Each permittee shall conspicuously maintain at the entrance to the surface coal mining and reclamation operations a clearly visible sign which sets forth the name, business address, and phone number of the permittee and the permit number of the surface coal mining and reclamation operations.

(e) **Violations**

Each inspector, upon detection of each violation of any requirement of any State or Federal program or of this chapter, shall forthwith inform the operator in writing, and shall report in writing any such violation to the regulatory authority.

(f) **Availability of information to public**

Copies of any records, reports, inspection materials, or information obtained under this subchapter by the regulatory authority shall be made immediately available to the public at central and sufficient locations in the county, multicounty, and State area of mining so that they are conveniently available to residents in the areas of mining.

(g) **Conflict of interest; penalty; publication of regulations; report to Congress**

No employee of the State regulatory authority performing any function or duty under this chapter shall have a direct or indirect financial interest in any 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 Secretary shall (1) within sixty days after August 3, 1977, publish in the Federal Register, in accordance with section 553 of title 5, regulations to establish methods by which the provisions of this subsection will be monitored and enforced by the Secretary and such State regulatory authority, including appropriate provisions for the filing by such employees and the review of statements and supplements thereto concerning any financial interest which may be affected by this subsection, and (2) report to the Congress as part of the Annual Report (section 1296 of this title) on actions taken and not taken during the preceding year under this subsection.

(h) **Review; procedures for inspections**

(1) Any person who is or may be adversely affected by a surface mining operation may notify the Secretary or any representative of the Secretary responsible for conducting the inspection, in writing, of any violation of this chapter which he has reason to believe exists at the surface mining site. The Secretary shall, by regulation, establish procedures for informal review of any refusal by a representative of the Secretary to issue a citation with respect to any such alleged violation. The Secretary shall furnish such persons requesting the review a written statement of the reasons for the Secretary's final disposition of the case.

(2) The Secretary shall also, by regulation, establish procedures to insure that adequate and complete inspections have been made. Any such person may notify the Secretary of any failure to make such inspections, after which the Secretary shall determine whether adequate and complete inspections have been made. The Secretary shall furnish such persons a written statement of the reasons for the Secretary's determination that adequate and complete inspections have or have not been conducted.

(Pub. L. 95-87, title V, § 517, Aug. 3, 1977, 91 Stat. 498.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1300 of this title.

§ 1268. Penalties

(a) **Civil penalties for violations of permit conditions and provisions of this subchapter**

In the enforcement of a Federal program or Federal lands program, or during Federal enforcement pursuant to section 1252 of this title or during Federal enforcement of a State program pursuant to section 1271 of this title, any permittee who violates any permit condition or who violates any other provision of this subchapter, may be assessed a civil penalty by the Secretary, except that if such violation leads to the issuance of a cessation order under section 1271 of this title, the civil penalty shall be assessed. Such penalty shall not exceed \$5,000 for each violation. Each day of continuing violation may be deemed a separate violation for purposes of penalty assessments. In determining the amount of the penalty, consideration shall be given to the permittee's history of previous violations at the particular surface coal mining operation; the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public; whether the permittee was negligent; and the demonstrated good faith of the permittee charged in attempting to achieve rapid compliance after notification of the violation.

(b) **Hearing**

A civil penalty shall be assessed by the Secretary only after the person charged with a violation described under subsection (a) of this section has been given an opportunity for a public hearing. Where such a public hearing has been

held, the Secretary shall make findings of fact, and he shall issue a written decision as to the occurrence of the violation and the amount of the penalty which is warranted, incorporating, when appropriate, an order therein requiring that the penalty be paid. When appropriate, the Secretary shall consolidate such hearings with other proceedings under section 1271 of this title. Any hearing under this section shall be of record and shall be subject to section 554 of title 5. Where the person charged with such a violation fails to avail himself of the opportunity for a public hearing, a civil penalty shall be assessed by the Secretary after the Secretary has determined that a violation did occur, and the amount of the penalty which is warranted, and has issued an order requiring that the penalty be paid.

(c) Notice of violation: action required of violator; waiver of legal rights

Upon the issuance of a notice or order charging that a violation of this chapter has occurred, the Secretary shall inform the operator within thirty days of the proposed amount of said penalty. The person charged with the penalty shall then have thirty days to pay the proposed penalty in full or, if the person wishes to contest either the amount of the penalty or the fact of the violation, forward the proposed amount to the Secretary for placement in an escrow account. If through administrative or judicial review of the proposed penalty, it is determined that no violation occurred, or that the amount of the penalty should be reduced, the Secretary shall within thirty days remit the appropriate amount to the person, with interest at the rate of 6 percent, or at the prevailing Department of the Treasury rate, whichever is greater. Failure to forward the money to the Secretary within thirty days shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.

(d) Civil action to recover civil penalties

Civil penalties owed under this chapter, may be recovered in a civil action brought by the Attorney General at the request of the Secretary in any appropriate district court of the United States.

(e) Willful violations

Any person who willfully and knowingly violates a condition of a permit issued pursuant to a Federal program, a Federal lands program or Federal enforcement pursuant to section 1252 of this title or during Federal enforcement of a State program pursuant to section 1271 of this title or fails or refuses to comply with any order issued under section 1271 or section 1276 of this title, or any order incorporated in a final decision issued by the Secretary under this chapter, except an order incorporated in a decision issued under subsection (b) of this section or section 1294 of this title, shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than one year or both.

(f) Corporate violations

Whenever a corporate permittee violates a condition of a permit issued pursuant to a Fed-

eral program, a Federal lands program or Federal enforcement pursuant to section 1252 of this title or Federal enforcement of a State program pursuant to section 1271 of this title, fails or refuses to comply with any order issued under section 1271 of this title, or any order incorporated in a final decision issued by the Secretary under this chapter except an order incorporated in a decision issued under subsection (b) of this section or section 1293 of this title, any director, officer, or agent of such corporation who willfully and knowingly authorized, ordered, or carried out such violation, failure, or refusal shall be subject to the same civil penalties, fines, and imprisonment that may be imposed upon a person under subsections (a) and (e) of this section.

(g) False statements, representations, or certifications

Whoever knowingly makes any false statement, representation, or certification, or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to a Federal program or a Federal lands program or any order of decision issued by the Secretary under this chapter, shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than one year or both.

(h) Failure to correct violation

Any operator who fails to correct a violation for which a citation has been issued under section 1271(a) of this title within the period permitted for its correction (which period shall not end until the entry of a final order by the Secretary. In the case of any review proceedings under section 1275 of this title initiated by the operator wherein the Secretary orders, after an expedited hearing, the suspension of the abatement requirements of the citation after determining that the operator will suffer irreparable loss or damage from the application of those requirements, or until the entry of an order of the court. In the case of any review proceedings under section 1276 of this title initiated by the operator wherein the court orders the suspension of the abatement requirements of the citation), shall be assessed a civil penalty of not less than \$750 for each day during which such failure or violation continues.

(i) Effect on additional enforcement right or procedure available under State law

As a condition of approval of any State program submitted pursuant to section 1253 of this title, the civil and criminal penalty provisions thereof shall, at a minimum, incorporate penalties no less stringent than those set forth in this section, and shall contain the same or similar procedural requirements relating thereto. Nothing herein shall be construed so as to eliminate any additional enforcement right or procedures which are available under State law to a State regulatory authority but which are not specifically enumerated herein.

(Pub. L. 95-87, title V, § 518, Aug. 3, 1977, 91 Stat. 499.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1262 of this title.

§ 1269. Release of performance bonds or deposits

(a) Filing of request; submittal of copy of advertisement; notification by letter of intent to seek release

The permittee may file a request with the regulatory authority for the release of all or part of a performance bond or deposit. Within thirty days after any application for bond or deposit release has been filed with the regulatory authority, the operator shall submit a copy of an advertisement placed at least once a week for four successive weeks in a newspaper of general circulation in the locality of the surface coal mining operation. Such advertisement shall be considered part of any bond release application and shall contain a notification of the precise location of the land affected, the number of acres, the permit and the date approved, the amount of the bond filed and the portion sought to be released, and the type and appropriate dates of reclamation work performed, and a description of the results achieved as they relate to the operator's approved reclamation plan. In addition, as part of any bond release application, the applicant shall submit copies of letters which he has sent to adjoining property owners, local governmental bodies, planning agencies, and sewage and water treatment authorities, or water companies in the locality in which the surface coal mining and reclamation activities took place, notifying them of his intention to seek release from the bond.

(b) Inspection and evaluation; notification of decision

Upon receipt of the notification and request, the regulatory authority shall within thirty days conduct an inspection and evaluation of the reclamation work involved. Such evaluation shall consider, among other things, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuance of future occurrence of such pollution, and the estimated cost of abating such pollution. The regulatory authority shall notify the permittee in writing of its decision to release or not to release all or part of the performance bond or deposit within sixty days from the filing of the request, if no public hearing is held pursuant to subsection (f) of this section, and if there has been a public hearing held pursuant to subsection (f) of this section, within thirty days thereafter.

(c) Requirements for release

The regulatory authority may release in whole or in part said bond or deposit if the authority is satisfied the reclamation covered by the bond or deposit or portion thereof has been accomplished as required by this chapter according to the following schedule:

(1) When the operator completes the backfilling, regrading, and drainage control of a bonded area in accordance with his approved reclamation plan, the release of 60 percent of the bond or collateral for the applicable permit area.

(2) After revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan. When determining the amount of bond to be released after successful revegetation has been established, the regulatory authority shall retain that amount of bond for the revegetated area which would be sufficient for a third party to cover the cost of reestablishing revegetation and for the period specified for operator responsibility in section 1265 of this title of reestablishing revegetation. No part of the bond or deposit shall be released under this paragraph so long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by section 1265(b)(10) of this title or until soil productivity for prime farm lands has returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to section 1257(b)(16) of this title. Where a silt dam is to be retained as a permanent impoundment pursuant to section 1265(b)(8) of this title, the portion of bond may be released under this paragraph so long as provisions for sound future maintenance by the operator or the landowner have been made with the regulatory authority.

(3) When the operator has completed successfully all surface coal mining and reclamation activities, the release of the remaining portion of the bond, but not before the expiration of the period specified for operator responsibility in section 1265 of this title: *Provided, however*, That no bond shall be fully released until all reclamation requirements of this chapter are fully met.

(d) Notice of disapproval

If the regulatory authority disapproves the application for release of the bond or portion thereof, the authority shall notify the permittee, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure said release and allowing opportunity for a public hearing.

(e) Notice to municipality

When any application for total or partial bond release is filed with the regulatory authority, the regulatory authority shall notify the municipality in which a surface coal mining operation is located by certified mail at least thirty days prior to the release of all or a portion of the bond.

(f) Objections to release; hearing

Any person with a valid legal interest which might be adversely affected by release of the bond or the responsible officer or head of any Federal, State, or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation, or is authorized to develop and enforce environmental standards with respect to such operations shall have the right to file written objec-

tions to the proposed release from bond to the regulatory authority within thirty days after the last publication of the above notice. If written objections are filed, and a hearing requested, the regulatory authority shall inform all the interested parties, of the time and place of the hearing, and hold a public hearing in the locality of the surface coal mining operation proposed for bond release within thirty days of the request for such hearing. The date, time, and location of such public hearings shall be advertised by the regulatory authority in a newspaper of general circulation in the locality for two consecutive weeks, and shall hold a public hearing in the locality of the surface coal mining operation proposed for bond release or at the State capital at the option of the objector, within thirty days of the request for such hearing.

(g) Informal conference

Without prejudice to the rights of the objectors, the applicant, or the responsibilities of the regulatory authority pursuant to this section, the regulatory authority may establish an informal conference as provided in section 1263 of this title to resolve such written objections.

(h) Power of regulatory authority with respect to informal conference

For the purpose of such hearing the regulatory authority shall have the authority and is hereby empowered to administer oaths, subpoena witnesses, or written or printed materials, compel the attendance of witnesses, or production of the materials, and take evidence including but not limited to inspections of the land affected and other surface coal mining operations carried on by the applicant in the general vicinity. A verbatim record of each public hearing required by this chapter shall be made, and a transcript made available on the motion of any party or by order of the regulatory authority.

(Pub. L. 95-87, title V, § 519, Aug. 3, 1977, 91 Stat. 501.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1265, 1279, 1300 of this title.

§ 1270. Citizens suits

(a) Civil action to compel compliance with this chapter

Except as provided in subsection (b) of this section, any person having an interest which is or may be adversely affected may commence a civil action on his own behalf to compel compliance with this chapter—

(1) against the United States or any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution which is alleged to be in violation of the provisions of this chapter or of any rule, regulation, order or permit issued pursuant thereto, or against any other person who is alleged to be in violation of any rule, regulation, order or permit issued pursuant to this subchapter; or

(2) against the Secretary or the appropriate State regulatory authority to the extent per-

mitted by the eleventh amendment to the Constitution where there is alleged a failure of the Secretary or the appropriate State regulatory authority to perform any act or duty under this chapter which is not discretionary with the Secretary or with the appropriate State regulatory authority.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties.

(b) Limitation on bringing of action

No action may be commenced—

(1) under subsection (a)(1) of this section—
(A) prior to sixty days after the plaintiff has given notice in writing of the violation (i) to the Secretary, (ii) to the State in which the violation occurs, and (iii) to any alleged violator; or

(B) if the Secretary or the State has commenced and is diligently prosecuting a civil action in a court of the United States or a State to require compliance with the provisions of this chapter, or any rule, regulation, order, or permit issued pursuant to this chapter, but in any such action in a court of the United States any person may intervene as a matter of right; or

(2) under subsection (a)(2) of this section prior to sixty days after the plaintiff has given notice in writing of such action to the Secretary, in such manner as the Secretary shall by regulation prescribe, or to the appropriate State regulatory authority, except that such action may be brought immediately after such notification in the case where the violation or order complained of constitutes an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.

(c) Venue; intervention

(1) Any action respecting a violation of this chapter or the regulations thereunder may be brought only in the judicial district in which the surface coal mining operation complained of is located.

(2) In such action under this section, the Secretary, or the State regulatory authority, if not a party, may intervene as a matter of right.

(d) Costs; filing of bonds

The court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation (including attorney and expert witness fees) to any party, whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(e) Effect on other enforcement methods

Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any of the provisions of this chapter and the regulations thereunder, or to seek any other relief (including relief against

the Secretary or the appropriate State regulatory authority).

(f) Action for damages

Any person who is injured in his person or property through the violation by any operator of any rule, regulation, order, or permit issued pursuant to this chapter may bring an action for damages (including reasonable attorney and expert witness fees) only in the judicial district in which the surface coal mining operation complained of is located. Nothing in this subsection shall affect the rights established by or limits imposed under State Workmen's Compensation laws.

(Pub. L. 95-87, title V, § 520, Aug. 3, 1977, 91 Stat. 503.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (d), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1276 of this title.

§ 1271. Enforcement

(a) Notice of violation; Federal inspection; waiver of notification period; cessation order; affirmative obligation on operator; suspension or revocation of permits; contents of notices and orders

(1) Whenever, on the basis of any information available to him, including receipt of information from any person, the Secretary has reason to believe that any person is in violation of any requirement of this chapter or any permit condition required by this chapter, the Secretary shall notify the State regulatory authority, if one exists, in the State in which such violation exists. If no such State authority exists or the State regulatory authority falls within ten days after notification to take appropriate action to cause said violation to be corrected or to show good cause for such failure and transmit notification of its action to the Secretary, the Secretary shall immediately order Federal inspection of the surface coal mining operation at which the alleged violation is occurring unless the information available to the Secretary is a result of a previous Federal inspection of such surface coal mining operation. The ten-day notification period shall be waived when the person informing the Secretary provides adequate proof that an imminent danger of significant environmental harm exists and that the State has failed to take appropriate action. When the Federal inspection results from information provided to the Secretary by any person, the Secretary shall notify such person when the Federal inspection is proposed to be carried out and such person shall be allowed to accompany the inspector during the inspection.

(2) When, on the basis of any Federal inspection, the Secretary or his authorized representative determines that any condition or practices exist, or that any permittee is in violation of any requirement of this chapter or any permit condition required by this chapter, which condition, practice, or violation also cre-

ates an imminent danger to the health or safety of the public, or is causing, or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources, the Secretary or his authorized representative shall immediately order a cessation of surface coal mining and reclamation operations or the portion thereof relevant to the condition, practice, or violation. Such cessation order shall remain in effect until the Secretary or his authorized representative determines that the condition, practice, or violation has been abated, or until modified, vacated, or terminated by the Secretary or his authorized representative pursuant to paragraph (5) of this subsection. Where the Secretary finds that the ordered cessation of surface coal mining and reclamation operations, or any portion thereof, will not completely abate the imminent danger to health or safety of the public or the significant imminent environmental harm to land, air, or water resources, the Secretary shall, in addition to the cessation order, impose affirmative obligations on the operator requiring him to take whatever steps the Secretary deems necessary to abate the imminent danger or the significant environmental harm.

(3) When, on the basis of a Federal inspection which is carried out during the enforcement of a Federal program or a Federal lands program, Federal inspection pursuant to section 1252, or section 1254(b) of this title, or during Federal enforcement of a State program in accordance with subsection (b) of this section, the Secretary or his authorized representative determines that any permittee is in violation of any requirement of this chapter or any permit condition required by this chapter; but such violation does not create an imminent danger to the health or safety of the public, or cannot be reasonably expected to cause significant, imminent environmental harm to land, air, or water resources, the Secretary or authorized representative shall issue a notice to the permittee or his agent fixing a reasonable time but not more than ninety days for the abatement of the violation and providing opportunity for public hearing.

If, upon expiration of the period of time as originally fixed or subsequently extended, for good cause shown and upon the written finding of the Secretary or his authorized representative, the Secretary or his authorized representative finds that the violation has not been abated, he shall immediately order a cessation of surface coal mining and reclamation operations or the portion thereof relevant to the violation. Such cessation order shall remain in effect until the Secretary or his authorized representative determines that the violation has been abated, or until modified, vacated, or terminated by the Secretary or his authorized representative pursuant to paragraph (5) of this subsection. In the order of cessation issued by the Secretary under this subsection, the Secretary shall determine the steps necessary to abate the violation in the most expeditious manner possible, and shall include the necessary measures in the order.

(4) When, on the basis of a Federal inspection which is carried out during the enforcement of a Federal program or a Federal lands program, Federal inspection pursuant to section 1252 or section 1254 of this title or during Federal enforcement of a State program in accordance with subsection (b) of this section, the Secretary or his authorized representative determines that a pattern of violations of any requirements of this chapter or any permit conditions required by this chapter exists or has existed, and if the Secretary or his authorized representative also find that such violations are caused by the unwarranted failure of the permittee to comply with any requirements of this chapter or any permit conditions, or that such violations are willfully caused by the permittee, the Secretary or his authorized representative shall forthwith issue an order to the permittee to show cause as to why the permit should not be suspended or revoked and shall provide opportunity for a public hearing. If a hearing is requested the Secretary shall inform all interested parties of the time and place of the hearing. Upon the permittee's failure to show cause as to why the permit should not be suspended or revoked, the Secretary or his authorized representative shall forthwith suspend or revoke the permit.

(5) Notices and orders issued pursuant to this section shall set forth with reasonable specificity the nature of the violation and the remedial action required, the period of time established for abatement, and a reasonable description of the portion of the surface coal mining and reclamation operation to which the notice or order applies. Each notice or order issued under this section shall be given promptly to the permittee or his agent by the Secretary or his authorized representative who issues such notice or order, and all such notices and orders shall be in writing and shall be signed by such authorized representatives. Any notice or order issued pursuant to this section may be modified, vacated, or terminated by the Secretary or his authorized representative. A copy of any such order or notice shall be sent to the State regulatory authority in the State in which the violation occurs: *Provided*, That any notice or order issued pursuant to this section which requires cessation of mining by the operator shall expire within thirty days of actual notice to the operator unless a public hearing is held at the site or within such reasonable proximity to the site that any viewings of the site can be conducted during the course of public hearing.

(b) *Inadequate State enforcement; notice and hearing*
Whenever on the basis of information available to him, the Secretary has reason to believe that violations of all or any part of an approved State program result from a failure of the State to enforce such State program or any part thereof effectively, he shall after public notice and notice to the State, hold a hearing thereon in the State within thirty days of such notice. If as a result of said hearing the Secretary finds that there are violations and such violations result from a failure of the State to enforce all or any part of the State program effectively, and if he further finds that the State has not

adequately demonstrated its capability and intent to enforce such State program, he shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Secretary that it will enforce this chapter, the Secretary shall enforce, in the manner provided by this chapter, any permit condition required under this chapter, shall issue new or revised permits in accordance with requirements of this chapter, and may issue such notices and orders as are necessary for compliance therewith: *Provided*, That in the case of a State permittee who has met his obligations under such permit and who did not willfully secure the issuance of such permit through fraud or collusion, the Secretary shall give the permittee a reasonable time to conform ongoing surface mining and reclamation to the requirements of this chapter before suspending or revoking the State permit.

(c) *Civil action for relief*

The Secretary may request the Attorney General to institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order in the district court of the United States for the district in which the surface coal mining and reclamation operation is located or in which the permittee thereof has his principal office, whenever such permittee or his agent (A) violates or fails or refuses to comply with any order or decision issued by the Secretary under this chapter, or (B) interferes with, hinders, or delays the Secretary or his authorized representatives in carrying out the provisions of this chapter, or (C) refuses to admit such authorized representative to the mine, or (D) refuses to permit inspection of the mine by such authorized representative, or (E) refuses to furnish any information or report requested by the Secretary in furtherance of the provisions of this chapter, or (F) refuses to permit access to, and copying of, such records as the Secretary determines necessary in carrying out the provisions of this chapter. Such court shall have jurisdiction to provide such relief as may be appropriate. Temporary restraining orders shall be issued in accordance with rule 65 of the Federal Rules of Civil Procedure, as amended. Any relief granted by the court to enforce an order under clause (A) of this section shall continue in effect until the completion or final termination of all proceedings for review of such order under this subchapter, unless, prior thereto, the district court granting such relief sets it aside or modifies it.

(d) *Sanctions; effect on additional enforcement rights under State law*

As a condition of approval of any State program submitted pursuant to section 1253 of this title, the enforcement provisions thereof shall, at a minimum, incorporate sanctions no less stringent than those set forth in this section, and shall contain the same or similar procedural requirements relating thereto. Nothing herein shall be construed so as to eliminate any additional enforcement rights or procedures which are available under State law to a State

regulatory authority but which are not specifically enumerated herein.

(Pub. L. 95-87, title V, § 521, Aug. 3, 1977, 91 Stat. 504.)

REFERENCES IN TEXT

Rule 65 of the Federal Rules of Civil Procedure, referred to in subsec. (c), is set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1253, 1254, 1268, 1275, 1276 of this title.

§ 1272. Designating areas unsuitable for surface coal mining

(a) *Establishment of State planning process; standards; State process requirements; integration with present and future land use planning and regulation processes; savings provisions*

(1) To be eligible to assume primary regulatory authority pursuant to section 1253 of this title, each State shall establish a planning process enabling objective decisions based upon competent and scientifically sound data and information as to which, if any, land areas of a State are unsuitable for all or certain types of surface coal mining operations pursuant to the standards set forth in paragraphs (2) and (3) of this subsection but such designation shall not prevent the mineral exploration pursuant to the chapter of any area so designated.

(2) Upon petition pursuant to subsection (c) of this section, the State regulatory authority shall designate an area as unsuitable for all or certain types of surface coal mining operations if the State regulatory authority determines that reclamation pursuant to the requirements of this chapter is not technologically and economically feasible.

(3) Upon petition pursuant to subsection (c) of this section, a surface area may be designated unsuitable for certain types of surface coal mining operations if such operations will—

(A) be incompatible with existing State or local land use plans or programs; or

(B) affect fragile or historic lands in which such operations could result in significant damage to important historic, cultural, scientific, and esthetic values and natural systems; or

(C) affect renewable resource lands in which such operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products, and such lands to include aquifers and aquifer recharge areas; or

(D) affect natural hazard lands in which such operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geology.

(4) To comply with this section, a State must demonstrate it has developed or is developing a process which includes—

(A) a State agency responsible for surface coal mining lands review;

(B) a data base and an inventory system which will permit proper evaluation of the capacity of different land areas of the State to

support and permit reclamation of surface coal mining operations;

(C) a method or methods for implementing land use planning decisions concerning surface coal mining operations; and

(D) proper notice, opportunities for public participation, including a public hearing prior to making any designation or redesignation, pursuant to this section.

(5) Determinations of the unsuitability of land for surface coal mining, as provided for in this section, shall be integrated as closely as possible with present and future land use planning and regulation processes at the Federal, State, and local levels.

(6) The requirements of this section shall not apply to lands on which surface coal mining operations are being conducted on August 3, 1977, or under a permit issued pursuant to this chapter, or where substantial legal and financial commitments in such operation were in existence prior to January 4, 1977.

(b) *Review of Federal lands*

The Secretary shall conduct a review of the Federal lands to determine, pursuant to the standards set forth in paragraphs (2) and (3) of subsection (a) of this section, whether there are areas on Federal lands which are unsuitable for all or certain types of surface coal mining operations: *Provided, however*, That the Secretary may permit surface coal mining on Federal lands prior to the completion of this review. When the Secretary determines an area on Federal lands to be unsuitable for all or certain types of surface coal mining operations, he shall withdraw such area or condition any mineral leasing or mineral entries in a manner so as to limit surface coal mining operations on such area. Where a Federal program has been implemented in a State pursuant to section 1254 of this title, the Secretary shall implement a process for designation of areas unsuitable for surface coal mining for non-Federal lands within such State and such process shall incorporate the standards and procedures of this section. Prior to designating Federal lands unsuitable for such mining, the Secretary shall consult with the appropriate State and local agencies.

(c) *Petition; intervention; decision*

Any person having an interest which is or may be adversely affected shall have the right to petition the regulatory authority to have an area designated as unsuitable for surface coal mining operations, or to have such a designation terminated. Such a petition shall contain allegations of facts with supporting evidence which would tend to establish the allegations. Within ten months after receipt of the petition the regulatory authority shall hold a public hearing in the locality of the affected area after appropriate notice and publication of the date, time, and location of such hearing. After a person having an interest which is or may be adversely affected has filed a petition and before the hearing, as required by this subsection, any person may intervene by filing allegations of facts with supporting evidence which would tend to establish the allegations. Within

sixty days after such hearing, the regulatory authority shall issue and furnish to the petitioner and any other party to the hearing, a written decision regarding the petition, and the reasons therefor.¹⁴ In the event that all the petitioners stipulate agreement prior to the requested hearing, and withdraw their request, such hearing need not be held.

(d) Statement

Prior to designating any land areas as unsuitable for surface coal mining operations, the regulatory authority shall prepare a detailed statement on (i) the potential coal resources of the area, (ii) the demand for coal resources, and (iii) the impact of such designation on the environment, the economy, and the supply of coal.

(e) Prohibition on certain Federal public and private surface coal mining operations

After August 3, 1977, and subject to valid existing rights no surface coal mining operations except those which exist on August 3, 1977, shall be permitted—

(1) on any lands within the boundaries of units of the National Park System, the National Wildlife Refuge Systems, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including study rivers designated under section 1276(a) of title 16 and National Recreation Areas designated by Act of Congress;

(2) on any Federal lands within the boundaries of any national forest: *Provided, however*, That surface coal mining operations may be permitted on such lands if the Secretary finds that there are no significant recreational, timber, economic, or other values which may be incompatible with such surface mining operations and—

(A) surface operations and impacts are incident to an underground coal mine; or

(B) where the Secretary of Agriculture determines, with respect to lands which do not have significant forest cover within those national forests west of the 100th meridian, that surface mining is in compliance with the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528-531), the Federal Coal Leasing Amendments Act of 1975, the National Forest Management Act of 1976, and the provisions of this chapter: *And provided further*, That no surface coal mining operations may be permitted within the boundaries of the Custer National Forest;

(3) which will adversely affect any publicly owned park or places included in the National Register of Historic Sites unless approved jointly by the regulatory authority and the Federal, State, or local agency with jurisdiction over the park or the historic site;

(4) within one hundred feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join such right-of-way line and except that the regulatory authority may permit such roads to be relocated or the area affected to lie within one hundred feet of such road, if after

public notice and opportunity for public hearing in the locality a written finding is made that the interests of the public and the landowners affected thereby will be protected; or

(5) within three hundred feet from any occupied dwelling, unless waived by the owner thereof, nor within three hundred feet of any public building, school, church, community, or institutional building, public park, or within one hundred feet of a cemetery.

(Pub. L. 95-87, title V, § 522, Aug. 3, 1977, 91 Stat. 507.)

REFERENCES IN TEXT

The Multiple-Use Sustained-Yield Act of 1960, referred to in subsec. (e)(2)(B), is Pub. L. 86-517, June 12, 1960, 74 Stat. 215, as amended, which is classified to sections 528 to 531 of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 528 of Title 16 and Tables.

The Federal Coal Leasing Amendments Act of 1975, referred to in subsec. (e)(2)(B), is Pub. L. 94-377, Aug. 4, 1976, 90 Stat. 1083, which was redesignated the Federal Coal Leasing Amendments Act of 1976 by Pub. L. 95-554, § 8, Oct. 30, 1978, 92 Stat. 2075, and which enacted sections 202a, 208-1, and 208-2 of this title, amended sections 184, 191, 201, 203, 207, 209, and 352 of this title, repealed sections 201-1 and 204 of this title, and enacted provisions set out as notes under sections 181, 184, 201, 201-1, 203, and 204 of this title. For complete classification of this Act to the Code, see Short Title of 1976 Amendment note set out under section 181 of this title and Tables.

The National Forest Management Act of 1976, referred to in subsec. (e)(2)(B), is Pub. L. 94-588, Oct. 22, 1976, 90 Stat. 2949, as amended, which enacted sections 472a, 521b, 1600, and 1611 to 1614 of Title 16, Conservation, amended sections 500, 515, 516, 518, 576b, 581h, and 1601 to 1610 of Title 16, repealed sections 476, 513, and 514 of Title 16, enacted provisions set out as notes under sections 476, 513, 528, 594-2, and 1600 of Title 16. For complete classification of this Act to the Code, see Short Title of 1976 Amendment note set out under section 1600 of Title 16 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1211, 1253, 1254, 1260, 1273 of this title.

§ 1273. Federal lands

(a) Promulgation and implementation of Federal lands program

No later than one year after August 3, 1977, the Secretary shall promulgate and implement a Federal lands program which shall be applicable to all surface coal mining and reclamation operations taking place pursuant to any Federal law on any Federal lands: *Provided*, That except as provided in section 1300 of this title the provisions of this chapter shall not be applicable to Indian lands. The Federal lands program shall, at a minimum, incorporate all of the requirements of this chapter and shall take into consideration the diverse physical, climatological, and other unique characteristics of the Federal lands in question. Where Federal lands in a State with an approved State program are involved, the Federal lands program shall, at a minimum, include the requirements of the approved State program: *Provided*, That the Secretary shall retain his duties under sections

201(a), (2)(B)¹⁵ and 201(a)(3) of this title, and shall continue to be responsible for designation of Federal lands as unsuitable for mining in accordance with section 1272(b) of this title.

(b) Incorporation of requirements into any lease, permit, or contract issued by Secretary which may involve surface coal mining and reclamation operations

The requirements of this chapter and the Federal lands program or an approved State program for State regulation of surface coal mining on Federal lands under subsection (c) of this section, whichever is applicable, shall be incorporated by reference or otherwise in any Federal mineral lease, permit, or contract issued by the Secretary which may involve surface coal mining and reclamation operations. Incorporation of such requirements shall not, however, limit in any way the authority of the Secretary to subsequently issue new regulations, revise the Federal lands program to deal with changing conditions or changed technology, and to require any surface mining and reclamation operations to conform with the requirements of this chapter and the regulations issued pursuant to this chapter.

(c) State cooperative agreements

Any State with an approved State program may elect to enter into a cooperative agreement with the Secretary to provide for State regulation of surface coal mining and reclamation operations on Federal lands within the State, provided the Secretary determines in writing that such State has the necessary personnel and funding to fully implement such a cooperative agreement in accordance with the provision of this chapter. States with cooperative agreements existing on August 3, 1977, may elect to continue regulation on Federal lands within the State, prior to approval by the Secretary of their State program, or imposition of a Federal program, provided that such existing cooperative agreement is modified to fully comply with the initial regulatory procedures set forth in section 1252 of this title. Nothing in this subsection shall be construed as authorizing the Secretary to delegate to the States his duty to approve mining plans on Federal lands, to designate certain Federal lands as unsuitable for surface coal mining pursuant to section 1272 of this title, or to regulate other activities taking place on Federal lands.

(d) Development of program to assure no unreasonable denial to any class of coal purchasers

The Secretary shall develop a program to assure that with respect to the granting of permits, leases, or contracts for coal owned by the United States, that no class of purchasers of the mined coal shall be unreasonably denied purchase thereof.

(Pub. L. 95-87, title V, § 523, Aug. 3, 1977, 91 Stat. 510.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1253, 1276, 1291, 1292, 1295, 1302 of this title.

¹⁵ So in original. Probably should be "201(a)(2)(B)".

§ 1274. Public agencies, public utilities, and public corporations

Any agency, unit, or instrumentality of Federal, State, or local government, including any publicly owned utility or publicly owned corporation of Federal, State, or local government, which proposes to engage in surface coal mining operations which are subject to the requirements of this chapter shall comply with the provisions of this subchapter.

(Pub. L. 95-87, title V, § 524, Aug. 3, 1977, 91 Stat. 511.)

§ 1275. Review by Secretary

(a) Application for review of order or notice; investigation; hearing; notice

(1) A permittee issued a notice or order by the Secretary pursuant to the provisions of paragraphs (2) and (3) of subsection (a) of section 1271 of this title, or pursuant to a Federal program or the Federal lands program or any person having an interest which is or may be adversely affected by such notice or order or by any modification, vacation, or termination of such notice or order, may apply to the Secretary for review of the notice or order within thirty days of receipt thereof or within thirty days of its modification, vacation, or termination. Upon receipt of such application, the Secretary shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing, at the request of the applicant or the person having an interest which is or may be adversely affected, to enable the applicant or such person to present information relating to the issuance and continuance of such notice or order or the modification, vacation, or termination thereof. The filing of an application for review under this subsection shall not operate as a stay of any order or notice.

(2) The permittee and other interested persons shall be given written notice of the time and place of the hearing at least five days prior thereto. Any such hearing shall be of record and shall be subject to section 554 of title 5.

(b) Findings of fact; issuance of decision

Upon receiving the report of such investigation, the Secretary shall make findings of fact, and shall issue a written decision, incorporating therein an order vacating, affirming, modifying, or terminating the notice or order, or the modification, vacation, or termination of such notice or order complained of and incorporate his findings therein. Where the application for review concerns an order for cessation of surface coal mining and reclamation operations issued pursuant to the provisions of paragraph (2) or (3) of subsection (a) of section 1271 of this title, the Secretary shall issue the written decision within thirty days of the receipt of the application for review, unless temporary relief has been granted by the Secretary pursuant to subsection (c) of this section or by the court pursuant to subsection (c) of section 1276 of this title.

(c) Temporary relief; issuance of order or decision granting or denying relief

Pending completion of the investigation and hearing required by this section, the applicant may file with the Secretary a written request that the Secretary grant temporary relief from any notice or order issued under section 1271 of this title, a Federal program or the Federal lands program together with a detailed statement giving reasons for granting such relief. The Secretary shall issue an order or decision granting or denying such relief expeditiously: *Provided*, That where the applicant requests relief from an order for cessation of coal mining and reclamation operations issued pursuant to paragraph (2) or (3) of subsection (a) of section 1271 of this title, the order or decision on such a request shall be issued within five days of its receipt. The Secretary may grant such relief, under such conditions as he may prescribe, if—

- (1) a hearing has been held in the locality of the permit area on the request for temporary relief in which all parties were given an opportunity to be heard;
- (2) the applicant shows that there is substantial likelihood that the findings of the Secretary will be favorable to him; and
- (3) such relief will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources.

(d) Notice and hearing with respect to section 1271 order to show cause

Following the issuance of an order to show cause as to why a permit should not be suspended or revoked pursuant to section 1271 of this title, the Secretary shall hold a public hearing after giving written notice of the time, place, and date thereof. Any such hearing shall be of record and shall be subject to section 554 of title 5. Within sixty days following the public hearing, the Secretary shall issue and furnish to the permittee and all other parties to the hearing a written decision, and the reasons therefor, concerning suspension or revocation of the permit. If the Secretary revokes the permit, the permittee shall immediately cease surface coal mining operations on the permit area and shall complete reclamation within a period specified by the Secretary, or the Secretary shall declare as forfeited the performance bonds for the operation.

(e) Costs

Whenever an order is issued under this section, or as a result of any administrative proceeding under this chapter, at the request of any person, a sum equal to the aggregate amount of all costs and expenses (including attorney fees) as determined by the Secretary to have been reasonably incurred by such person for or in connection with his participation in such proceedings, including any judicial review of agency actions, may be assessed against either party as the court, resulting from judicial review or the Secretary, resulting from administrative proceedings, deems proper.

(Pub. L. 95-87, title V, § 525, Aug. 3, 1977, 91 Stat. 511.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1268, 1276 of this title.

§ 1276. Judicial review

(a) Review by United States District Court; venue; filing of petition; time

(1) Any action of the Secretary to approve or disapprove a State program or to prepare or promulgate a Federal program pursuant to this chapter shall be subject to judicial review by the United States District Court for the District which includes the capital of the State whose program is at issue. Any action by the Secretary promulgating national rules or regulations including standards pursuant to sections 1251, 1265, 1266, and 1273 of this title shall be subject to judicial review in the United States District Court for the District of Columbia Circuit. Any other action constituting rulemaking by the Secretary shall be subject to judicial review only by the United States District Court for the District in which the surface coal mining operation is located. Any action subject to judicial review under this subsection shall be affirmed unless the court concludes that such action is arbitrary, capricious, or otherwise inconsistent with law. A petition for review of any action subject to judicial review under this subsection shall be filed in the appropriate Court within sixty days from the date of such action, or after such date if the petition is based solely on grounds arising after the sixtieth day. Any such petition may be made by any person who participated in the administrative proceedings and who is aggrieved by the action of the Secretary.

(2) Any order or decision issued by the Secretary in a civil penalty proceeding or any other proceeding required to be conducted pursuant to section 554 of title 5 shall be subject to judicial review on or before 30 days from the date of such order or decision in accordance with subsection (b) of this section in the United States District Court for the district in which the surface coal mining operation is located. In the case of a proceeding to review an order or decision issued by the Secretary under the penalty section of this chapter, the court shall have jurisdiction to enter an order requiring payment of any civil penalty assessment enforced by its judgment. This availability of review established in this subsection shall not be construed to limit the operations of rights established in section 1270 of this title.

(b) Evidence; conclusiveness of findings; orders

The court shall hear such petition or complaint solely on the record made before the Secretary. Except as provided in subsection (a) of this section, the findings of the Secretary if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may affirm, vacate, or modify any order or decision or may remand the proceedings to the Secretary for such further action as it may direct.

(c) Temporary relief; prerequisites

In the case of a proceeding to review any order or decision issued by the Secretary under this chapter, including an order or decision issued pursuant to subsection (c) or (d) of section 1275 of this title pertaining to any order issued under paragraph (2), (3), or (4) of subsection (a) of section 1271 of this title for cessation of coal mining and reclamation operations, the court may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate pending final determination of the proceedings if—

- (1) all parties to the proceedings have been notified and given an opportunity to be heard on a request for temporary relief;
- (2) the person requesting such relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceeding; and
- (3) such relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air, or water resources.

(d) Stay of action, order, or decision of Secretary

The commencement of a proceeding under this section shall not, unless specifically ordered by the court, operate as a stay of the action, order, or decision of the Secretary.

(e) Action of State regulatory authority

Action of the State regulatory authority pursuant to an approved State program shall be subject to judicial review by a court of competent jurisdiction in accordance with State law, but the availability of such review shall not be construed to limit the operation of the rights established in section 1270 of this title except as provided therein.

(Pub. L. 95-87, title V, § 526, Aug. 3, 1977, 91 Stat. 512.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1264, 1268, 1275 of this title.

§ 1277. Special bituminous coal mines

(a) Issuance of separate regulations; criteria

The regulatory authority is authorized to issue separate regulations for those special bituminous coal surface mines located west of the 100th meridian west longitude which meet the following criteria:

- (1) the excavation of the specific mine pit takes place on the same relatively limited site for an extended period of time;
- (2) the excavation of the specific mine pit follows a coal seam having an inclination of fifteen degrees or more from the horizontal, and continues in the same area proceeding downward with lateral expansion of the pit necessary to maintain stability or as necessary to accommodate the orderly expansion of the total mining operation;
- (3) the excavation of the specific mine pit involves the mining of more than one coal seam and mining has been initiated on the deepest coal seam contemplated to be mined in the current operation;

(4) the amount of material removed is large in proportion to the surface area disturbed;

(5) there is no practicable alternative method of mining the coal involved;

(6) there is no practicable method to reclaim the land in the manner required by this chapter; and

(7) the specific mine pit has been actually producing coal since January 1, 1972, in such manner as to meet the criteria set forth in this section, and, because of past duration of mining, is substantially committed to a mode of operation which warrants exceptions to some provisions of this subchapter.

(b) New bituminous coal surface mines

Such separate regulations shall also contain a distinct part to cover and pertain to new bituminous coal surface mines which may be developed after August 3, 1977, on lands immediately adjacent to lands upon which are located special bituminous mines existing on January 1, 1972. Such new mines shall meet the criteria of subsection (a) of this section except for paragraphs (3) and (7), and all requirements of State law, notwithstanding in whole or part the regulations issued pursuant to subsection (c) of this section. In the event of an amendment or revision to the State's regulatory program, regulations, or decisions made thereunder governing such mines, the Secretary shall issue such additional regulations as necessary to meet the purposes of this chapter.

(c) Scope of alternative regulations

Such alternative regulations may pertain only to the standards governing onsite handling of spoils, elimination of depressions capable of collecting water, creation of impoundment and regrading to the approximate original contour and shall specify that remaining highwall are stable. All other performance standards of this subchapter shall apply to such mines.

(Pub. L. 95-87, title V, § 527, Aug. 3, 1977, 91 Stat. 513.)

§ 1278. Surface mining operations not subject to this chapter

The provisions of this chapter shall not apply to any of the following activities:

- (1) the extraction of coal by a landowner for his own noncommercial use from land owned or leased by him;
- (2) the extraction of coal for commercial purposes where the surface mining operation affects two acres or less; and
- (3) the extraction of coal as an incident part of Federal, State or local government financed highway or other construction and regulations established by the regulatory authority.

(Pub. L. 95-87, title V, § 528, Aug. 3, 1977, 91 Stat. 514.)

§ 1279. Anthracite coal mines

(a) The Secretary is authorized to and shall issue separate regulations according to the schedules established in this chapter for anthracite coal surface mines, if such mines:

regulated by environmental protection standards of the State in which they are located. Such alternative regulations shall adopt, in each instance, the environmental protection provisions of the State regulatory program in existence on August 3, 1977, in lieu of sections 1265 and 1266 of this title. Provisions of sections 1259 and 1269 of this title are applicable except for specified bond limits and period of revegetation responsibility. All other provisions of this chapter apply and the regulation issued by the Secretary of Interior for each State anthracite regulatory program shall so reflect: *Provided, however*, That upon amendment of a State's regulatory program for anthracite mining or regulations thereunder in force in lieu of the above-cited sections of this chapter, the Secretary shall issue such additional regulations as necessary to meet the purposes of this chapter.

(b) The Secretary of Interior shall report to Congress biennially, commencing on December 31, 1977, as to the effectiveness of such State anthracite regulatory programs operating in conjunction with this chapter with respect to protecting the environment and such reports shall include those recommendations the Secretary deems necessary for program changes in order to better meet the environmental protection objectives of this chapter.

Pub. L. 95-87, title V, § 529, Aug. 3, 1977, 91 Stat. 514.)

SUBCHAPTER VI—DESIGNATION OF LANDS UNSUITABLE FOR NONCOAL MINING

§ 1281. Designation procedures

(a) Review of Federal land areas for unsuitability for noncoal mining

With respect to Federal lands within any State, the Secretary of Interior may, and if so requested by the Governor of such State shall, review any area within such lands to assess whether it may be unsuitable for mining operations for minerals or materials other than coal, pursuant to the criteria and procedures of this section.

(b) Criteria considered in determining designations

An area of Federal land may be designated under this section as unsuitable for mining operations if (1) such area consists of Federal land of a predominantly urban or suburban character, used primarily for residential or related purposes, the mineral estate of which remains in the public domain, or (2) such area consists of Federal land where mining operations would have an adverse impact on lands used primarily for residential or related purposes.

(c) Petition for exclusion; contents; hearing; temporary land withdrawal

Any person having an interest which is or may be adversely affected shall have the right to petition the Secretary to seek exclusion of an area from mining operations pursuant to this section or the redesignation of an area or part thereof as suitable for such operations. Such petition shall contain allegations of fact with supporting evidence which would tend to

substantiate the allegations. The petitioner shall be granted a hearing within a reasonable time and finding with reasons therefor upon the matter of their petition. In any instance where a Governor requests the Secretary to review an area, or where the Secretary finds the national interest so requires, the Secretary may temporarily withdraw the area to be reviewed from mineral entry or leasing pending such review: *Provided, however*, That such temporary withdrawal be ended as promptly as practicable and in no event shall exceed two years.

(d) Limitation on designations; rights preservation; regulations

In no event is a land area to be designated unsuitable for mining operations under this section on which mining operations are being conducted prior to the holding of a hearing on such petition in accordance with subsection (c) of this section. Valid existing rights shall be preserved and not affected by such designation. Designation of an area as unsuitable for mining operations under this section shall not prevent subsequent mineral exploration of such area, except that such exploration shall require the prior written consent of the holder of the surface estate, which consent shall be filed with the Secretary. The Secretary may promulgate, with respect to any designated area, regulations to minimize any adverse effects of such exploration.

(e) Statement

Prior to any designation pursuant to this section, the Secretary shall prepare a detailed statement on (i) the potential mineral resources of the area, (ii) the demand for such mineral resources, and (iii) the impact of such designation or the absence of such designation on the environment, economy, and the supply of such mineral resources.

(f) Area withdrawal

When the Secretary designates an area of Federal lands as unsuitable for all or certain types of mining operations for minerals and materials other than coal pursuant to this section he may withdraw such area from mineral entry or leasing, or condition such entry or leasing so as to limit such mining operations in accordance with his determination, if the Secretary also determines, based on his analysis pursuant to subsection (e) of this section, that the benefits resulting from such designation would be greater than the benefits to the regional or national economy which could result from mineral development of such area.

(g) Right to appeal

Any party with a valid legal interest who has appeared in the proceedings in connection with the Secretary's determination pursuant to this section and who is aggrieved by the Secretary's decision (or by his failure to act within a reasonable time) shall have the right of appeal for review by the United States district court for the district in which the pertinent area is located.

(Pub. L. 95-87, title VI, § 601, Aug. 3, 1977, 91 Stat. 515.)

SUBCHAPTER VII—ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 1253 of this title.

§ 1291. Definitions

For the purposes of this chapter—

(1) "alluvial valley floors" means the consolidated stream laid deposits holding streams where water availability is sufficient for sub-irrigation 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 by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation and windblown deposits;

(2) "approximate original contour" means that surface configuration achieved by back-filling and grading of the mined area 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 and spoil piles eliminated; water impoundments may be permitted where the regulatory authority determines that they are in compliance with section 1265(b)(8) of this title;

(3) "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States, or between a State and any other place outside thereof, or between points in the same State which directly or indirectly affect interstate commerce;

(4) "Federal lands" means any land, including mineral interests, owned by the United States without regard to how the United States acquired ownership of the land and without regard to the agency having responsibility for management thereof, except Indian lands: *Provided*, That for the purposes of this chapter lands or mineral interests east of the one hundredth meridian west longitude owned by the United States and entrusted to or managed by the Tennessee Valley Authority shall not be subject to sections 1304 (Surface Owner Protection) and 1305 (Federal Lessee Protection) of this title.

(5) "Federal lands program" means a program established by the Secretary pursuant to section 1273 of this title to regulate surface coal mining and reclamation operations on Federal lands;

(6) "Federal program" means a program established by the Secretary pursuant to section 1254 of this title to regulate surface coal mining and reclamation operations on lands within a State in accordance with the requirements of this chapter;

(7) "fund" means the Abandoned Mine Reclamation Fund established pursuant to section 1231 of this title;

(8) "imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirement of this chapter in a surface coal mining and reclamation operation, which condition, practice, or violation could reasonably be expected to cause substantial physical harm to persons outside the permit area before such condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose himself or herself to the danger during the time necessary for abatement;

(9) "Indian lands" means all lands, including mineral interests, within the exterior boundaries of any Federal Indian reservation, notwithstanding the issuance of any patent, and including rights-of-way, and all lands including mineral interests held in trust for or supervised by an Indian tribe;

(10) "Indian tribe" means any Indian tribe, band, group, or community having a governing body recognized by the Secretary;

(11) "lands within any State" or "lands within such State" means all lands within a State other than Federal lands and Indian lands;

(12) "Office" means the Office of Surface Mining Reclamation and Enforcement established pursuant to subchapter II of this chapter;

(13) "operator" means any person, partnership, or corporation engaged in coal mining who removes or intends to remove more than two hundred and fifty tons of coal from the earth by coal mining within twelve consecutive calendar months in any one location;

(14) "other minerals" means clay, stone, sand, gravel, metalliferous and nonmetalliferous ores, and any other solid material or substances of commercial value excavated in solid form from natural deposits on or in the earth, exclusive of coal and those minerals which occur naturally in liquid or gaseous form;

(15) "permit" means a permit to conduct surface coal mining and reclamation operations issued by the State regulatory authority pursuant to a State program or by the Secretary pursuant to a Federal program;

(16) "permit applicant" or "applicant" means a person applying for a permit;

(17) "permit area" means the area of land indicated on the approved map submitted by the operator with his application, which area of land shall be covered by the operator's bond as required by section 1259 of this title and shall be readily identifiable by appropriate markers on the site;

(18) "permittee" means a person holding a permit;

(19) "person" means an individual, partnership, association, society, joint stock compa-

¹So in original. The period probably should be a semicolon.

Tab G

SUBCHAPTER A—GENERAL

PART 700—GENERAL

Sec	
700 1	Scope
700 2	Objective
700 3	Authority
700 4	Responsibility
700 5	Definitions
700 10	Information collection
700 11	Applicability
700 12	Petitions to initiate rulemaking
700 13	Notice of citizen suits
700 14	Availability of records
700 15	Computation of time

AUTHORITY 30 USC 1201 *et seq* as amended and Pub L. 100-34

SOURCE 44 FR 15313 Mar 13 1979 unless otherwise noted

§700.1 Scope

The regulations in Chapter VII of 30 CFR consisting of parts 700 through 899 establish the procedures through which the Secretary of the Interior will implement the Surface Mining Control and Reclamation Act of 1977 (Pub L. 95-87, 91 Stat. 445 (30 USC 1201 *et seq.*)). Chapter VII is divided into 13 subchapters.

(a) Subchapter A contains introductory information intended to serve as a guide to the rest of the chapter and to the regulatory requirements and definitions generally applicable to the programs and persons covered by the Act.

(b) Subchapter B contains regulations covering the initial regulatory program which apply before the applicability of permanent program regulations to persons conducting surface coal mining and reclamation operations and other persons covered by the Act.

(c) Subchapter C sets forth regulations covering applications for and decisions on permanent State programs, the process to be followed for substituting a Federal program for an approved State program if necessary, the process for assuming temporary Federal enforcement of an approved State program, and the process for implementing a Federal program in a State when required by the Act.

(d) Subchapter D of this chapter identifies the procedures that apply to

surface coal mining and reclamation operations conducted on Federal lands rather than State or private lands and incorporates by reference the requirements of the applicable regulatory program and the inspection and enforcement requirements of subchapter L of this chapter.

(e) Subchapter E of this chapter contains regulations that apply to surface coal mining and reclamation operations conducted on Indian lands.

(f)(1) Subchapter F implements the requirements of the Act for—

(i) Designating lands which are unsuitable for all or certain types of surface coal mining operations.

(ii) Terminating designations no longer found to be appropriate and

(iii) Prohibiting surface coal mining and reclamation operations on those lands or areas where the Act states that surface coal mining operations should not be permitted or should be permitted only after specified determinations are made.

(2) Subchapter F does not include regulations governing designation of areas unsuitable for noncoal mining under the terms of section 601 of the Act or the designation of Federal lands under the Federal lands review provisions of section 522(b) of the Act. The Bureau of Land Management of the Department of the Interior is responsible for these provisions which will be implemented when promulgated by regulations in title 43 of the Code of Federal Regulations.

(g) Subchapter G governs applications for and decisions on permits for surface coal mining and reclamation operations on non-Indian and non-Federal lands under a State or Federal program. It also governs coal exploration and permit application and decisions on permits for special categories of coal mining on non-Indian and non-Federal lands under a State or Federal program. Regulations implementing the experimental practices provision of the Act are also included in subchapter G.

(h) Subchapter J sets forth requirements for performance bonds and public liability insurance for both sur-

Surface Mining Reclamation and Enforcement, Interior

§ 700 4

face mining and underground mining activities.

(i) Subchapter K sets forth the environmental and other performance standards which apply to coal exploration and to surface coal mining and reclamation operations during the permanent regulatory program. The regulations establish the minimum requirements for operations under State and Federal programs. Performance standards applicable to special mining situations such as anthracite mines, steep slope mining, alluvial valley floors and prime farmlands are included.

(j) Subchapter L sets forth the inspection, enforcement and civil penalty provisions that apply to a State Federal or Federal lands program.

(k) Subchapter M sets forth the requirements for the training examination and certification of blasters.

(l) Subchapter P sets forth the provisions for protection of employees who initiate proceedings under the Act or testify in any proceedings resulting from the administration or enforcement of the Act.

(m) Subchapter R sets forth the regulations for the abandoned mine land reclamation program. These regulations include the fee collection requirements and the mechanisms for implementing the State and Federal portions of the abandoned mine land reclamation program.

(n) Subchapter S sets forth the regulations that apply to grants for mining and mineral research institutes and grants for mineral research projects.

[44 FR 15313 Mar 13 1979 as amended at 48 FR 6934 Feb 16 1983 49 FR 38477 Sept 28 1984]

§700.2 Objective

The objective of Chapter VII is to fulfill the purposes of the Act found in section 102 in a manner which is consistent with the language of the Act. Its legislative history, other applicable laws and judicial interpretations.

§700.3 Authority

The Secretary is authorized to administer the requirements of the Act except the following:

(a) Provisions of the Act that authorize the Secretary of Agriculture to establish programs for the reclama-

tion of rural lands, identification of prime agricultural lands and other responsibilities described in the Act. Regulations promulgated by the Secretary of Agriculture are in 7 CFR.

(b) Provisions of the Act for which responsibility is specifically assigned to other Federal agencies including the Department of Labor, the Environmental Protection Agency, the Corps of Engineers, the Council on Environmental Quality and the Department of Energy and.

(c) Authority retained by the States to enforce State laws or regulations which are not inconsistent with the Act and this chapter, including the authority to enforce more stringent land use and environmental controls and regulations.

§700.4 Responsibility

(a) The Director of the Office of Surface Mining Reclamation and Enforcement under the general direction of the Assistant Secretary, Energy and Minerals, is responsible for exercising the authority of the Secretary except for the following:

(1) Approval, disapproval or withdrawal of approval of a State program and implementation of a Federal program. The Director is responsible for exercising the authority of the Secretary to substitute Federal enforcement of a State program under section 521(b) of the Act.

(2) Designation of non-Federal lands or Federal lands without the concurrence of the Federal surface managing agency as unsuitable for all or certain types of surface coal mining operations under section 522 of the Act and as unsuitable for non-coal mining under section 601 of the Act and.

(3) Authority to approve or disapprove mining plans to conduct surface coal mining and reclamation operations on Federal lands.

(b) The Director is responsible for consulting with Federal land managing agencies and Federal agencies with responsibility for natural and historic resources on Federal lands on actions which may have an effect on their responsibilities.

(c) The States are responsible for the regulation of surface coal mining

and reclamation operations under the initial regulatory program and surface coal mining and reclamation operations and coal exploration under an approved State program and the reclamation of abandoned mine lands under an approved State Reclamation Plan on non-Federal and non-Indian lands in accordance with procedures in this chapter.

(d) The Secretary may delegate to a State through a cooperative agreement certain authority relating to the regulation of surface coal mining and reclamation operations on Federal lands in accordance with 30 CFR part 745.

(e) The Director, Office of Hearings and Appeals, U.S. Department of the Interior, is responsible for the administration of administrative hearings and appeals required or authorized by the Act pursuant to the regulations in 43 CFR part 4.

[44 FR 15313, Mar. 13, 1979; 44 FR 49684, Aug. 24, 1979]

§ 700.5 Definitions.

As used throughout this chapter, the following terms have the specified meaning except where otherwise indicated—

Act means the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95-87).

Anthracite means coal classified as anthracite in ASTM Standard D 388-77. Coal classifications are published by the American Society of Testing and Materials under the title, *Standard Specification for Classification of Coals by Rank*, ASTM D 388-77, on pages 220 through 224. Table 1 which classifies the coals by rank is presented on page 223. This publication is hereby incorporated by reference as it exists on the date of adoption of these regulations. Notices of changes made to this publication will be periodically published by the Office of Surface Mining in the *FEDERAL REGISTER*. This ASTM Standard is on file and available for inspection at the OSM Office, U.S. Department of the Interior, South Interior Building, Washington, DC 20240, at each OSM Regional Office, District Office and Field Office, and at the central office of the applicable State Regulatory Author-

ity, if any. Copies of this publication may also be obtained by writing to the above locations. A copy of this publication will also be on file for public inspection at the Federal Register Library, 1100 L St., NW., Washington, DC. Incorporation by reference provisions approved by the Director of the *FEDERAL REGISTER* February 7, 1979. The Director's approval of this incorporation by reference expires on July 1, 1981.

Coal means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77, referred to and incorporated by reference in the definition of "anthracite" immediately above.

Department means the Department of the Interior.

Director means the Director, Office of Surface Mining Reclamation and Enforcement, or the Director's representative.

Federal lands means any land, including mineral interests, owned by the United States, without regard to how the United States acquired ownership of the lands or which agency manages the lands. It does not include Indian lands. However, lands or mineral interests east of the 100th meridian west longitude owned by the United States and entrusted to or managed by the Tennessee Valley Authority are not subject to sections 714 (surface owner protection) and 715 (Federal lessee protection) of the Act.

Federal lands program means a program established by the Secretary pursuant to section 523 of the Act to regulate surface coal mining and reclamation operations on Federal lands.

Fund means the Abandoned Mine Reclamation Fund established pursuant to section 401 of the Act.

Indian lands means all lands, including mineral interests, within the exterior boundaries of any Federal Indian reservation, notwithstanding the issuance of any patent, and including rights-of-way, and all lands including mineral interests held in trust for or supervised by an Indian tribe.

Indian tribe means any Indian tribe, band, group, or community having a governing body recognized by the Secretary.

Office means the Office of Surface Mining Reclamation and Enforcement established under title II of the Act.

OSM and OSMRE mean the Office of Surface Mining Reclamation and Enforcement established under title II of the Act.

Person means an individual, Indian tribe when conducting surface coal mining and reclamation operations on non-Indian lands, partnership, association, society, joint venture, joint stock company, firm, company, corporation, cooperative or other business organization and any agency, unit, or instrumentality of Federal, State or local government including any publicly owned utility or publicly owned corporation of Federal State or local government.

Person having an interest which is or may be adversely affected or person with a valid legal interest shall include any person—

(a) Who uses any resource of economic, recreational, esthetic, or environmental value that may be adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the Secretary or the State regulatory authority; or

(b) Whose property is or may be adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the Secretary or the State regulatory authority.

Public office means a facility under the direction and control of a governmental entity which is open to public access on a regular basis during reasonable business hours.

Regional Director means a Regional Director of the Office or a Regional Director's representative.

Regulatory authority means the department or agency in each State which has primary responsibility at the State level for administering the Act in the initial program, or the State regulatory authority where the State is administering the Act under a State regulatory program, or the Secretary in the initial or permanent program where the Secretary is administering the Act, or the Secretary when administering a Federal program or Federal lands program or when enforcing a

State program pursuant to section 521(b) of the Act.

Regulatory program means any approved State or Federal program or, in a State with no approved State or Federal program and coal exploration and surface coal mining and reclamation operations are on Federal lands, the requirements of subchapters A, F, G, J, K, L, M, and P of this chapter.

Secretary means the Secretary of the Interior or the Secretary's representative.

State regulatory authority means the department or agency in each State which has primary responsibility at the State level for administering the initial or permanent State regulatory program.

Surface coal mining operations mean—

(a) Activities conducted on the surface of lands in connection with a surface coal mine or, subject to the requirements of section 516 of the Act, surface operations and surface impacts incident 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 excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountain top 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% percent of the tonnage of minerals removed for purposes of commercial use or sale, or coal exploration subject to section 512 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 in paragraph (a) of this definition occur or where such activities disturb the natural land surface. These areas shall also include any ad-

§ 700.10

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.

Surface coal mining and reclamation operations means surface coal mining operations and all activities necessary or incidental to the reclamation of such operations. This term includes the term surface coal mining operations.

Ton means 2000 pounds avoirdupois (.90718 metric ton).

[44 FR 15313, Mar. 13, 1979; 44 FR 49684, Aug. 24, 1979, as amended at 45 FR 54753, Aug. 18, 1980; 48 FR 6934, Feb. 16, 1983; 48 FR 20400, May 5, 1983; 50 FR 28189, July 10, 1985; 52 FR 17729, May 11, 1987; 52 FR 39407, Oct. 21, 1987]

§ 700.10 Information collection.

The collection of information, and recordkeeping requirements, contained in 30 CFR 700.11(d), 700.12(b) and 700.13 has approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029-0094. The information collected in § 700.11(d) is used by OSMRE and States to establish standards for determining when a mine site is no longer a surface coal mining and reclamation operation and thereby when regulatory jurisdiction may end. The information collection under § 700.12(b) is used by OSMRE to consider need, costs, and benefits of a proposed regulatory change in order to grant or deny a petition that has been submitted. Information collected in § 700.13 identifies the person and nature of a citizen's suit, so that OSMRE or a state can respond appropriately.

[53 FR 44363, Nov. 2, 1988]

30 CFR Ch. VII (7-1-91 Edition)

§ 700.11 Applicability.

(a) Except as provided in paragraph (b) of this section, this chapter applies to all coal exploration and surface coal mining and reclamation operations, except:

(1) The extraction of coal by a landowner for his or her own noncommercial use from land owned or leased by him or her. Noncommercial use does not include the extraction of coal by one unit of an integrated company or other business or nonprofit entity which uses the coal in its own manufacturing or power plants;

(2) The extraction of 250 tons of coal or less by a person conducting a surface coal mining and reclamation operation. A person who intends to remove more than 250 tons is not exempted;

(3) The extraction of coal as an incidental part of Federal, State or local government-financed highway or other construction in accordance with part 707 of this chapter;

(4) The extraction of coal incidental to the extraction of other minerals where coal does not exceed 16½ percent of the total tonnage of coal and other minerals removed for purposes of commercial use or sale in accordance with part 702 of this chapter.

(5) Coal exploration on lands subject to the requirement of 43 CFR parts 3480-3487.

(b) This chapter does not apply to the extraction of coal for commercial purposes where the surface coal mining and reclamation operation, together with any related operations, has or will have an affected area of two acres or less. For purposes of this paragraph:

(1) Where a segment of a road is used for access or coal haulage by more than one surface coal mining operation, the entire segment shall be included in the affected area of each of those operations; provided, that two or more operations which are deemed related pursuant to paragraph (b)(2) of this section shall be considered as one operation for purposes of this paragraph.

(2) Except as provided in paragraph (b)(3) of this section, surface coal mining operations shall be deemed related if they occur within twelve

Surface Mining Reclamation and Enforcement, Interior

§ 700.11

months of each other, are physically related, and are under common ownership or control.

(i) Operations shall be deemed physically related if drainage from both operations flows into the same watershed at or before a point within five aerial miles of either operation.

(ii) Operations shall be deemed under common ownership or control if they are owned or controlled, directly or indirectly, by or on behalf of:

(A) The same person;

(B) Two or more persons, one of whom controls, is under common control with, or is controlled by the other; or

(C) Members of the same family and their relatives, unless it is established that there is no direct or indirect business relationship between or among them;

(iii) For purposes of this paragraph, "control" means: ownership of 50 percent or more of the voting shares of, or general partnership in, an entity; any relationship which gives one person the ability in fact or law to direct what the other does; or any relationship which gives one person express or implied authority to determine the manner in which coal at different sites will be mined, handled, sold or disposed of.

(3) Notwithstanding the provisions of paragraph (b)(2) of this section, the regulatory authority may determine, in accordance with the procedures applicable to requests for determination of exemption pursuant to paragraph (c) of this section, that two or more surface coal mining operations shall not be deemed related if, considering the history and circumstances relating to the coal, its location, the operations at the sites in question, all related operations and all persons mentioned in paragraph (b)(2)(ii) of this section, the regulatory authority concludes in writing that the operations are not of the type which the Act was intended to regulate and that there is no intention on the part of such operations or persons to evade the requirements of the Act or the applicable regulatory program.

(4) The exemption provided by paragraph (b) of this section applies only to operations with an affected area of

less than two acres where coal is being extracted for commercial purposes and to surface coal mining operations within that affected area incidental to such operations.

(c) The regulatory authority may on its own initiative and shall, within a reasonable time of a request from any person who intends to conduct surface coal mining operations, make a written determination whether the operation is exempt under this section. The regulatory authority shall give reasonable notice of the request to interested persons. Prior to the time a determination is made, any person may submit, and the regulatory authority shall consider, any written information relevant to the determination. A person requesting that an operation be declared exempt shall have the burden of establishing the exemption. If a written determination of exemption is reversed through subsequent administrative or judicial action, any person who, in good faith, has made a complete and accurate request for an exemption and relied upon the determination, shall not be cited for violations which occurred prior to the date of the reversal.

(d)(1) A regulatory authority may terminate its jurisdiction under the regulatory program over the reclaimed site of a completed surface coal mining and reclamation operation, or increment thereof, when:

(i) The regulatory authority determines in writing that under the initial program, all requirements imposed under subchapter B of this chapter have been successfully completed; or

(ii) The regulatory authority determines in writing that under the permanent program, all requirements imposed under the applicable regulatory program have been successfully completed or, where a performance bond was required, the regulatory authority has made a final decision in accordance with the State or Federal program counterpart to part 800 of this chapter to release the performance bond fully.

(2) Following a termination under paragraph (d)(1) of this section, the regulatory authority shall reassert jurisdiction under the regulatory program over a site if it is demonstrated

§ 700.12

that the bond release or written determination referred to in paragraph (d)(1) of this section was based upon fraud, collusion, or misrepresentation of a material fact.

[47 FR 33431, July 2, 1982, as amended at 48 FR 40634, Sept. 8, 1983; 48 FR 44779, Sept. 30, 1983; 49 FR 38477, Sept. 28, 1984; 53 FR 44363, Nov. 2, 1988; 54 FR 52120, 54 FR 52120, Dec. 20, 1989]

EDITORIAL NOTE: 1. At 52 FR 21229, June 4, 1987, paragraph (b) of § 700.11 was suspended insofar as it excepts from the applicability of 30 CFR Chapter VII:

(1) Any surface coal mining operations commencing on or after June 6, 1987; and

(2) Any surface coal mining operations conducted on or after November 8, 1987.

EDITORIAL NOTE: 2. At 56 FR 25039, June 3, 1991, paragraph (d) of § 700.11 was suspended, effective July 3, 1991.

§ 700.12 Petitions to initiate rulemaking.

(a) Any person may petition the Director to initiate a proceeding for the issuance, amendment, or repeal of any regulation under the Act. The petition shall be submitted to the Office of the Director, Office of Surface Mining Reclamation and Enforcement, Department of the Interior, Washington, DC 20240.

(b) The petition shall be a concise statement of the facts, technical justification, and law which require issuance, amendment, or repeal of a regulation under the Act and shall indicate whether the petitioner desires a public hearing.

(c) Upon receipt of the petition, the Director shall determine if the petition sets forth facts, technical justification and law which may provide a reasonable basis for issuance, amendment or repeal of a regulation. Facts, technical justification or law previously considered in a petition or rulemaking on the same issue shall not provide a reasonable basis. If the Director determines that the petition has a reasonable basis, a notice shall be published in the FEDERAL REGISTER seeking comments from the public on the proposed change. The Director may hold a public hearing, may conduct an investigation or take other action to determine whether the petition should be granted.

(d) Within 90 days from receipt of the petition, the Director shall issue a

30 CFR Ch. VII (7-1-91 Edition)

written decision either granting or denying the petition. The Director's decision shall constitute the final decision for the Department.

(1) If the petition is granted, the Director shall initiate a rulemaking proceeding.

(2) If the petition is denied, the Director shall notify the petitioner in writing, setting forth the reasons for denial.

§ 700.13 Notice of citizen suits.

(a) A person who intends to initiate a civil action on his or her own behalf under section 520 of the Act shall give notice of intent to do so, in accordance with this section.

(b) Notice shall be given by certified mail to the Secretary and the Director in all cases and to the head of the State regulatory authority, if a complaint involves or relates to a specific State. A copy of the notice shall be sent by first class mail to the Regional Director, if the complaint involves or relates to surface coal mining and reclamation operations in a specific region of the Office.

(c) Notice shall be given by certified mail to the alleged violator, if the complaint alleges a violation of the Act or any regulation, order, or permit issued under the Act.

(d) Service of notice under this section is complete upon mailing to the last known address of the person being notified.

(e) A person giving notice regarding an alleged violation shall state, to the extent known—

(1) Sufficient information to identify the provision of the Act, regulation, order, or permit allegedly violated;

(2) The act or omission alleged to constitute a violation;

(3) The name, address, and telephone numbers of the person or persons responsible for the alleged violation;

(4) The date, time, and location of the alleged violation;

(5) The name, address, and telephone number of the person giving notice; and

(6) The name, address, and telephone number of legal counsel, if any, of the person giving notice.

Surface Mining Reclamation and Enforcement, Interior

§ 701.1

PART 701—PERMANENT REGULATORY PROGRAM

Sec.

701.1 Scope.

701.2 Objective.

701.3 Authority.

701.4 Responsibility.

701.5 Definitions.

701.11 Applicability.

AUTHORITY: Pub. L. 95-87 (30 U.S.C. 1201 et seq.), and Pub. L. 100-34.

SOURCE: 44 FR 15316, Mar. 13, 1979, unless otherwise noted.

§ 701.1 Scope.

(a) This part provides general introductory material for the permanent regulatory program required by the Act.

(b) The following regulations apply to the permanent regulatory program:

(1) Subchapter C on State program application, approval, withdrawal, and grants, and Federal program implementation;

(2) Subchapter D on surface coal mining and reclamation operations on Federal lands;

(3) Subchapter E on surface coal mining and reclamation operations on Indian lands.

(4) Subchapter F on criteria for designating lands unsuitable for surface coal mining operations and the process for designating these lands or withdrawing the designation by the regulatory authority; *Provided*, That, part 761 is applicable during the initial regulatory program under subchapter B of this chapter and 30 CFR part 211¹ and that part 769 and other parts incorporated therein are applicable to the initial Federal lands program under 30 CFR part 211.¹

(5) Subchapter G on the process for application, approval, denial, revision, and renewal of permits for surface coal mining and reclamation operations, including the small operator assistance program, requirements for special categories of these operations, and requirements for coal exploration;

¹ Editorial Note: 30 CFR part 211 was redesignated as 43 CFR part 3480 at 48 FR 41589, Sept. 16, 1983.

(f) A person giving notice of an alleged failure by the Secretary or a State regulatory authority to perform a mandatory act or duty under the Act shall state, to the extent known:

(1) The provision of the Act containing the mandatory act or duty allegedly not performed;

(2) Sufficient information to identify the omission alleged to constitute the failure to perform a mandatory act or duty under the Act;

(3) The name, address, and telephone number of the person giving notice; and

(4) The name, address, and telephone number of legal counsel, if any, of the person giving notice.

§ 700.14 Availability of records.

(a) Records required by the Act to be made available locally to the public shall be retained at the geographically closest office of the State or Federal regulatory authority having jurisdiction over the area involved.

(b) Other records or documents in the possession of the Office may be requested under 43 CFR part 2, which implements the Freedom of Information Act and the Privacy Act.

§ 700.15 Computation of time.

(a) Except as otherwise provided, computation of time under this chapter is based on calendar days.

(b) In computing any period of prescribed time, the day on which the designated period of time begins is not included. The last day of the period is included unless it is a Saturday, Sunday, or legal holiday on which the regulatory authority is not open for business, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.

(c) Intermediate Saturdays, Sundays, and legal holidays are excluded from the computation when the period of prescribed time is 7 days or less.

Tab H

Dev Co. <u>Exb</u>	EXHIBIT "A"	Carla Knopp
Dept. <u>12th Floor</u>	Phone # <u>32</u>	
Fax # <u>596 2814</u>	Fax # <u>472 8770</u>	

NO. N 41-26-8-2

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
 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
11/21/91

#26
 Identification Number

SEE REVERSE SIDE

WHITE-DOGM YELLOW-OSM PINK-PERMITTEE/OPERATOR GOLDENRCCO-NOV FILE

DOGM/NOV-1

an equal opportunity employer

11/85

cc: Ms. Carla Knopp.

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

Violation No. 1 of 2

Nature of violation

Failure to maintain diversions to be stable
Failure to minimize erosion to the extent possible.

Provisions of act, regulations or permit violated

R-614-301-742.312.1

R-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 diversions and minimize erosion.
Coordinate with Town of Minner

Abatement time (Including interim steps)

5 p.m. December 20, 1991

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

DOGM/NOV-2

an equal opportunity employer

11/85

65

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

Violation No. 2 a 2

Nature of violation

- Failure to clearly 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 outcrops
- Road up slopes

Remedial action required (Including any interim steps)

- Seed the specified disturbed areas not previously seeded.
- Reseed the road.
- Seed and reseeding to be completed as specified in the Mining & Reclamation Plan.
- Coordinate with Susan White

Abatement time (Including interim steps)

5 p.m. December 20, 1991

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

DOGM/NOV-2

an equal opportunity employer

11/85

Tab I

BEFORE THE DIVISION OF OIL GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

---00000---

IN THE MATTER OF THE APPEAL	:	FINDINGS, CONCLUSIONS
OF FACT OF VIOLATION	:	AND ORDER
#N91-26-8-2, HIDDEN VALLEY	:	
COAL COMPANY, HIDDEN VALLEY	:	INFORMAL HEARING
MINE, EMERY COUNTY, UTAH	:	CAUSE NO. ACT/015/007

---00000---

On December 20, 1991, the Division of Oil, Gas and Mining ("Division") held an informal hearing concerning the fact of violation for the above-referenced Notice of Violation ("NOV"). The following individuals attended:

Presiding:	Dianne R. Nielson, Director Division of Oil, Gas and Mining
Petitioner:	Lee Edmonson Hidden Valley Coal Company ("Hidden Valley") Denise Dragoo Fabian and Clendenin Counsel for Hidden Valley Coal Company Joe Jarvis JBR Consultants Consultant to Hidden Valley Coal Company Karla Knoop JBR Consultants Consultant to Hidden Valley Coal Company
Division:	Lowell Braxton Associate Director for Mining Pamela Grubaugh-Littig Permit Supervisor Susan White Reclamation Specialist

William Malencik
Reclamation Specialist
Issuing Inspector

Board: Ron Daniels
Assessment Conference Officer
Penalty Assessment

Joe Helfrich
Assessment Officer
Penalty Assessment

The Findings, Conclusions, and Order in this matter are based on information provided by the Petitioner in connection with this informal hearing, and information in the files of the Division. During the informal hearing, counsel for Hidden Valley presented arguments as to why the NOV should be vacated. Counsel offered to further brief the legal arguments and the presiding officer provided that additional briefs could be submitted by December 30, 1991. The Division agreed to planimeter the road, pads, and related outslope areas. This information was considered as part of the review of fact of violation.

In the brief filed by counsel for Hidden Valley, vacation of the NOV was requested, based on the following reasons.

1. Hidden Valley is exempt from regulation under the federal Surface Mining and Reclamation Act and the Utah Coal Mining and Reclamation Act because 250 tons of coal were not mined at the Mine and no coal mining activity occurred at the Mine during the interim program after January 3, 1977.

2. The NOV is barred by the applicable statute of limitation of two years.

3. The Division has waived or is estopped from taking enforcement action because the Division failed to require reclamation of road upslopes and outslopes (cut and fill slopes) in either the approved reclamation plan or prior to approval of Phase I bond release.

The Consultant for the Operator also stated during the informal hearing that the reclamation requested in the NOV would create additional damage to fine-particle-covered portions of the outslopes.

FINDINGS OF FACT

1. Notice of this hearing was properly given.

2. The Assessment Conference, to review the proposed penalties for NOV N91-26-8-2, was held immediately following this informal hearing regarding fact of violation. Requirement to pay the assessed penalty is stayed pending the decision in the informal review of fact of violation.

3. NOV N91-26-8-2 was issued on November 22, 1991. It includes two parts. Part 1 of 2 was written for failure to maintain diversions to be stable and failure to minimize erosion to the extent possible, in accordance with Utah Admin. R. 614-301-742.312.1 and 614-301-742.113, with respect to the road outslope and upslope. Part 2 of 2 was written for failure to clearly mark with perimeter markers all disturbed areas and failure to seed and revegetate all disturbed areas, in accordance with Utah Admin.

R. 614-301-521.251 and 614-301-354, with respect to the road and stream disturbed out slopes and road upslopes.

4. As enacted in 1977 and 1979 respectively, the Surface Coal Mining and Reclamation Act (SMCRA) and the Utah Coal Mining and Reclamation Act (UCMRA) both include the definition:

"operator" means any person, partnership or corporation engaged in coal mining who removes or intends to remove more than two hundred and fifty tons of coal from the earth by coal mining within twelve consecutive calendar months in any one location. (emphasis added)

SMCRA § 701(13); Utah Code Ann. § 40-10-3(7).

5. UCMRA defines "coal mining" in the context of the term "surface coal mining" in part as:

activities conducted on the surface of lands...including excavation for the purpose of obtaining coal....

Utah Code Ann. §40-10-3(18).

6. Chapter III of the Reclamation Plan submitted and approved for the Hidden Valley Mine, includes the following description:

The mining plan for Hidden Valley proposed production to begin in June 1981. Maximum production was to be 500,000 tons annually with an expected mine life of 40 years. The initial development work commenced on April 17, 1980 with this goal in mind. However by August, 1980 it became evident that economic conditions had changed and it was decided by the company to cease development.

A 0.5 mile graveled Class II road was completed to gain access to the coal seams adjacent to Ivie Creek. At the coal seams two pads were constructed for the future portal operations area. Bulk coal samples were obtained from the existing exploratory audits in the two naturally exposed coal seams. These exposed coal seams were faced up and diversions were constructed above the seams in anticipation of portal construction.

Hidden Valley Coal Mine Reclamation Plan, Chapter III, pp. 1 and 4, May 1986.

7. In the minutes of a September 9, 1980 meeting of the Soldier Creek Coal Company Management Committee, provided by counsel for Hidden Valley, the status of operations of the Hidden Valley Mine are discussed:

After further discussion, and upon motion duly made, seconded, and unanimously carried, it was decided that:

(1) Further development of the Hidden Valley property will be temporarily suspended and will be reassessed from time-to-time in light of the then current level of capital expenditures believed necessary to make the property operational as a mine and the costs of mining and hauling coal therefrom vis-a-vis the market for coal; (emphasis added)

Minutes of Soldier Creek Coal Company Management Committee, September 9, 1980, p.4.

8. As stated in Utah Code Ann. §40-10-4:

The Utah Mined Land Reclamation Act (Chapter 8 of Title 40), and the rules and regulations adopted under it, where appropriate, and not in conflict with the provisions of this chapter or the rules and regulations adopted under it, shall be applicable to coal mining operations and reclamation operations. (emphasis added)

9. Section III of Chapter III of the Hidden Valley Reclamation Plan (page 27) requires, in accordance with UMC 817.106, that:

The rills or gullies that may appear during post-reclamation monitoring will be stabilized by filling with soil and rock. Chronic sites will be stabilized with small gabions or rock check dams.

10. There is no map or other documentation in the Reclamation Plan which specifically identifies the areas included in the Disturbed Area, stated to be approximately 6.7 acres. The text of the report refers to the disturbed area, stating:

The disturbed area is approximately 6.7 acres consisting of an access road, pads and drainage control structures.

Chapter III, page 6.

Planimetry conducted by Division staff following the informal conference indicates that the area consisting of the road surface, pad areas with matting and graded/seeded, and sediment control structures (Plate III) total 6.1 acres. This acreage is consistent with calculations provided by Hidden Valley in response to the informal conference. Planimetry of that area plus the outslopes and upslopes of the road and the southern outslopes of the pads totals 9.1 acres.

11. Disturbed Area markers have been placed at both sides of the road. The markers were not placed at the foot of the outslopes or the top of the upslopes of the road.

12. There is no map in the plan which delineates the disturbed area boundary.

13. The Reclamation Plan states:

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.

Chapter III, Section VI, page 56.

14. The Reclamation Plan is silent on the subject of revegetation of cut slopes of the road.

15. Both the Division staff and the consultant for Hidden Valley agreed that, because of saline soil conditions and concerns for fine soil profiles and rocky areas, seeding procedures may vary and may be largely accomplished through broadcasting.

16. The existing Phase I surety amount is sufficient to cover the seeding of the subject fill slopes.

CONCLUSIONS OF LAW

1. While Hidden Valley may not have "mined 250 tons of coal within a consecutive 12 month period," the documentation in the Reclamation Plan and the September 9, 1980 minutes of the Management Committee clearly indicate that they "intended to remove more than 250 tons of coal." Furthermore, the Management Committee "temporarily suspended" further development in September, 1980. It did not terminate development.

2. The Division did require and the reclamation plan requires stabilization of rills and gullies, including those which "may appear during post-reclamation monitoring."

3. The Division did require and the reclamation plan requires revegetation of the fill slopes associated with the road.

4. The reclamation plan is silent on requirements for revegetation of the cut slope of the road.

5. The Division did require and the reclamation plan requires revegetation of the fill slopes of the pads.

6. It is not possible to determine whether the fill slopes associated with the road were included in the disturbed area acreage, and hence considered in the determination of reclamation surety. The plan provides for reclamation of those fill areas. Planimetry data is not consistent with the stated acreage of the

disturbed area. There is no map in the plan which delineates the disturbed area boundary. However, failure by Hidden Valley to properly designate the fill slopes as disturbed area or failure to include the area in the reclamation calculation does not obviate the responsibility of Hidden Valley to reclaim the fill slopes, as described in the plan.

7. The Division has not waived and hence is not estopped from taking enforcement action.

8. The statute of limitation does not apply.

9. Hidden Valley's consultant has indicated that they did not seed the fill slopes of the road or the subject fill slopes associated with the pads. There is no information to indicate that the Division was aware of those facts at the time of phase I bond release. The success of erosion mitigation measures, including prevention of rills and gullies and reestablishment of vegetation is ongoing during the reclamation period. The reclamation plan and the performance standards require mitigation when problems are noted by the operator or the Division. Because that monitoring and preventative action is an ongoing responsibility, it cannot be stayed by any statute of limitations.

ORDER

NOW THEREFORE, it is ordered that:

1. NOV N91-26-8-2 parts 1 of 2 and 2 of 2 are upheld, except with respect to revegetation of the cut slopes of the road

as discussed in Part 2 below.

2. Hidden Valley is directed to submit the plans and move the disturbed area markers, as required in the NOV. The Division will work with Hidden Valley or its consultant to approve seeding plans, including exemptions from ground disturbance in areas where appropriate to minimize erosion of existing soils. Although the Reclamation Plan omitted vegetation of the cut slope of the road, Hidden Valley is encouraged to do such vegetation if it will enhance slope stability and protect against erosion on the road, which is subject to the reclamation plan and ongoing monitoring.

3. The revegetation of the fill slopes will be included under the existing surety. The present Phase I surety is adequate. Hidden Valley is not required to revise the amount of its Phase I surety.

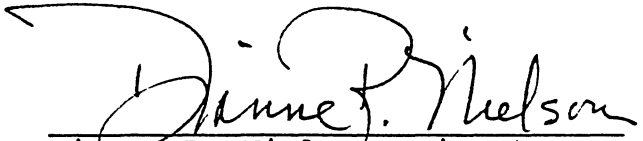
4. The required plan will be submitted to the Division within 30 days of the issuance of this order. The Division will extend the abatement period for the completion of seeding as needed to provide for seeding at the earliest favorable time.

5. The finalized assessment, resulting from the Assessment Conference of December 20, 1991, is due and payable to the Division 30 days from the date of this Order.

6. The Petitioner may appeal to the Board of Oil, Gas and Mining the informal determination of fact of violation and/or finalized assessment by filling said appeal within 30 days of the

date of this Order, in accordance with statutory and regulatory requirements, including placing the assessed civil penalty in escrow.

SO DETERMINED AND ORDERED this 17th day of January, 1992.


Dianne R. Nielson, Director
Division of Oil, Gas and Mining
State of Utah

Tab J

DECEMBER

BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

STIRBA & HATHAWAY

---oo0oo---

IN THE MATTER OF NOTICE OF	:	ORDER
VIOLATION N91-26-8-2, HIDDEN	:	
VALLEY MINE, EMERY COUNTY,	:	DOCKET NO. 92-005
UTAH	:	CAUSE NO. ACT/015/007
	:	

---oo0oo---

On June 30, 1992, the above entitled matter came before the Hearing Examiner, Chairman James W. Carter. Representing the Board of Oil, Gas and Mining's Examiner ("Examiner") was Thomas A. Mitchell, Esq., Assistant Attorney General. Representing the Division of Oil, Gas and Mining ("DOGM") was William R. Richards, Esq., Assistant Attorney General, and representing the Respondent Hidden Valley Mine was Peter Stirba, Esq. The Board considered the Examiner's recommended Findings of Fact and Order at their regularly scheduled hearing on July 22, 1992 and adopted it with the modifications contained herein.

FINDINGS OF FACT

1. NOV 91-26-8-2, parts one and two, was issued on November 20, 1991. There was an assessment conference and fact of violations hearing resulting in the final Division assessment on December 20, 1991.

2. The Petitioner timely appealed the final Division assessment and findings and paid the total assessment in the

amount of \$760.00 for part one of two, and \$460.00 for part two of two into the Division.

3. The Respondent, Hidden Valley Mine, is subject to the jurisdiction of the Board of Oil, Gas and Mining pursuant to Utah Statute, Utah Code Ann. § 40-10-3 (1953, as amended).

4. On September 7, 1979, Hidden Valley's predecessor, Soldier Creek Coal Company (Soldier Creek), submitted a Mining and Reclamation Plan for the land which is the subject of these enforcement proceedings. In that plan Soldier Creek stated that it intended to develop an underground coal mine by June of 1981 which was intended to produce approximately 500,000 tons per year for 40 years.

5. On April 14, 1980, the Division of Oil, Gas and Mining approved Soldier Creek's Mining and Reclamation Plan pursuant to the State Coal Program's interim regulations.

6. On April 17, 1980, surface mining operations commenced at the Hidden Valley Mine pursuant to the approved Mining and Reclamation Plan. These operations included the construction and paving of a 2.5 mile road; construction of an access road to two portal areas where pads were constructed adjacent to coal seams; construction of portal entry face ups; top soil removal from the surface; sediment pond construction and installation of drainage diversions.

7. On January 23, 1981, the Utah State Coal Program was approved by the federal government with Utah as a primacy state, and the Utah Permanent Program Regulations became effective.

8. On March 23, 1981, Soldier Creek informed the Division for the first time that the Hidden Valley mine would temporarily suspend operations.

9. By letter dated May 24, 1985, the Division notified Soldier Creek that it must elect to either permit the Hidden Valley Mine under the Permanent Program Regulations or reclaim the mine in accordance with the approved plan and Permanent Program Regulations.

10. After September 15, 1985, Hidden Valley elected to cease mining operations and reclaim the mine site. In May, 1986, the Respondent filed a Reclamation Plan incorporating the Permanent Program reclamation standards, which plan was approved by the Division.

11. Reclamation of the mine site was undertaken by Respondent, and Phase I bond release was authorized by the Division on May 24, 1988.

12. Subsequent to Phase I bond release, the Respondent has failed to comply with the Permanent Program standards and with the approved Reclamation Plan by failing to adequately construct and maintain erosion control structures on the outslope of the access haul road.

13. The Respondent has failed to comply with the Permanent Program standards and the approved Reclamation Plan by having failed to seed the disturbed area constituting the outslopes of the access road.

14. The Respondent has failed to comply with the Permanent Program standards and the approved Reclamation Plan by having failed to place disturbed area boundary markers at the toe of the slope of the disturbed area below the access road, and instead has placed them at the edge of the road above the disturbed area.

15. The violations which are the subject of this enforcement proceeding are continuing violations, and constitute a current and ongoing basis for enforcement.

16. The Respondent has not changed its position or incurred any detriment in reliance upon any act or statement of the Division or its inspection and permitting staff.

CONCLUSIONS OF LAW

1. This Board has jurisdiction over the Respondent and the Hidden Valley Mine pursuant to Utah Code Ann. § 40-10-3. This provision of the Utah Coal Statute provides that an operator comes within the jurisdiction of the Board and the Division when the operator mines or intends to mine 250 tons of coal within any 12-month period.

2. The intent of an operator to mine is to be determined by an objective standard based upon the acts and representations of the operator during relevant time periods. The Board concludes that Hidden Valley possessed the requisite intent to conduct mining activities, subjecting itself to the jurisdiction of the Utah Coal Statute.

3. The Board concludes that the Permanent Program standards apply to the Respondent because the operator neither permanently ceased operations nor abandoned the intent to mine prior to the Permanent Program becoming effective, and because Hidden Valley specifically agreed to application of the Permanent Program rules in its 1986 Reclamation Plan.

4. The Board concludes the Division has made a prima facie case to support the issuance of the NOV's which are the subject of this enforcement action. The Board further concludes that Hidden Valley has not carried its burden of proof to rebut the Division's prima facie case.

5. The Board concludes that the statute of limitations provision contained in the Utah Mined Land Reclamation Act is not incorporated by reference under Utah Code Ann. § 40-10-1 et seq. because it is inconsistent with the approved federal program as well as less stringent. Further, the Board concludes that even if there were an applicable statute of limitations, the statute has not begun to run because the violations are continuing.

6. The Board concludes that the Respondent has not proven the elements of estoppel necessary to avail itself of that affirmative defense.

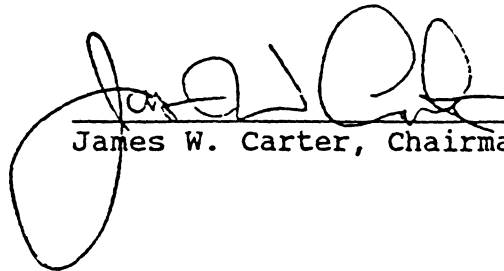
ORDER

1. The Division's action in issuing the NOV subject to this enforcement action should be upheld.

2. The Division's penalty assessments are upheld as to all parts of the NOV, with the exception of that part relating to the placement of the disturbed area boundary markers, where the negligence points should be reduced to zero. Final assessment for part two of two of the violation is reduced from \$460.00 to \$330.00.

ISSUED AND SIGNED this 30th day of July, 1992.

STATE OF UTAH
BOARD OF OIL, GAS AND MINING



James W. Carter, Chairman

CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the foregoing ORDER in Docket No. 92-005, Cause No. ACT/015/007 to be mailed by certified mail, postage prepaid, on the 30th day of July, 1992, to the following:

Peter Stirba
Stirba & Hathaway
215 South State #1150
Salt Lake City, Utah 84111

Hand Delivered to:

William R. Richards
Assistant Attorney General
Utah Division of Oil, Gas and Mining
3 Triad Center, Suite 350
355 West North Temple
Salt Lake City, Utah 84180



Tab K

CESSATION ORDER NO. C 97-26-1-2Violation No 1 of 2

Nature of condition, practice or violation

FAILURE TO ABATE AFOREMENTIONED VIOLATION
FAILURE TO MAINTAIN DIVERSIONS TO BE STABLE
FAILURE TO MINIMIZE EROSION TO THE EXTENT POSSIBLE

Provisions of act, regulations or permit violated

DCA at sec 40-10-20 (8)R645-400-314R645-301-742.312.1R645-301-742.313

Check appropriate box

- ☐ Condition, practice or violation is creating an imminent danger to health or safety of the public.
☐ Permittee/Operator is/has been conducting mining activities without a permit.
☐ Condition, practice or violation is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.
☒ Permittee or Operator has failed to abate Violation(s) No. 1 of 2 included in Notice of Violation No. N91-26-8-2 within time for abatement originally fixed or subsequently extended.

Operation(s) to be ceased immediately N/A

MINE IS IN A RECLAMATION STAGE, COVERED BY BOND, AND NO MINING IS TAKING
PLACE AT THIS MINE.

Affirmative obligation(s) and abatement time (if applicable)

SUBMIT A COMPLETE AND ACCURATE PLAN TO REPAIR AND CONTROL EROSION

WHITE-DOGM YELLOW-OSM PINK-PERMITTEE/OPERATOR GOLDENHOD-NOV FILE

CESSATION ORDER NO: C92-26-1-2

Violation No. 2 of 2

Nature of condition, practice or violation

FAILURE TO ABATE AFOREMENTIONED VIOLATION

FAILURE TO CLEARLY MARK WITH PERIMETER MARKERS ALL DISTURBED AREAS

FAILURE TO SEED AND REVEGETATE ALL DISTURBED AREAS

Provisions of act, regulations or permit violated

NECA et sec 40-10-20 (8)

R645-301-521, 251

R645-301-354

Check appropriate box:

- ☐ Condition, practice or violation is creating an imminent danger to health or safety of the public.
- ☐ Permittee/Operator is/has been conducting mining activities without a permit.
- ☐ Condition, practice or violation is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.
- ☒ Permittee or Operator has failed to abate Violation(s) No. 2 of 2 included in Notice of Violation No. N91-26-8-2 within time for abatement originally fixed or subsequently extended.

Operation(s) to be ceased immediately N/A

MINE IS IN A RECLAMATION STAGE COVERED BY BOND AND NO MINING IS TAKING PLACE AT THIS MINE.

Affirmative obligation(s) and abatement time (if applicable)

INSTALL PERIMETER MARKERS TO CLEARLY MARK ALL THE DISTURBED AREAS.

SEED THE SPECIFIED DISTURBED AREAS NOT PREVIOUSLY SEEDED

RESEED THE ROAD

SEEDING AND RESEEDING TO BE COMPLETED AS SPECIFIED IN THE MINING AND RECLAMATION PLAN

WHITE-DOSH YELLOW-CSM PINK-PERMITTEE/OPERATOR GOLDENROD-NOV FILE

Tab L

STIRBA & HATHAWAY

IN THE THIRD JUDICIAL DISTRICT COURT

SALT LAKE COUNTY, STATE OF UTAH

In the Matter of)	
)	
HIDDEN VALLEY COAL COMPANY,)	Case No. <u>920904813CV</u>
)	
Appellant,)	
)	
vs.)	
)	
the UTAH BOARD OF OIL, GAS AND)	Judge <u>Glen K. Iwasaki</u>
MINING and the UTAH DIVISION)	
OF OIL, GAS AND MINING,)	
)	
Appellee.)	

ORDER

The above entitled matter came before this Court on Wednesday, October 28, 1992, for oral argument on Appellant Hidden Valley's appeal from a formal adjudicatory decision of the Board of Oil, Gas and Mining.

On appeal, this Court has applied the standard of judicial review set forth under Utah Code Ann. § 40-10-30. The review of this matter is a review of the record in the tribunal below, and not a trial de novo. This Court has applied the criteria for review of the Board's final decision set forth at Utah Code Ann.

§ 40-10-30 to the issues raised by Appellant in its Brief. Based on this review, the Court rules as follows:

Appellant has contested the Board's jurisdiction under Utah Code Ann. § 40-10 et seq. This Court finds that Appellant had the requisite intent to mine 250 tons of coal or more. This finding is based upon the evidence in the record evidencing the Appellant's contemporaneous statements at the time of surface disturbance, and the prolonged period during which Appellant continued to submit itself to the jurisdiction of the Board of Oil, Gas and Mining and the Division of Oil, Gas and Mining under the state's coal program. Therefore the Division of Oil, Gas and Mining has jurisdiction over Appellant's surface coal mining reclamation operations.

The Appellant has contested the enforcement actions taken by the Division of Oil, Gas and Mining based on its argument that the statute of limitations in Utah Code Ann. § 40-8 et seq. are applicable to Utah Code Ann. § 40-10 et seq. The Court finds that the Board's conclusion of law that this statute of limitation is inconsistent with the Utah Coal Statute is correct. Therefore, Appellant's argument that the Division of Oil, Gas and Mining's enforcement is time-barred is erroneous.

The Appellant has contested the applicability of the Utah State permanent program under the state coal statute, Utah Code Ann. § 40-10 et seq. The Court finds that the Board's application of the law to the facts in this matter was correct

and that the permanent program performance standards apply to the Appellant.

The Appellant has argued that the enforcement actions taken by the Division of Oil, Gas and Mining in this matter were barred by the equitable principles of estoppel. This Court finds that the elements of estoppel have not been met and that the enforcement actions of the Division of Oil, Gas and Mining in this matter are not barred by this doctrine. This Court finds that the Board correctly applied the legal elements of the doctrine of estoppel, and that the record below supports the finding that Appellant took no acts in reliance upon the inspection reports to which Appellant points as being the basis for the application of the doctrine of estoppel.

Concerning the issue of whether or not there was a prima facie showing made of the elements of the Notices of Violation (NOVs) in this matter, the Court upholds the Board's ruling as to part one of the NOV concerning failure to address the erosion on the outslopes of the reclaimed access road. The Court finds that the record contains substantial evidence on this matter.


Concerning part two of the NOV addressing the failure to re-seed disturbed areas, the Court finds that there is substantial evidence on the record and that indeed it is undisputed that the Appellant failed to re-seed the areas addressed in the Notice of Violation.

Concerning the final portion of part two of the NOV, addressing the improperly located perimeter markers, the Court

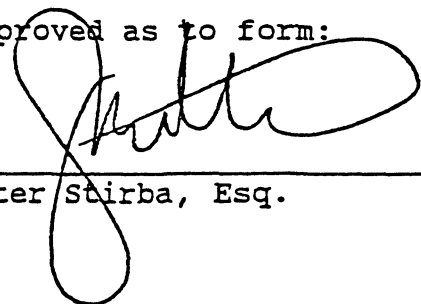
overturns the findings of the Board as to a prima facie showing and determines that the record does not contain substantial evidence as to the location of the perimeter markers being in violation of the plan or permanent program performance standards under the state's Coal Act. The Court does not find that the Appellant was in compliance in this respect, but only determines that there was a failure of the Division to make a prima facie showing in the record below as to this element.

This Order disposes of and finalizes all matters raised on appeal by the Appellant from the decision of the Board of Oil, Gas and Mining in this matter.

SO ORDERED this 5th day of November, 1992.


Judge Glen K. Iwasaki

Approved as to form:



Peter Stirba, Esq.

CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the foregoing ORDER in Case No. 920904813CV to be mailed by first class mail, postage prepaid, on the 6th day November, 1992, to the following:

Peter Stirba, Esq.
Stirba & Hathaway
215 South State Street, Suite 1150
Salt Lake City, Utah 84111

Thomas A. Mitchell, Esq.
William R. Richards, Esq.
Division of Oil, Gas and Mining
3 Triad, Suite 350
355 West North Temple
Salt Lake City, Utah 84180-1203

Kim Kubota

Tab M

HIDDEN VALLEY COAL MINE

RECLAMATION PLAN

CHAPTER III

Soldier Creek Coal Company

Submitted by

JBR Consultants Group

May, 1986

Executive Summary

The Hidden Valley Coal property, in the Emery Coal Field south of Emery Town, was to be developed by Soldier Creek Coal Company, a Utah corporation and wholly owned subsidiary of CalMat Company. The property is 960 acres and Soldier Creek Coal Company owns the surface and has the rights to the coal under a long term lease. A mining and reclamation plan, with two amendments, were submitted and approved under the OSM Interim Program. The access road, coal seam exploration, graded pads and drainage control were the only developments realized as economic changes forced curtailment of mine development. This document is a revised Reclamation Plan for the reclaiming of the small developed areas (approximately 6.7 acres of disturbed ground) within the permit area in 1986.

The culverts will be removed from the access road and from the two pad areas. The natural ephemeral drainage crossing the developed area will be restored to accept most of the flow from the reclaimed sites. Because the original drainage control pattern will be restored, the sediment pond will no longer function and can be opened to drain into Ivie creek.

The access road will be accessible to 4-wheel drive vehicles only and be waterbarred to control surface flows. The road surface will be scarified and seeded. The integrity of the road alignment will be maintained minimizing future development costs and

environmental impact when development becomes feasible.

The adits in the two coal seams will be sealed and the seams covered and graded. Topsoil materials stored onsite will be spread over a portion of the disturbed areas to provide a seedbed. Other materials on site will be used for seedbed material where topsoils are not available. All of the reclaimed areas will be mulched, fertilized and seeded in late fall as the final phase of reclamation. Drift fences will be installed to restrict cattle use of the seedings.

A ten year monitoring plan will sample the water quality and flows semi-annually in Ivie Creek and check on the progress of the revegetation efforts. Projected costs for reclaiming the site in 1986 are \$ 148,716 and \$ 23,000 for 10 years of monitoring

Table of Contents

* Revised, Modified or Added for Completeness and Technical Review

	Page #
Executive Summary	
Introduction	1
I Proposed Postmining Land Use	7
UMC 784.15	
UMC 785.17(b) (2,6,9)	
UMC 817.133	
UMC 823.11	
UMC 823.14	
UMC 823.15	
II Structural Removal and Site Clean-up	9
*UMC 784.11(b)	
UMC 784.11(b) (2) (6)	
UMC 784.13(a)	
*UMC 784.13(b) (1) (3-5)	
*UMC 784.13(b) (8)	
*UMC 817.13-.15	
UMC 817.17-.74	
UMC 817.18-.88	
UMC 817.91-.92	
UMC 817.95	
UMC 817.97	
UMC 817.132	
III Backfilling and Grading	18
UMC 817.100	
*UMC 817.101	
UMC 817.103	
*UMC 817.106	
IV Drainage Control	28
*UMC 784.14(a) (1-4) (b) (1-2)	
*UMC 784.14(c)	
*UMC 784.16(a) (1) (i-iii)	
*UMC 784.16(a) (2) (iv)	
UMC 784.16(a) (3) (iv)	

IV Drainage Control Con't.

*UMC 784.16(b) (1)
*UMC 784.16(b) (2)
*UMC 784.16(c)
UMC 784.16(d) (e)
*UMC 784.22
UMC 817.99
UMC 817.150-.156
*UMC 817.160-.165
*UMC 817.166
UMC 817.170-.176

V Topsoil Redistribution and Surface Preparation 53

*UMC 817.21
*UMC 817.24
*UMC 817.25

VI Revegetation 56

*UMC 817.111
*UMC 817.112
UMC 817.113
*UMC 817.114
UMC 817.115
*UMC 817.116
UMC 817.117

VII Monitoring and Maintenance 62

UMC 817.41-.50
*UMC 817.52
UMC 817.56
*UMC 817.57

*VIII Schedule, Sequence of Reclamation Components 65

*IX Costs 68

List of Tables

Table 1	Peak Flows for Diversion Structures and Restored Channels	10
Table 2	Proposed Diversion and Channel Configuration	10
Table 3	Riprap Gradation	10&30

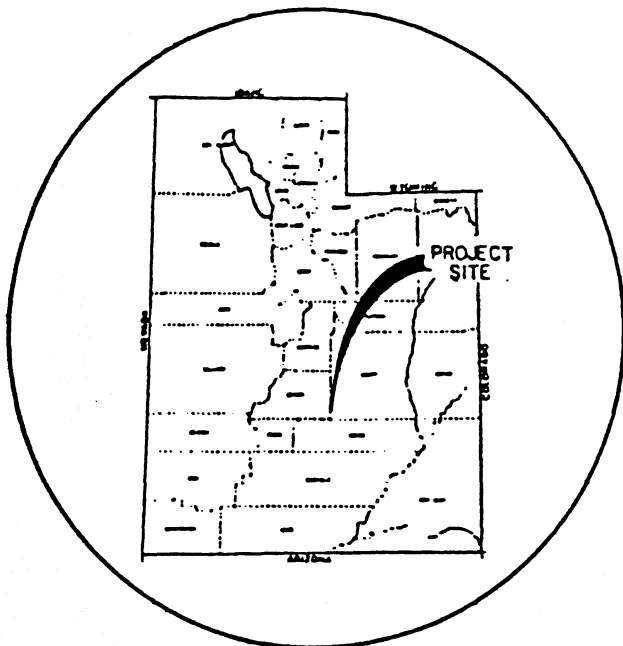
Reclamation Plan

Chapter III

Introduction

Soldier Creek Coal Company, a Utah Corporation and a wholly-owned subsidiary of CalMat Company, purchased this property and leased the right to mine coal from Ivie Creek Coal Company to develop the coal as a fuel source for their cement kilns (See Plate I for location, Plate 1a for ownership and Plate 1b for permit area). A mining and reclamation plan was submitted for this mine on September 7, 1979 under the OSM Interim Regulations. This mining and reclamation plan was granted conditional tentative approval on February 4, 1980 under the Interim Program by the Utah Division of Oil, Gas and Mining. Final approval under the Interim Program Regulations for Coal Mining and Reclamation Operations and the Utah Mined Land Reclamation Act was received April 14, 1980. A corporate guarantee of \$152,500 was posted to cover projected reclamation costs under the Interim Plan. These plans, amendments and correspondence are on file at the Division's offices in Salt Lake City.

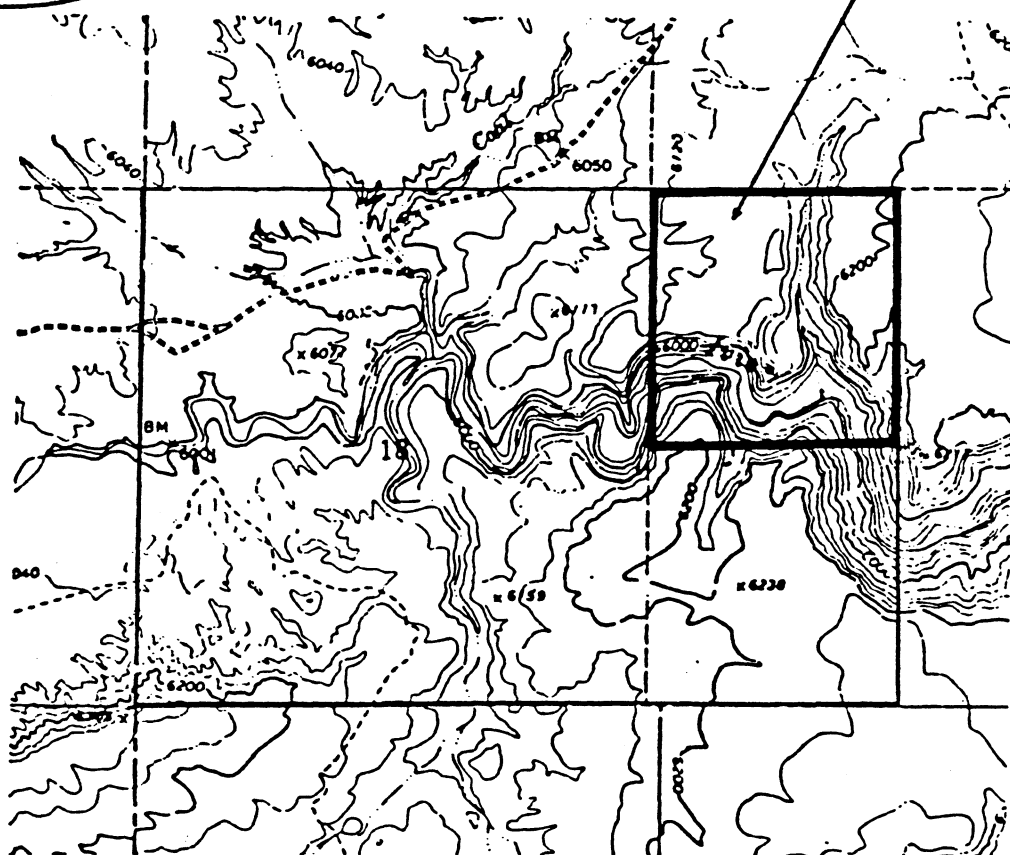
The mining plan for Hidden Valley proposed production to begin in



HIDDEN VALLEY MINE SITE

Township 23 South, Range 6 East
Salt Lake Base and Meridian
Section 18 & the West 1/2 of Section 17

AREA OF 1"=100' SCALE MAPS
(PLATES II, III & V)



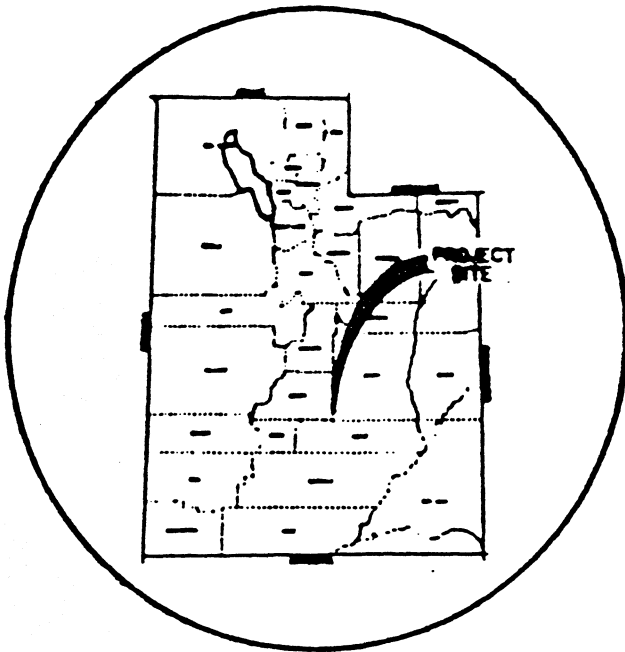
CONSULTANTS GROUP
SALT LAKE CITY, UTAH

**SOLDIER CREEK COAL COMPANY
HIDDEN VALLEY MINE**

**HIDDEN VALLEY MINE
LOCATION**

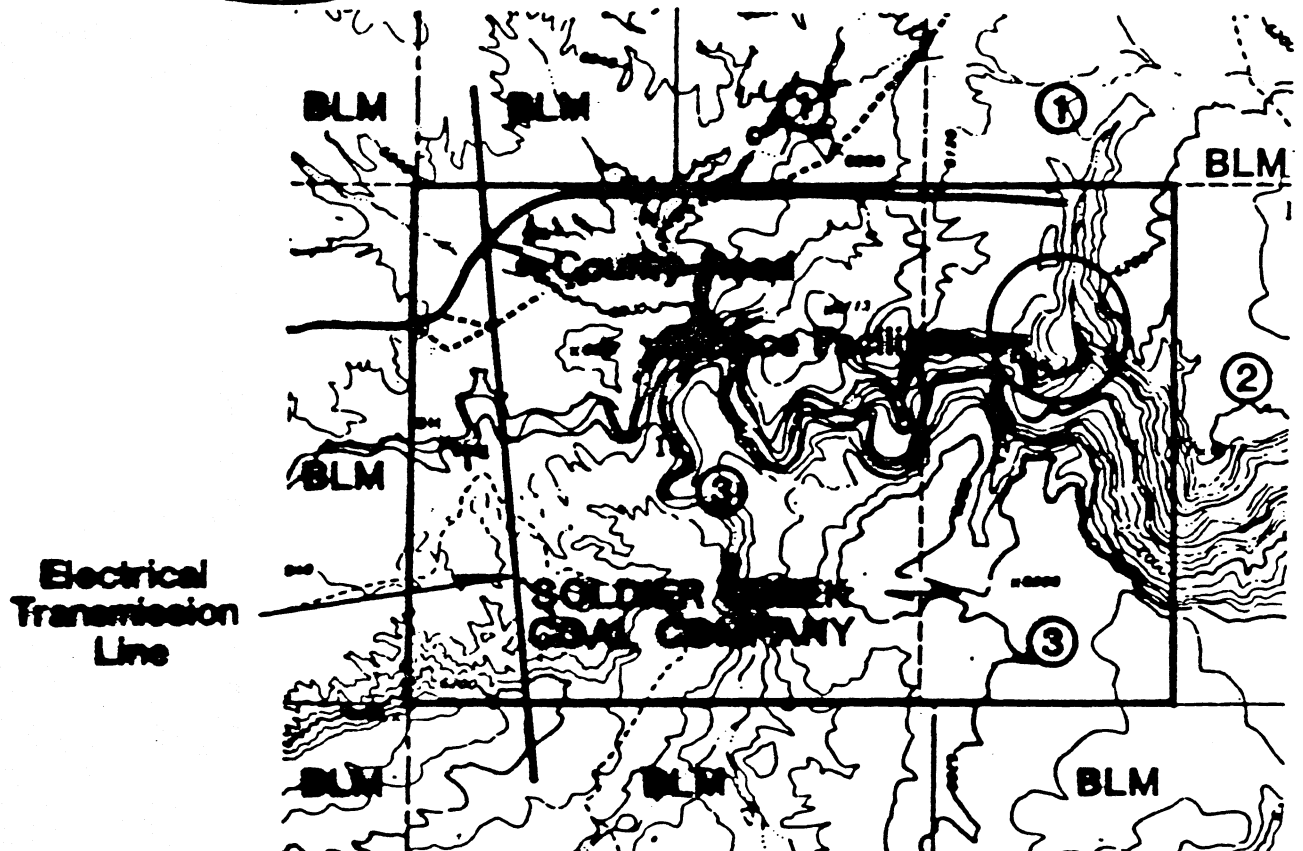
BY	DATE	REVISION	BY	DATE	DESIGNED BY	DRAWN BY
					J.M.J	C. Platon
					SCALE	DATE 5/3/86

PLATE I



HIDDEN VALLEY MINE SITE

Township 23 South, Range 6 East
Salt Lake Base and Meridian
Section 18 & the West 1/2 of Section 17



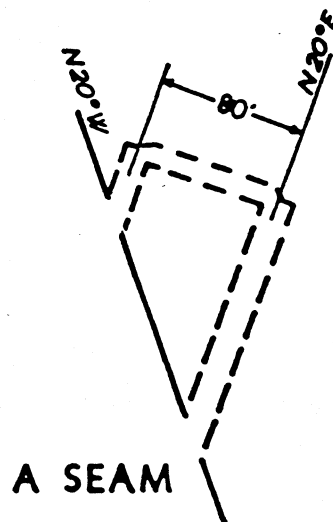
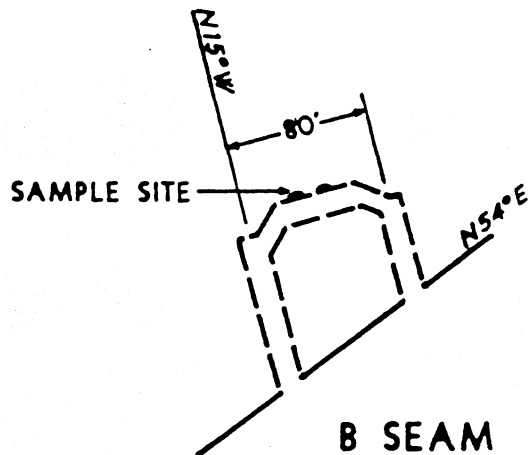
- ① CONSOLIDATED COAL - 50% SURFACE AND MINERAL
THE PITTSBURG MIDWAY - 50% SURFACE AND MINERAL
GULF OIL CORP. - 50% COAL
- ② BANK OF CALIFORNIA (LOVELLA COOK ROYALTY CONVEYANCE)
JOHN E. LANSING
- ③ IVIE CREEK COAL ASSOCIATES - 100% MINERALS



CONSULTANTS GROUP
INC.

**SOLDIER CREEK COAL COMPANY
HIDDEN VALLEY MINE**

**HIDDEN VALLEY MINE
OWNERSHIP**



CONSULTANTS GROUP
SALT LAKE CITY, UTAH

**SOLDIER CREEK COAL COMPANY
HIDDEN VALLEY MINE**

EXPLORATORY ADITS

DATE	5/13/86	DRAWN BY	J.M.J.	CHECKED BY	C. Pinton
SCALE	1" = 100'				

FIGURE 1

June, 1981. Maximum production was to be 500,000 tons annually with an expected mine life of 40 years. The initial development work commenced on April 17, 1980 with this goal in mind. However by August, 1980 it became evident that economic conditions had changed and it was decided by the company to cease development.

Within this short construction period a paved 2.75 mile access road from Highway 10 to the proposed coal processing site was completed with state funds and dedicated to Sevier and Emery Counties (See Appendix I, ROW documents). A 0.5 mile graveled Class II road was completed to gain access to the coal seams adjacent to Ivie Creek. The upper seam is designated the B coal seam and the lower seam is called the A seam. At the coal seams two pads were constructed for the future portal operations area. Culverts were installed in the graveled access road and in the benches for drainage control. A sediment pond was constructed on the lower pad to receive surface flows from the pads. Bulk coal samples were obtained from the existing exploratory adits in the two naturally exposed coal seams (See Figure I). These exposed coal seams were faced up and safety benches were constructed above the seams in anticipation of portal construction. Topsoil was stockpiled adjacent to the upper or "B" seam pad.

Because mine development did not proceed beyond this stage, no coal production was realized. Consequently, no other proposed facilities for mining and coal processing were constructed on the

property (Plate II). The disturbed area is approximately 6.7 acres consisting of an access road, pads and drainage control structures.

This reclamation plan will meet the regulations of the Permanent State OSM Program and supercedes the plan submitted under the Interim Program. The baseline data and mine plans are available in the Division of Oil, Gas and Mining files and will not be repeated in this plan. Many of the regulation sections usually required in a reclamation plan do not apply because facilities for coal production were never constructed. All sections of the required regulations are addressed in the plan but those not applicable are dismissed with a brief explanation. An Addendum is attached to this report to provide the information necessary to complete the original application.

I. Proposed Postmining Land Use Acreage to be Reclaimed and
Timing and Sequence

UMC 784.15 Reclamation Plan. Post Mining Land Use

The adjacent BLM lands are permitted for cattle grazing in the winter and early spring. Most of the forage production is confined to the flats and benches in Castle Valley. Some grazing occurs on the upper benches of the permit area. The livestock use of the fee lands is presently unregulated. The declaration for postmining land use would be wildlife habitat and livestock grazing. This was the land use prior to the proposed mine development and this land use has continued to the present.

BLM Saleratus Allotment

409 cattle from Nov. 11th to March 31st, stocking rate is 1 AUM/10 Acres for total AUM's of 1843.

The disturbed acreage of the permit area is mostly sandstone talus slopes that provides very little livestock forage or wildlife habitat as is generally defined. The revegetation of these small disturbed areas will be in accordance with adjacent surveyed range reference sites. This revegetation will not provide either wildlife or livestock forage of any significance but will stabilize the site.

UMC 817.133 Postmining Land Use

The approximately 6.7 acres of disturbed land will be fully reclaimed. The work schedule calls for reclamation work to begin in the fall of 1986 with completion by December 31, 1986.

UMC 785.17 (b)(2,6,9); UMC 823.11 (c); UMC 823.14; UMC 823.15

Prime Farmland

Prime Farmland was not designated in the permit and does not exist within the permit area. All the lands in the permit area are undeveloped.

II. Structural Removal and Site Clean Up

UMC 784.11 (b) Operation Plan: General Requirements

There is a sediment pond with a small dam built into the pad at the "A" seam location. There are no other embankments or impoundments.

The sediment pond will be decommissioned at the time of reclamation of the disturbed area. The pond will lose its function because the contributing drains will be removed and the natural drainages restored. This will cut off flows to the pond except for the immediate surface flows on the lower pad.

With the reestablishment of the ephemeral channel, waterbars in the access road, regrading of the A seam and B seam pads and the bench cut on the A seam face-up; the area draining to the sediment pond will be quite small, less than one half acre. As such, the pond will no longer serve a purpose. Therefore it is proposed that the discharge structures of the pond will be removed and the embankment facing Ivie Creek be breached. This will allow the discharges from the small drainage area to flow through the pond area. Peak flow from the area is only 0.35 cfs, based on a 10-year-24-hour precipitation and a curve number of 78 (Table 1 & 2). This minimal flow will not result in any significant accumulation in the area. The regraded surface of the pond is shown in Plate V and Figure II.

Table 1 - Peak Flows for Diversion Structures and Restored Channels

Structure ID	Curve Number	Time of Concentration (hr)	Drainage Area (ac)	Storm Duration (hr)	Precip. Depth (in)	Rainfall Distribution	Peak Flow (cfs)
Ephemeral Channel	78	0.54	124.89	24	2.60	SCS Type II	70.97
A-seam Terrace	85	0.03	1.9	24	1.67	SCS Type II	1.20
A-seam pad	80	0.22	0.78	24	1.67	SCS Type II	0.26
Sediment Pond	80	0.43	0.41	24	1.67	SCS Type II	0.10

Curve Number Documentation - Appendix III

Table 2 - Proposed Diversion and Channel Configuration

Reach	Q (cfs)	Slope (%)	Bottom width (ft)	m	"n"	Flow Depth (ft)	Flow Velocity (fps)	Permissible Velocity (fps)	Remarks
Ephemeral Channel	70.97	10.5	10	2	**	0.56	11.4	**	Riprap w/ D ₅₀ of 0.75 ft
A-seam Terrace	1.2	3.0	0	5&.5	0.034	0.40	2.7	5.0-6.0*	Asymetric Channel
A-seam pad	0.26	110.0	0	2	0.028	0.12	8.2	2.5-4.0*	Alluvial Soils
Sediment Pond	0.10	90.0	0	2	0.028	0.09	6.0	2.5-4.0*	Alluvial Soils

* Values obtained from Table 6.1b in Simons and Li (1982)

** Channel design selected and evaluated using Steep Slope Diversion Design method (Simons and Li, 1982)

Table 3 - Riprap Gradation

D ₁₀₀	2.5 * D ₅₀	1.50 ft
D ₈₅	1.8 * D ₅₀	1.13 ft
D ₅₀	1.0 * D ₅₀	0.75 ft
D ₁₅	0.1 * D ₅₀	0.08 ft

The A-seam terrace diversion has been made functional by regrading the bench cut, and has been extended by creating a ditch across the road and down onto the flat area east of the ephemeral channel. The alignment of this channel is shown on the revised Plate III, and design details are given in the addendum to Appendix III. Information on peak flows and channel configuration for this diversion is updated from that given in Tables 1 and 2 as follows:

Table 1 - Peak Flows for Diversion Structures and Restored Channels

Structure ID	Curve Number	Time of Concent. (hr)	Drainage Area (ac)	Storm Duration (hr)	Precip. Depth (in)	Rainfall Dist.	Peak Flow (cfs)
A-seam Terrace	85	0.016	1.35	24	2.60	SCS B	1.83

Table 2 - Proposed Diversion and Channel Configuration

Reach	Q (cfs)	Slope (%)	Bottom width (ft)	m	"n"	Flow Depth (ft)	Flow Vel. (ft)	Permissible Velocity (fps)	Remar
A-seam Terrace:									
upper	1.83	8	0	1&3	.025	0.4	4.9	5.0-6.0	asymmetr
lower	1.83	17	0	3&3	.035	.3	5.2	11	.75' ripra

The A-seam pad diversion was never installed. All runoff from the pad is conveyed through the sediment pond diversion. Information in Table 2 has been updated to show flow characteristics of the combined flow from the A-seam pad and the sediment pond diversions:

Table 2 - Proposed Diversion and Channel Configuration

Reach	Q (cfs)	Slope (%)	Bottom width (ft)	m	"n"	Flow Depth (ft)	Flow Vel. (ft)	Permissible Velocity (fps)	Remar
Sed. Pond	0.36	90	0	2	.035	.16	7.0	8.8	.6' ripra

A hydraulic evaluation of the reach from the sediment pond to Ivie Creek was conducted and it was determined that a trapezoidal channel with a 2h:1v sideslope and a six foot bottom would have a water velocity less than the maximum allowable. Slope protection with riprap is proposed for the sediment pond channel. The pond slopes will be seeded when the bench and coal seam slopes are revegetated. See Appendix III for hydrology methods.

UMC 784.11 (b) (2) (6) Operation Plan: General Requirements

Response: Not Applicable

UMC 784.13 (a) Reclamation Plan: General Requirements

Response: Refer to Interim Plan

UMC 784.13 (b) (1) (3-5) Reclamation Plan: General Requirements

Response:

(b) (1) See Section VIII, Schedule

(b) (2) See Section VIII, Schedule

(b) (3) See Section III, Backfilling and Grading

(b) (4) See Section V, Topsoil Redistribution

(b) (5) See Section VI, Revegetation

(b)(6) Not Applicable

(b)(7) Not Applicable

UMC 784.13 (b)(8) Reclamation Plan; General Requirements

Response: See Figure III

UMC 817.13-.15 Casing and Sealing Underground Openings: General Requirements

Response: The four shallow exploration adits are the only underground mine openings. The closure techniques for these openings are described in Section III. There have also been seven (7) exploration drill holes completed on the property. These holes were drilled both to evaluate the coal resource and to explore for groundwater for use as a mine water supply.

The locations of these drill holes are shown on Plate IV. Drill holes 1, 2, #3, and 7 discovered artesian water. These holes are part of an approved and in-force 0.25 CFS water right issued by the Utah Division of Water Rights. The other drill holes, 4, 5, and 6, found no water and were dry. Drill holes 1, 2, 3, and 7 were cased and completed as water wells. Valves were installed on each wellhead. The valves were in turn wrapped with fiberglass insulation, covered with an empty 55 gallon drum, and buried beneath a mound of soil.

habitat on otherwise barren sites. The use of legumes and grasses will provide a small amount of additional forage for small mammals and birds. The new shrubs will provide sparse cover for these small animals. Probably the major beneficiary of this small amount of forage from the increased cover and food will be the migratory flocks of small birds and mourning doves.

The closing of the road will reduce harassment of wildlife and particularly the nesting prairie falcons.

784.22 Diversions

See revised Section IV, Drainage Control.

784.26 Air Pollution Control Plan

(a)(b)

Construction in this small area within a protected drainage will not produce copious amounts of fugitive dust. In this remote area no croplands or developments are contiguous to the permit area. During periods of strong winds large amounts of dust are transported naturally from the many barren and exposed soils in this area often exceeding Class II particulate levels.

During periods of extreme wind (50 mph+) construction will be delayed until winds abate. Water control of dust is not deemed necessary in this protected canyon. The only activity outside of the canyon is loading of the roadbase material which is a gravelly sandy material.

817.99 Slides and Other Damage

Soldier Creek Coal Company will mitigate any slide damage on the permit area for the period of their obligations under the Reclamation Plan.

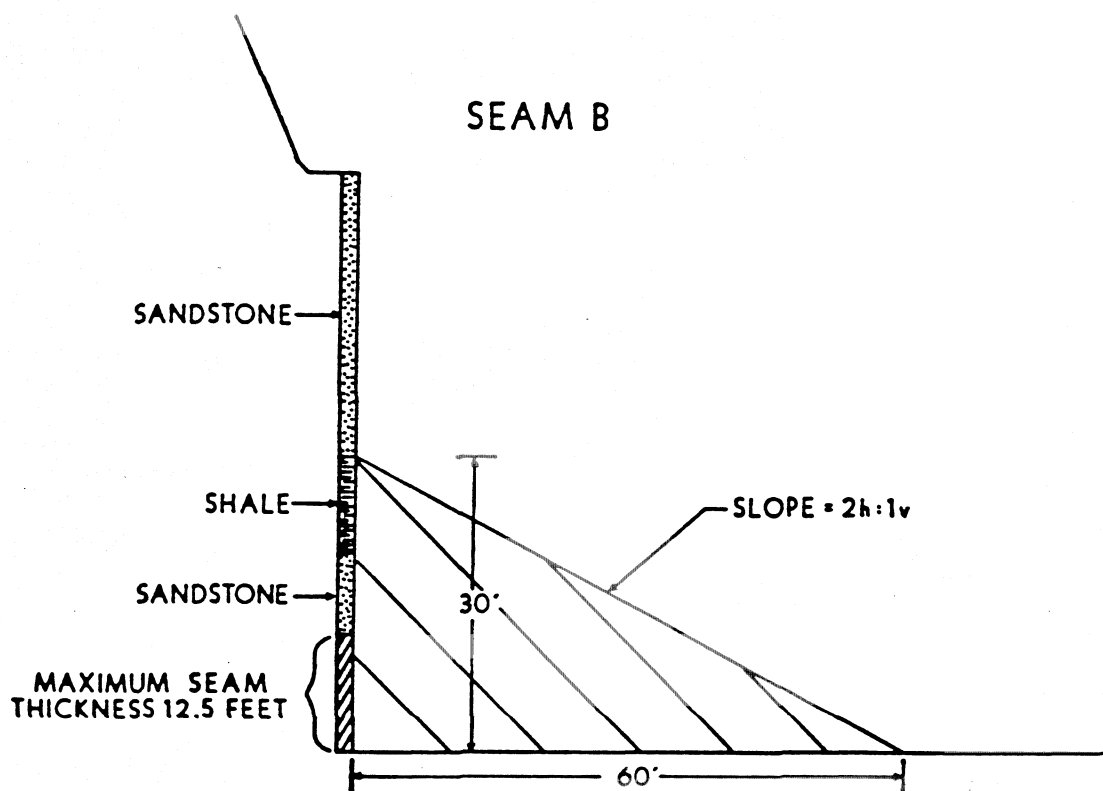
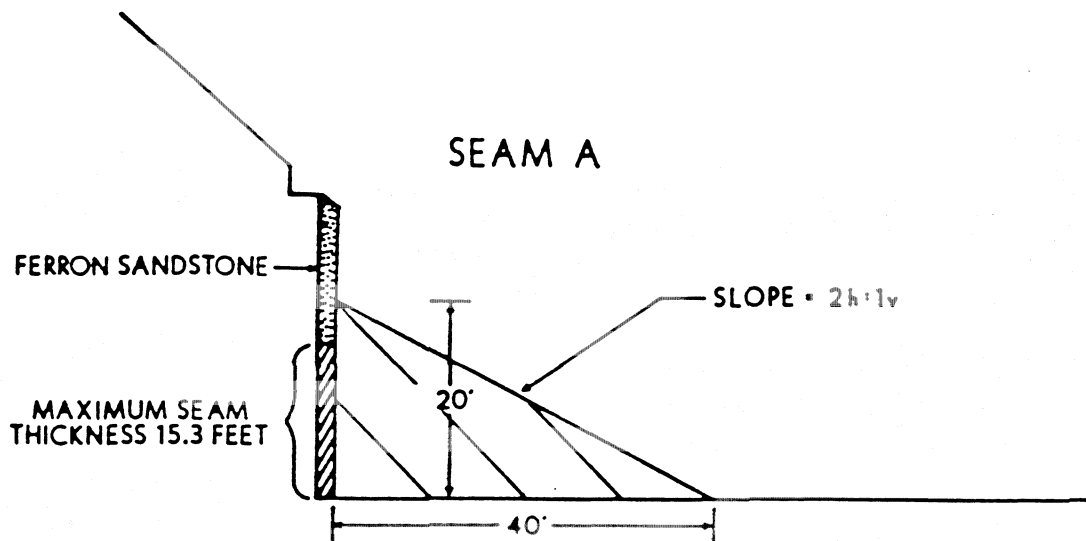
Table 3a	Riprap Gradation	35
Table 3b	Water Bar Spacing	51a
Table 4	Completion Details and Approximate Water Elevations for Boreholes	42
Table 5	Soil Fertility Summary	55

List of Figures

Figure I	Exploratory Adits	5
Figure II	Sections and Profiles of Sediment Pond	11
Figure III	Cross Sections for Coal Seam Backfills	14
Figure IV	Cross Sections for Backfill and Grading of Pads	20
Figure V	Sections and Profile of Road Channel	22
Figure VI	Block Diagram of Road Waterbars	23
Figure VII	Longitudinal Profile of Ephemeral Channel	25
Figure VIII	Cross Sections of Ephemeral Channel	26
Figure IX	Local Geology	37
Figure X	Surface Hydrology	39

List of Plates

Plate I	Hidden Valley Mine Location	2
Plate Ia	Hidden Valley Ownership	3
Plate Ib	Hidden Valley Permit Area	Pocket
Plate II	Proposed Facilities	Pocket
Plate III	Final Reclamation	Pocket
Plate IV	Hidden Valley Mine Drill Hole Locations	14
Plate V	Final Configuration	Pocket
Plate VI	Class II Road Vertical Alignment	Pocket



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SALT LAKE CITY, UTAH

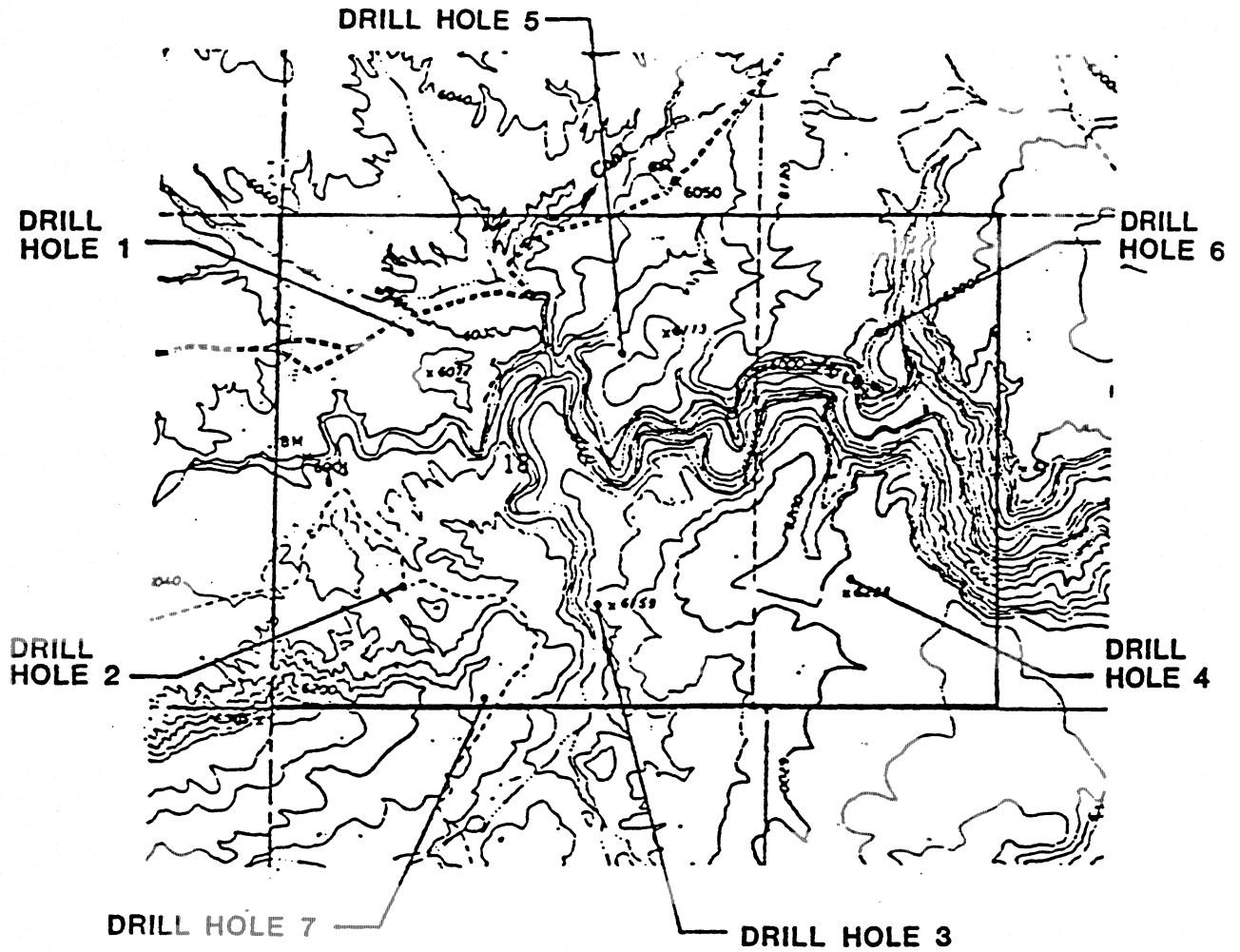
**SOLDIER CREEK COAL COMPANY
HIDDEN VALLEY MINE**

**CROSS SECTIONS
FOR
COAL SEAM BACKFILLS**

DESIGNED BY	J.M.J.	DRAWN BY	C. Piston
SCALE	1"=20'	DATE	8/11/86

FIGURE III

HIDDEN VALLEY MINE



CONSULTANTS GROUP
SALT LAKE CITY, UTAH

**SOLDIER CREEK COAL COMPANY
HIDDEN VALLEY MINE**

**HIDDEN VALLEY MINE
DRILL HOLE LOCATIONS**

BY	DATE	REVISIONS	BY	DATE	DESIGNED BY	DRAWN	C. Pistor
					SCALE	1"=2000'	DATE 8/11/86

An inspection of all drill sites was carried out on July 31, 1986. This inspection revealed that drill holes 1, 2, 3, and 7 remain soil-covered as described above and that no leakage, evidenced by either wet soil or unusual plant growth, is taking place. The site of drill hole #4 was located, but the actual drill hole could not be found indicating that it has most likely been plugged and backfilled. Drill holes #5 and #6 were both located. Drill hole #5 was found to be open and covered with plastic sheeting beneath a large rock. Drill hole #6 was found to be cemented to the surface with a survey marker installed in the plug.

Drill hole #5 will be plugged with a five-foot surface plug during the reclamation work to be conducted during the Fall of 1986. Drill holes 1, 2, 3, and 7 will remain in there current condition since the water right for this property represents an asset that significantly enhances the potential for future development and also the property's value for resale. The Division of Water Rights has indicated that the water right is in force and that an extension through January 31, 1988 has been granted allowing the water right holder additional time to develop the water right. Given the potential for future coal development in this area, it is likely that further extensions (five years in term) will be granted. The Division of Water Rights has also indicated that the means of temporarily capping these wells that is described above is acceptable (Mr. Kent

The known location for drill hole #4 will again be searched with a shovel and probe at the time of reclamation to determine if the drill hole is plugged or open. The site is remote and the exploration road is not serviceable. Thus to use equipment on the site to search for this drill hole would require the re-opening of the exploration road, an additional disturbance. Should an open drill hole be discovered at this site it will be plugged with a five-foot surface plug during the reclamation construction period.

Drill holes 1,2,3 and 7 are part of Soldier Creek Coal Company's water right that has been extended to Jan. 31, 1988. Soldier Creek Coal Company through Calmat will notify the DOGM by March 1, 1988 of the action taken by the Utah Division of Water Rights regarding this water right. Should the water right be terminated, then abandonment procedures as required by the Utah Division of Water Rights', will be undertaken within 90 days of the date of final notice on the water right. Soldier Creek recognizes that this may require an extension of a portion of the surety bond to cover the additional costs of reclamation of the drill hole sites following abandonment action.

Should the water rights be transferred then Soldier Creek Coal Company will follow the procedures in UMC 817.53 for transfer of water rights.

Jones, Utah Division of Water Rights, Salt Lake City).

UMC 817.17-.74 Disposal of Excess Soil and Underground
Development Waste: General Requirements

Response: There are no excess soils or underground wastes.

UMC 817.81-.88 Coal Processing Waste Banks: General Requirements

Response: Coal was not produced or processed under this permit.

UMC 817.91-.92 Coal Processing Waste: Dams and Embankments

Response: None exist on the property.

UMC 817.95 Air Resources Protection

Response: There was no underground mining or coal processing
consequently there was no methane gases or emissions developed.

UMC 817.97 Protection of Fish, Wildlife and Related
Environmental Values

Response: Refer to Interim Plan.

UMC 817.132 Cessation of Operations: Permanent

Response: There was no underground mining. Development ceased in
August, 1980

UMC 817.95 Air Resources Protection

Response: There was no underground mining or coal processing consequently methane gases or emissions were not produced.

(a) (b)

Construction in this small area within a protected drainage will not produce copious amounts of fugitive dust. In this remote area no croplands or developments are contiguous to the permit area. During periods of strong winds large amounts of dust are transported naturally from the many barren and exposed soils in this area often exceeding Class II particulate levels.

During periods of extreme wind (50 mph+) construction will be delayed until winds abate. Water control of dust is not deemed necessary in this protected canyon. The only activity outside of the canyon is loading of the roadbase material which is a gravelly sandy material.

III Backfilling and Grading--including Portal Closure

UMC 817.100 Contemporaneous Reclamation

There have been only maintenance activities (drains, signs, etc.) on the property since August, 1980. The topsoil stockpile was hydroseeded in 1985 to stabilize and protect the soils material.

UMC 817.101 Backfilling and Grading: General Requirements

(b) Portals and Coal Seams

A dozer will be used to collapse the roof structures and push them into the exploratory adits. Soil and rock materials from the pads and culvert excavations will then be pushed into each adit for 25' to seal these openings. This is in accordance with MSHA Regulations 75.1711-2 (30 CFR Chapter I, 7-1-85 edition).

The exposed coal seams would then be covered and graded to a slope of approximately 2h:1v. The berm on the diversion above the "B" seam will be removed and cast down after backfilling. The slopes will then be covered with approximately 2" of topsoil and revegetated. Figure III shows the generalized backfill cross sections for the A and B seams. Actual cross sections showing pre- and post-reclamation configurations for the A seam and B

UMC 817.101 Backfilling and Grading (b) (4) (iii)

The static safety factor for the fill on the "A" seam pad is 1.354 and for the fill on the "B" seam pad is 1.353. The slope stability analysis is in Appendix VII.

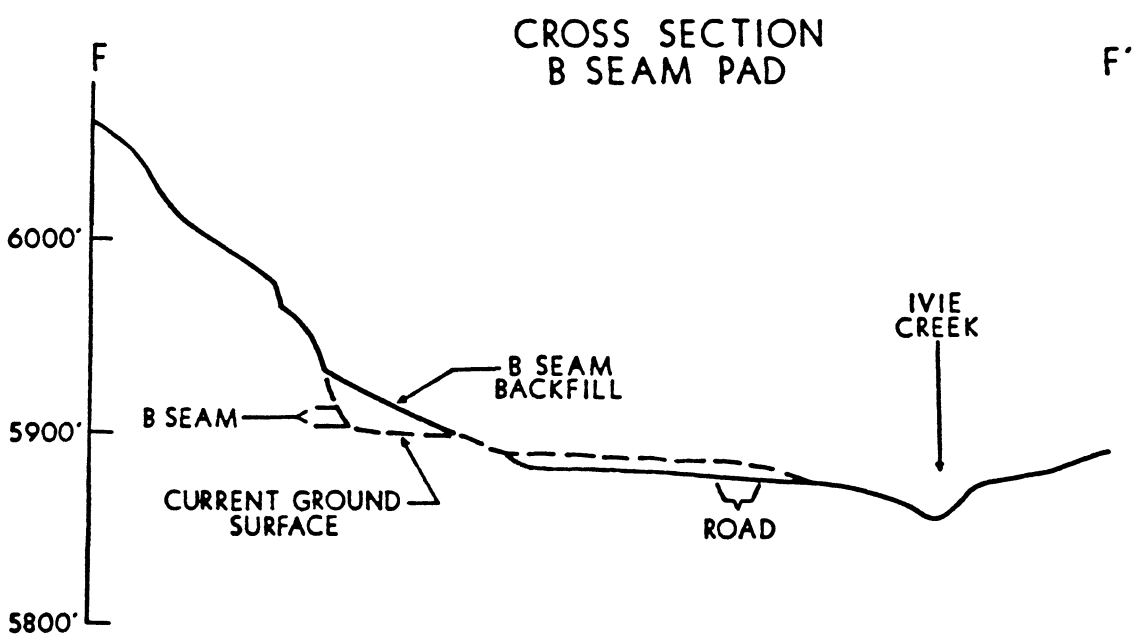
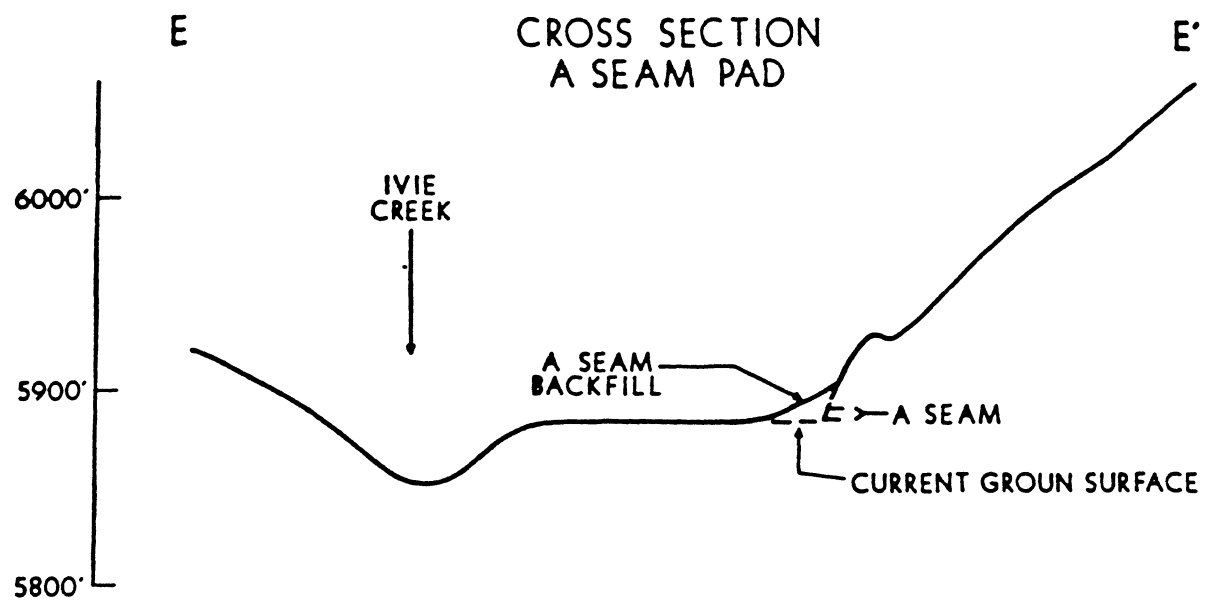
seam pads and highwalls are presented on Figure IV. Backfill volume required for the A seam is estimated to be 2500 cubic yards. This quantity plus the substantial existing talus bank that has naturally formed at the toe of the highwall will be adequate to achieve a 2h:1v fill slope. The volume of fill required to achieve a 2h:1v slope against the B seam is approximately 10,200 cubic yards. The source of fill for these backfills will be the estimated 11,000 cubic yards of material excavated from the channel to be cut through the B seam pad and the 1800 cubic yards of road base material stockpiled on the site. The road base material will be placed against the highwall on the B seam cut and covered with pad material.

The removal of the berm on the highwall diversion will allow the surface flows to drain down the hillside in small rivulets. To prevent gully action on the sloped portion of the diversion the sidecast material will be placed on the terrace to restore the original slope gradient(Plate III). This will require about 84 cu. yds. of material on 300' of terrace.

(1) Road

The three culverts (80' of 48" diameter, 40' of 18" diameter and 70' of 18" diameter) located in the road will be removed. The 48" diameter culvert, located at the crossing of the ephemeral channel, will be removed to construct a channel to allow fording of the creek. Based on the reaches up and downstream of the

Three small, exposed coal seams along the road cut have been backfilled at a 2h:1v slope. Surfaces were prepared and revegetated according to the original revegetation plan.




 CONSULTANTS GROUP <small>SALT LAKE CITY, UTAH</small>			
SOLDIER CREEK COAL COMPANY HIDDEN VALLEY MINE			
CROSS SECTION AND POST RECLAMATION CONFIGURATION A SEAM AND B SEAM PADS			
<small>BY</small> <small>DATE</small>	<small>REVIEWED BY</small> <small>DATE</small>	<small>DESIGNED BY</small> R.J.B.	<small>DRAWN BY</small> C. Piston
<small>SCALE</small> 1" = 200'		<small>DATE</small> 8/11/86	

FIGURE IV

portion to be restored, it is expected that the channel bottom will rest on bedrock. The gradient of the channel will be the same as it was on the culvert (0.071 ft/ft) (Figure V). The channel will be riprapped to stabilize the disturbed section.

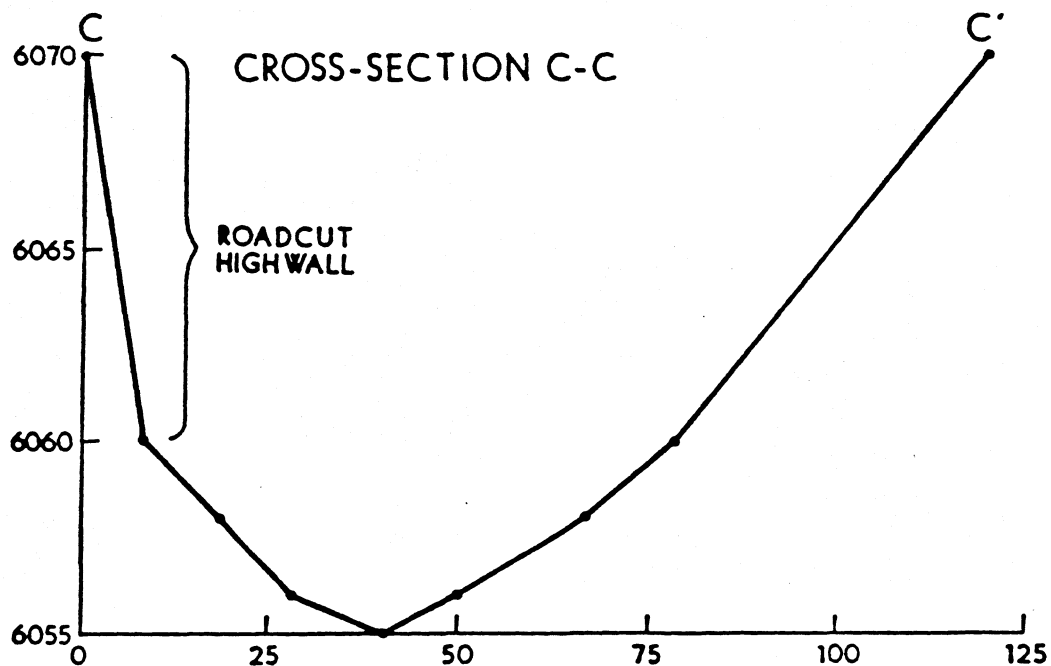
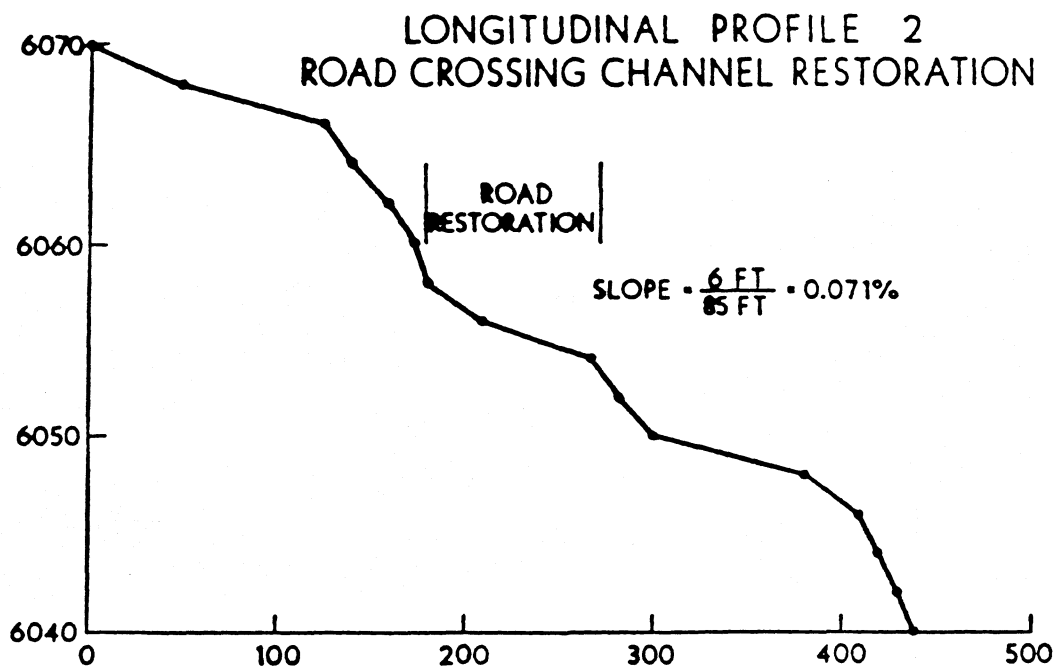
The other two 18" diameter culverts are road drainage culverts which were spaced to convey runoff under the road to prevent significant erosion. With the removal of these culverts waterbars will be installed according to spacing in Table 3b and Plate III at a 45° angle to the direction of the roadbed. These waterbars will serve a similar purpose as the culverts, to control and collect surface runoff from the road and the hillsides above the road. The 11 waterbars will be approximately 18" high by 72" wide with a rounded crest extending across the road (Figure VI). The area just up hill from the bar will be excavated to a depth of 12" by a width of 48". The small flows diverted at each waterbar will be discharged to the west into the natural rockfill above the ephemeral drainage.

The roadbed will then be ripped to increase percolation and water-holding capacity. The entire road surface will be seeded. A gate with a lock will be installed near the top of the road to discourage trespass and prevent livestock drift onto the revegetated areas (Plate III).

This reclamation process on the road will restore the natural

Two additional waterbars have been added near the end of the road to prevent erosion of the toe of the small roadside coal seam backfill. They were installed according to the specifications in the original Plan. In addition, onsite rock has been placed in the waterbar outfalls to supplement existing rock fill where needed to control gullying. Small loose-rock check dams were installed at the downstream end of the waterbars to check the water before it spills over the crest of the outfall.

During the 1989 repair work, the road was not ripped and revegetated, for the reasons described on Amendment page 51. Erosion from the road surface appears to be adequately controlled through the installation and maintenance of water bars, and through the previous three years' of revegetation.



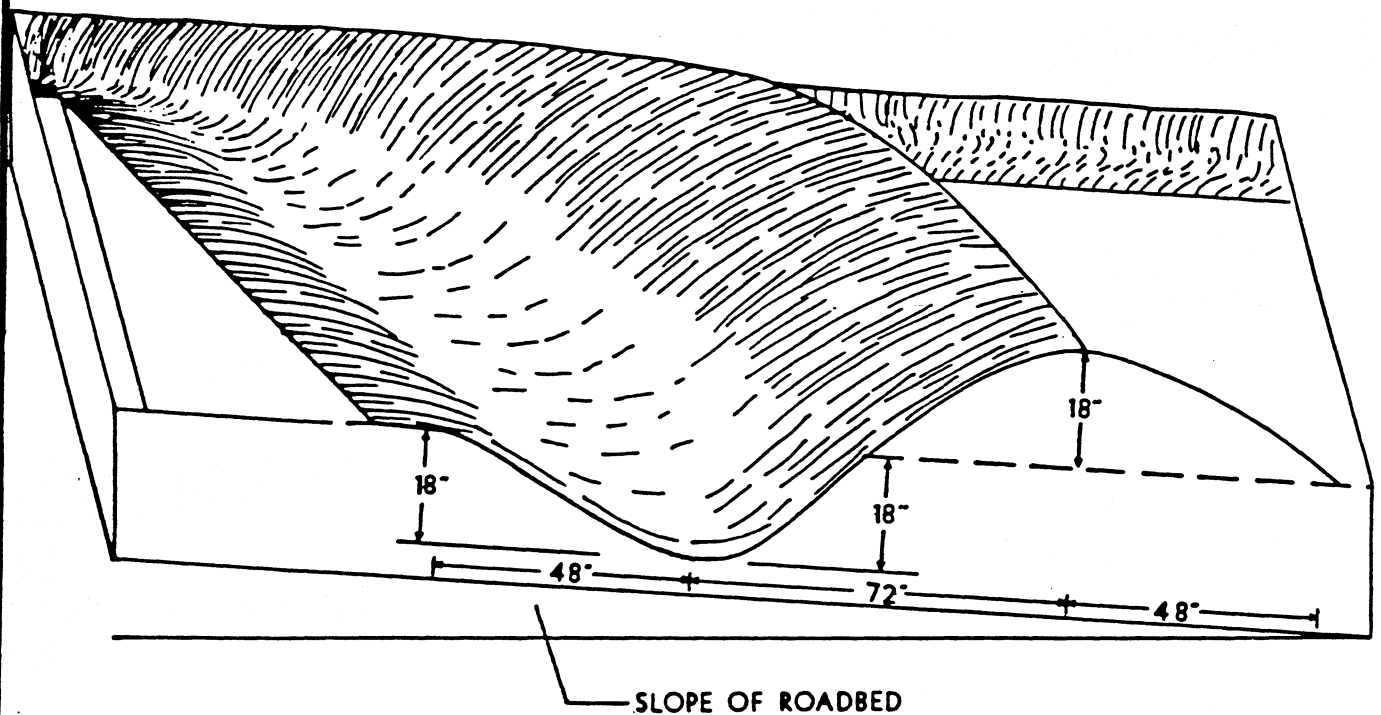
CONSULTANTS GROUP
SALT LAKE CITY, UTAH

**SOLDIER CREEK COAL COMPANY
HIDDEN VALLEY MINE**

**SECTIONS AND PROFILE
OF
ROAD CHANNEL**

BY	DATE	DESIGNED BY	DRAWN BY
		T.J.S.	C. Platon
SCALE	AS SHOWN	DATE	7/25/86

FIGURE IV



CONSULTANTS GROUP
SALT LAKE CITY, UTAH

**SOLDNER CREEK COAL COMPANY
HIDDEN VALLEY MINE**

**BLOCK DIAGRAM OF
ROAD WATERBARS**

DATE	PROJECT	DESIGNED BY	DRAWN BY
		E.J.B.	C. Pisten
SCALE	1" = 30'	DATE	8/11/86

FIGURE VI

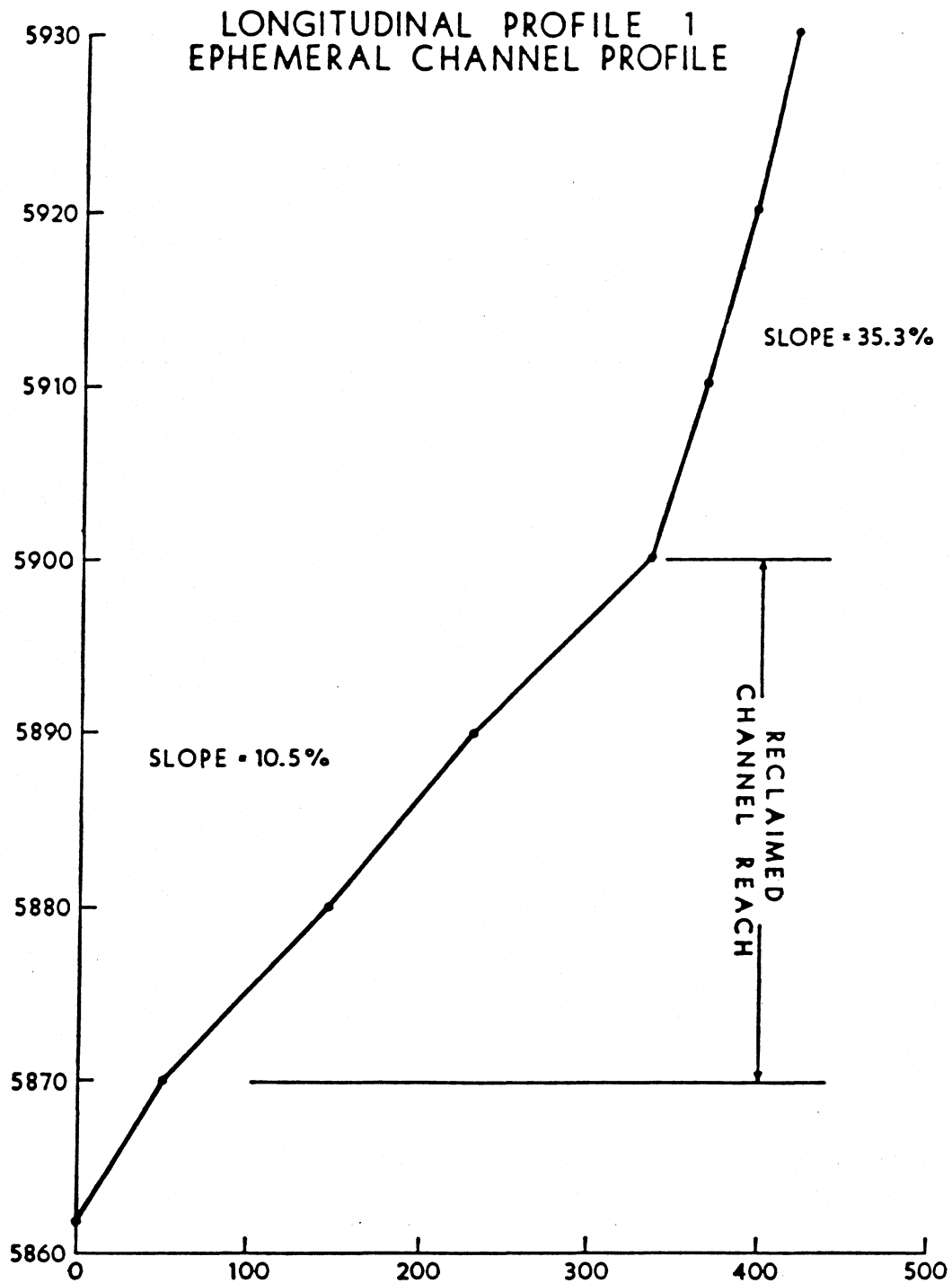
drainage patterns and control erosion. Because the cuts and fills remain the integrity of the road alignment is retained . Thus, the road could be restored for use in future coal resource development with minimal construction activity and environmental damage.

A variance is requested to allow these stabilized road fills and cuts to remain after reclamation and monitoring are completed.

Pads

The 250' of 48" diameter culvert in the "B" seam pad will be removed and the ephemeral channel restored to approximately original grade. The gradient will be uniform at 10.5% and the sidelsopes will be 4h:1v. The depth variation of the channel is shown in Figure VII and the cross-sections of the proposed and natural channels are shown in Figure VIII. It will then discharge into Ivie creek. This channel will be riprapped to stabilize the surface and prevent excessive headcutting. The excavated material from the channel will be used to cover the coal seam and to slope the adjacent pads to drain into the restored ephemeral channel. A silt fence will be installed on the channel banks to prevent sediments from reaching the channel prior to vegetation becoming established on the topsoiled areas.

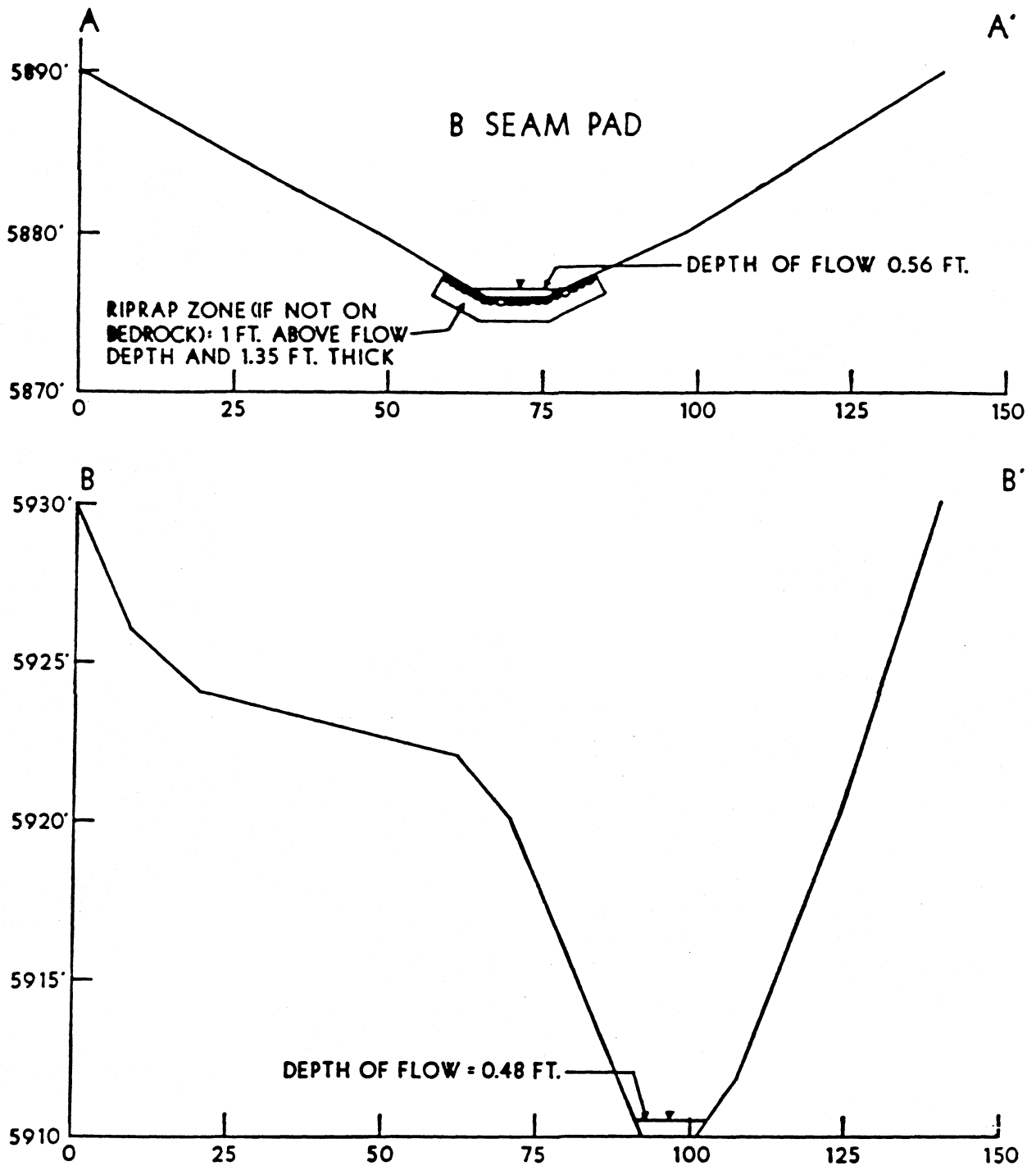
The 160' of 18" diameter culvert in "A" seam pad will be removed and the excavated material replaced in the channel. With the



Vertical Exaggeration: 10x

 CONSULTANTS GROUP <small>SALT LAKE CITY, UTAH</small>			
SOLDIER CREEK COAL COMPANY HIDDEN VALLEY MINE			
B-SEAM PAD RESTORED CHANNEL PROFILE			
<small>DESIGNED BY</small>	<small>PROJECT</small>	<small>APPROVED BY</small>	<small>DRAWN BY</small>
		T.J.S.	C. Patten
<small>SCALE</small>	<small>DATE</small>	<small>AS SHOWN</small>	<small>7/25/86</small>

FIGURE VII




 CONSULTANTS GROUP <small>SALT LAKE CITY, UTAH</small>	
SOLDIER CREEK COAL COMPANY HIDDEN VALLEY MINE	
CROSS SECTIONS OF EPHEMERAL CHANNEL	
<small>BY</small> <small>DATE</small> <small>BY</small> <small>DATE</small> <small>BY</small> <small>DATE</small>	<small>DESIGNED BY</small> T.J.S. <small>DRAWN BY</small> C. Pickett <small>SCALE</small> AS SHOWN <small>DATE</small> 8/11/86

FIGURE VIII

water-barring of the road and filling of the small roadside ditch the discharge into this culvert will be eliminated.

UMC 817.103 Backfilling and Grading: Covering Coal and Acid- and Toxic-Forming Materials

Coal or other associated materials are not readily evident on the site. Should any of these materials be discovered during excavation and backfilling they will be placed against the coal seams and covered with other non-toxic materials. There is no water drainage from the coal seams or adits. Therefore, acid mine drainage and related toxic elements would not be discharged from the site. See letter in Appendix Ia.

UMC 817.106 Regrading or Stabilizing Rills and Gullies

The existing rills in the road surface will be eliminated with water-barring and ripping of the road surface. The rills or gullies that may appear during post-reclamation monitoring will be stabilized by filling with soil and rocks. Chronic sites will be stabilized with small gabions or rock check dams.

IV Drainage Control - Including Sediment Control and Channel Restoration

UMC 784.14 (a)(1-4), (b)(1-2) Reclamation Plan: Protection of the Hydrologic Balance.

Response: The measures to be taken to protect the hydrologic balance during the present suspended operations are included in the Interim Plan, Runoff Control Plan.

Measures to be taken during the reclamation phase of the operation will include the following:

- 1) Reestablishment of the ephemeral drainage through the B-seam pad and at the present road crossing.
- 2) Removal of the road culverts and replacement with waterbar structures.
- 3) Removal of the A-seam culvert and regrading of the site to allow natural drainage of the site.
- 4) Removal of the discharge structures from the sediment pond and breaching of the embankment against Ivie Creek to provide a naturally draining structure.

- 5) Installation of a series of berms and silt fences prior to construction to allow control of erosion and to ensure that water quality of waters that are released from the site meet acceptable standards.

The 250 feet of 48 inch diameter culvert in the B-seam pad will be removed and the ephemeral channel restored to an approximately natural grade. The gradient will be uniform at 10.5%, the sideslopes will be at 4h:1v, and the bottom width will be 10 feet. The depth of the channel will vary depending on the exact location. The depth variation is shown on Plate V and the cross-sections of the natural and proposed channels are shown on Figure VIII. While little information is available as to the material underlying the 48 inch culvert, it is expected that much of the excavation for the restored channel will result with the channel bottom resting on bedrock. For any section of the channel where the bottom will rest on fill material, the fill will be riprapped to protect against erosion (see Figure VIII).

Evaluation of the restored channel for flow depth and for flow velocity to be capable of handling a peak flow of 71 cfs, indicates that the expected flow depth in the channel is 0.55 feet while the velocity is expected to be approximately 11 fps. As indicated above, a portion of the channel is expected to be bedded on bedrock and therefore will require riprap on the slopes, however several reaches of the channel are expected be

provide adequate protection, the riprap will be required to have a D₅₀ of 0.75 feet. Table 3 shows design specification of the riprap gradation.

Table 3 Riprap Gradation

D 100	2.5 * D50	1.50 ft.
D 85	1.8 * D50	1.13 ft.
D 50	1.0 * D50	0.75 ft.
D 15	0.1 * D50	0.08 ft.

Design calculations for all diversions and hydrologic structures are presented in Appendix III.

No filter blanket is presently planned for the site. This is due to the coarse nature of the material in the channel area. No particle size distribution for the channel material is available, because the 48 inch culvert and fill material exists at the proposed location of the channel. It is expected however, that when the culvert is removed, much of the coarse bedding material will remain in those portions of the channel requiring riprap. This is expected to provide a more than adequate blanket layer for those portions of the channel requiring riprap. To ensure that the channel design is adequate, a sample of the material in the channel area will be taken (after the culvert has been removed) for particle size analysis. The data will be used to evaluate the need for a filter blanket in those areas to be riprapped.

The 48 inch culvert, located at the crossing of the ephemeral channel (see Plate V), will be removed and the channel excavated to construct a channel to allow fording of the creek (see Figure V). Based on the reaches up and downstream of the reach to be restored, it is expected that the channel bottom will rest on bedrock. The gradient on the channel will be the same as that on the culvert (0.071 ft/ft). Assuming a conservative approach, the peak flow determined for the restored ephemeral channel through the B-seam pad will be used in the evaluation of the road crossing channel restoration. Using a peak flow of 71 cfs, the flow depth through the channel is 0.93 feet. The velocity of flow through the restored reach is 7.4 fps. This is below the maximum allowable velocity for flows over bedrock so only the slopes one-foot above flow depths will be riprapped.

As the road and A-seam pad are regraded it becomes necessary to remove the 18 inch culvert through the pad. With the water barring of the road and the filling-in of the road side ditch, the normal drainage to the culvert will be diverted. Therefore, there is no reason for the culvert to remain.

Regrading of the A-seam pad, as shown on Plate V, will result in two drainage areas on the pad. First is the main portion of the pad and second is the sediment pond area. Due to the reestablishment of the ephemeral channel and the regrading of the road, the main portion of the A-seam pad will convey water from a

drainage area of 0.78 acres through a silt fence to Ivie Creek via a triangular ditch. The peak flow for the area is 0.26 cfs. This flow is based on the 10 year 24 hour precipitation event and a curve number of 80. The ditch will have 2h:1v side slopes, a depth of 1.5 feet, and an anticipated flow depth of 0.17 feet. Evaluation of the flow in the ditch at its steepest section shows that 6" D₅₀ riprap protection is required to handle the maximum expected velocity of 4.3 feet per second (f/s). The riprap gradation is presented in Table 3a. No filter blanket is proposed due to the short stretch of channel and the gravelly nature of the soil.

With the reestablishment of the ephemeral channel, regrading of the access road and the A-seam pad, the area draining to the sediment pond will be quite small, less than one acre. As such the pond will no longer serve a purpose. Therefore, it is Proposed that the discharge structures of the pond be removed and the embankment facing Ivie Creek be breached allowing the small drainage area to follow through the pond area. The regraded surface of the pond is shown in Plate V with the cross-sections and longitudinal profile shown in Figure II.

The peak flow resulting from the small area above the pond is only 0.1 cubic feet per second (cfs). This value is based on the 10 year 24 hour precipitation event and a curve number of 80. This discharge for the regraded pond area will be past through a

Flow to the pond is 0.36 cubic feet/second (original pond diversion flow plus flow from the remainder of the A-seam pad). Flow velocity is 7.0 feet/second and flow depth is 0.16 feet, as shown on the updated Table 2 on Amendment page 10-a.

silt fence as shown on Plate III and conveyed to Ivie Creek via a triangular ditch. The ditch will have 2h:1v side slopes, a depth of 1.5 feet, and an anticipated flow depth of 0.11 feet. Elevation of the flow in the ditch at its steepest section shows that the maximum expected velocity of 3.8 feet per second (f/s) requires a riprap of 6" D₅₀. Table 3a shows the riprap gradation for the channel. As with the A-seam diversion channel no filter blanket is proposed.

Prior to the construction of the above described drainage structures, a series of berms and silt fences will be constructed, as shown on Plate V, to control erosion from the site and aid in meeting water quality standards for any runoff from the site during construction. The material specified for the filter fabric will be required to be capable of withstanding prolonged exposure to ultraviolet rays. The construction and installation of the silt fences will consist of the following:

- 1) Placement of "t" fence posts at eight foot spacing along the length of the proposed silt fence location.
- 2) Attach "chicken" wire fence material to the fence posts at top and bottom of the wire fence material along the ground surface.
- 3) Secure silt fence fabric to the chicken wire fence, on

Drainage from the entire A-seam pad, including the fill slope, the main pad area and the old sediment pond location, is all conveyed through a series of silt fences to the diversion at the location of the old sediment pond which empties into Ivie Creek. The channel constructed during the original Plan is sufficient to carry these flows, as indicated on the Amendment page 10-a.

Silt fences were constructed according to original specifications, but in some areas a heavy-gauge field fence was used instead of the chicken wire called for in the original Plan. The field fence will provide a stronger support for the fabric.

The A-seam terrace diversion has been made functional by regrading the bench cut, and has been extended by creating a ditch across the road and down onto the flat area east of the ephemeral channel. The alignment of this channel is shown on the revised Plate III, and design details are given in the addendum to Appendix III. Information on peak flows and channel configuration for this diversion is updated on Amended page 10-a.

A series of small retention berms was placed downslope of the outlet of the channel parallel to the slope on the flat bench east of the ephemeral channel. The alignment of these berms is shown on revised Plate III. They are approximately 2 feet high, with 2h:1v sideslopes, constructed with cut/fill techniques. They will serve to retain runoff and sediment and pass the overflow to the next, downstream berm, thus creating a longer flow path to the silt fence and the ephemeral channel.

the upstream side of the fence, at the top of the fence only. This protects the integrity of the silt fence fabric. The lower edge of the silt fence fabric is to be buried at the base of the fence to a depth of at least 6 inches.

- 4) The ends of the silt fence are to be enclosed in an adjacent berm to ensure that no runoff is allowed to bypass the silt fence.

UMC 784.14 c Reclamation Plan: Protection of Hydrologic
Balance

Probable Hydrologic Consequences Assessment

for the

Hidden Valley Mine

1.0 Introduction

The purpose of this section is to address the requirement raised in the State of Utah, Department of Natural Resources, Division of Oil, Gas, and Mining (DOGM) regulations, UMC 784.14 (c), requiring that the operator of an underground coal mine address

Table 3a. Riprap Gradation for A-Seam and Sediment pond Diversions.

Size Percentage	Multiplier	Particle size
D100	2.5 x D50	1.25 ft
D85	1.8 x D50	0.90 ft
D50	0.5 x D50	0.50 ft
D15	0.1 x D50	0.05 ft

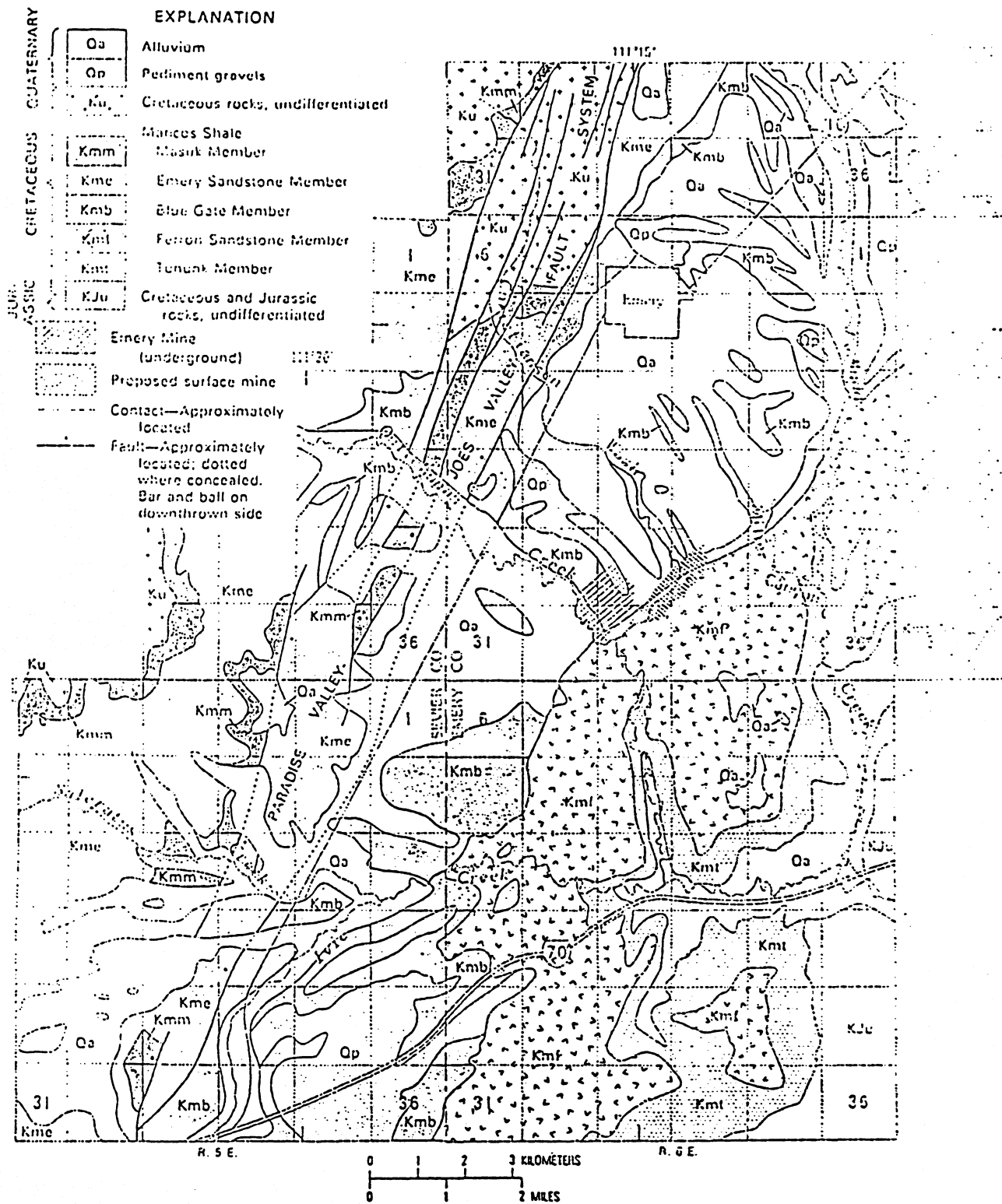
the probable hydrologic consequences of the proposed operation.

This section will present hydrologic and geologic information to allow the DOGM to review the impacts of the proposed operation. In the case of the Hidden Valley Mine, the proposed operation is the reclamation of a partially constructed underground mine.

2.0 Description of the Mining Operation

The Hidden Valley Mine is located in Emery County, Utah approximately seven miles south of the town of Emery. It was proposed to be a 500,000 ton per year underground coal mining operation. Due to poor market conditions, such development was not possible. Following several years of inactive status, the company has decided that the best course of action will be to reclaim the site.

Originally proposed as an underground mine to be developed in the A and B coal seams of the Ferron Sandstone Member of the Mancos Shale, the site was located adjacent to Ivie Creek in a small ephemeral drainage. The local geology is shown in Figure IX. Taken from Lines and Morrissey (1983), the figure shows that the Ferron Sandstone Member of the Mancos Shale is conformably overlain and underlain by the Blue Gate and Tununk Members, respectively, of the Mancos Shale. The sediments are of Cretaceous age and were deposited as part of a transgressive series of the shallow seas during middle Cretaceous time (Stokes



**FIGURE IX
LOCAL GEOLOGY**

and Cohenour, 1956).

Mine development was never undertaken. The extent of the workings, shown in Plate II and Figure I, were never expanded beyond the exploration adits. Samples were taken within the adits and from boreholes for coal quality data. No samples were taken of underburden or overburden quality. The coal quality data is presented in Appendix VI.

3.0 Surface Water

Figure X shows the surface hydrology surrounding the Hidden Valley site. Located adjacent to Ivie Creek, a perennial stream, approximately two miles from the confluence with Quitchupah Creek, drainage from the mine site flows through the sediment pond to Ivie Creek.

The mine site is bisected by an ephemeral drainage which has been diverted through a 48" culvert through the mine site. Drainage from above the portals has also been diverted by bench cuts and 18" culverts to Ivie Creek. Flow at the site is generally limited to thunderstorm runoff. Some snow melt does occur during the spring, however generally water produced from snow melt is evaporated or it infiltrates.

Water use in the area is mainly for stock and some irrigation. The waters are generally high in Total Dissolved Solids (TDS),

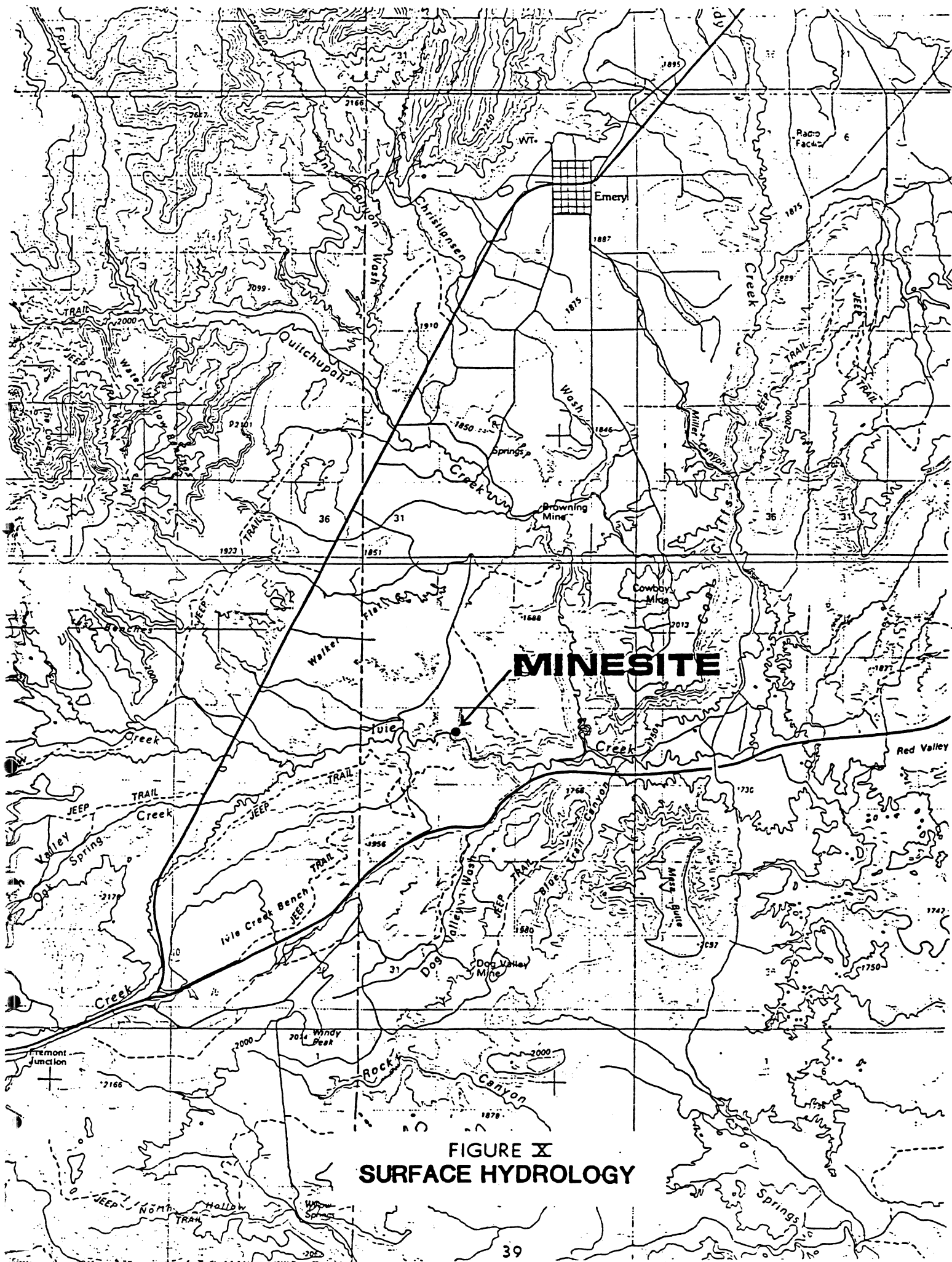


FIGURE X
SURFACE HYDROLOGY

averaging 3,050 mg/l, which limit the use of the waters. Seasonally, the TDS concentration varies from 700 mg/l in the spring to 3,000 to 5,000 mg/l in the fall. No significantly high metals were noted. The surface runoff is dominated by sodium and sulfate ions.

Average flow in Ivie Creek is less than 1 cfs. Minimum flows at the weir on Ivie Creek were less than 0.1 cfs. The maximum flows reported by the U.S.G.S. was 1,240 cfs. The maximum flows usually occur during either the spring as a result of snow melt runoff on the south end of the Wasatch Plateau or as thunderstorm runoff from summer storms.

4.0 Ground Water

Ground water in the area of the Hidden Valley site occurs in the Ferron Sandstone Member of the Mancos Shale. Recharge to the sandstone occurs from three areas. First and largest, is subsurface inflow, most likely from the Wasatch Plateau. Second is a moderate amount of recharge from infiltration of precipitation at the outcrop. Last is leakage from either the overlying Blue Gate Shale or the underlying Tununk Shale. This last area of recharge is quite small. Lines and Morrissey (1983) indicate that recharge values to the Ferron Sandstone are: 2.4 cubic feet per second (cfs) from subsurface inflow; >0.1 cfs from precipitation; and >0.1 cfs from leakage from both the Blue Gate

and Tununk Shales.

Discharge from the Ferron Sandstone occurs from six areas. In order of decreasing rate they are: leakage to the Blue Gate Shale, mine discharge, leakage along streams, leakage to the Tununk Shale, well discharge, phreatophyte transpiration, and spring and seep flows. Lines and Morrissey (1983) indicate flow rates for these discharge areas are as follows: 0.8 cfs for leakage to the Blue Gate Shale; 0.7 cfs from Browning mine discharge; 0.4 cfs each for both stream leakage and leakage to the Tununk Shale; 0.3 cfs for well discharges; and >0.1 cfs each to both phreatophyte transmission and spring and seep flows. The balance of these order of magnitude numbers for inflow to and discharges from the Ferron Sandstone is within 0.1 cfs.

Seven boreholes were drilled on and adjacent to the mine plan area. Four of these boreholes encountered water and were completed as water monitoring wells. Two of the dry holes were plugged and reclaimed. The last borehole was not plugged and will be plugged as part of the mine reclamation activities. Plate IV, Page 14, shows the locations of the boreholes. Sites DH-1, DH-2, DH-3, and DH-7 encountered water and were completed as monitoring wells.

The depth of the various boreholes is shown in Table 4. As mentioned above, only four of the holes were completed as

Table 4 Completion Details and Approximate Water Elevations For Boreholes

Drill Hole Number	Collar* Elevation	Depth of Hole	Depth Cased	Perforated or Open Zone	Water Level	Approximate Water Elevation	Comments
DH-1	6020	439	165	165-439	+196	6216	hole uncased thru and beneath water production zone
DH-2	6058	545	155	155-545	-12	6046	"
DH-3	6140	484	155	155-484	+157	6297	"
DH-4	6232	464	0	0	0	0	Dry hole
DH-5	6060	414	0	0	0	0	Dry hole
DH-6	6148	464	0	0	0	0	Dry hole
DH-7	6152	600	600	300-600	>gs**	>6152	Water flowing at the surface - No pressure recorded

* not surveyed - taken from U.S.G.S. Topographic map, Walker Flat Quadrangle, 40 Foot contour interval.

** Ground surface.

monitoring wells. The completion details of these holes are also shown in Table 4.

DH-1, 2, 3, and 7 have water levels which are above the ground surface, representing an artesian condition in the Ferron sandstone. DH-1 has a shut-in pressure of approximately 85 psi, representing 196 feet of water. DH-2 has a water level within the casing at 6046 feet. The ground surface for DH-2 is 6058 feet. The pressure head in DH-3 is 68 psi. This represents 157 feet of water. The shut-in pressure of DH-7 was not recorded, however it has a sustained flow of approximately 5 gallons per minute (gpm) from a casing above the ground surface.

Lines and Morrissey (1983) estimate, based on a computer simulation of the Ferron Sandstone Aquifer (Morrissey, et al., 1980), that potentiometric surface in the area of the mine is between 6000 to 6050 feet and moves toward Ivie Creek and to the east. Comparison of these estimated potentiometric surface elevations with the approximate elevation values presented in Table 4, shows only one close value. The remaining three water levels are 100 to 250 feet higher. This variation is most likely due to the semiquantitative nature of the computer simulation data. Lines and Morrissey (1983) indicate that the computer model predictions are semiquantitative due to: the lack of historical data verification; the nonsteady state conditions during data collection period; and the inability of the model

used to account for the fractures in the Ferron Sandstone which act as major groundwater flow conduits.

The computer model was based on actual data inputs of transmissivity, hydraulic conductivity, and storage. As part of the Lines and Morrissey study (1983) values for each parameter were determined. Aquifer tests were conducted to determine transmissivity values. Transmissivities ranged from 200 to 700 square feet per day downdip from the outcrop area to less than 200 square feet per day in the outcrop area. Hydraulic conductivity values were evaluated for the sandstones and shales. The sandstones were found to average 1.5×10^{-1} feet per day in the horizontal direction and 9.1×10^{-2} feet per day in the vertical. Conductivity values for the shales were found to average 3.8×10^{-4} feet per day horizontally and 1.3×10^{-3} feet per day in the vertical. It is felt that the reduction of the transmissivity value toward the outcrop is a result of the thinning of the formation and a reduction in the saturated thickness rather than a change in the hydraulic conductivity.

The storage coefficient, for the confined portion of the aquifer, ranges from 3.0×10^{-6} to 2.0×10^{-3} . For the unconfined zone, the storage coefficient is estimated to average about 0.05.

Quality of the regional ground water is generally quite good, with municipal and industrial uses farther up gradient (toward

Emery). In and adjacent to the mine, four water wells were completed by Soldier Creek Coal Company for industrial use. Water rights were filed and approved for these wells (App # 47409). Water analyses from these wells shows the water quality to be good. TDS concentrations ranged from 610 to 850 mg/l with no elevated metals concentrations. The ground waters, like the surface waters, are dominated by sodium and sulfate ions.

5.0 Consequences of Reclamation Activities

This sub-section provides a general description of the reclamation activities and their consequences and impacts.

5.1 Description of Reclamation Plan

The reclamation plans for the Hidden Valley mine call for reclamation of the portal pad area and restoration of the portal access road. The proposed plans are:

1. Removal of the 48" culvert for the ephemeral drainage under the pad and at the road crossing and the 18" culverts from the portal bench terraces above the A and B seams to Ivie Creek, regrading of the site, and restoration of the ephemeral channel to convey water to Ivie Creek.
2. Removal of the sediment pond discharge structures and regrading of the pond embankments and A-seam pad to establish and ensure adequate drainage for the site.

3. Installation of a combination of berms and silt fences along the edge of the regraded slopes and the ephemeral channel to serve as temporary sediment control measures.
4. Removal of the road culverts, regrading of the road surface to slope to the ephemeral drainage, and installation of water bars at a 45 degree angle to ensure drainage is conveyed off of the road to the ephemeral channel.
5. Revegetation of the site with an acceptable seed mix and erosion protection with hay mulch applied at a rate of 4,000 pounds per acre.

Further details of the channel restoration plan can be found in the Hydrology Section of the reclamation plan for the Hidden Valley mine.

5.2 Impacts and Consequences of the Reclamation Plan

5.2.1 Ground Water

Based on the fact that no ground water has been encountered at the site or in the underground workings and that the ground water is confined and isolated from the surface so no surface activities can or will affect the ground waters, no ground water impacts are expected.

The fill slopes at the A- and B-seams have been covered with an erosion-control matting in place of the hay mulch.

5.2.2 Surface Water

Surface water impacts at the site are expected to be minimal. Construction and reclamation activities will result in suspended and settleable solids in the runoff water from the disturbed and reclaimed areas. This sediment laden runoff will be minimized by the installation of berms and silt fences adjacent to the ephemeral drainage and to Ivie Creek during all reclamation activities.

Also, some settleable solids contributions are expected from within the restored ephemeral channel during the first few runoff events. This flushing will not be a significant problem, due to the bedrock channel bottom or to riprap protection for fill sections. Also during and for a short period following channel restoration, a silt fence will be installed across the ephemeral channel, at the confluence with Ivie Creek, to aid in controlling erosion and sediment contribution.

6.0 Conclusion

No significant long term impacts are expected to either ground or surface waters. Some minor short term affects are expected to the surface water system from the reclamation activities; however, these will be minimized by the actions of the company during the reclamation and by nature once the reclamation is established.

References

Lines, G.C. and D.J.Morrissey, 1983. Hydrology of the Ferron Sandstone Aquifer and Effects of Proposed Surface-Coal Mining in Castle Valley, Utah, U.S.G.S. Water Supply Paper 2195. Washington, D.C.

Morrissey, D.J., G.C.Lines, and S.D.Bartholoma, 1980. Three-Dimensional Digital-Computer Model of the Ferron Sandstone Aquifer near Emery, Utah. U.S.G.S., Water-Resources Investigation 80-62. Salt Lake City, Utah.

Stokes, W.L. and R.E.Cohenour, 1956. Geologic Atlas of Utah-Emery County, Bulletin 52, Utah Geological and Mineral Survey. Salt Lake City, Utah.

UMC 784.16 (a)(1)(i-iii) Reclamation Plan: Ponds, Impoundments,
Banks, Dams and Embankments

Response: See Section II, Pages 9 & 11

UMC 784.16(a)(2)(iv) Timetable

Response: Refer to Section VIII, Schedule

UMC 784.16 (a)(3)(iv)

Response: The sediment pond shall be removed concurrently with
reclamation of the area.

UMC 784.16 (b)(1)

Response: Refer to Interim Plan, Runoff Control Plan

UMC 784.16 (b)(2)

Response: Refer to Interim Plan, Runoff Control Plan

UMC 784.16 (c)

Response: Refer to Interim Plan, Runoff Control Plan

UMC 784.16 (d) (e)

Response: Not Applicable

UMC 784.22

Response: See Figures IV,V,VII & VIII

UMC 817.150-.156 Roads: Class I

The Class I road was constructed with public funds and is dedicated to Sevier and Emery Counties. See ROW documents in Appendix I.

UMC 817.160-.165 Roads: Class II

Response: Refer to Interim Plan, Mine Plan Section, Figure 6.1: Appendix D

UMC 817.166 Roads: Class II: Restoration

(a) Request variance for retention of road alignment only. A variance will be required to retain the road surface materials (mostly native fill materials) and the rock cuts and fills.

(1) A sign "Road Closed" will be placed at the terminus of the paved road. A 3-wire, 42" high barbed wire fence, tied to rock

UMC 817.89 Disposal of Non-Coal Wastes

A waste bin will be located onsite during reclamation construction for disposal of solid and liquid wastes. The bin wastes and culverts or drainages structures removed will be hauled offsite to the appropriate landfill for disposal.

UMC 817.166 Roads: Class II: Restoration

(a) Request variance for retention of road alignment only. A variance will be required to retain the road surface (mostly native fill materials) and the rock cuts and fills.

ledges, will be constructed across the upper portion of the road to prevent access. This fence will be checked at each site visit during the monitoring period and maintenance completed as required to retain the integrity of the fence.

(2) The 48" diameter culvert will be removed and the natural ephemeral drainage restored and stabilized. This will require the excavation of approximately 213 cu. yds. of fill. The channel design will adhere to the standards proposed in Table I except the sideslope gradient will be less to accommodate the passage of 4WD vehicles.

(3) The 48" and two 18" diameter culverts will be removed and the excavations backfilled.

(4) The roadbed shall be ripped and scarified prior to revegetating.

(5) Fill slopes are stable and similar to natural rock slopes in the area both in materials and grades.

(6) Cut slopes are rock and shall remain. They are similar to the ledges and cliffs in the area.

(7) The eleven water bars shall be spaced according to Table 3b and located on the ripped roadbed according to Plate III at a 45

After the initial revegetation attempt on the road, two additional attempts were made to establish vegetation on the road. In the fall of 1987, and again in the fall of 1988, the road surface was ripped, seeded, fertilized and mulched according to the original Revegetation Plan. As part of the 1988 revegetation work, a photo-degradable netting was also placed to help hold the mulch.

During the 1989 work, it was decided not to do further revegetation work on the road surface, for the following reasons:

- 1) Each successive year of ripping the road surface to prepare the seedbed has had the negative effect of bringing large rock to the surface, while the desirable soil material has fallen into the voids. In localized areas, ripping the road continues to expose the coal bedrock just under the road surface. These consequences of ripping have substantially decreased the suitability of the road surface as an adequate medium for plant growth. Ripping has also prevented the road from being suitable as a four-wheel drive road, as was permitted during the initial Reclamation Plan. It was felt that re-ripping the road would simply worsen these problems.
- 2) Observations of growth patterns on the road surface over three consecutive years indicates that salinity of the soil may also be worsened by excessive disturbances such as ripping. It is thought that exposing new material to the surface, as well as creating conditions for excessive evaporation of soil moisture, has increased salinity of the already-saline soil material. It was felt prolonged exposure of the ripped soils to precipitation may leach some of the salts from the surfaces, as the ripping has provided adequate internal drainage. Also, the residue from successive seeding over the last few years has provided adequate seed when future conditions allow for germination. For the above reasons, it was felt that minimizing the disturbance on the road would be the best alternative at this time.
- 3) It appears that erosion from the road surface is adequately controlled, so additional ripping and reseeding is not necessary from a water quality standpoint.

Table 3b Water Bar Spacing for the Calmat Access Road.

Section	Length	Slope	Spacing	Number of Bars
1	200 ft	5.8%	800 ft	1
2	450 ft	9.7%	500 ft	1
3	450 ft	3.0%	800 ft	1
4	300 ft	0.8%	1000 ft	1
5	850 ft	11.8%	200 ft	4
6	250 ft	15.0%	160 ft	2
7	200 ft	17.0%	150 ft	1
8	200 ft	1.2%	1000 ft	0
	----- 2900 ft			<u>11</u>

Slopes were taken from Plate VI, Class II Road Vertical Alignment and Plate V, Final Configuration.

degree angle to discharge into the stable rock fills. The 11 water bars will average 18" in height and 60' in length (Fig. VI). These will be checked during each site visit of the monitoring period and cleaned and repaired as necessary.

(8) No terraces are necessary.

(9) No topsoil is available to cover the road surface. The native fill is suitable growing medium if properly prepared by mulching and fertilizing.

(b) The road surface materials are suitable for revegetation as noted in (a) (9)

UMC 817.170-.176 Roads: Class III

There are no Class III roads in the permit area.

Two additional waterbars have been added near the end of the road to prevent erosion of the toe of the small roadside coal seam backfill. They were installed according to the specifications in the original Plan. Where needed to control gullying, onsite rock has been placed in the waterbar outfalls to supplement existing rock fill. Small loose-rock check dams were installed at the downstream end of the waterbars to check the water before it spills over the crest of the outfall. These checkdams were constructed with small, notched spillways to control overflow.

V Topsoil Redistribution and Surface Preparation Including
Testing and Amendments

UMC 817.21 Topsoil: General Requirements

One topsoil pile of approximately 770 cu. yds. is located on the "B" seam pad.

UMC 817.24 Topsoil: Redistribution

The single topsoil stockpile will be redistributed on the "B" seam pad.

The soil stockpile on the B seam pad is approximately 770 cu. yds. of fine sand, silt loam salvaged from the alluvial benches during initial development. This will be used to topsoil the 2.1 acres of covered B seam and the regraded pad. This topsoil will be spread to a thickness of approximately 2.5 inches.

The pad at the "A" seam and the sediment pond were constructed of alluvial silt loams, rocky sandy loams and coal seam overburden. There is no topsoil available for this pad so the existing mixture of materials will be used for the seedbed. During construction an attempt will be made to salvage the better soil materials as they are exposed.

UMC 817.25 Nutrients and Soil Amendments

Composite soil samples were taken from the topsoil storage pile and from each pad in March and July, 1986. See Appendix II for the complete lab reports.

The soil materials are low in fertility. They lack sufficient cation sites and organic matter to provide the basic nutrients for plant growth. Phosphorus and nitrogen are at especially low levels. Sulfates and sodium are at high levels and very mobile in these soils. The soil textures are sandy loams. Some fines are probably contributed by coal and overburden debris. Saturation percent indicates adequate water holding capacity.

To partially overcome the poor fertility structure of these soils 4,000 lbs/acre of green alfalfa hay mulch will be applied to the seedbeds to increase organic matter and also nitrogen and potassium. Diammonium phosphate fertilizer pellets will be spread in the fall at the rate of 242 lbs/acre to increase phosphorus and nitrogen. The dragging operation on the seeded soils will cover the mulch and fertilizer. A spring application of 100 lbs/acre of liquid urea will supply additional nitrogen to the plants to compensate for the increased soil microbial action. This program will provide 140 lbs of phosphorus, 84 lbs of potassium and 187 lbs of nitrogen per acre in the seedbeds.

On areas which were reseeded during the 1989 repair work (A- and B-seam fills, and pad areas adjacent to the ephemeral channel) fertilizer was spread with a cyclone spreader. The fertilizer used during the original revegetation work was not readily available, so 16-20-0-13(S) was used in its place after onsite approval was given by Henry Sauer and Lynn Kunzler of DOGM. It was applied at the rate of 100 pounds per acre, and was supplemented with additional urea (approximately 10 pounds per acre).

Table 5 Soil Fertility Summary

<u>Parameter</u>	<u>Range</u>
pH	6.79 - 7.83
Saturation %	29.2 - 33.4
CEC meg/100	4.17 - 6.84
Alkalinity as CaCO_3 mg/l	45.9 - 56.3
N %	0.025 - 0.032
P mg/kg	1.50 - 3.81
K mg/kg	91 - 95
Ca mg/kg	365 - 440
Mg mg/kg	138 - 515
SO_4 mg/kg	5,490 - 10,600
Na mg/kg	120 - 425

817.25 Nutrients and Soil Amendments

The correct conductivity reading is Umhos/cm as stated in the lab reports in Appendix II.

The metals copper, iron and zinc were determined from a DPTA extract.

A lab analysis was run on a sample of native soil obtained from a adjacent undisturbed area to provide baseline fertility information. These results are located in Appendix II under sample S-5.

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 by

During the 1989 repair work, revegetation was done on the A- and B-seam fill slopes, and on pad areas adjacent to the ephemeral channel.

On the fill slopes, the seedbed was prepared by first loosening the soil and repairing the gullies by bulldozing fill materials upslope. Then a series of small depressions/catches were made by using the dozer blade to create small furrows the width of the blade (furrows were approximately 6 inches deep, 8 inches wide, spaced at 1.5-foot intervals down the slope). These were placed across the entire fill slopes. Due to the very soft, powdery nature of the recently disturbed soils, some definition of these was lost during additional disturbance by seeding and placing the erosion control matting, but they still maintained their function as a surface roughening mechanism.

Since the prepared soil surface was very loose and did not easily settle, it was not necessary to rake in the seed and fertilizer. The fertilizer was of sufficient weight to sink slightly under the soil surface, and the seed was adequately worked into the soil by the act of walking on it and applying the erosion control matting. Care was taken to apply seed during periods of no wind, and netting was done immediately afterward to prevent wind loss.

On the flatter pad areas where revegetation was done, the soil surface was prepared by ripping the soil to a depth of 6- to 8 inches. Seeding and fertilizing was done during periods of no wind and covered by the action of dozer tracks on the loose soil.

The fertilizer and seed were applied with cyclone type spreaders at the rate prescribed on previous pages.

installation of 3-wire 42" barbed wire drift fences across Ivie Creek and on the road alignment (Plate III).

UMC 817.112 Revegetation: Use of Introduced Species.

A mixture of native and commonly used introduced species will be seeded on the disturbed areas. The introduced species are legumes that provide nitrogen-fixing capabilities. Two grasses, crested wheatgrass and Russian wildrye, are used to provide erosion control and food for wildlife.

- (a) Both species are now established on the site from past undocumented seedings. These two species also did well on test plots located just north of the permit area. They became quickly established as seedlings and maintained themselves during the 5 year test of revegetation success on the Emery Coal fields.

See page 9 & 10 of Reclamation on Utah's Emery and Alton Coal Fields: Techniques and Plant Materials; R.B.

Ferguson and Frischknecht, N.C.; Research Paper INT-335; Intermountain Forest and Range Experiment Station Ogden, Utah.

- (b) Indian ricegrass and sand dropseed will be slow to germinate and establish groundcover on the reclaimed sites. Quick cover species are needed to provide erosion control in the first two-three years.

(c) The species provide food and cover for small animals.

Both produce high yields of seed for birds and rodents.

(d) The two species are not poisonous or noxious and meet State and Federal seed standards.

The following seed mixture and rates will be used:

Common Name	Scientific Name	PLS
		lbs/acre
crested wheatgrass	Agropyron cristatum	1.0
sand dropseed	Sporobolus cryptandrus	0.5
Indian ricegrass	Oryzopsis hymenoides	3.0
Salina wildrye	Elymus salinus	3.0
Russian wildrye	Elymus junceus	1.0
yellow sweetclover	Melilotus officinalis	3.0
fourwing saltbush	Atriplex canescens	3.0
shadscale	Atriplex confertifolia	2.0
mat saltbush	Atriplex corrugata	2.0
winterfat	Ceratoides lanata	2.0
Total		<u>20.5</u>

This mixture varies from that listed in the Interim Plan. The mixture is designed to be salt tolerant and survive in the dry

Planting was redone on the A- and B-seam fillslopes and the pad areas adjacent to the ephemeral channel. The original revegetation mix was adjusted based upon experience gained with three seasons of planting since the original reclamation work was done in 1986. The revised seed mix is:

<u>Common Name</u>	<u>Scientific Name</u>	<u>PLS in lb/ac</u>
Hycrest hybrid	Agropyron cristatum	4
Indian ricegrass	Oryzopsis hymenoides	2
Russian wildrye	Elymus junceus	3
Yellow sweetclover	Melilotus officinalis	1
Fourwing saltbush	Atriplex canescens	1

All of these species were in the original mix, except that crested wheatgrass was replaced with a new, drought-tolerant hybrid of crested and Ephraim wheatgrasses. Species that were not hearty enough to withstand the drought conditions (i.e. winterfat) and species that did not germinate at all (i.e. sand dropseed) in past seedings were not utilized in the latest seeding attempt.

conditions of the talus slopes.

UMC 817.113 Revegetation: Timing

The seedbed will be prepared by ripping all compacted surfaces and scarifying the soil materials. The areas will be broadcast seeded in late fall (Oct-Nov) as the final reclamation phase. The species are all cool-season types except sand dropseed which actually germinates as late cool-season or early warm-season grass. The seed, mulch and fertilizer will be covered by dragging the loose soil surface.

UMC 817.114 Revegetation: Mulching and other stabilizing practices.

Alfalfa hay at 4000 lbs/acre will be spread on all the seeded areas. The mulch will be anchored with soil dragged over the hay. The graded slopes on the coal seams will require erosion control netting to hold the mulch and seed in place.

UMC 817.115 Revegetation: Grazing

The postmining land use is wildlife and livestock grazing. The location of the revegetated area precludes any significant value or use by livestock. Cattle use is restricted to a few head drifting along Ivie Creek. Wildlife use is restricted to small

The graded slopes on the A- and B-seams were stabilized with erosion control matting. This matting is North American Green SC-150, which is designed for use on steep slopes. It is comprised of straw and coconut fibers held together by a cotton netting and degradable, plastic netting. It was installed according to manufacturer's specifications for 2h:1v slopes, including trench-key-in, overlapping requirements, and a staple pattern of 2/sq. yd.

mammals, birds and raptors.

UMC 817.116 Revegetation: Standards for Success

A reference site is located on the talus slopes with a south aspect adjacent to the coal seams for the seedings on the pads, backfills and roadbed (Appendix IV). This corresponds to study site #3, steep rocky slopes, in the Interim Plan. The 0.14 acre roadbase storage site in study site #4, pinyon-juniper upper benches, is a very small area. To simplify the monitoring and bond release, the standard for success for this site will be the reference site established on the talus slope in the steep rocky slope vegetative type.

The seeded area will be checked monthly (April - Sept.) during the first two growing seasons. A site check will include inspection of fences, erosion control structures, seeding condition and wildlife or pest damage. The seeded areas will be carefully scrutinized to determine the need for reseeding. Line intercept transects will be utilized in year 3 to determine the need for reseeding. However, should the initial seeding obviously be a failure reseeding could be initiated earlier.

In years 3-10, the site will be visited annually during the growing season.

Reseeding of portions of the reclaimed area was accomplished in years 1, 2 and 3, and as such, no transects will be done until year 6. Monthly monitoring during the growing season will continue in years 4-6.

The cover, density and productivity of the seeded sites will be sampled in years 9 & 10 in preparation for bond release. The reference sites will be measured again with the methods used for the original measurements (See Appendix IV). The fences protecting the seedlings will be removed once the plant cover goals are achieved.

UMC 817.117 Revegetation: Trees and Shrubs

No trees will be planted. A variety of shrub species are included in the seed mixture.

VII Monitoring and Maintenance

UMC 817.41-.50 Hydrologic Balance: General Requirements

UMC 817.52 Hydrologic Balance: Surface and Ground Water Monitoring

The surface flows in Ivie creek, a perennial stream, are and will be sampled and measured semi-annually, during the months of May and September. The water analysis includes:

Field Measurements

Specific Conductivity (umhos/cm)

pH

Water Temperature (Degrees Centigrade)

Dissolved Oxygen

Flows (cfs)

Laboratory Analyses (mg/l)

Total Dissolved Solids

Total Suspended Solids

Total Settleable Solids

Total Hardness (as CaCO₃)

Acidity (HCO₃⁻)

Carbonate (CO₃⁻²)

Bicarbonate (HCO₃⁻)

Calcium

Chloride

UMC 817.52 Hydrologic Balance: Surface and Ground Water Monitoring

1. The upstream surface water sampling point is 1400 feet upstream from the confluence of the ephemeral channel in the development area and Ivie Creek in section 17. See Plate Ib. The site is on a curve of Ivie Creek below cliffs.

2. The downstream surface water sampling point is 400 feet downstream of the natural channel discharge below the disturbed area in section 17. This site is on the east shore north of the large curve in Ivie Creek. See Plate Ib.

Iron (Dissolved)
Magnesium
Manganese (Total)
Potassium
Sodium
Sulfates
Oil & Grease
Cation-Anion Balance

This monitoring program will be continued until bond release is obtained.

There is no ground water monitoring planned since there was no underground development and mine-water discharge.

Water quality samples will also be secured at the discharge points from the reclaimed area to Ivie Creek during each runoff event encountered during scheduled monitoring visits (water quality and revegetation checks).

UMC 817.56 Hydrologic Balance: Postmining Rehabilitation of Sedimentation Ponds, Diversions, Impoundments and Treatment Facilities

The sediment pond will be decommissioned concurrent with reclamation as stated in UMC 784.11(b) & 784.14(a & b).

UMC 817.57 Hydrologic Balance: Stream Buffer Zones

The ephemeral stream channels disturbed during reclamation will be stabilized in a 2h:1v or 4h:1v sideslope configuration. Silt fences as shown in Plate V will aid in control of sediments from surface flows until revegetation adequately stabilizes the ground surface. The small berm and silt fences adjacent to Ivie Creek will remain throughout monitoring. No reclamation activities will be conducted in the buffer zone except for the removal of culverts that empty into the creek and the subsequent restoration of channel discharges.

Schedule Sequence of Reclamation Components

1. Haul stockpiled roadbase material (1800 cu. yds.) to "B" seam pad. 3 days*

2. Remove culverts in pads. 5 days

250' of 48" culvert, est. 10,924 cu. yds excavated

160' of 18" culvert, est. 430 cu. yds. excavated and refilled

70' of 18" culvert under the road between the pads, est. 21 cu. yds. excavated and refilled.

3. Remove pipe drains and open sediment pond dam to drain into Ivie Creek. 1 day

40' of 18" pipe, est. 178 cu. yds excavated

4. Collapse roof structures into adits and backfill (compacted) 25' into adits to seal. 2 days

74 cu. yds. of compacted fill/adit(4) = 296 cu. yds. total

5. Backfill and grade coal seams and regrade pads to drain into riprapped channels ("B" seam pad) or into channel in breached sediment pond dam ("A" seam pad). 5 days

A seam = 2,500 cu. yds.

B seam = 10,250 cu. yds.

Slopes = 1,800 cu. yds.

6. Riprap channel in "B" seam pad and install drains for "A" seam pad. 3 days

250' of channel = 458 cu. yds.

7. Spread topsoil on "B" seam bench. 1 day

770 cu. yds of topsoil

8. Prepare seedbed on 4.2 acres. 3 days

Scarify = 4 acres

Fertilize = 1016 lbs of diammonium phosphate

420 lbs of urea

Mulch = 16,800 lbs of hay

Seed = 86 lbs of seed

Broadcast and cover seed = 4.2 acres

9. Install silt fences, drift fences and erosion netting. 4 days

silt fences = 700'

drift fences= 240'

erosion netting = 2025'

* These days for each component may run concurrent or sequential. Project is estimated to take 15-20 working days to complete.

10. Remove culverts from road. 1 day

80' of 48" diameter culvert and riprap, 213 cu. yds. of excavation

60' of 18" diameter culvert and refill, 20 cu. yds. of excavation

11. Water bar road and rip surface for seeding. 1 day

11 waterbars

2.4 acres of ripping and scarifying

12. Seed road and roadbase storage site. 2 days

2.5 acres of seeding

51 lbs of seed

10,000 lbs of hay

605 lbs of diammonium phosphate

250 lbs of urea

13. Install fence and gate on road. 1 day

60' of fence

14. Monitor, 10 year period

20 water sampling trips

20 revegetation checks

IX Costs

Means Site Work Cost Data, 1986, 5th Edition

Hours represent total equipment time.

	<u>Unit Cost</u>	<u>Total Cost</u>
1. Hauling roadbase 1800 cu yds, 25 hrs.	\$ 2.30	\$ 4,140
spreading topsoil 770 cu yds, 11 hrs.	\$ 1.61	\$ 1,240
Subtotal		<u>\$ 5,380</u>
2. Removing culverts, 89 hrs.		
road 80' of 48", 213 cu yds excavation	\$ 1.36	\$ 290
60' of 18", 20 cu yds excavation	\$ 3.85	\$ 77
pads 250' of 48", 10,924 cu yds excavation	\$ 1.36	\$ 14,857
230' of 18", 501 cu yds excavation	\$ 3.85	\$ 1,945
sed pond 40' of 18", 178 cu yds excavation	\$ 3.32	\$ 591
remove pipe and concrete pads		\$ 200
sampling for particle analysis		\$ 250
Subtotal		<u>\$ 18,210</u>
3. Covering coal seams and grading, 179 hrs.		
Collapse structures in 4 adits		\$ 480
Fill 4 adits 296 cu yds	\$ 3.39	\$ 1003
"A" seam cover 2500 cu yds	\$ 3.39	\$ 8,475
"B" seam cover 10250 cu yds	\$ 3.39	\$ 34,748
Slope grading 1800 cu yds	\$ 3.39	\$ 6,102
General grading 500 cu yds	\$ 3.39	\$ 1,695
Subtotal		<u>\$ 52,503</u>
4. Riprap channels, 44 hrs.		
80' in road 67 cu yds	\$ 21.13	\$ 1,416
250' in pad 930 cu yds	\$ 21.00	\$ 19,530
100' in A pad 15 cu yds	\$ 21.00	\$ 315
Hauling rock all sites	\$ 1.78	\$ 2,422
Subtotal		<u>\$ 23,683</u>

5.	Waterbars in road and ripping, 10 hrs.		
	11 waterbars		\$ 650
	rip, 2.4 acres	\$ 314.58	\$ 755
	Subtotal		<u>\$ 1,405</u>
6.	Seedbed preparation and seeding, 50 hrs.		
	benches, 4.2 acres	\$ 1,800	\$ 7,560
	road and roadbase site, 2.5 acres	\$ 1,800	\$ 4,500
	Subtotal		<u>\$ 12,060</u>
7.	Fences, gates and erosion netting, 55 hrs.		
	fences, 180'	\$ 4.60	\$ 843
	gate, 1 ea.		\$ 200
	silt fences, 700'	\$ 5.85	\$ 4,095
	erosion netting, 2250 sy	\$ 0.55	\$ 1,238
	Subtotal		<u>\$ 6,376</u>
8.	Drill Hole plugging, 2 holes	\$ 500	<u>\$ 1,000</u>
9.	Miscellaneous, 64 hrs.		
	Equipment mobilization		\$ 5,000
	Equipment rental		\$ 2,500
	Materials disposal		\$ 2,500
	Subtotal		<u>\$ 10,000</u>
	Reclamation Total		<u>\$130,617</u>
10.	Monitoring, 10 years		
	Water sampling, 20 trips		\$ 16,000
	Revegetation checks, 20		\$ 7,000
	Total		<u>\$ 23,000</u>
10.	Contingency 10%		\$ 15,362
	Escalation 1.62% for 1 yr.		\$ 2,737
	Subtotal		<u>\$ 18,099</u>
	Grand Total		<u>\$171,716</u>

ADDENDUM

This Section contains the regulatory sections normally listed in the PAP. These additional sections have been requested by the DOGM in the Completeness Review to provide other information and data for evaluation of the Reclamation Plan.

771.25 Permit Fees

The \$5.00 fee will be filed with the application.

771.27 Verification of Application

The copy of verification is located at the front of the application.

782.13 Identification of Interests

(a)(1)

Permit Applicant: Soldier Creek Coal Company
subsidiary of CalMat Co.
3200 San Fernando Road
Los Angeles, California 90065

Mailing Address:
P.O. Box 2950
Los Angeles, California 90051
(213) 258-2777

(2)(3)

Surface Owners: Soldier Creek Coal Company

Mineral Owners: Soldier Creek Coal Company, lessee; see attached

owners:

B.G. Raybould	0.23530%
Sigler and Co.	2.94134%
Barbara D. Williams	1.61774%
A.W. Walker & Lovejoy Prosser	2.94134%
Helen G. Paul	2.43543%
Katherine Paul Littlefield	2.43543%
Dale W. Ahern, as personal representative of the Dorothy R. Ward Estate	2.42955%
Winifred W. Fehr	2.18052%
Zions First National Bank, as personal representative of the Samuel Walker Estate	1.09026%
Smith and Co.	4.85910%
Bank of America, as personal representative of Francis Lewis Noonan Estate	5.31501%
Forrest Kelly Eccles	4.48555%
William Walker Eccles	4.49144%
Samuel Franklin Eccles	4.49144%
Eugene K. Walker	3.77669%
Helen Kennedy Rogers	0.27060%
Paul D. Augsburg	0.27060%
June E. Kimball	0.54120%
Roger Walker Daynes	0.81181%
Sarah Daft Home	4.08553%
Nicholas W. Kuryla	1.08929%
Michale A. Kuryla	1.08929%
Charles Kuryla	1.08929%
Virginia Godnick	5.28266%
Robert von Khrum	2.22366%
M. Walker Wallace	11.76539%
Glen Walker Wallace	11.76539%
Karen Bertagnole	2.22366%
First Interstate Bank of Utah, as personal representative of John M. Wallace Jr. Estate	11.76539%

(4)

No purchasers of record under a real estate contract.

(5)

Operator: Soldier Creek Coal Company

(6)

Resident Agent:

(b)(1)(2)

Corporation: Soldier Creek Coal Company

Officers: See attached list of officers

Shareholders: See attached list of shareholders

(3)

Previous Coal Mining Permits: Permit No. ACT-007-013
Soldier Creek Coal Company Price, Utah

(3)(e)

Contiguous Owners: See Plate 1a

SW 1/4 of Section 7
SE 1/4 of section 8
Sections 19 & 20
T. 23 S., R. 6 E.
Bureau of Land Management
Price, Utah

Sections 12, 13, & 24
T. 23 S., R. 5 E.
Bureau of Land Management
Richfield, Utah

E 1/2 of Section 17
T. 23 S., R. 6 E.
Bank of California
John E. Lansing
Lovella Clark royalty conveyance

SW 1/4 of Section 8
T. 23 S., R. 6 E.
Consolidated Coal, 50% surface & mineral

SW 1/4 of Section 8
T. 23 S., R. 6 E.
The Pittsburg Midway, 50% surface & mineral

SW 1/4 of Section 8
T. 23 S., R. 6 E.
Gulf Oil Corp., 50% coal

(3)(f)

MSHA ID No. 42-01407, Hidden Valley

(3)(g)

Soldier Creek Coal Company does not have any interest or pending application for contiguous lands or minerals.

782.14 Compliance Information

(a)

No permit suspended or revoked

(b)

No bond or security forfeiture

(c)

Violations:

<u>Date</u>	<u>Agency</u>	<u>Regulation</u>	<u>Action</u>	<u>Termination</u>
1/30/85	DOGM	UMC 817.131	resume monitoring	3/20/85
		no water monitoring		
3/21/85	DOGM	UMC 817.23	seed stockpile	4/25/85
		topsoil stockpile not protected		
3/21/85	DOGM	UMC 817.42	signed road and area	5/24/85
		no signs		
1/27/86	DOGM	UMC 817.52	resume monitoring	1/27/86
		no water monitoring		

UMC 782.15 Right of Entry and Operation Information

(a)

Soldier Creek Coal Company is the surface owner.
Warranty Deed is attached.

(b)

Soldier Creek Coal Company has a long term coal lease to 2022
Lease is attached.

782.16 Relationship to Areas Designated Unsuitable for Mining

No areas designated unsuitable for mining are located on or near the permit area.

782.17 Permit Term Information

Coal mining is not or will not be conducted under this permit.

782.18 Personal Injury and Property Damage Insurance
Information

Certificate included with Application.

782.19 Identification of Other Licenses and Permits

N.P.D.E.S. Permit # UT-002370 with E.P.A. Denver, Colorado
no record of approval or termination

782.20 Identification of Public Office for Filing Information

The Emery County Recorder's Office; Castledale, Utah 84513

782.21 Newspaper Advertisement and Proof of Publication

To be filed in the Carbon County and Salt Lake City metropolitan
newspapers.

783.18 Climatological Information

The closest official weather station is located at Emery, Utah
about 8 miles north-northwest of the mine site. The information
is taken from the Utah State by the National Oceanic and
Atmospheric Administration.

(a)

The average annual precipitation is 7.55 inches. The prevailing
strong winds are from the south. The daily winds shift from
southeast A.M. winds to northwest P.M. winds.

Precipitation and Temperatures by Month

<u>J</u>	<u>F</u>	<u>M</u>	<u>A</u>	<u>M</u>	<u>J</u>	<u>J</u>	<u>A</u>	<u>S</u>	<u>O</u>	<u>N</u>	<u>D</u>	<u>Total</u>
.47	.41	.45	.42	.62	.69	.71	1.17	.79	.85	.40	.57	7.55
23.9	28.9	36.5	44.6	53.3	61.4	67.8	66.0	58.2	47.9	35.0	26.8	45.9

783.19 Vegetation Information

(a)

<u>Vegetation Type</u>	<u>Disturbed Acres</u>
Rocky Slopes	6.67
Pinyon-Juniper Woodland	0.14
Total	<u>6.71</u>

783.20 Fish and Wildlife Resources Information

See 784.21 Fish and Wildlife Plan

783.24 Maps: General Requirements

See Plate 1a

784.13 General Reclamation Requirements - Revegetation

See 817.111 - 817.116 and Section VIII & IX

784.14 Protection of the Hydrologic Balance

See revised Section IV, Drainage Control

784.16 Reclamation Plan; Pond, Impoundments, Banks, Dam and Embankments

See revised Section IV, Drainage Control

784.17 Protection of Public Parks and Historic Places

There are no public parks or historic places on the disturbed area or on the Permit Area.

784.21 Fish and Wildlife Plan

The resident wildlife populations consist of small mammals, small birds, a few carnivorous mammals and raptors. The small mammals populations and the fluctuating seasonal small bird populations provide the prey base for the carnivores and raptors. Reptiles, especially lizards, are part of the prey base during the summer.

The plant cover is generally sparse and consequently forage production is low. The cliffs and rock slopes provide ample cover and security for the animals. Ivie Creek has a sparse narrow band of riparian vegetation.

The only specific wildlife reports (USFWS, 1980) for the area mentioned a owl's nest in one of the adits. This site was visited in March, April and May of 1986 with no reports of owl observations. An active prairie falcon nest was noted on a cliff face south of Ivie Creek about 900 feet from the portal pads. The nesting was completed by late April.

The fall construction period will not impact falcon nesting in the vicinity. The restoration of vegetation will provide some

Executive Summary

The Hidden Valley Coal property, in the Emery Coal Field south of Emery Town, was to be developed by Soldier Creek Coal Company, a Utah corporation and wholly owned subsidiary of CalMat Company. The property is 960 acres and Soldier Creek Coal Company owns the surface and has the rights to the coal under a long term lease. A mining and reclamation plan, with two amendments, were submitted and approved under the OSM Interim Program. The access road, coal seam exploration, graded pads and drainage control were the only developments realized as economic changes forced curtailment of mine development. This document is a revised Reclamation Plan for the reclaiming of the small developed areas (approximately 6.7 acres of disturbed ground) within the permit area in 1986.

The culverts will be removed from the access road and from the two pad areas. The natural ephemeral drainage crossing the developed area will be restored to accept most of the flow from the reclaimed sites. Because the original drainage control pattern will be restored, the sediment pond will no longer function and can be opened to drain into Ivie Creek.

The access road will be accessible to 4-wheel drive vehicles only and be waterbarred to control surface flows. The road surface will be scarified and seeded. The integrity of the road alignment will be maintained in support of the postmining land use of grazing by improving watershed values and providing a livestock trailway.

The adits in the two coal seams will be sealed and the seams covered and graded. Topsoil materials stored on site will be spread over a portion of the disturbed areas to provide a seedbed. Other materials on site will be used for seedbed material where topsoils are not available. All of the reclaimed areas will be mulched, fertilized and seeded in late fall as the final phase of

reclamation. Drift fences will be installed to restrict cattle use of the seedings.

A ten year monitoring plan will sample the water quality and flows semi-annually in Ivie Creek and check on the progress of the revegetation efforts. Projects cost for reclaiming the site in 1986 are \$148,716 and \$23,000 for 10 years of monitoring.

I. Proposed Postmining Land Use Acreage to be Reclaimed and Timing and Sequence

UMC 784.15 Reclamation Plan. Post Mining Land Use

The adjacent BLM lands are permitted for cattle grazing in the winter and early spring. Most of the forage production is confined to the flats and benches in Castle Valley. Some grazing occurs on the upper benches of the permit areas. The livestock use of the fee lands is presently unregulated. The declaration for postmining land use would be wildlife habitat and livestock grazing. This was the land use prior to the proposed mine development and this land use has continued to the present.

Because a variance to leave cut and fill slopes associated with the access road is being requested (see revised page 24 of this Plan), part of the disturbed area would involve an alternative postmining land use as defined by the Division. This is due to the fact that the cut and fill slopes, although still used for the postmining uses of livestock grazing and wildlife habitat, would allow a higher or better usage than occurred previous to the disturbance. This use would be compatible with the surrounding land uses. Emery County officials have indicated that their preference generally is not to close existing roads (Personal communication with Scott Johansen, Emery County Attorney, March 14, 1991).

BLM Saleratus Allotment

409 cattle from Nov. 11th to March 31st, stocking rate is 1 AUM/10 Acres for total AUM's of 1843.

The disturbed acreage of the permit area is mostly sandstone talus slopes that provides very little livestock forage or wildlife habitat as is generally defined. The revegetation of these small disturbed areas will be in accordance with adjacent surveyed range reference sites. This revegetation will not provide either

wildlife or livestock forage of any significance but will stabilize the site.

As with the surrounding BLM land, there is no crucial wildlife habitat in the area; wildlife species utilizing the site would most likely be small mammals and birds. Cattle would likely be the type of livestock using the area; they also graze adjacent federal land managed by the Bureau of Land Management. A grazing management plan for the site is detailed below, and is based upon livestock management in the adjacent BLM grazing allotment. In this way, the postmining land use and management at Hidden Valley will be compatible with management of the surrounding land. The BLM's proposed Resource Management Plan for the San Rafael Planning Area was utilized in preparation of the grazing plan.

Critical soils are present at the Hidden Valley site, in the form of both saline and erodible soil. A grazing plan should ensure protection of these soils. Therefore, in line with both BLM policy for the adjacent lands and site specific conditions, emphasis on achievement of the postmining land use will be through protection of critical soils, and management of the site to increase vegetation. The revegetation seed mix, as described on page 58 was chosen with this in mind, rather than exclusively specifying native plants with high forage values.

Application of the grazing rate used on the Saleratus Allotment to the disturbed and reclaimed area would result in a forage production of less than one AUM, so livestock grazing will likely be minimal at the site, unless better forage production than provided by native vegetation is achieved. Cattle would be the preferred user. Period of use of the reclamation site will be the same as the adjacent federal land: November 16 through March 15. The access road will be used as the primary travelway for livestock, both to gain entry to the revegetated disturbed areas and to access Ivie Creek, the only nearby perennial water source.

(The access road has been left in place to aid in achievement of the postmining land uses, as described under the request for variance in this document).

The objective of the grazing plan would be to lease the 1.5 square-mile permit area to the adjacent BLM permittee. (This operator currently has access to much of the undisturbed permit acreage that is not fenced.) If that permittee did not wish to lease the property, then CalMat would open the lease to competitive bidding. The lessee would then need to insure that his livestock did not trespass to adjacent BLM land and that the BLM permittee no longer accessed the Hidden Valley property.

drainage patterns and control erosion.

A variance is requested to allow the access road and associated cut and fill terraces to remain upon reclamation. A description of the means by which this variance will allow the postmining land use to be achieved is described in the following paragraphs. The variance will simply enhance the premining land use capabilities, while allowing the use to remain the same. It will also enhance the ability to meet other requirements of the Division such as revegetation, erosion and runoff control. In addition, CalMat, the land owner, approves of the variance; the variance is also compatible with the operation of adjacent lands.

A stability analysis has been conducted on the slopes which would not be restored to natural contours and is described in this document. All coal wastes have been covered, so retention of the cuts and fills will not result in exposure of waste materials. As described below, greater benefits to the watershed will occur as a result of maintaining the cut and fill terraces than would occur if the natural contours were restored. High velocity runoff and consequent erosion will be minimized if the road bed is in place, and use of the road surface as a livestock trail will prevent impact to Ivie Creek and its adjacent riparian lands as a result of trampling.

Retention of the cut and fill terraces of the roadway will aid in the protection of critical soils and enhance the forage production at the site. According to the RMP for the adjacent San Rafael Planning Area, one of the main BLM means of protecting critical soils is to grade slopes such that they serve to collect water to aid in onsite revegetation. The roadway functions to provide this. In addition, the roadway is in line with other BLM goals of water-barring roads and protection of riparian areas as described later in this section.

During construction of the access road into the property, blasting was required along the uphill side of the road, resulting in a cut slope in bedrock, and excess materials were placed as fill along the downhill side of the road, resulting in a talus-like slope down to the ephemeral channel bottom. The natural terrain in the area is comprised of a series of cliffs, small benches and talus slopes due to the interbedded sedimentary bedrock, so the cut and fill terraces of the roadway complement the natural drainage patterns of much of the area.

During reclamation, the cut and fill slopes created during road construction were left in place. Water bars were installed along the road to control runoff from uphill areas and the roadbed itself. These water bars meet BLM criterion for construction in critical soil areas (road grade does not exceed 10 percent within a 1000-foot distance). The road surface was ripped to eliminate compaction, seeded, mulched and fertilized. The roughened condition of the road and barriers across the road prevent vehicular access.

In its current configuration, the road and associated cut and fill terraces aid achievement of the postmining land use in two ways. The first of these is site enhancement related to revegetation and erosion control.

A typical cross section of the roadway and adjacent slopes would show a steep slope comprised of bedrock outcrop interspersed with areas of colluvial material with sparse vegetation, below which occurs the road cut slope which is almost vertical sandstone bedrock with a height of approximately 10 - 15 feet. The road bed itself is approximately 20 feet wide and is in a roughened, hummocky condition with occasional large boulders. The road fill area down to the channel bottom is comprised of talus-like fill materials with some large boulders and natural bedrock outcrop

visible. The entire slope is steep, with little vegetative growth as is typical of the surrounding undisturbed areas.

The roadbed surface acts in several ways to enhance vegetation efforts. The flat bench serves to break up the otherwise very steep sideslope of the canyon, providing a terrace to capture runoff and sediments from the upper steep, bare slopes. This lessens the potential for erosion of the bottom slope adjacent to the channel by reducing both total runoff and flow velocities. In the absence of this terrace, the very high production of runoff from the upper slopes would result in severe erosion of the lower talus slopes adjacent to the channel, which would compromise the stability of the canyon side slopes. Additional benefits are incurred by storing of runoff and conserving soil moisture in the roadbed soils rather than conveying it all to the channel. Also, the trapping of fine sediments on the roadbed enhances the road surface as a growth medium. These all serve to enhance the potential for revegetation on the road bed. Neither the upper nor lower portions of the canyon sideslope are conducive for vegetation because of the lack of soil medium.

Contour terraces that are essentially equivalent to the roadbed are commonly constructed to provide water harvesting and erosion control in slope rehabilitation. They function to shorten the slope length, consequently reducing runoff velocities which in turn encourages infiltration and storage of runoff, and lessens the potential for erosion. Because the road bed has a significant gradient, a series of water bars were constructed across the surface to further control runoff and sediment production.

In the site environment, where climate and soil types limit vegetative growth, any means of enhancing growth potential can significantly increase the value of the site as a provider of habitat and producer of forage. In this way, the cut and fill

terraces left during reclamation are essential in allowing achievement of the post-mining land use of grazing and wildlife habitat.

The second way in which the cut and fill terraces serve to enhance the post-mining land use is for livestock trailing. Other than the road surface, there would be two avenues for livestock to gain entrance to the disturbed areas where revegetation would be most successful. The first of these would be along the Ivie Creek bottom. This is evidently the trail that was used historically, however given the already poor quality of Ivie Creek water, the desirable protection of riparian areas, and the risk to livestock along this route (high flows, ice, and precarious travelways), this route is less than ideal. The second possible trailway would be from the top of the disturbed area down through the ephemeral drainage at the base of the roadway. This route is steep, narrow and very rocky, which unnecessarily increases the risk to livestock. Use of the roadway for livestock trailing would be preferable from an environmental standpoint, from a livestock safety standpoint, and also from the standpoint of human access to inspect animals, provide salt licks, etc..

In summary, not regrading the cut and fill terraces associated with the road allows achievement of the post mining land uses. This is accomplished primarily by site enhancement through conserving soil moisture, ensuring slope stability, and controlling erosion. A secondary benefit of the road surface is to provide a livestock trailing route that is preferable to other available options.

Pads

The 250' of 48" diameter culvert in the "B" seam pad will be removed and the ephemeral channel restored to approximately original grade. The gradient will be uniform at 10.5% and the sideslopes will be 4h:1v. The depth variation of the channel is shown in Figure VII and the cross-sections of the proposed and

natural channels are shown in Figure VIII. It will then discharge into Ivie Creek. This channel will be riprapped to stabilize the surface and prevent excessive headcutting. The excavated material from the channel will be used to cover the coal seam and to slope the adjacent pads to drain into the restored ephemeral channel. A silt fence will be installed on the channel banks to prevent sediments from reaching the channel prior to vegetation becoming established on the topsoiled areas.

The 160' of 18" diameter culvert in "A" seam pad will be removed and the excavated material replaced in the channel. With the

Tab N



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JUN 29 1992 INSPECTION REPORT

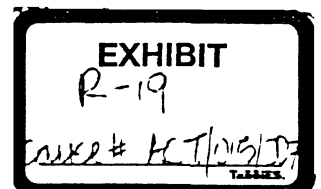
**SECRETARY, BOARD OF
OIL, GAS & MINING**

INSPECTION DATE & TIME: 01/29/87
11:00 am

Permittee and/or Operators Name: California Portland Cement
Business Address: 695 South Rancho Avenue, Colton, California 92324-0514
Mine Name: Hidden Valley Permit Number: Ina/015/007
Type of Mining Activity: Underground ☒ Surface ☐ Other Reclaimed
County: Emery
Company Official (s): None
State Official(s): Phil Ralphs & John Whitehead
Partial: ☐ Complete: ☒ Date of Last Inspection: 10/28/86
Weather Conditions: Mostly cloudy & cool. Ground was mostly snow covered.
Acreage: Permitted 960 Disturbed 7 Regraded 7 Seeded 7 Bonded 7
Enforcement Action: None

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

	YES	NO	N/A	COMMENTS
1. PERMITS	(X)	()	()	(X)
2. SIGNS AND MARKERS	(X)	()	()	()
3. TOPSOIL	(X)	()	()	()
4. HYDROLOGIC BALANCE:				
a. STREAM CHANNEL DIVERSIONS	(X)	()	()	(X)
b. DIVERSIONS	(X)	()	()	()
c. SEDIMENT PONDS AND IMPOUNDMENTS	()	()	(X)	(X)
d. OTHER SEDIMENT CONTROL MEASURES	(X)	()	()	(X)
e. SURFACE AND GROUNDWATER MONITORING	(X)	()	()	()
f. EFFLUENT LIMITATIONS	()	()	(X)	()
5. EXPLOSIVES	()	()	(X)	()
6. DISPOSAL OF DEVELOPMENT WASTE AND SPOIL	()	()	(X)	()
7. COAL PROCESSING WASTE	()	()	(X)	()
8. NONCOAL WASTE	()	()	(X)	()
9. PROTECTION OF FISH, WILDLIFE AND RELATED ENVIRONMENTAL VALUES	(X)	()	()	()
10. SLIDES AND OTHER DAMAGE	()	()	(X)	()
11. CONTEMPORANEOUS RECLAMATION	(X)	()	()	(X)
12. BACKFILLING AND GRADING	(X)	()	()	()
13. REVEGETATION	(X)	()	()	()
14. SUBSIDENCE CONTROL	()	()	()	()
15. CESSATION OF OPERATIONS	(X)	()	()	()
16. ROADS				
a. CONSTRUCTION	(X)	()	()	()
b. DRAINAGE CONTROLS	(X)	()	()	()
c. SURFACING	(X)	()	()	()
d. MAINTENANCE	()	()	(X)	()
17. OTHER TRANSPORTATION FACILITIES	()	()	(X)	()
18. SUPPORT FACILITIES				
UTILITY INSTALLATIONS	()	()	(X)	()



INSPECTION REPORT
(continuation sheet)

Page 2 of 2

PERMIT NUMBER: INA/015/007

DATE OF INSPECTION: 01/29/87

(Comments are Numbered to Correspond with Topics Listed Above)

1.) PERMITS:

The operator recieved Final Permit Approval from the Division for their Reclamation Plan on December 12, 1986. There were two stipulations attached to the Permit Approval. The operator has met conditions of both stipulations.

4.) HYDROLOGIC BALANCE:

The main ephemeral stream channel which ran through the mine site has been restored to its approximate original slope and location. This channel has been riprapped, and a filter blanket of sand and fine gravel (road base material) was placed prior to the channel being riprapped. Both sides of the channel have been lined with "Typar" filter material and wire mesh backing which will act as silt fence and serve as sediment controls. The silt fence is being supported by steel fence posts.

The sediment pond was breached and essentially removed during reclamation. The area where the pond was breached, and presently drains the west portion of the mine site into Ivy Creek has been riprapped and had a silt fence structure, of the same design described above, installed to serve as an alternative sediment control.

RECLAMATION - General Comment:

This entire mine site was reclaimed just prior to Christmas, 1986. Reclamation consisted of backfilling the portals (both coal seams), regrading the cut and fill areas, restoring the stream channel (as was mentioned above), recontouring the sediment pond area, seeding and mulching. The access road, from the end of the paved county road to the mine site was ripped, water bars installed, seeded and mulched. The road base material which was being stored at an area above the mine site was removed and the site was ripped and seeded. Overall reclamation of the site looks good.

General area of concern (possibly):

The "Typar" filter material silt fence (mentioned previously) is beginning to tear where it is wired to the wire mesh backing. The situation was caused primarily by heavy winds at the site just following the completion of reclamation activities. At the present time the silt fences are still functional and remain mostly intact. However, there is a real possibility that the fences will eventually become ineffective. A possible solution to the situation would be to lower the overall height of the silt fences, and use some alternative form of attaching the filter material to the wire mesh. This situation will be watched closely during the near future; and if the silt fences become ineffective, or reach the point where, in the judgement of the State official visiting the site, ineffectiveness is imminent, enforcement action will be taken.

Copy of this Report:

Mailed to: Donna Griffin (OSM) & John Rains (Cal Mat)

Given to: Joe Helfrich & John Whitehead

Inspectors Signature and Number:

Philip M. Helfrich #10 Date: 2/5/87



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JUN 29 1992

inspection report

SECRETARY, BOARD OF
OIL, GAS & MINING

Permit No. 44A/015/007
Inspection Date 4/2/92
Permittee Operator Name CALIFORNIA PORTLAND CEMENT
Business Address 695 SO. RANCHO AV.
City COLTON State CALIF. Zip 92324-0514
Mine HIDDEN VALLEY ☐ Surface ☒ Underground ☐ Other
County EMERY State UTAH
Company Official(s) ~~XXXXXXXXXX~~ NONE
State Official(s) TOMMUNSON, KATHY MUTE, DAN OJCE, BILL MAENCIA
Time of inspection 10 30 ☒ a.m. ☐ p.m. to 12 30 ☐ a.m. ☒ p.m. ☒ Partial ☐ Complete
Date of last inspection _____ Weather conditions SUNNY
Acreage 960 ☒ Permitted 6.7 ☒ Disturbed 6.7 ☒ Regraded 6.7 ☒ Seeded 6.7 ☒ Fenced
Enforcement Action NOV NO N 87-11-1-1

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

	YES	NO	4-1	CONTRACT		YES	NO	4-1	CONTRACT
1. Permits	<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"/>
2. Signs and markers	<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"/>
3. Topsoil	<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"/>
4. Hydrologic balance					12. Backfilling and grading	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
- Stream channel diversions	<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 checked="" type="checkbox"/>
- Diversions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	14. Subsidence control	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Sediment ponds and impoundments	<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"/>
- Other sediment control measures	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16. Roads				
- Surface and groundwater monitoring	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	- Construction	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Effluent limitations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	- Drainage controls	<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"/>	- Surfacing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Development waste and spoil disposal	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	- Maintenance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Coal processing waste	<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"/>
8. Noncoal waste	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	18. Support facilities and utility installations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

WHITE - DOGM YELLOW - OSM PINK - PERMITTEE OPERATOR GOLD/RED - NOV FILE

DOGM 10-1

an equal opportunity employer

817

EXHIBIT

R-21

copy # 101/015/007

INSPECTION REPORT COMMENTS

Permit No. INA/015/007

Inspection Date 4/2/87

Please number comments to correspond with topics on previous page

4. other sediment control measures - The silt fence was not adequately maintained and approximately 75% of the fence was lying on the ground. The operator was issued ~~an~~ NOV. 87-11-1-1 and given until APRIL 30, 1987 to repair or reinstall all damaged silt fence.

12. Backfilling and grading - The backfilling and grading appeared to be stable and the soil materials appeared to be settling and stabilizing.

13. Revegetation -

o Dogn recommends, but will not require, immediate coverage of the ^{presently backfilled} eroded areas with Excelsior or other comparable mulch matting. Immediate use of this material at the site would preserve the soil moisture currently present 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 COMMENTS

Permit No.

INAP/15/007

Inspection Date

4/2/87

Please number comments to correspond with topics on previous page

4. Other sediment control measures - The silt fence was not adequately maintained and approximately 75% of the fence was lying on the ground. The operator was issued N.O.V. 87-11-1-1 and given until April 30, 1987 to repair or reinstall all damaged silt fence.
12. Backfilling and grading - The backfilling and grading appeared to be stable and the soil materials appeared to be settling and stabilizing.
13. Revegetation - The grasses are starting to come up in places. In areas where the mulch has preserved the moisture other seeds are germinating. Overall the site is drying out as summer temperatures increase.

Copy of report mailed to

Donna Buffin (OSM) + John Paris (GACM)

Copy of report given to

Joe Helfrich and John Whitehead

Inspector's signature

Thomas Munson

No.

25

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

4/28/87

JUN 29 1992

inspection report

SECRETARY, BOARD OF
OIL, GAS & MINING

Permit No. INA 1015/007
Expiration Date 4/21/87

Permittee Operator Name CALIFORNIA PORTLAND CEMENT

Business Address 695 SO. RANCHO AV.

City COLTON State CALIF Zip 92324-0514

Mine HIDDEN VALLEY ☐ Surface ☒ Underground ☐ Other

County EMERY State UTAH

Company Official(s) NONE

State Official(s) TOM MUNSON

Time of inspection 10 30 ☒ am ☐ am to 12 30 ☐ am ☒ pm ☐ Period ☒ Complete

Date of last inspection 4/2/87 Weather conditions SUNNY

Acreage 160 ☒ Permitted 7 ☒ Disturbed 7 ☒ Regraded 7 ☒ Seeded 7 ☒ Erodible

Enforcement Action NONE

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

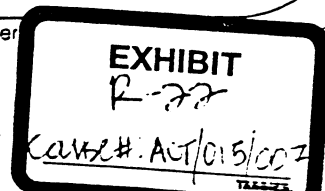
	YES	NO	N/A	COMMENTS		YES	NO	N/A	COMMENTS
1. Permits	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	9. Protection of fish, wildlife, and related environmental values	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Signs and markers	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	10. Slides and other damage	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Topsoil	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	11. Contemporaneous reclamation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Hydrologic balance					12. Backfilling and grading	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Stream channel diversions	<input checked="" 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"/>
- Diversions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	14. Subsidence control	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
- Sediment ponds and impoundments	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	15. Cessation of operations	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Other sediment control measures	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16. Roads				
- Surface and groundwater monitoring	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	- Construction	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Effluent limitations	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	- Drainage controls	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Explosives	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	- Surfacing	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6. Development waste and spoil disposal	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	- Maintenance	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7. Coal processing waste	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	17. Other transportation facilities	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. Noncoal waste	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	18. Support facilities and utility installations	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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

DOGM/IR-1

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82



INSPECTION REPORT COMMENTS

Permit No. INA/015/007

Inspection Date 4/21/87

Please number comments to correspond with topics on previous page

2. ~~2~~ Signs and Markers - The road closed sign at the entrance of the property has been vandalized and must be repaired.

4. ~~2~~ Other sediment control measures - The silt fence has not been repaired as of this inspection. The abatement time frame for NOV. 87-11-1-1 is April 30, 1987 at 5:00 PM.

General comments: The site looks ~~similar~~ the same as early spring inspections. It appears to be drying out where there is no surface mulch. Some grasses are appearing and other plants may be germinating under the mulch. It is still too early in the season to tell.

Copy of report mailed to Donna Giffin (OSM) + John Rains (CA/MAT)

Copy of report given to Joe Helfrich + John Whitehead

Inspector's signature Thomas Munson No. 25

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

4-28-87



FILED

YJR 0

JUN 29 1992

inspection report

SECRETARY, BOARD OF
OIL, GAS & MINING

Permit No. INA/015/007

Inspection Date May 4, 1987

Permittee Operator Name California Portland Cement

Business Address P.O. Box 1947

City Colton

State Calif

Co. 92324-0514

Mine Hidden Valley

☐ Surface

☐ Underground

☒ Other

County Emery

State

Company Official(s) None Present During Inspection

State Official(s) Bill Malencik

Time of inspection 11 00 ☒ a.m. ☐ p.m. to 1 00 ☐ a.m. ☒ p.m. ☒ Partial ☐ Complete

Date of last inspection 4-21-87 Weather conditions Windy/Warm/Clear/Dry

Acreage 960 ☒ Permitted 7 ☒ Disturbed 7 ☒ Regraded 7 ☒ Seeded 7 ☒ Bonded

Enforcement Action None

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

	YES	NO	N/A	COMMENTS		YES	NO	N/A	COMMENTS
1. Permits	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	9. Protection of fish, wildlife, and related environmental values	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Signs and markers	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	10. Slides and other damage	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Topsoil	<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"/>
4. Hydrologic balance					12. Backfilling and grading	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
— Stream channel diversions	<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 checked="" type="checkbox"/>
— Diversions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	14. Subsidence control	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
— Sediment ponds and impoundments	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	15. Cessation of operations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
— Other sediment control measures	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16. Roads				
— Surface and groundwater monitoring	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	— Construction	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
— Effluent limitations	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	— Drainage controls	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Explosives	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	— Surfacing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Development waste and spoil disposal	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	— Maintenance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Coal processing waste	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	17. Other transportation facilities	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. Noncoal waste	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	18. Support facilities and utility installations	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

WHITE — DOGM YELLOW — GDM PINK — PERMITTEE OPERATOR GOLDENROD — NO FILE

DOGM (R-1)

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EXHIBIT
R-23

May 4, 1987

INSPECTION REPORT COMMENTS

Permit No. INA/015/507

Inspection Date May 4, 1987

Please number comments to correspond with topics on previous page

Introduction: The purpose of this inspection and report is two-fold i.e. (1) To ascertain what specific work had been completed in response to NOV 87-11-1-1 dated 4/6/87 and, (2) to complete a partial inspection of other sediment control measures i.e. the silt fence had been repaired and was found to be in satisfactory condition.

From the vehicle, two tracks into the area the work had been performed during a light rain. The work consisted of the following: (1) adding additional steel posts for support, (2) taping the tears and utilizing the existing silt fence, (3) lowering the chicken wire support fence and silt fence, and (4) attaching the silt fence and chicken wire to the steel posts by weaving the wire the entire length of the silt fence. The silt fence was reburied into the soil surface in those areas where it had become dislodged.

Failure to maintain the silt fence was the NOV issue. According to John Rains all work on silt fence completed 4/29/87.

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 COMMENTS

Permit No INA/C15/C07

Inspection Date Apr 4, 1987

Please number comments to correspond with topics on previous page

[9] As related to the "Protection xxx and related environmental values", no domestic livestock nor tracks were observed in the seeded area under fence.

[13] Observation on the "Revegetation" included the following: (1) Seeded/unfenced area adjacent to blacktop entrance road - no signs of plants and/or seed germination, (2) Road that has been ripped - gate to mine site -- sparse cover of grass seedlings, 2"-3" in height and most observed in small depressions, (3) two rehabed steep side slopes - sparse cover and 3"-4" seedlings in height in areas where moisture had accumulated, and (4) moderate slopes & flatter areas - more grass seedlings than areas noted above including weed seedlings. All grass plants were dark green in color and showed no signs of moisture stress.

Copy of report mailed to DONNA GRIFFIN & JOHN RAINS

Copy of report given to JOE HELFRICH & JOHN WHITEHEAD

Inspector's signature Jim J. Malenik 5/5/87

No 26

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



FILED

JUN 29 1992

inspection report

SECRETARY, BOARD OF
OIL, GAS & MINING

Permittee Operator Name California Portland Cement

Business Address 695 South Rancho Avenue

City Colton

State Calif

92324551

Mine Hidden Valley

☐ Surface

☒ Underground

County Emery

State Ut

Company Official(s) None

State Official(s) Wm. J. Malencik & Holland Shepard

Time of inspection 10 00 ☒ am ☐ pm to 1 00 ☐ am ☒ pm ☐ Period ☒ Complete

Date of last inspection May 4, 1987 Weather conditions Clear/Warm

Acreage 960 ☒ Permitted 7 ☒ Stopped 7 ☒ Regrassed 7 ☒ Seeded 7 ☒ Fertilized

Enforcement Action None

Other: Correct information on entrance sign

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

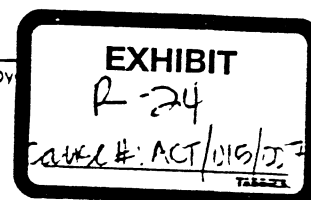
	YES	NO	N/A	COMMENTS		YES	NO	N/A	COMMENTS
1 Permits	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	9 Protection of fish wildlife and related environmental values	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2 Signs and markers	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	10 Slides and other damage	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3 Topsoil	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	11 Contemporaneous reclamation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4 Hydrologic balance					12 Backfilling and grading	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
a Stream channel diversions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	13 Revegetation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b Diversions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	14 Subsidence control	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c Sediment ponds and impoundments	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	15 Cessation of operations	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d Other sediment control measures	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16 Roads				
e Surface and groundwater monitoring	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	- Construction	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f Effluent limitations	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	- Drainage controls	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5 Explosives	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	- Surfacing	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6 Development waste and spoil disposal	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	- Maintenance	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7 Coal processing waste	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	17 Other transportation facilities	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8 Noncoal waste	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	18 Support facilities and utility installations	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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

DOGM 11-1

an equal opportunity employer

825



INSPECTION REPORT COMMENTS

Permit No. _____

Inspection Date _____

Please number comments to correspond with topics on previous page

12] Signs & Markers: The entrance sign at the end of the blacktop road does not contain current information. The operator name is shown as Soldier Creek instead of Calif. Portland Cement. The address as Rice, UT instead of Colton, Calif. The balance of the information on the sign is correct i.e. MSHA & DOGM permit numbers.

The sign should be changed to reflect correct information on or before July 15, 1987.

14] Other sediment control measures i.e., silt fences recently repaired are operational and in good shape even though the site has experienced little runoff.

13] Revegetation i.e. grass seeding performed late last fall is very spotty. No germination and seedlings were observed at the seeding site adjacent to the entrance sign/end of blacktop road. On the balance of the area i.e., below the gate, good crop of weeds exist, especially on lower elevations. Some seedlings (grass) are emerging in the lower weeded areas. The only seedlings observed on the road was in the ripped areas with a higher density in pockets or depressions.

Copy of report mailed to Calif. Portland Cement, Donna Griffin OSM

Copy of report given to Joe Helfrich

Inspector's signature Jim J. Malenik 6/12/87 No. 26

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



355 W. North Temple • 3rd Floor • Suite 350 • Salt Lake City, UT 84110 • 801-538-6340

INSPECTION REPORT

INSPECTION DATE & TIME: July 7, 1987
10:00 a.m. to 1:00 p.m.

Permittee and/or Operators Name: California Portland Cement
Business Address: 695 South Rancho Avenue Colton, CA 92324-0514
Mine Name: Hidden Valley Permit Number: INA/C15/007
Type of Mining Activity: Underground ☒ Surface ☐ Other ☐
County: Emery
Company Official(s): None
State Official(s): Wm. J. Malencik, Harold Sandbeck
Partial: ☒ Complete: ☐ Date of Last Inspection: June 11, 1987
Weather Conditions: Clear/Warm
Acreage: Permitted 960 Disturbed 7 Regraded 7 Seeded 7 Bonded 7
Enforcement Action: None

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

	YES	NO	N/A	COMMENTS
1. PERMITS	()	()	()	()
2. SIGNS AND MARKERS	(X)	()	()	(X)
3. TOPSOIL	()	()	(X)	()
4. HYDROLOGIC BALANCE:				
a. STREAM CHANNEL DIVERSIONS	()	()	()	()
b. DIVERSIONS	()	()	()	()
c. SEDIMENT PONDS AND IMPOUNDMENTS	()	()	(X)	()
d. OTHER SEDIMENT CONTROL MEASURES	(X)	()	()	(X)
e. SURFACE AND GROUNDWATER MONITORING	()	()	()	()
f. EFFLUENT LIMITATIONS	()	()	(X)	()
5. EXPLOSIVES	()	()	(X)	()
6. DISPOSAL OF DEVELOPMENT WASTE AND SPOIL	()	()	(X)	()
7. COAL PROCESSING WASTE	()	()	(X)	()
8. NONCOAL WASTE	()	()	(X)	()
9. PROTECTION OF FISH, WILDLIFE AND RELATED ENVIRONMENTAL VALUES	()	()	()	()
10. SLIDES AND OTHER DAMAGE	()	()	(X)	()
11. CONTEMPORANEOUS RECLAMATION	()	()	()	()
12. BACKFILLING AND GRADING	()	()	()	()
13. REVEGETATION	(X)	()	()	(X)
14. SUBSIDENCE CONTROL	()	()	(X)	()
15. CESSATION OF OPERATIONS	()	()	(X)	()
16. ROADS				
a. CONSTRUCTION	()	()	()	()
b. DRAINAGE CONTROLS	()	()	()	()
c. SURFACING	()	()	()	()
d. MAINTENANCE	()	()	()	()
17. OTHER TRANSPORTATION FACILITIES	()	()	(X)	()
18. SUPPORT FACILITIES				
UTILITY INSTALLATIONS	()	()	(X)	()

INSPECTION REPORT
(continuation sheet)

Page 2 of 2

PERMIT NUMBER: INA/015/CG7

DATE OF INSPECTION July 7, 1987

(Comments are Numbered to Correspond with Topics Listed Above)

2. SIGNS AND MARKERS:

The main sign at the end of the black top road and at permit boundary was missing. A followup phone call to Mr. John Rains, Colton, California, revealed the fact that the sign is currently being updated. The mine company is complying with request to update information on the sign as requested in the inspection report of June 11, 1987. Mr. Rains indicated the updated sign shall be reinstalled shortly and before the next inspection.

13. REVEGETATION:

The vegetal conditions are in substance the same as reported in the June 11, 1987, inspection. The volunteer barley has headed out and is drying. No grass seed heads were observed from the seeding conducted last fall.

GENERAL COMMENT:

The general mine area looks good. It's too early to make a firm evaluation in the success of the seeding. The silt fence is all up and functional. The silt fence repairs, additional fence posts, top tie wire, and reduction in height have provided the necessary stability.

No significant mine site erosion was observed. Also, all fences are up and no domestic livestock or sign of same were observed.

Copy of this Report:

Mailed to: Donna Griffin, OSM; John Rains, CPC

Given to: Joe Helfrich, DOGM

John Whitehead for

Inspectors Signature and Number: Wm. J. Malencik #26 Date: July 13, 1987



FILED

JUN 29 1992

Permit No. TNA/015/007
Inspection Date August 14, 1987

inspection report

SECRETARY, BOARD OF
OIL, GAS & MINING

California Portland Cement
Business Address 695 South Rancho Avenue
City Colton State CA Zip 92324-0514
Mine Hidden Valley ☐ Surface ☒ Underground ☐ Other
County Emery State UT
Company Official(s) None
State Official(s) Harold G. Sandbeck and Bill Malencik
Time of inspection 10 00 ☒ a.m. ☐ a.m. to 1 00 ☐ a.m. ☒ p.m. ☐ Partial ☒ Complete
Date of last inspection July 7, 1987 Weather conditions Clear/Warm
Acreage 960 ☒ Permitted 7 ☒ Disturbed 7 ☒ Regraded 7 ☒ Seeded 7 ☒ Bonded
Enforcement Action None

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

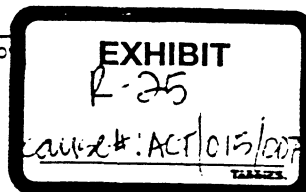
	YES	NO	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
1. Permits	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<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"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Topsoil	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Hydrologic balance																				
a Stream channel diversions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b Diversions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c Sediment ponds and impoundments	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d Other sediment control measures	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e Surface and groundwater monitoring	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f Effluent limitations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Explosives	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Development waste and spoil disposal	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Coal processing waste	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. Protection of fish, wildlife, and related environmental values	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. Contemporaneous reclamation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<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"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<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"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14. Subsidence control	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
16. Roads																				
a Construction	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b Drainage controls	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c Surfacing	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d Maintenance	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
18. Support facilities and utility installations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

DOGM 11-1

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INSPECTION REPORT COMMENTS

Permit No. INA/015/007

Inspection Date August 14, 1987

Please number comments to correspond with topics on previous page.

General Comments: The mine site area appears stable and looks good. The ground was wet indicating recent runoff. No significant erosion was observed on the mine site.

2.) Signs and Markers: The main sign at the end of the black top road has been installed. The sign has been updated and is current.

4.d.) The silt fences along the slope and around the riprap channel appear functional.

16.d.) The main entrance haul road berms are doing a good job of preventing erosion. Evidence of water puddling was noticed behind road berms. The road vegetation is predominantly weeds and appears well established.

Copy of report mailed to Donna Griffin, OSM; John Rains, CPC

Copy of report given to Joe Helfrich, DOGM

Inspector's signature Harold J. Handberg 14 August 1987 No. 27

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



FILED

File

6/29

JUN 29 1992

INA/015/005
Inspection Date *September 3, 1987*

inspection report

SECRETARY, BOARD OF
OIL, GAS & MINING

Permittee Operator *California Portland Cement*

Business Address *695 South Rancho Avenue*

City *Colton* State *CA* Phone *923-24-0514*

Mine *Hidden Valley* ☐ Surface ☒ Underground ☐ Other

County *Emery* State *UT*

Company Official(s) *None*

State Official(s) *Harold G. Sandbeck and Tom Munson*

Time of inspection *12 00* ☐ a.m. ☒ p.m. to *6 00* ☐ a.m. ☒ p.m. ☒ Partial ☐ Complete

Date of last inspection *August 14, 1987* Weather conditions *Cloudy/Warm*

Acreage *960* ☒ Permitted *7* ☒ Disturbed *7* ☒ Regraded *7* ☒ Seeded *7* ☒ Barbed

Enforcement Action *None*

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

	YES	NO	N/A	COMMENTS		YES	NO	N/A	COMMENTS
1. Permits	<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"/>
2. Signs and markers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	10. Slides and other damage	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Topsoil	<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"/>
4. Hydrologic balance					12. Backfilling and grading	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>a</i> Stream channel diversions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	13. Revegetation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>b</i> Diversions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	14. Subsidence control	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>c</i> Sediment ponds and impoundments	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	15. Cessation of operations	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>d</i> Other sediment control measures	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16. Roads				
<i>e</i> Surface and groundwater monitoring	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<i>a</i> Construction	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>f</i> Effluent limitations	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<i>b</i> Drainage controls	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5. Explosives	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<i>c</i> Surfacing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Development waste and spoil disposal	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<i>d</i> Maintenance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Coal processing waste	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	17. Other transportation facilities	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. Noncoal waste	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	18. Support facilities and utility installations	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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

DOGM 12-1

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EXHIBIT
R-26
Cause# *Actions 1003*

INSPECTION REPORT COMMENTS

Permit No. INA/CIS/007
 Inspection Date September 3 1987

Please number comments to correspond with topics on previous page.

General Comments: A high intensity, short duration thunderstorm occurred at the mine site. Tom Munson (staff hydrologist) determined by visual observation, actual main channel flow depth measurements and other means that the storm event was well in excess of the 100 year return interval. In the mine plan, the reclaimed main channel flow depth design was 0.55 feet for a 100 year - 24 hour storm. The actual reclaimed main channel flow depth was 2 feet or greater in certain areas of the channel which was well in excess of 0.55 feet. The mine plan peak flow design for the reclaimed channel was 41 cfs. This channel saw flows well in excess of 41 cfs.

Areas of Storm Damage

- 1.) Oute slope erosion on the access road at water bar locations.
- 2.) Erosion of hillside, namely gullying, on both sides of the reclaimed channel.
- 3.) Erosion of the main channel.
- 4.) Silt fence sediment buildup and/or damage.

Since the storm event was determined to be in excess of the 10 year return interval,
a violation is not warranted, however, the operator is responsible for timely
repairs to all damage areas mentioned above.

Copy of report mailed to Brian Smith, ASM and John Rains, CPC

Copy of report given to Joe Helfrich, DORM

Inspector's signature Harold A. Handberg 14 September 1987 No. 27

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



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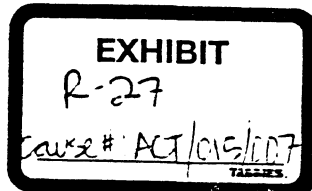
SECRETARY, BOARD OF
OIL, GAS & MINING

INSPECTION DATE & TIME: October 6, 1987
2:00 p.m. to 5:00 p.m.

Permittee and/or Operators Name: California Portland Cement
Business Address: 635 South Rancho Avenue Colton, CA 92324-0514
Mine Name: Hidden Valley Permit Number: INA/015/007
Type of Mining Activity: Underground ☒ Surface ☐ Other ☐
County: Emery
Company Official (s): none
State Official(s): Harold G. Sandbeck and Bill Malencik, DOGM
Partial: ☒ Complete: ☐ Date of Last Inspection: Sept. 3, 1987
Weather Conditions: Clear and warm
Acreage: Permitted 960 Disturbed 7 Regraded 7 Seeded 7 Bonded 7
Enforcement Action: None

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

	YES	NO	N/A	COMMENTS
1. PERMITS	()	()	()	()
2. SIGNS AND MARKERS	(X)	()	()	()
3. TOPSOIL	()	()	()	()
4. HYDROLOGIC BALANCE:				
a. STREAM CHANNEL DIVERSIONS	(X)	()	()	()
b. DIVERSIONS	(X)	()	()	()
c. SEDIMENT PONDS AND IMPOUNDMENTS	()	()	()	()
d. OTHER SEDIMENT CONTROL MEASURES	(X)	()	()	()
e. SURFACE AND GROUNDWATER MONITORING	()	()	()	()
f. EFFLUENT LIMITATIONS	()	()	()	()
5. EXPLOSIVES	()	()	()	()
6. DISPOSAL OF DEVELOPMENT WASTE AND SPOIL	()	()	()	()
7. COAL PROCESSING WASTE	()	()	()	()
8. NONCOAL WASTE	()	()	()	()
9. PROTECTION OF FISH, WILDLIFE AND RELATED ENVIRONMENTAL VALUES	()	()	()	()
10. SLIDES AND OTHER DAMAGE	()	()	()	()
11. CONTEMPORANEOUS RECLAMATION	()	()	()	()
12. BACKFILLING AND GRADING	()	()	()	()
13. REVEGETATION	()	()	()	()
14. SUBSIDENCE CONTROL	()	()	()	()
15. CESSATION OF OPERATIONS	()	()	()	()
16. ROADS				
a. CONSTRUCTION	()	()	()	()
b. DRAINAGE CONTROLS	()	()	()	()
c. SURFACING	()	()	()	()
d. MAINTENANCE	()	()	()	()
17. OTHER TRANSPORTATION FACILITIES	()	()	()	()
18. SUPPORT FACILITIES				
UTILITY INSTALLATIONS	()	()	()	()



INSPECTION REPORT
(continuation sheet)

Page 2 of 2

PERMIT NUMBER: INA/015/007

DATE OF INSPECTION Oct. 6, 1987

(Comments are Numbered to Correspond with Topics Listed Above)

GENERAL COMMENTS:

As of October 6, 1987, the storm damage, as discussed in the September 3, 1987, partial inspection, has not been repaired. On September 14, 1987, DOGM informed the operator that the storm damages should be repaired by October 31, 1987. The operator has informed the undersigned inspector that repair work should commence by October 20, 1987. The repair work will address the storm damage areas as stated in the September 3, 1987, inspection report.

Copy of this Report:

Mailed to: John Rains, CPC and Brian Smith, OSM
Given to: Joe Helfrich, DOGM

Inspectors Signature and Number: Harold G. Sandbeck #27 Date: Oct. 13, 1987

Harold G. Sandbeck



STATE OF UTAH
NATURAL RESOURCES
Oil, Gas & Mining

Norman - Bangert Governor
Dee C. Hansen Executive Director
Dianne R. Nielson Ph.D. Division Director

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JUN 29 1992

INSPECTION REPORT

SECRETARY, BOARD OF
OIL, GAS & MINING

INSPECTION DATE & TIME: Oct. 21, 1987
9:00 a.m. to 5:00 p.m.

Permittee and/or Operators Name: California Portland Cement
Business Address: 695 South Rancho Avenue Colton, CA 92324-0514
Mine Name: Hidden Valley Permit Number: INA/015/007
Type of Mining Activity: Underground ☒ Surface ☐ Other ☐
County: Emery
Company Official (s): John Rains
State Official(s): Harold G. Sandbeck and Bill Malencik
Partial: ☐ Complete: ☒ Date of Last Inspection: Oct. 6, 1987
Weather Conditions: Clear and warm
Acreage: Permitted 960 Disturbed 7 Regraded 7 Seeded 7 Bonded 7
Enforcement Action: 3 TDN's, TDNX-87-02-006-013-TV-3

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

	YES	NO	N/A	COMMENTS
1. PERMITS	(X)	()	()	()
2. SIGNS AND MARKERS	(X)	()	()	(X)
3. TOPSOIL	(X)	()	()	()
4. HYDROLOGIC BALANCE:				
a. STREAM CHANNEL DIVERSIONS	(X)	()	()	(X)
b. DIVERSIONS	(X)	()	()	()
c. SEDIMENT PONDS AND IMPOUNDMENTS	()	()	(X)	()
d. OTHER SEDIMENT CONTROL MEASURES	(X)	()	()	()
e. SURFACE AND GROUNDWATER MONITORING	(X)	()	()	()
f. EFFLUENT LIMITATIONS	()	()	(X)	()
5. EXPLOSIVES	()	()	(X)	()
6. DISPOSAL OF DEVELOPMENT WASTE AND SPOIL	()	()	(X)	()
7. COAL PROCESSING WASTE	()	()	(X)	()
8. NONCOAL WASTE	()	()	(X)	()
9. PROTECTION OF FISH, WILDLIFE AND RELATED ENVIRONMENTAL VALUES	(X)	()	()	()
10. SLIDES AND OTHER DAMAGE	()	()	(X)	()
11. CONTEMPORANEOUS RECLAMATION	(X)	()	()	()
12. BACKFILLING AND GRADING	(X)	()	()	()
13. REVEGETATION	(X)	()	()	()
14. SUBSIDENCE CONTROL	()	()	(X)	()
15. CESSATION OF OPERATIONS	()	()	(X)	()
16. ROADS				
a. CONSTRUCTION	(X)	()	()	()
b. DRAINAGE CONTROLS	(X)	()	()	()
c. SURFACING	(X)	()	()	()
d. MAINTENANCE	(X)	()	()	()
17. OTHER TRANSPORTATION FACILITIES	()	()	(X)	()
18. SUPPORT FACILITIES				
UTILITY INSTALLATIONS	()	()	(X)	()

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835

EXHIBIT

R-28

cause # ACTION 1/1/87

TABLER

INSPECTION REPORT
(continuation sheet)

Page 2 of 3

PERMIT NUMBER: INA/C15/007

DATE OF INSPECTION Oct. 21, 1987

(Comments are Numbered to Correspond with Topics Listed Above)

GENERAL COMMENTS:

On this complete inspection, DOGM was accompanied by John Rains (operator) and Joe Funk (OSM oversight inspector). Ground conditions were dry. Following are the TDN's received by undersigned inspector on October 21, 1987:

T87-02-006-013, 1 of 3 was issued for failure to design, construct and maintain diversions in a manner which prevents additional contribution of suspended solids to streamflow and to runoff outside the permit area. The undersigned inspector field checked and terminated the repair work before the TDN deadline. However, DOGM maintains that this TDN was unwarranted since the storm event was documented in the September 3, 1987, inspection report to exceed site designs. Therefore, the operator was exempt from violations and given until October 31, 1987, to repair the site.

T87-02-006-013, 2 of 3 was issued for failure to designate and mark a stream buffer zone. The Division does not contest the fact that stream buffer zone signs may not have been in place at the time of inspection. The Division feels that issuing an NOV for the reasons cited above after Phase 1 reclamation has been completed may be technically proper, but since no mechanized operations are, or will be, ongoing on this site, issuance will not likely cause correction of the violation, nor serve any other useful purpose. No NOV will be issued for this portion of this TDN.

T87-02-006-013, 3 of 3 was issued for failure to provide drains for outsloped dips discharging onto road embankments. The undersigned inspector field checked and terminated the repair work before the TDN deadline. As with TDN 1 of 3, DOGM maintains that this TDN was unwarranted since the storm event was documented to exceed site designs. Therefore, the operator was exempt from violations and given until October 31, 1987, to repair the site.

Copy of this Report:

Mailed to: John Rains, CPC; Brian Smith, CSM

Given to: Joe Helfrich, DOGM

Inspectors Signature and Number: Harold G. Sandbeck #27 Date: Oct. 29, 1987

INSPECTION REPORT
(continuation sheet)

Page 3 of 3

PERMIT NUMBER: INA/C15/007

DATE OF INSPECTION Oct. 21, 1987

(Comments are Numbered to Correspond with Topics Listed Above)

Joe Funk expressed concern that two months was too long to have not repaired the site. September 3, 1987, is the recognized date whereby DOGM realized a problem existed at the mine site. DOGM believes that two to three months is a reasonable length of time to have an out-of-state operator repair a site. An operator requires time to assess the damage, to draw up any designs, and to contract out the repair work.

The California Portland Cement operator estimated the repair work at \$25,000. He also stated it was company policy to take the following steps before initiating work.

- A. Define scope of work after a field survey.
- B. Prepare design specifications and drawings.
- C. Inform DOGM regarding the intentions to repair site.
- D. Incorporate B above and any other information into a formal contract bid proposal.
- E. Print bid proposal and mail to prospective contractors.
- F. Field tour of site with all prospective contractors.
- G. Analyze all bids and award contract.
- H. Issue notice to contractor to proceed.

Inspectors Signature and Number: Harold G. Sandbeck #27 Date: Oct. 29, 1987



355 W. North Temple, 3rd Floor, Salt Lake City, UT 84143-1203 • 801-533-5340

FILED

JUN 29 1992

INSPECTION REPORT

SECRETARY, BOARD OF
OIL, GAS & MINING

INSPECTION DATE & TIME: Dec. 8, 1987
1:00 p.m. to 4:00 p.m.

Permittee and/or Operators Name: California Portland Cement
Business Address: 695 South Rancho Avenue Colton, CA 92324-0514
Mine Name: Hidden Valley Permit Number: INA/015/007
Type of Mining Activity: Underground ☒ Surface ☐ Other ☐
County: Emery
Company Official(s): None
State Official(s): Harold G. Sandbeck and Brent Stettler
Partial: ☒ Complete: ☐ Date of Last Inspection: Oct. 21, 1987
Weather Conditions: Clear and cool
Acreage: Permitted 960 Disturbed 7 Regraded 7 Seeded 7 Bonded 7
Enforcement Action: None

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

	YES	NO	N/A	COMMENTS
1. PERMITS	()	()	()	()
2. SIGNS AND MARKERS	(X)	()	()	()
3. TOPSOIL	()	()	()	()
4. HYDROLOGIC BALANCE:				
a. STREAM CHANNEL DIVERSIONS	(X)	()	()	(X)
b. DIVERSIONS	(X)	()	()	()
c. SEDIMENT PONDS AND IMPOUNDMENTS	()	()	(X)	()
d. OTHER SEDIMENT CONTROL MEASURES	(X)	()	()	(X)
e. SURFACE AND GROUNDWATER MONITORING	(X)	()	()	(X)
f. EFFLUENT LIMITATIONS	()	()	()	()
5. EXPLOSIVES	()	()	()	()
6. DISPOSAL OF DEVELOPMENT WASTE AND SPOIL	()	()	()	()
7. COAL PROCESSING WASTE	()	()	()	()
8. NONCOAL WASTE	()	()	()	()
9. PROTECTION OF FISH, WILDLIFE AND RELATED ENVIRONMENTAL VALUES	()	()	()	()
10. SLIDES AND OTHER DAMAGE	()	()	()	()
11. CONTEMPORANEOUS RECLAMATION	()	()	()	()
12. BACKFILLING AND GRADING	(X)	()	()	()
13. REVEGETATION	()	()	()	()
14. SUBSIDENCE CONTROL	()	()	()	()
15. CESSATION OF OPERATIONS	()	()	()	()
16. ROADS				
a. CONSTRUCTION	(X)	()	()	()
b. DRAINAGE CONTROLS	(X)	()	()	(X)
c. SURFACING	(X)	()	()	()
d. MAINTENANCE	()	()	()	()
17. OTHER TRANSPORTATION FACILITIES	()	()	()	()
18. SUPPORT FACILITIES				
UTILITY INSTALLATIONS	()	()	()	()

INSPECTION REPORT
(continuation sheet)

Page 2 of 2

PERMIT NUMBER: INA/015/007

DATE OF INSPECTION Dec. 8, 1987

(Comments are Numbered to Correspond with Topics Listed Above)

GENERAL COMMENTS:

No significant mine site erosion was observed. Ground conditions were dry.

4a. STREAM CHANNEL DIVERSIONS:

As mentioned in previous inspection reports, the channel had been repaired and was stable. No problems were encountered.

4d. OTHER SEDIMENT CONTROL MEASURES:

The silt fences had been repaired. Some fences were repaired by increasing the fence height. This increase in height may cause stability problems later. The undersigned inspector will monitor the silt fences.

4e. SURFACE AND GROUNDWATER MONITORING:

The September semi-annual surface water sampling results were received by DOGM November 23, 1987, and checked by the undersigned inspector.

16b. ROAD DIVERSIONS:

At this time, the haul road out slopes were stable but need to be watched for any future erosion.

Copy of this Report:

Mailed to: California Portland Cement; Brian Smith, OSM

Given to: Joe Helfrich, DOGM

Inspectors Signature and Number: Harold G. Sandbeck #27 Date: Dec. 10, 1987



JUN 29 1992

Permit No. INA/015/007
Inspection Date January 6, 1992

SECRETARY, BOARD OF
OIL, GAS & MINING

Permittee Operator Name California Portland Cement

Business Address 695 South Rancho Avenue

City Colton State CA Zip 92324-0514

Mine Hidden Valley ☐ Surface ☒ Underground ☐ Other

County Emery State Ut

Company Official(s) None

State Official(s) Harold G. Sandbeck and Daron Hadlock

Time of inspection 2 30 ☐ a.m. ☒ p.m. to 5 00 ☐ a.m. ☒ p.m. ☒ Partial ☐ Complete

Date of last inspection December 8, 1987 Weather conditions Clear/Cold

Acreage 960 ☒ Permitted 7 ☒ Disturbed 7 ☒ Regraded 7 ☒ Seeded 7 ☒ Bonded

Enforcement Action None

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

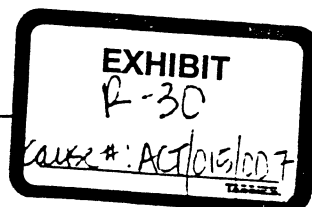
	YES	NO	N/A	COMMENTS
1. Permits	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Signs and markers	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Topsoil	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Hydrologic balance				
a Stream channel diversions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b Diversions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c Sediment ponds and impoundments	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d Other sediment control measures	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e Surface and groundwater monitoring	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f 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. Development waste and spoil disposal	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Coal processing waste	<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 type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input 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	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b Drainage controls	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c Surfacing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d Maintenance	<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 and utility installations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

DOGM/IR-1

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840



inspection report

INSPECTION REPORT COMMENTS

Permit No. INAP/15/007

Inspection Date January 6, 1988

Please number comments to correspond with topics on previous page

The site was covered with about 6" of snow. On this partial
inspection, no compliance problems were noted out in the field
or in the permit.

Copy of report mailed to John Rains, CPC; Brian Smith, OSM

Copy of report given to Joe Heffrich, DOAM

Inspector's signature Harold J. Handman 11 Jan. 1988 No. 27

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



STATE OF UTAH
NATURAL RESOURCES
Oil, Gas & Mining

John

John

Norman H. Bangerter, Governor
Dee C. Hansen, Executive Director
Dianne R. Nelson, Ph.D., Division Director

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JUN 29 1992

INSPECTION REPORT

SECRETARY, BOARD OF
OIL, GAS & MINING

INSPECTION DATE & TIME: Feb. 12, 1988
10:00 a.m. to 1:00 p.m.

Permittee and/or Operators Name: California Portland Cement
Business Address: 695 South Rancho Avenue Colton, CA 92324-0514
Mine Name: Hidden Valley Permit Number: INA/015/007
Type of Mining Activity: Underground ☒ Surface ☐ Other ☐
County: Emery
Company Official(s): None
State Official(s): Harold G. Sandbeck and Bill Malencik
Partial: ☐ Complete: ☒ Date of Last Inspection: Jan. 5, 1988
Weather Conditions: Clear and warm
Acreage: Permitted 960 Disturbed 7 Reclaimed 7 Seeded 7 Bonded 7
Enforcement Action: None

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

	YES	NO	N/A	COMMENTS
1. PERMITS	(X)	()	()	()
2. SIGNS AND MARKERS	(X)	()	()	(X)
3. TOPSOIL	(X)	()	()	()
4. HYDROLOGIC BALANCE:				
a. STREAM CHANNEL DIVERSIONS	(X)	()	()	()
b. DIVERSIONS	(X)	()	()	()
c. SEDIMENT PONDS AND IMPOUNDMENTS	()	()	(X)	()
d. OTHER SEDIMENT CONTROL MEASURES	(X)	()	()	()
e. SURFACE AND GROUNDWATER MONITORING	(X)	()	()	()
f. EFFLUENT LIMITATIONS	()	()	(X)	()
5. EXPLOSIVES	()	()	(X)	()
6. DISPOSAL OF DEVELOPMENT WASTE AND SPILL	()	()	(X)	()
7. COAL PROCESSING WASTE	()	()	(X)	()
8. NONCOAL WASTE	()	()	(X)	()
9. PROTECTION OF FISH, WILDLIFE AND RELATED ENVIRONMENTAL VALUES	(X)	()	()	()
10. SLIDES AND OTHER DAMAGE	()	()	(X)	()
11. CONTEMPORANEOUS RECLAMATION	(X)	()	()	()
12. BACKFILLING AND GRADING	(X)	()	()	()
13. REVEGETATION	(X)	()	()	()
14. SUBSIDENCE CONTROL	()	()	(X)	()
15. CESSATION OF OPERATIONS	()	()	(X)	()
16. ROADS				
a. CONSTRUCTION	(X)	()	()	()
b. DRAINAGE CONTROLS	(X)	()	()	()
c. SURFACING	(X)	()	()	()
d. MAINTENANCE	(X)	()	()	()
17. OTHER TRANSPORTATION FACILITIES	()	()	(X)	()
18. SUPPORT FACILITIES				
UTILITY INSTALLATIONS	()	()	(X)	()

INSPECTION REPORT
(continuation sheet)

Page 2 of 2

PERMIT NUMBER: INA/015/007

DATE OF INSPECTION Feb. 12, 1988

(Comments are Numbered to Correspond with Topics Listed Above)

GENERAL COMMENTS:

Ground was frozen and covered with snow.

2. SIGNS AND MARKERS:

The main entrance sign at the end of the blacktop road was down. Apparently, the post was weakened from bullet holes and then pushed or blown down. The operator will erect the sign as soon as possible.

No other problems were noted.

Copy of this Report:

Mailed to: John Rains, CPC

Mailed to SLC for: Brian Smith, OSM; Joe Helfrich, DOGM

Inspectors Signature and Number: Harold G. Sandbeck #27 Date: Feb. 16, 1988



STATE OF UTAH
NATURAL RESOURCES
Oil, Gas & Mining

JUN 27 1988

Norman - Bangerter Governor
Dee C. Hansen, Executive Director
Dianne R. Nielson, Ph.D., Division Director

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JUN 29 1992

DIVISION OF
OIL, GAS & MINING

INSPECTION REPORT

SECRETARY, BOARD OF
OIL, GAS & MINING

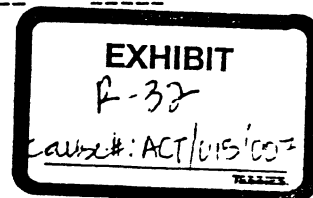
INSPECTION DATE & TIME: March 8, 1988

2:00 p.m. to 5:00 p.m.

Permittee and/or Operators Name: California Portland Cement
Business Address: 695 South Rancho Avenue Colton, CA 92324-0514
Mine Name: Hidden Valley Permit Number: INA/015/007
Type of Mining Activity: Underground ☒ Surface ☐ Other ☐
County: Emery State Utah
Company Official (s): None
State Official(s): Harold G. Sandbeck and Brent Stettler
Partial: ☒ Complete: ☐ Date of Last Inspection: Feb. 12, 1988
Weather Conditions: Cold and windy
Acreage: Permitted 960 Disturbed 7 Regraded 7 Seeded 7 Bonded 7
Enforcement Action: None

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

	YES	NO	N/A	COMMENTS
1. PERMITS	()	()	()	()
2. SIGNS AND MARKERS	(X)	()	()	(X)
3. TOPSOIL	()	()	()	()
4. HYDROLOGIC BALANCE:				
a. STREAM CHANNEL DIVERSIONS	(X)	()	()	(X)
b. DIVERSIONS	()	()	()	()
c. SEDIMENT PONDS AND IMPOUNDMENTS	()	()	()	()
d. OTHER SEDIMENT CONTROL MEASURES	(X)	()	()	(X)
e. SURFACE AND GROUNDWATER MONITORING	()	()	()	()
f. EFFLUENT LIMITATIONS	()	()	()	()
5. EXPLOSIVES	()	()	()	()
6. DISPOSAL OF DEVELOPMENT WASTE AND SPOIL	()	()	()	()
7. COAL PROCESSING WASTE	()	()	()	()
8. NONCOAL WASTE	()	()	()	()
9. PROTECTION OF FISH, WILDLIFE AND RELATED ENVIRONMENTAL VALUES	()	()	()	()
10. SLIDES AND OTHER DAMAGE	()	()	()	()
11. CONTEMPORANEOUS RECLAMATION	()	()	()	()
12. BACKFILLING AND GRADING	()	()	()	()
13. REVEGETATION	()	()	()	()
14. SUBSIDENCE CONTROL	()	()	()	()
15. CESSATION OF OPERATIONS	()	()	()	()
16. ROADS				
a. CONSTRUCTION	()	()	()	()
b. DRAINAGE CONTROLS	()	()	()	()
c. SURFACING	()	()	()	()
d. MAINTENANCE	()	()	()	()
17. OTHER TRANSPORTATION FACILITIES	()	()	()	()
18. SUPPORT FACILITIES				
UTILITY INSTALLATIONS	()	()	()	()



INSPECTION REPORT
(continuation sheet)

Page 2 of 2

PERMIT NUMBER: INA/015/007

DATE OF INSPECTION March 8, 1988

(Comments are Numbered to Correspond with Topics Listed Above)

GENERAL COMMENTS:

Ground conditions were semi-frozen with no snow cover on the site. No significant erosion problems were observed.

2 SIGNS AND MARKERS:

As noted in the February 12, 1988, inspection report, the main entrance sign at the end of the blacktop road was down. The sign has been erected and all appears in order.

4a. STREAM CHANNEL DIVERSIONS:

The stream channel was inspected and it appears to be stable with no problems observed.

4d. OTHER SEDIMENT CONTROL MEASURES:

The silt fences were inspected and no stability problems were noted. As noted in previous inspection reports, some silt fences had been repaired by increasing the fence height. This increase in height may cause stability problems later.

Copy of this Report:

Mailed to: John Rains, CPC
Mailed to SLC for: Brian Smith, DSM; Joe Helfrich, DOGM
Filed to: PFO

Inspectors Signature and Number: Harold G. Sandbeck #27 Date: Mar. 9, 1988



JUN 29 1992

inspection report

SECRETARY, BOARD OF
OIL, GAS & MINING

Permit No TNA/015/007

Inspection Date 4/6/88

Permittee Operator Name CALIFORNIA PORTLAND CEMENT
Business Address 695 SOUTH RANCHO AVENUE
City COLTON State CALIF. Zip 92324-0514
Mine HIDDEN VALLEY ☐ Surface ☒ Underground ☐ Other
County EMERY State UTAH
Company Official(s) NONE
State Official(s) JOHN WHITEHEAD, TOM MUNSON
Time of inspection 3:00 ☐ a.m. ☒ p.m. to 4:00 ☐ a.m. ☒ p.m. ☒ Partial ☐ Complete
Date of last inspection 2/12/88 Weather conditions CLEAR
Acreage 960 ☒ Permitted 7 ☒ Disturbed 7 ☒ Regraced 7 ☒ Seeded 7 ☒ Bonseed
Enforcement Action NONE

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

	YES	NO	N/A	COMMENTS		YES	NO	N/A	COMMENTS
1 Permits	<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 checked="" type="checkbox"/>	<input type="checkbox"/>
2 Signs and markers	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	10 Slides and other damage	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3 Topsoil	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	11 Contemporaneous reclamation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4 Hydrologic balance					12 Backfilling and grading	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
— Stream channel diversions	<input checked="" 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"/>
— Diversions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	14 Subsidence control	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
— Sediment ponds and impoundments	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	15 Cessation of operations	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
— Other sediment control measures	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16 Roads				
— Surface and groundwater monitoring	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	— Construction	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
— Effluent limitations	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	— Drainage controls	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5 Explosives	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	— Surfacing	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6 Development waste and spoil disposal	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	— Maintenance	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7 Coal processing waste	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	17 Other transportation facilities	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8 Noncoal waste	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	18 Support facilities and utility installations	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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

DOGM 1R-1

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846

EXHIBIT

R-33

aux: P: 1/15/11

INSPECTION REPORT COMMENTS

Permit No INA/C15/007
Inspection Date 4/6/88

Please number comments to correspond with topics on previous page

GENERAL COMMENTS

The site was repaired from a storm event last summer and looked in good shape and improvements were in place

4. Hydrologic Balance

- Other sediment control measures.

The silt fence located in the A seam area was in need of being in at the toe of the fence for about 50 feet. The remainder of the fence looked in good repair and appeared to be holding up well.

- Gullies formed on the A-seam hillside may need to be raked and reseeded if the rock dams and additional diversion work proves to be ineffective in stopping gully formation on this hillside

Copy of report mailed to JOHN RAINS, CPC
Copy of report given to BRAAN SMITH, OSM, JOE HELFRICH DOGM
Inspector's signature Thomas Munson 4-13-88 No. 25

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



87 JCH
Page 2

JUN 29 1992

SECRETARY, BOARD OF
OIL, GAS & MINING

Perm. No. INA/CIS/CCF

Inspection Date 5/24/88

Permittee Operator Name CALIFORNIA PORTLAND CEMENT
Business Address 695 SOUTH RANCHO AVENUE
City COLTON State CALIFORNIA Zip 92324-0514
Mine HIDDEN VALLEY MINE ☐ Surface ☒ Underground ☐ Other
County EMERY State UTAH
Company Official(s) NONE
State Official(s) PAMELA GRUBBAUGH-LITTIG
Time of inspection 8 45 ☒ a.m. ☐ p.m. to 10 00 ☒ a.m. ☐ p.m. ☐ Partial ☒ Complete
Date of last inspection 4/6/88 Weather conditions CLEAR AND WARM
Acreage 960 ☒ Permitted 7 ☒ Disturbed 7 ☒ Regraded 7 ☒ Seeded 7 ☒ Enclosed
Enforcement Action NONE 9/14/88

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

	YES	NO	N/A	COMMENTS		YES	NO	N/A	COMMENTS
1 Permits	<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 checked="" type="checkbox"/>	<input type="checkbox"/>
2 Signs and markers	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	10 Slides and other damage	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3 Topsoil	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	11 Contemporaneous reclamation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4 Hydrologic balance					12 Backfilling and grading	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
a Stream channel diversions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	13 Revegetation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b Diversions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	14 Subsidence control	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c Sediment ponds and impoundments	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	15 Cessation of operations	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d Other sediment control measures	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16 Roads				
e Surface and groundwater monitoring	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	a Construction	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
f Effluent limitations	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	b Drainage controls	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5 Explosives	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	c Surfacing	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6 Development waste and spoil disposal	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	d Maintenance	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7 Coal processing waste	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	17 Other transportation facilities	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8 Noncoal waste	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	18 Support facilities and utility installations	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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

DOGM IR 1

an equal opportunity employer

843

EXHIBIT

R-34

CAUSE# ACT/CIS/112

TABLE

inspection report

INSPECTION REPORT COMMENTS

Permit No. 1NA 1015/007
 Inspection Date 5/24/88

Please number comments to correspond with topics on previous page.

#2- The permit sign is standing and in good repair. Perimeter markers were also noted to be in good repair. A cattle fence is keeping cattle out.

#4d- The silt fence is in an operable condition. No holes were seen in the fence.

#13- There is a "biomass" cover over $\approx 80\%$ of the reclaimed site. There was clover noted. The vegetative material is doing especially well in the "cat" tracks (dugs).

#16b- The road has been "roughed" and water bars are handling water.

Overall, the reclaimed site looked good on this inspection. This inspection also served as the Phase I- bond release inspection.

PFO, Copy of report mailed to Brian Smith, OSM and John Rains, CPC
 Copy of report given to Joe Helfrich, DOGM
 Inspector's signature Danella Amburgey-Littig 5/24/88 No. 20
WHITE - DOGM YELLOW - OSM PINK - PERMITTEE/OPERATOR GOLDENROD - NOV FILE



FILED

JUN 29 1992

Permit No INA/015/007

Inspection Date 6/21/88

SECRETARY, BOARD OF

Permittee California Portland Cement

Business Address 695 South Ranch Avenue

City Colton State California Zip 92324-0514

Mine Hidden Valley Mine ☐ Surface ☒ Underground ☐ Other

County Emery State Utah

Company Official(s) none

State Official(s) Lynn Kunzler, Brent Stettler

Time of inspection 3:30 ☐ a.m. ☒ p.m. to 4:40 ☐ a.m. ☒ p.m. ☒ Partial ☐ Complete

Date of last inspection 5/24/88 Weather conditions hot, windy, partly cloudy

Acreage 960 ☒ Permitted 7 ☒ Disturbed 7 ☒ Regraded 7 ☒ Seeded 7 ☒ Barbed

Enforcement Action none

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

	YES	NO	N/A	COMMENTS		YES	NO	N/A	COMMENTS
1. Permits	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	9. Protection of fish, wildlife, and related environmental values	<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 type="checkbox"/>	<input type="checkbox"/>	10. Slides and other damage	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Topsoil	<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"/>
4. Hydrologic balance					12. Backfilling and grading	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
a Stream channel diversions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	13. Revegetation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b Diversions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	14. Subsidence control	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c Sediment ponds and impoundments	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	15. Cessation of operations	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d Other sediment control measures	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16. Roads				
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f Effluent limitations	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	- Drainage controls	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Explosives	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	- Surfacing	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Development waste and spoil disposal	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	- Maintenance	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Coal processing waste	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	17. Other transportation facilities	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. Noncoal waste	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	18. Support facilities and utility installations	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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

DOGM: IR-1

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850

EXHIBIT

P-35

CAUSE # 10215107

TABER

inspection report

INSPECTION REPORT COMMENTS

Permit No 1NA/015/007

Inspection Date 6/21/88

Please number comments to correspond with topics on previous page.

4 d. Other sediment control measures

No rills were observed. Silt fences appear to be functioning effectively. The ripped surface of the access road has effectively controlled erosion.

13. Revegetation

Per ocular estimate, over 90% of the existing vegetation consists of annual weeds. These are predominantly Russian thistle (Salsola kali), halogeton (Halogeton glomeratus), and kochia (Kochia scoparia).

L. Kunzler, Reclamation Biologist, judged the vegetative cover to be 50% \pm 15%, including weeds.

The following desirable species occurred on reclamation: winterfat, fourwing saltbush, black greasewood, yellow sweetclover, shadscale, crested wheatgrass, Indian ricegrass, and Russian wildrye.

Reclamation doesn't look very good at this point. Dry conditions may be largely responsible for poor perennial plant establishment.

Copy of report mailed to John Rains, CPC; PFO.

Copy of report given to Brian Smith, OSM; Joe Helfrich, DOGM.

Inspector's signature Brent A. Stettin No. 29

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



STATE OF UTAH
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

355 West North Temple
Salt Lake City, Suite 350
Salt Lake City, Utah 84180-1203
801 538 5340

INSPECTION REPORT

SECRETARY, BOARD OF
OIL, GAS & MINING

INSPECTION DATE & TIME: July 6, 1988
9:00-9:45 a.m.

Permittee and/or Operators Name: California Portland Cement
Business Address: 695 South Rancho Avenue Colton, Calif. 92324-0514
Mine Name: Hidden Valley Permit Number: INA/015/007
Type of Mining Activity: Underground XX Surface Other
County: Emery State: Utah
Company Official(s): None
State Official(s): Bill Warmack and Tom Munson
Partial: XX Complete: Date of Last Inspection: June 21, 1988
Weather Conditions: Clear and warm
Acreage: Permitted 960 Disturbed 7 Regraded 7 Seeded 7 Bonded 7
Enforcement Action: None

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

	YES	NO	N/A	COMMENTS
1. PERMITS	(X)	()	()	()
2. SIGNS AND MARKERS	(X)	()	()	(X)
3. TOPSOIL	()	()	()	()
4. HYDROLOGIC BALANCE:				
a. STREAM CHANNEL DIVERSIONS	()	()	()	()
b. DIVERSIONS	(X)	()	()	()
c. SEDIMENT PONDS AND IMPOUNDMENTS	()	()	()	()
d. OTHER SEDIMENT CONTROL MEASURES	(X)	()	()	(X)
e. SURFACE AND GROUNDWATER MONITORING	()	()	()	()
f. EFFLUENT LIMITATIONS	()	()	(X)	()
5. EXPLOSIVES	()	()	(X)	()
6. DISPOSAL OF DEVELOPMENT WASTE AND SPOIL	()	()	(X)	()
7. COAL PROCESSING WASTE	()	()	(X)	()
8. NONCOAL WASTE	()	()	(X)	()
9. PROTECTION OF FISH, WILDLIFE AND RELATED ENVIRONMENTAL VALUES	()	()	(X)	()
10. SLIDES AND OTHER DAMAGE	()	()	(X)	()
11. CONTEMPORANEOUS RECLAMATION	()	()	()	()
12. BACKFILLING AND GRADING	()	()	()	()
13. REVEGETATION	(X)	()	()	()
14. SUBSIDENCE CONTROL	()	()	(X)	()
15. CESSATION OF OPERATIONS	()	()	(X)	()
16. ROADS				
a. CONSTRUCTION	()	()	(X)	()
b. DRAINAGE CONTROLS	(X)	()	()	()
c. SURFACING	()	()	(X)	()
d. MAINTENANCE	()	()	(X)	()
17. OTHER TRANSPORTATION FACILITIES	()	()	(X)	()
18. SUPPORT FACILITIES				
UTILITY INSTALLATIONS	()	()	(X)	()

INSPECTION REPORT
(continuation sheet)

Page 2 of 2

PERMIT NUMBER: ACT/015/007

DATE OF INSPECTION July 6, 1988

(Comments are Numbered to Correspond with Topics Listed Above)

GENERAL COMMENTS:

Ground conditions were dry with no evidence of measurable precipitation. No erosion problems were encountered.

2. SIGNS AND MARKERS:

The permit sign needs to be installed back on its post.

4d. OTHER SEDIMENT CONTROL MEASURES:

All silt fences were up and functioning properly.

13. REVEGETATION:

Considerable amount of plant growth was observed especially in the "roughed-out" areas. The seeded areas show signs of perennial vegetation establishment; however, there has been a widespread invasion of halogeton within the disturbed areas. The density of halogeton varies. It is most dense in those areas where perennial vegetation is sparse. An evaluation should be made before fall to determine what areas, if any, should be reseeded.

Copy of this Report:

Mailed to: John Rains, California Portland Cement

Mailed to SLC for: Brian Smith, OSM; Joe Helfrich and Tom Munson, DOGM

Filed to: PFO

Inspectors Signature and Number: William A. Warmack #30 Date: July 13, 1988



JUN 29 1992

INSPECTION REPORT

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

INSPECTION DATE & TIME: Aug. 9, 1988
2:00-3:00 p.m.

Permittee and/or Operators Name: California Portland Cement
Business Address: 695 South Rancho Avenue Colton, CA 92324-0514
Mine Name: Hidden Valley Permit Number: ACT/015/007 7c85
Type of Mining Activity: Underground XX Surface Other
County: Emery State: Utah
Company Official(s): None
State Official(s): Bill Warmack and John Whitehead
Partial: Complete: XX Date of Last Inspection: July 6, 1988
Weather Conditions: Clear and hot
Acreage: Permitted 960 Disturbed 7 Regraded 7 Seeded 7 Bonded 7
Enforcement Action: None

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

	YES	NO	N/A	COMMENTS
1. PERMITS	(X)	()	()	()
2. SIGNS AND MARKERS	(X)	()	()	(X)
3. TOPSOIL	(X)	()	()	()
4. HYDROLOGIC BALANCE:				
a. STREAM CHANNEL DIVERSIONS	(X)	()	()	()
b. DIVERSIONS	(X)	()	()	(X)
c. SEDIMENT PONDS AND IMPOUNDMENTS	()	()	(X)	()
d. OTHER SEDIMENT CONTROL MEASURES	(X)	()	()	(X)
e. SURFACE AND GROUNDWATER MONITORING	(X)	()	()	(X)
f. EFFLUENT LIMITATIONS	()	()	(X)	()
5. EXPLOSIVES	()	()	(X)	()
6. DISPOSAL OF DEVELOPMENT WASTE AND SPOIL	()	()	(X)	()
7. COAL PROCESSING WASTE	()	()	(X)	()
8. NONCOAL WASTE	()	()	(X)	()
9. PROTECTION OF FISH, WILDLIFE AND RELATED ENVIRONMENTAL VALUES	(X)	()	()	()
10. SLIDES AND OTHER DAMAGE	()	()	(X)	()
11. CONTEMPORANEOUS RECLAMATION	(X)	()	()	()
12. BACKFILLING AND GRADING	(X)	()	()	()
13. REVEGETATION	(X)	()	()	()
14. SUBSIDENCE CONTROL	()	()	(X)	()
15. CESSATION OF OPERATIONS	()	()	(X)	()
16. ROADS				
a. CONSTRUCTION	(X)	()	()	()
b. DRAINAGE CONTROLS	(X)	()	()	()
c. SURFACING	(X)	()	()	()
d. MAINTENANCE	(X)	()	()	()
17. OTHER TRANSPORTATION FACILITIES	()	()	(X)	()
18. SUPPORT FACILITIES				
UTILITY INSTALLATIONS	()	()	(X)	()

INSPECTION REPORT
(continuation sheet)

Page 2 of 3

PERMIT NUMBER: ACT/015/007

DATE OF INSPECTION Aug. 9, 1999

(Comments are Numbered to Correspond with Topics Listed Above)

GENERAL COMMENTS:

The mine site conditions were moist; some evidence was present indicating a previous localized storm had occurred with little or no effects to the site. In maintenance areas noted, some minor hand work is required to reduce future storm impacts. Ivie Creek was flowing during this inspection.

2. SIGNS AND MARKERS:

A new mine I.D. sign was installed and erected on the property. Although the metal post and sign appear to be stable at this time, future installations should be directed towards reducing post height; the current height tends to be very susceptible to the varying winds associated with this area.

4b. DIVERSIONS:

1. Second waterbar diversion upwards from lower road switchback is developing some minor erosion on outslope bank.
2. Road drainage ditch by lower switchback has developed some cutting.

4d. OTHER SEDIMENT CONTROL MEASURES:

1. The silt fences were observed and with the following exceptions, were noted to be in good repair.
 - A. Lower silt fence on the old pond site had some water run around the outer edge of fencing.
 - B. A small piping hole has developed on the southern end of the eastern silt fence along main channel.
 - C. Some water run around has occurred on the southern end of the western silt fence along main channel.
2. The backfill area adjacent to the old pond site, specifically by the rock check dams, is developing some rills especially where the water cascades down from upper dams. Some additional placement of rock may be required to dissipate the water energy in these particular areas.

INSPECTION REPORT
(continuation sheet)

Page 3 of 3

PERMIT NUMBER: ACT/015/007

DATE OF INSPECTION Aug. 9, 1988

(Comments are Numbered to Correspond with Topics Listed Above)

4e. SURFACE AND GROUND WATER MONITORING:

The results of the May 1988 stream monitoring work of Ivie Creek were received by the Division on July 18, 1988. Samples were taken on May 23, 1988.

Copy of this Report:

Mailed to: John Rains, California Portland Cement
Mailed to SLC for: Brian Smith, DSM; Joe Helfrich, DOGM
Filed to: PFO

Inspectors Signature and Number: William A. Warmack #30 Date: Aug. 12, 1988

William A. Warmack



STATE OF UTAH
NATURAL RESOURCE
Oil, Gas & Mining

Norman H. Bangerter, Governor
Dee C. Hansen, Executive Director
Dianne R. Nielson, Ph.D., Division Director

355 W. North Temple • 3rd Floor • Salt Lake City, UT 84143 • 801-538-5340

JUN 27 1992

INSPECTION REPORT

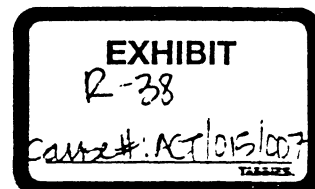
SECRETARY, BOARD OF
OIL, GAS & MINING

INSPECTION DATE & TIME: September 7, 1988
8:30-9:30 a.m.

Permittee and/or Operators Name: California Portland Cement
Business Address: 695 South Rancho Avenue Colton, CA 92324-0514
Mine Name: Hidden Valley Permit Number: INA/015/007 7085
Type of Mining Activity: Underground XX Surface Other
County: Emery State: Utah
Company Official(s): None
State Official(s): Bill Warmack
Partial: XX Complete: Date of Last Inspection: August 9, 1988
Weather Conditions: Clear and hot
Acreage: Permitted 960 Disturbed 7 Regraded 7 Seeded 7 Bonded 7
Enforcement Action: None

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

	YES	NO	N/A	COMMENTS
1. PERMITS	()	()	()	()
2. SIGNS AND MARKERS	(X)	()	()	(X)
3. TOPSOIL	()	()	()	()
4. HYDROLOGIC BALANCE:				
a. STREAM CHANNEL DIVERSIONS	()	()	()	()
b. DIVERSIONS	()	()	()	()
c. SEDIMENT PONDS AND IMPOUNDMENTS	()	()	()	()
d. OTHER SEDIMENT CONTROL MEASURES	(X)	()	()	(X)
e. SURFACE AND GROUNDWATER MONITORING	()	()	()	()
f. EFFLUENT LIMITATIONS	()	()	()	()
5. EXPLOSIVES	()	()	()	()
6. DISPOSAL OF DEVELOPMENT WASTE AND SPOIL	()	()	()	()
7. COAL PROCESSING WASTE	()	()	()	()
8. NONCOAL WASTE	()	()	()	()
9. PROTECTION OF FISH, WILDLIFE AND RELATED ENVIRONMENTAL VALUES	()	()	()	()
10. SLIDES AND OTHER DAMAGE	()	()	()	()
11. CONTEMPORANEOUS RECLAMATION	()	()	()	()
12. BACKFILLING AND GRADING	()	()	()	()
13. REVEGETATION	(X)	()	()	(X)
14. SUBSIDENCE CONTROL	()	()	()	()
15. CESSATION OF OPERATIONS	()	()	()	()
16. ROADS				
a. CONSTRUCTION	()	()	()	()
b. DRAINAGE CONTROLS	(X)	()	()	(X)
c. SURFACING	()	()	()	()
d. MAINTENANCE	()	()	()	()
17. OTHER TRANSPORTATION FACILITIES	()	()	()	()
18. SUPPORT FACILITIES				
UTILITY INSTALLATIONS	()	()	()	()



INSPECTION REPORT COMMENTS

Permit No INA/015/007

Inspection Date SEPT 7, 1988

Please number comments to correspond with topics on previous page.

GENERAL: MINE SITE CONDITIONS WERE VERY DRY, NO
VISIBLE EVIDENCE OF RECENT PRECIPITATION. MAINTENANCE
ITEMS NOTED HEREIN ARE FOR REFERENCE ONLY & DO NOT
VIOLATE UTRC STANDARDS.

2. SIGNS & MARKERS

THE MINE I.D. SIGN WAS ONCE AGAIN TORN LOOSE FROM
THE POLE. AS POINTED OUT IN THE PREVIOUS INSPECTION
REPORT (8/9/88), THE SIGN SHOULD BE INSTALLED CLOSER
TO THE GROUND & SHOULD BE FASTENED MORE SECURELY.

4d. OTHER SEDIMENT CONTROL MEASURES

THE SILT FENCES WERE INSPECTED & FOUND IN GOOD
REPAIR. HOWEVER, SOME ADDITIONAL WORK IS REQUIRED
TO CORRECT SOME OF THE WATER RUN-AROUND.

13. REVEGETATION

APPROXIMATELY 400' DOWN FROM THE APPLES ROAD
GATE A SPARSELY VEGETATED AREA WAS OBSERVED.

Copy of report mailed to _____

Copy of report given to _____

Inspector's signature BLW 9/13/88 No. _____

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

INSPECTION REPORT COMMENTS

Permit No. INA/CIS/007

Inspection Date SEPT. 7, 1988

Please number comments to correspond with topics on previous page

13. REVEGETATION (CRACK)

THIS AREA APPEARED TO HAVE SOME ASSOCIATED
SOIL CONDITION & MAY HAVE TO BE EVALUATED
FOR FUTURE RESEEDING.

14b. ROAD DRAINAGE CONTROLS

THE OUTSIDE BANK BY THE ACCESS ROAD
WATER BAR PREVIOUSLY DISCUSSED IN THE
AUGUST 9 REPORT APPEARS TO HAVE
STABILIZED ITSELF, NO FURTHER PROBLEMS
HAVE DEVELOPED.

Copy of report mailed to JOHN BAINS, CALIFORNIA PORTLAND CEMENT

Copy of report ^{MAILED} given to BRIAN SMITH, OSM; JOE HELEXICH, DOGM
^{FILED:} PFO

Inspector's signature William A. Warrick 9/13/88 No. 30

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



JUN 29 1992

SECRETARY, BOARD OF
OIL, GAS & MINING

Permit No. TRA/CIS/807

Inspection Date Oct. 24, 1992

inspection report

Permittee Operator Name CALIFORNIA PORTLAND CEMENT
Business Address 1245 SOUTH RALPHO AVE.
City COLTON State CA Zip 92329-0514
Mine HIDDEN VALLEY ☐ Surface ☒ Underground ☐ Other
County EMERY State UT
Company Official(s) NONE
State Official(s) BILL WARMACK
Time of inspection 8:30 ☒ a.m. ☐ p.m. to 9:30 ☒ a.m. ☐ p.m. ☒ Partial ☐ Complete
Date of last inspection SEPT. 7, 1992 Weather conditions CLEAR & COOL
Acreage 960 ☒ Permitted 7 ☒ Disturbed 7 ☒ Regraded 7 ☒ Seeded 7 ☒ Bonded
Enforcement Action NONE

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

	YES	NO	N/A	COMMENTS		YES	NO	N/A	COMMENTS
1. Permits	<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"/>
2. Signs and markers	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	10. Slides and other damage	<input 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"/>	11. Contemporaneous reclamation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Hydrologic balance					12. Backfilling and grading	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
a Stream channel diversions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	13. Revegetation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b Diversions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	14. Subsidence control	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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f Effluent limitations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	- Drainage controls	<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"/>	- Surfacing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Development waste and spoil disposal	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	- Maintenance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Coal processing waste	<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"/>
8. Noncoal waste	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	18. Support facilities and utility installations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

DOGM/IR-1

an equal opportunity employer

EXHIBIT

R-39

cause # ACT/CIS/807

800

INSPECTION REPORT COMMENTS

Permit No INA/015/007

Inspection Date 10/29/00

Please number comments to correspond with topics on previous page

GENERAL: Mine site conditions were dry, however, some physical evidence was present indicating recent stream activity.

2. SIGNS & MARKERS: The mine I.D. sign has been placed @ the bottom of the pole but needs some reinforcement to keep it from blowing off.

AD. OTHER SEDIMENT CONTROLS: ① All of the silt fences were found in good repair & functioning properly. ② The rock check-dams on the eastern slope are operating as desired & have deposited the fines along the basin area.

13. REVEGETATION: Several areas along the access road show signs of "pood" soil & should be evaluated for vegetation success. Growth is very slow on both fill slopes, but appear to be fairly stable.

3L FOL; BRIAN SMITH, OSM; JOE HELFICH, DOGM
Copy of report mailed to JOHN RAINS, CRC

Copy of report given to PEO
FHO

Inspector's signature William A. Wainwright 10/29/00 No. 30

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



STATE OF UTAH
NATURAL RESOURCES
Oil, Gas & Mining
FILED

Norman H. Bangert, Governor
Dee C. Hansen, Executive Director
Dianne R. Nielson, Ph.D., Division Director

355 W. North Temple • 3rd Center, Suite 350 • Salt Lake City, UT 84180-1203 • 801-538-5340

JUN 29 1992

INSPECTION REPORT

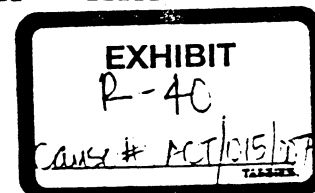
SECRETARY, BOARD OF
OIL, GAS & MINING

INSPECTION DATE & TIME: November 24, 1988
10:00 a.m. - 12:00 p.m.

Permittee and/or Operators Name: California Portland Cement
Business Address: 695 South Rancho Avenue Colton, CA 92324-2514
Mine Name: Hidden Valley Permit Number: INA/015/007
Type of Mining Activity: Underground XX Surface Other
County: Emery State: Utah
Company Official(s): Karla Knocp (JBR Consultants)
State Official(s): Bill Warmack
Partial: Complete: XX Date of Last Inspection: October 24, 1988
Weather Conditions: Partly cloudy, breezy
Acreage: Permitted 960 Disturbed 7 Regraded 7 Seeded 7 Bonded 7
Enforcement Action: None

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

	YES	NO	N/A	COMMENTS
1. PERMITS	(X)	()	()	(X)
2. SIGNS AND MARKERS	(X)	()	()	(X)
3. TOPSOIL	(X)	()	()	()
4. HYDROLOGIC BALANCE:				
a. STREAM CHANNEL DIVERSIONS	(X)	()	()	()
b. DIVERSIONS	(X)	()	()	()
c. SEDIMENT PONDS AND IMPOUNDMENTS	()	()	(X)	()
d. OTHER SEDIMENT CONTROL MEASURES	(X)	()	()	(X)
e. SURFACE AND GROUNDWATER MONITORING	(X)	()	()	(X)
f. EFFLUENT LIMITATIONS	()	()	(X)	()
5. EXPLOSIVES	()	()	(X)	()
6. DISPOSAL OF DEVELOPMENT WASTE AND SPOIL	()	()	(X)	()
7. COAL PROCESSING WASTE	()	()	(X)	()
8. NONCOAL WASTE	()	()	(X)	()
9. PROTECTION OF FISH, WILDLIFE AND RELATED ENVIRONMENTAL VALUES	(X)	()	()	()
10. SLIDES AND OTHER DAMAGE	()	()	(X)	()
11. CONTEMPORANEOUS RECLAMATION	(X)	()	()	()
12. BACKFILLING AND GRADING	(X)	()	()	()
13. REVEGETATION	(X)	()	()	(X)
14. SUBSIDENCE CONTROL	()	()	(X)	()
15. CESSATION OF OPERATIONS	()	()	(X)	()
16. ROADS				
a. CONSTRUCTION	(X)	()	()	()
b. DRAINAGE CONTROLS	(X)	()	()	()
c. SURFACING	()	()	(X)	()
d. MAINTENANCE	(X)	()	()	()
17. OTHER TRANSPORTATION FACILITIES	()	()	(X)	()
18. SUPPORT FACILITIES				
UTILITY INSTALLATIONS	()	()	(X)	()



INSPECTION REPORT
(continuation sheet)

Page 2 of 3

PERMIT NUMBER: ACT/015/007

DATE OF INSPECTION Nov. 7, 1988

(Comments are Numbered to Correspond with Topics Listed Above)

GENERAL COMMENTS:

The undersigned inspector was accompanied by Karla Knoop (JBR Consultants) during this complete inspection. Revegetation and maintenance work was being completed throughout the site.

1. PERMITS:

CALMAT received a final approval of PAP Amendment on June 9, 1988. No further amendments or approvals were pending at this time.

2. SIGNS AND MARKERS:

The mine I.D. sign has been reinstalled on the post once again, and has been secured in such a manner to prevent future problems.

4d. OTHER SEDIMENT CONTROL MEASURES:

1. Silt fences were being installed on the eastern slope where rock check dams had been previously built.
2. The existing silt fences were observed and found in good repair. Some minor enhancement work will be done as necessary before work is terminated.
3. In a few general areas, some minor rilling has occurred from previous storms; straw and/or rock will be placed to prevent future problems from developing.

4e. SURFACE AND GROUND WATER MONITORING:

According to Karla, September water samples were taken during the first part of the quarter. At this time, field and laboratory results are not available and will be referenced when received.

13. REVEGETATION:

1. The main access road has been ripped along its entire length and will be reseeded. A bare area that has been referenced in prior reports will be treated with lime to alleviate the possible acidity problem. As the road is seeded, straw and netting will be placed to ensure proper growth.

INSPECTION REPORT
(continuation sheet)

Page 3 of 3

PERMIT NUMBER: ACT/015/007

DATE OF INSPECTION Nov. 7, 1988

(Comments are Numbered to Correspond with Topics Listed Above)

2. The northern slope was being reseeded and covered with straw in hopes of establishing strong vegetative growth next year.

NOTE: All areas that have been reseeded were broadcasted and hand raked if necessary.

Copy of this Report:

Mailed to: John Rains, California Portland Cement

Mailed to SLC for: Brian Smith, OSM; Joe Helfrich, DOGM

Filed to: PFO

Inspectors Signature and Number: William A. Warmack #30 Date: Nov. 8, 1988

William A. Warmack 11/8/88



JUN 29 1992

SECRETARY, BOARD OF
OIL, GAS & MINING

Permit No. INA/C15/007
Inspection Date DEC. 5, 1992

Permittee/Operator Name CALIFORNIA PORTLAND CEMENT
Business Address 1095 SOUTH PINEHURST AVENUE
City CLIFTON State CA Zip 92324-1514
Mine HIDDEN VALLEY ☐ Surface ☒ Underground ☐ Other
County EMERY State UT
Company Official(s) NONE
State Official(s) BILL WARMACK
Time of inspection 9:30 ☒ a.m. ☐ p.m. 11:00 ☒ a.m. ☐ p.m. ☒ Partial ☐ Complete
Date of last inspection 11/7/92 Weather conditions CLEAR & FAIR
Acreage 960 ☒ Permitted 7 ☒ Disturbed 7 ☒ Regraded 7 ☒ Seeded 7 ☒ Bonded
Enforcement Action NONE

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

	YES	NO	N/A	COMMENTS		YES	NO	N/A	COMMENTS
1. Permits	<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"/>
2. Signs and markers	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	10. Slides and other damage	<input 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"/>	11. Contemporaneous reclamation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Hydrologic balance					12. Backfilling and grading	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
a Stream channel diversions	<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 checked="" type="checkbox"/>
b Diversions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	14. Subsidence control	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c Sediment ponds and impoundments	<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"/>
d Other sediment control measures	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16. Roads				
e Surface and groundwater monitoring	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	— Construction	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f Effluent limitations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	— Drainage controls	<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"/>	— Surfacing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Development waste and spoil disposal	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	— Maintenance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Coal processing waste	<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"/>
8. Noncoal waste	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	18. Support facilities and utility installations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

DOGM/IR-1

an equal opportunity employer

EXHIBIT

P-41

DATE: DEC 15 1992

inspection report

INSPECTION REPORT COMMENTS

Permit No. TUA/15/007

Inspection Date 12/15/12

Please number comments to correspond with topics on previous page.

GENERAL: SNOW FROM PREVIOUS STORM ACTIVITY
HAS MELTED, HOWEVER, SOME SMALL PATCHES
WERE REMAINING ON THE SHADY, NORTH FACING
SIDES THE CREEK WAS FLOWING AT A THIN LAYER
OF ICE (APPROX. 1") COVERED THE STREAM BED.

2. SIGNS & MARKERS: THE MINE I.D. SIGN HAS
BEEN SUBJECT TO VANDALISM, & 4-5
SHOTGUN BLASTS WERE DIRECTED AT THE SIGN
RECENTLY BY AREA BIRD HUNTERS. ALTHOUGH STILL
LEGIBLE, THE SIGN MIGHT REQUIRE REPLACEMENT
IF INCIDENTS REOCCUR

4. OTHER SED CONTROLS: SILT FENCE INSTALLATION
ON THE EASTERN SLOPE HAS BEEN COMPLETED.
THE SILT FENCES REPLACE THE PREVIOUSLY
USED ROCK CHECK DAMS WHICH HAD BECOME
"COSMETIC".

Copy of report mailed to _____

Copy of report given to _____

Inspector's signature BW No. _____

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



INSPECTION REPORT COMMENTS

Permit No. TNA/015/007

Inspection Date 12/5/00

Please number comments to correspond with topics on previous page.

1.3. REVEGETATION:

(1) THE ACCESS ROAD HAS BEEN SEEDING,
(MULCHED WITH STRAW), & ALSO MULCHED
WITH NETTING. THE BANK AREA
BELOW THE RAKE HAS BEEN SEEDING
WITH LIME TO ENHANCE THE SOIL.

(2) THE NORTHERN SLOPE (ACCESS CHANNEL)
HAS BEEN SEEDING & MULCHED WITH
STRAW. HOWEVER, A STRONG GROWTH
WILL DEVELOP NEXT GROWING SEASON.

Copy of report mailed to JOE HELFRICH (DOGM); BRIAN SMITH (OSM)
JOHN POWIS (CPC); KAPPA KUCAR (JAP)

Copy of report ^{FILED} given to PFO

Inspector's signature William A. Warmack 12/14/00 No. 30

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



JUN 29 1997

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL GAS AND MINING

355 West North Temple
3 Trade Center Suite 350
Salt Lake City, Utah 84103
801-538-5100

INSPECTION REPORT

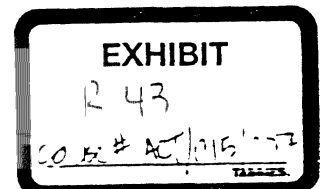
SECRETARY, BOARD OF
OIL, GAS & MINING

INSPECTION DATE & TIME January 4, 1997
11:30 a.m. to 12:45 p.m.

Permittee and/or Operator's Name: California Portland Cement
Business Address: 695 South Rancho Avenue, Colton, CA 92324-754
Mine Name: Hidden Valley Permit Number: INA/015/007
Type of Mining Activity: Underground XX Surface Other
County: Emery
Company Official (s): None
State Official(s): Henry Sauer and Bill Warmack
Partial XX Complete: Date of Last Inspection: December 3, 1996
Weather Conditions: Cold and cloudy
Acreage: Permitted 960 Disturbed 7 Regraded 7 Seeded 7 Bordered 7
Enforcement Action: None

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

	YES	NO	N/A	COMMENT
1. PERMITS	()	()	()	()
2. SIGNS AND MARKERS	(X)	()	()	()
3. TOPSOIL	()	()	()	()
4. HYDROLOGIC BALANCE:				
a. STREAM CHANNEL DIVERSIONS	()	()	()	()
b. DIVERSIONS	()	()	()	()
c. SEDIMENT PONDS AND IMPOUNDMENTS	()	()	()	()
d. OTHER SEDIMENT CONTROL MEASURES	(X)	()	()	(X)
e. SURFACE AND GROUNDWATER MONITORING	()	()	()	()
f. EFFLUENT LIMITATIONS	()	()	()	()
5. EXPLOSIVES	()	()	()	()
6. DISPOSAL OF DEVELOPMENT WASTE AND SPOIL	()	()	()	()
7. COAL PROCESSING WASTE	()	()	()	()
8. NONCOAL WASTE	()	()	()	()
9. PROTECTION OF FISH, WILDLIFE AND RELATED ENVIRONMENTAL VALUES	()	()	()	()
10. SLIDES AND OTHER DAMAGE	()	()	()	()
11. CONTEMPORANEOUS RECLAMATION	()	()	()	()
12. BACKFILLING AND GRADING	(X)	()	()	(X)
13. REVEGETATION	(X)	()	()	(X)
14. SUBSIDENCE CONTROL	()	()	()	()
15. CESSATION OF OPERATIONS	()	()	()	()
16. ROADS				
a. CONSTRUCTION	()	()	()	()
b. DRAINAGE CONTROLS	()	()	()	()
c. SURFACING	()	()	()	()
d. MAINTENANCE	()	()	()	()
17. OTHER TRANSPORTATION FACILITIES	()	()	()	()
18. SUPPORT FACILITIES				
UTILITY INSTALLATIONS	()	()	()	()



PERMIT NUMBER: INA/015/007

DATE OF INSPECTION January 4, 1989

(Comments are Numbered to Correspond with Topics Listed Above)

1. PERMITS
2. SIGNS AND MARKERS
3. TOPSOIL
4. HYDROLOGIC BALANCE
 - a. STREAM CHANNEL DIVERSIONS
 - b. DIVERSIONS
 - c. SEDIMENT PONDS AND IMPOUNDMENTS
 - d. OTHER SEDIMENT CONTROL MEASURES
 - e. SURFACE AND GROUNDWATER MONITORING
 - f. EFFLUENT LIMITATIONS
5. EXPLOSIVES
6. DISPOSAL OF DEVELOPMENT WASTE AND SPOIL
- d. COAL PROCESSING WASTE
8. NONCOAL WASTE
9. PROTECTION OF FISH, WILDLIFE AND RELATED ENVIRONMENTAL VALUES
10. SLIDES AND OTHER DAMAGE
11. CONTEMPORANEOUS RECLAMATION
12. BACKFILLING AND GRADING
13. REVEGETATION
14. SUBSIDENCE CONTROL
15. CESSATION OF OPERATIONS
16. ROADS
 - a. CONSTRUCTION
 - b. DRAINAGE CONTROLS
 - c. SURFACING
 - d. MAINTENANCE
17. OTHER TRANSPORTATION FACILITIES
18. SUPPORT FACILITIES UTILITY INSTALLATIONS

Copy of this Report:

Mailed to: John Rains, CPC; Karla Knoop, JBR; Brian Smith, QSM

Given to: Joe Helfrich - DOGM

Inspectors Signature and Number: #32 Henry Laver Date: Jan. 4, 1989

1/13/89

INSPECTION REPORT
(continuation sheet)

Page 3 of 3

PERMIT NUMBER: INA/015/007

DATE OF INSPECTION January 4, 1988

(Comments are Numbered to Correspond with Topics Listed Above)

General Comments

Snow from previous storms has remained on site (3-5 inches deep). Weather conditions were cold and cloudy. Cattle were noticed north of the main access road. Maintenance items mentioned below do not constitute UMC violations.

2. Signs & Markers - The mine I.D. sign has been partially pushed over. The bullet-riddled sign needs to be replaced.
- 4d. Other Sediment Controls - Silt fences are in place and are in good repair.
12. Backfilling and Grading - Surface cracks have formed on the east slope immediately below the terrace (bench) on the south end of the reclamation. Although these cracks are minor (5-10 feet long x 1 inch wide x 2 inches deep) they need to be monitored in the future.

The terrace (bench) mentioned above appears to catch some of the drainage from the adjacent cliffs. Some of this drainage is breaching the crest of the bench. To prevent this in the future, a berm should be constructed (by hand) on the crest of the terrace.

13. Revegetation The netting and underlying alfalfa mulch have been torn off the surface of the access road. The damage has occurred from the end of the pavement to the gate. The mulch and netting need to be reapplied as soon as it is practical.

There is evidence of heavy rabbit usage (feces) along the access road. This could potentially damage revegetation-establishment, and should be monitored in the future.

djh
AT43/9-11

7033


 UTAH
NATURAL RESOURCES
Oil, Gas & Mining

3 Triad Center • Suite 300 • Salt Lake City, UT 84118-1203 • (801) 538-5340

FILED

JUN 29 1992

Permit No. UW1015/007Inspection Date FEB. 1, 1989

inspection report

SECRETARY, BOARD OF

OIL, GAS & MINING

Permit No. UW1015/007 CALIFORNIA PORTLAND CEMENTBusiness Address 695 SOUTH RANCHO AVENUECity COLTONState CACounty 92324-0574Mine HIDDEN VALLEY☐ Surface☒ Underground☐ OtherCounty EMERYState UTCompany Official(s) NONEState Official(s) BILL WARMACK & HENRY SAUERTime of inspection 12 00 ☒ a.m. ☐ p.m. to 4 00 ☒ a.m. ☐ p.m. ☐ Partial ☒ CompleteDate of last inspection JAN. 4, 1989 Weather conditions SUNNY & WARMAcreage 960 ☒ Permitted 77 ☒ Disturbed 7 ☒ Regraded 77 ☒ Seeded 77 ☒ BondedEnforcement Action NONE

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

	YES	NO	N/A	COMMENTS		YES	NO	N/A	COMMENTS
1. Permits	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	9. Protection of fish, wildlife, and related environmental values	<input checked="" 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 checked="" type="checkbox"/>	10. Slides and other damage	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Topsoil	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	11. Contemporaneous reclamation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Hydrologic balance					12. Backfilling and grading	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
a Stream channel diversions	<input checked="" 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"/>
b Diversions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	14. Subsidence control	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c Sediment ponds and impoundments	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	15. Cessation of operations	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d Other sediment control measures	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16. Roads				
e Surface and groundwater monitoring	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	a Construction	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f Effluent limitations	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	b Drainage controls	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Explosives	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	c Surfacing	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Development waste and spoil disposal	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	d Maintenance	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Coal processing waste	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	17. Other transportation facilities	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. Noncoal waste	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	18. Support facilities and utility installations	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

WHITE - DOGM YELLOW - OSM PINK - PERMITTEE OPERATOR GOLDEN-ROD - NOV FILE

DOGM - IR-1

an equal opportunity employer

EXHIBIT

P-44

 CASE # ACT/D15/007
 T-122

871

INSPECTION REPORT COMMENTS

Permit No. FNA/015/007

Inspection Date 2/1/89

Please number comments to correspond with topics on previous page

GENERAL: HENRY SAUER (DOGMA) ACCOMPANIED THE
UNDERSIGNED INSPECTOR ON THIS COMPLETE
INSPECTION. SEVERAL INCHES OF SNOW STILL COVERED
A MAJORITY OF THE MINE SITE, HOWEVER, THE SOUTH
FACING AREAS WERE MOSTLY FREE OF SNOW.

2. SIGNS & MARKERS: THE MINE I.D. SIGN WAS STILL
EVIDENT, BUT THE WEATHER (WIND) IS TAKING
ITS TOLL.

4d. OTHER SEDIMENT CONTROLS: THE SILT FENCES &
BELMS APPEAR TO BE FUNCTIONING PROPERLY; AN
AREA AT THE NORTH END OF THE EASTERN FILL
SLOPE SHOWED SOME SIGNS OF WATER ACCUMULATION
ALONG THE TERRACE & SHOULD BE SCRUTINIZED TO
PREVENT FUTURE PROBLEMS.

4c. SURFACE & GROUNDWATER MONITORING: SEPT. 1988
MONITORING RESULTS FOR JULIE CREEK WERE RECEIVED

Copy of report mailed to _____

Copy of report given to _____

Inspector's signature WAW 2/1/89 No. 30

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



INSPECTION REPORT COMMENTS

Permit No. INA/015/007

Inspection Date 2/1/89

Please number comments to correspond with topics on previous page

4C. (cont.)

By the Division on December 16, 1988.

12. BACKFILLING & GRADING: THE SULFIDE CLACKS
AT THE SOUTH END OF EASTERN SLOPE
(REFERENCED IN PREVIOUS REPORT) APPEAR TO
HAVE STABILIZED.

13. SUPPORT FACILITIES: SOME IMPROVEMENT OF
THE MAIN GATE/FENCE IS REQUIRED ESPECIALLY
ON THE WESTERN SIDE. THE FENCE SHOULD
BE TIGHTENED TO PREVENT CATTLE ACCESS,
& SHOULD BE REMEDIED AS SOON AS POSSIBLE.

JOE HELFRICH (DOGM), BRIAN SMITH (OSM)

Copy of report mailed to JOHN RAINS (CPC), KAREL KNOOP (JBR)

Copy of report ^{FILED} given to PFO

Inspector's signature William A. Whinnock 2/1/89 No. 30

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



STATE OF UTAH
NATURAL RESOURCES
Oil, Gas & Mining
FILED

Norman H. Bengtson, Governor
Dee C. Hansen, Executive Director
Dianne R. Nielson, Ph.D., Director

355 W. North Temple • 3 Triad Center • Suite 350 • Salt Lake City, UT 84180-1203 • 801-538-5343

JUN 29 1992

INSPECTION REPORT

SECRETARY, BOARD OF
OIL, GAS & MINING

INSPECTION DATE & TIME: March 7, 1989
9:30 a.m. - 11:30 a.m.

Permittee and/or Operators Name: California Portland Cement
Business Address: 695 South Rancho Avenue Colton, CA 92324-0514
Mine Name: Hidden Valley Permit Number: INA/015/007
Type of Mining Activity: Underground XX Surface Other
County: Emery State: Utah
Company Official(s): None
State Official(s): Bill Warmack
Partial: XX Complete: Date of Last Inspection: February 1, 1989
Weather Conditions: Overcast and cool
Acreage: Permitted 960 Disturbed 7 Regraded 7 Seeded 7 Bonded 7
Enforcement Action: None

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

	YES	NO	N/A	COMMENTS
1. <u>PERMITS</u>	()	()	()	()
2. <u>SIGNS AND MARKERS</u>	(X)	()	()	(X)
3. <u>TOPSOIL</u>	()	()	()	()
4. <u>HYDROLOGIC BALANCE:</u>				
a. <u>STREAM CHANNEL DIVERSIONS</u>	()	()	()	()
b. <u>DIVERSIONS</u>	()	()	()	()
c. <u>SEDIMENT PONDS AND IMPOUNDMENTS</u>	()	()	()	()
d. <u>OTHER SEDIMENT CONTROL MEASURES</u>	(X)	()	()	(X)
e. <u>SURFACE AND GROUNDWATER MONITORING</u>	()	()	()	()
f. <u>EFFLUENT LIMITATIONS</u>	()	()	()	()
5. <u>EXPLOSIVES</u>	()	()	()	()
6. <u>DISPOSAL OF DEVELOPMENT WASTE AND SPOIL</u>	()	()	()	()
7. <u>COAL PROCESSING WASTE</u>	()	()	()	()
8. <u>NONCOAL WASTE</u>	()	()	()	()
9. <u>PROTECTION OF FISH, WILDLIFE AND</u> <u>RELATED ENVIRONMENTAL VALUES</u>	()	()	()	()
10. <u>SLIDES AND OTHER DAMAGE</u>	()	()	()	()
11. <u>CONTEMPORANEOUS RECLAMATION</u>	()	()	()	()
12. <u>BACKFILLING AND GRADING</u>	()	()	()	()
13. <u>REVEGETATION</u>	()	()	()	()
14. <u>SUBSIDENCE CONTROL</u>	()	()	()	()
15. <u>CESSATION OF OPERATIONS</u>	()	()	()	()
16. <u>ROADS</u>				
a. <u>CONSTRUCTION</u>	()	()	()	()
b. <u>DRAINAGE CONTROLS</u>	()	()	()	()
c. <u>SURFACING</u>	()	()	()	()
d. <u>MAINTENANCE</u>	()	()	()	()
17. <u>OTHER TRANSPORTATION FACILITIES</u>	()	()	()	()
18. <u>SUPPORT FACILITIES</u>				
<u>UTILITY INSTALLATIONS</u>	(X)	()	()	(X)

INSPECTION REPORT
(continuation sheet)

Page 2 of 2

PERMIT NUMBER: ACT/015/007

DATE OF INSPECTION March 7, 1989

(Comments are Numbered to Correspond with Topics Listed Above)

GENERAL COMMENTS:

The mine site was free of snow, ground conditions were moist. Cattle were observed grazing on the adjacent areas. Ivie Creek was flowing and the majority of the ice was gone.

2. SIGNS AND MARKERS:

The mine I.D. sign has been reposted at a lower elevation. Stream buffer zone signs were observed and in good repair.

4d. OTHER SEDIMENT CONTROL MEASURES:

1. Repairs have been made to silt fences and berms that did not fair well with winter.
2. Rills have developed on the northern portion of the A seam and western portion of the B seam fill slopes. Measurements indicated that the areas were still in compliance with UMC 817.106 since the rills have not developed beyond 9 inches in depth (A seam: 6-8 inches, B seam: 4-6 inches). However, based upon the season and the likelihood of precipitation events, the operator should undertake preventive maintenance to ensure that these rills do not further develop. Mr. Rains (CPC) was contacted on 3/8/89 regarding the Division's concerns of additional erosion and stabilization of the area.

18. SUPPORT FACILITIES:

The fence at the main gate has been tightened and appears to be in good repair. Also, the drift fences above and below the site were observed and found to be functioning properly.

Copy of this Report:

Mailed to: John Rains, California Portland Cement; Karla Knoop (JBR)
Mailed to SLC for: Brian Smith, OSM; Joe Helfrich, DOGM
Filed to: PFO

Inspectors Signature and Number: William A. Warmack #30 Date: March 8, 1989

William A. Warmack 3/8/89

JUN 29 1992

Page 1 of 2

inspection report

SECRETARY, BOARD OF
OIL, GAS & MINING

Permit No. FWA/015/007
Inspection Date April 16, 1989

Permittee Operator Name California Portland Cement
Business Address 1025 South Rancha Avenue
City Colton State CA Phone 923-6574
Mine HIDDEN VALLEY ☐ Surface ☒ Underground ☐ Other
County EMERY State UT
Company Official(s) NONE
State Official(s) Bill Warrmark
Time of inspection 8:30 ☒ a.m. ☐ p.m. to 9:30 ☒ a.m. ☐ p.m. ☒ Partial ☐ Complete
Date of last inspection MARCH 7, 1989 Weather conditions CLEAR & WARM
Acreage 960 ☒ Permitted ☒ Disturbed ☒ Regraced ☒ Seeded ☒ Bonded
Enforcement Action NONE

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

	YES	NO	N/A	COMMENTS		YES	NO	N/A	COMMENTS
1. Permits	<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"/>
2. Signs and markers	<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"/>
3. Topsoil	<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"/>
4. Hydrologic balance					12. Backfilling and grading	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
a. Stream channel diversions	<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 checked="" type="checkbox"/>
b. Diversions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	14. Subsidence control	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Sediment ponds and impoundments	<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"/>
d. Other sediment control measures	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16. Roads				
e. Surface and groundwater monitoring	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	a. Construction	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. Effluent limitations	<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"/>
5. Explosives	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	c. Surfacing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Development waste and spoil disposal	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	d. Maintenance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Coal processing waste	<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"/>
8. Noncoal waste	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	18. Support facilities and utility installations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

DOGM 1P-1

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EXHIBIT

P-46

CAUSE # ACF/015/007

876

INSPECTION REPORT COMMENTS

Permit No. INIA/015/007

Inspection Date 4/6/89

Please number comments to correspond with topics on previous page

GENERAL: THE MINE SITE WAS DRY & FREE
OF SNOW. CATTLE WERE NOT OBSERVED GRADING
ON THE ADJACENT AREAS. FINE CREEK WAS FLOWING.

4d. SEDIMENT CONTROLS: THE RILLING THAT WAS
DESCRIBED IN THE REPORT OF 3/7/89 HAS NOT
PROGRESSED ANY FURTHER AS OF THIS INSPECTION.
HOWEVER, PROTECTIVE MEASURES SHOULD BE
CONSIDERED TO PREVENT ADDITIONAL RILLING
FROM OCCURRING.

13. REVEGETATION: THE B SEAM FILL SLOPE &
THE ACCESS ROAD SHOW NO SIGNS OF
NEW VEGETATION AS OF THIS INSPECTION.
FOLDS & GRASSES HAVE STARTED TO GREEN.

BRIAN SMITH (OSM)

Copy of report mailed to JOHN RANKS (CPC), KAREL KIPP (TAC), JOE HELFRICH (DOGM)

Copy of report given to PFO

Inspector's signature William A. Warmack 4/7/89 No. 30

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

JUN 29 1992

inspection report

SECRETARY, BOARD OF
OIL, GAS & MINING

Permit No. INA/OIS/907Issuance Date April 19, 1989

Permittee Operator Name CALIFORNIA PORTLAND CEMENT
 Business Address 695 SOUTH RANCHO AVENUE
 City COTTON State CA Zip 92324-6514
 Mine HIDDEN VALLEY ☐ Surface ☒ Underground ☐ Other
 County EMERY State UT
 Company Official(s) NONE
 State Official(s) BILL WARMACK & LADE DRELL (OSM)
 Time of inspection 2 ☐ a.m. ☒ a.m. to 4 ☐ a.m. ☒ p.m. ☐ P.m. ☐ Somewhere
 Date of last inspection April 6, 1989 Weather conditions WARM
 Acreage 960 ☒ Permitted 7 ☒ Disturbed 7 ☒ Regraded 7 ☒ Seeded 7 ☒ Bonded
 Enforcement Action NONE

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

	YES	NO	N/A	COMMENTS		YES	NO	N/A	COMMENTS
1. Permits	<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"/>
2. Signs and markers	<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"/>
3. Topsoil	<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"/>
4. Hydrologic balance					12. Backfilling and grading	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
a Stream channel diversions	<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 checked="" type="checkbox"/>
b Diversions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	14. Subsidence control	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c Sediment ponds and impoundments	<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"/>
d Other sediment control measures	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16. Roads				
e Surface and groundwater monitoring	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	— Construction	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f Effluent limitations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	— Drainage controls	<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"/>	— Surfacing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Development waste and spoil disposal	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	— Maintenance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Coal processing waste	<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"/>
8. Noncoal waste	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	18. Support facilities and utility installations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

DOGM 12-1

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878

EXHIBIT

R-47

cause # ACT/OIS/007

INSPECTION REPORT COMMENTS

Permit No INIA/015/007

Inspection Date 4/19/89

Please number comments to correspond with topics on previous page.

GENERAL: THE UNDERSIGNED INSPECTION WAS
ACCOMPANIED BY DARRIN HADDICK (DOGM) & RAE
ORRIS (OSM) DURING THIS INSPECTION. NO
ENFORCEMENT ACTIONS WERE TAKEN ON THE PART
OF DOGM CO BY MR. ORRIS.

THE SITE WAS ACCESSED ALONG THE RECLAIMED
ROAD WHICH HAD BEEN RIPPED & SEDED LAST
FALL ('88). NO SIGNS OF NEW VEGETATION (DESIRABLE)
WERE EVIDENT AT THIS TIME.

BOTH OF THE A & B SEAM FILL SLOPES
WERE OBSERVED & THE ASSOCIATED DRAINAGES
WERE FOR EACH. ALL OF THE SILT FENCES ON
SITE WERE INTACT & APPEARED TO BE
FUNCTIONAL.

THE SITE WAS DRY WITH NO SIGNS OF RECENT
PRECIPITATION PRESENT.

Copy of report mailed to SLC FOR: JOE HELFRICH (DOGM), BRIAN SMITH (OSM)
TO: JOAN RAINS (CPC), KAREL KEMP (T&E)

Copy of report given to RFO

Inspector's signature William A. Warmack No. 30

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

JUN 29 1992

INSPECTION REPORT COMMENTS

SECRETARY, BOARD OF
OIL, GAS & MINING

Permit No. EUA/C/S/007

Inspection Date 5/11/89

Please number comments to correspond with topics on previous page

GENERAL: DOGM PERSONNEL (T. MURPHY, B. STETTER,
DAVID WARDEN & B. WARMACK) INSPECTED THE
SITE & OBSERVED THE RECLAMATION EFFORTS.
THE SITE WAS DRY, ESPECIALLY ON THE EXPOSED SLOPES.

2. SIGNS & MARKERS: ALL OF THE MINE SIGNS &
MARKERS WERE INTACT & IN GOOD REPAIR.

1d. OTHER SEDIMENT CONTROLS:

1. An erosion protection matting has been
placed on the ACOR OF THE A + B SEAMS
WHERE SOME MINOR EROSION HAD DEVELOPED.

2. A CONSIDERABLE AMOUNT OF SEDIMENT HAS
ACCUMULATED BEHIND THE SILT FENCE @ THE
SOUTHERN END OF THE A SEAM SLOPE. TO
PREVENT FURTHER BUILDUP, FUTURE SILT FENCES
SHOULD BE INSTALLED DOWN-DIP TO CREATE
A TERRACING EFFECT.

Copy of report mailed to JOHN RAINS (CPC), KARLA KNOOP (TBR)
JOE HELDRICH (DOGM), BRIAN SMITH (BIM)

Copy of report given to PFO

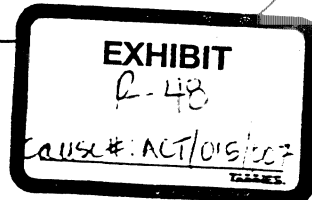
Inspector's signature William A. Warmack 5/12/89 No. 30

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

DOGM/IR-2

an equal opportunity employer

J. 88





YCN

JUN 29 1992

inspection report

SECRETARY, BOARD OF
OIL, GAS & MINING

Permit No. INA/015/007
Inspection Date June 8, 1989

Permittee Operator Name California Portland Cement
Business Address 695 South Bancho Avenue
City Colton State UT Co 92324-0514
Mine Hidden Valley ☐ Surface ☒ Underground ☐ Other
County Emery State _____
Company Official(s) none
State Official(s) Bill Warmack, Brent Stettler
Time of inspection 9:00 ☒ a.m. ☐ p.m. to 11:00 ☒ a.m. ☐ p.m. ☐ Partial ☒ Complete
Date of last inspection May 11, 1989 Weather conditions partly cloudy, breezy
Acreage 960 ☒ Permitted 7 ☒ Disturbed 7 ☒ Regraded 7 ☒ Seeded 7 ☒ Erosion
Enforcement Action none

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

	YES	NO	N/A	COMMENTS		YES	NO	N/A	COMMENTS
1. Permits	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	9. Protection of fish, wildlife, and related environmental values	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Signs and markers	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	10. Slides and other damage	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Topsoil	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	11. Contemporaneous reclamation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Hydrologic balance					12. Backfilling and grading	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
a. Stream channel diversions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	13. Revegetation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. Diversions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	14. Subsidence control	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. Sediment ponds and impoundments	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	15. Cessation of operations	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. Other sediment control measures	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16. Roads				
e. Surface and groundwater monitoring	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	- Construction	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. Effluent limitations	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	- Drainage controls	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Explosives	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	- Surfacing	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Development waste and spoil disposal	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	- Maintenance	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Coal processing waste	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	17. Other transportation facilities	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. Noncoal waste	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	18. Support facilities and utility installations	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

WHITE - COGM LOW - GCM PINK - PERMITTEE OPERATOR GOLDENROD - NOV FILE

COGM - R-1

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88

EXHIBIT

R-49

Case # ACT/015/007

INSPECTION REPORT COMMENTS

Permit No. INA/C15/007

Inspection Date June 8, 1989

Please number comments to correspond with topics on previous page

2. Signs and Markers. The mine's I.D. sign has been damaged by five bullet holes, but is still legible.

4d. Other Sediment Control Measures. Rain fell earlier this morning or last night. Moisture penetration was $\frac{1}{2}$ - 1 inch into the soil, which was dry beneath that level. No run-off occurred. All silt fences and erosion-control mats were functional.

4e. Surface and Ground Water Monitoring. Monitoring of Ivie Creek occurs twice yearly in May and September. Carla Knott, JBR Consultant representative, reported completion of May sampling as scheduled. Results had not been received by Division as of inspection.

9. Protection of Fish, Wildlife and Related Environmental Values. In February 1989, the BLM grazing lessee removed spacers and dropped wires of the perimeter fence -- intentionally grazing cattle on the

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 COMMENTS

Permit No INA/015/cc 7

Inspection Date June 8, 1989

Please number comments to correspond with topics on previous page

reclaimed area. Cattle trampling compacted soils and
damaged the vexar netting. Grazing removed shrub
leader growth and may have impacted desirable
perennial grass species. The Fence was repaired by
JBR Consultants. No grazing has occurred since
that time.

White-throated swifts and rock wrens were observed
on site. Prairie Falcon calls were heard up Erie Creek
Canyon. Nesting may occur in the vicinity.

13. Revegetation. In Fall 1988, the access road
was ripped for the third time since initial reclamation.
Seed was broadcast, and covered with hay mulch
and vexar netting. Reseeding and terracing of the
east-facing fill slope also occurred. No germination
of seeds was evident.

Reclamation has been unsuccessful to date.
Drought, wind, cattle grazing & slope steepness have
all contributed to the present condition. Summer cycles,

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 COMMENTS

Permit No INA/015/007

Inspection Date June 8, 1989

Please number comments to correspond with topics on previous page.

an annual weed, appears to be the only species growing
vigorously on the fill slopes. Second in importance is
Russian thistle, another weed. Halimolobos is the
dominant vegetative cover along the access road.
Desirable perennials on site are sparse, and consist
of saltbush, winterfat, greasewood, wildrye, and
crested wheatgrass.

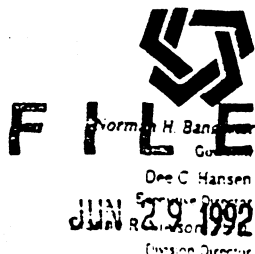
IF drought conditions persist, the operator
may have to reseed and initiate an irrigation program,
using water from Ivie Creek.

Copy of report mailed to John Rains (CPC), Karla Kneet (JBR), John Cathmann (OSM)

Copy of report given to Joe Helfrich (DOGM), PFO.

Inspector's signature Brent Stettler No. 29

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



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

JUN 29 1992

355 West North Temple
J. Trad Center Suite 350
Salt Lake City, Utah 84119-1033
801-538-5540

INSPECTION REPORT

SECRETARY, BOARD OF
OIL, GAS & MINING

INSPECTION DATE & TIME: July 5, 1992
1 hour

Permittee and/or Operators Name: California Portland Cement Company
Business Address: 695 South Rancho Ave, P O Box 947, Colton CA 92304-1511
Mine Name: Hidden Valley Permit Number: ACT/015/007
Type of Mining Activity: Underground Surface Other
County: Emery
Company Official(s): _____
State Official(s): Joe Helfrich, Rade Orell, Tom Emmett
Partial: XX Complete: _____ Date of Last Inspection: June 8, 1989
Weather Conditions: Clear and Sunny
Acreage: Permitted _____ Disturbed _____ Regraded _____ Seeded _____ Bonded _____
Enforcement Action: None

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

	YES	NO	N/A	COMMENTS
1. PERMITS	()	()	()	()
2. SIGNS AND MARKERS	()	()	()	()
3. TOPSOIL	()	()	()	()
4. HYDROLOGIC BALANCE:				
a. STREAM CHANNEL DIVERSIONS	()	()	()	()
b. DIVERSIONS	()	()	()	()
c. SEDIMENT PONDS AND IMPOUNDMENTS	()	()	()	()
d. OTHER SEDIMENT CONTROL MEASURES	()	()	()	()
e. SURFACE AND GROUNDWATER MONITORING	()	()	()	()
f. EFFLUENT LIMITATIONS	()	()	()	()
5. EXPLOSIVES	()	()	()	()
6. DISPOSAL OF DEVELOPMENT WASTE AND SPOIL	()	()	()	()
7. COAL PROCESSING WASTE	()	()	()	()
8. NONCOAL WASTE	()	()	()	()
9. PROTECTION OF FISH, WILDLIFE AND RELATED ENVIRONMENTAL VALUES	()	()	()	()
10. SLIDES AND OTHER DAMAGE	()	()	()	()
11. CONTEMPORANEOUS RECLAMATION	()	()	()	()
12. BACKFILLING AND GRADING	()	()	()	()
13. REVEGETATION	()	()	()	()
14. SUBSIDENCE CONTROL	()	()	()	()
15. CESSATION OF OPERATIONS	()	()	()	()
16. ROADS				
a. CONSTRUCTION	()	()	()	()
b. DRAINAGE CONTROLS	()	()	()	()
c. SURFACING	()	()	()	()
d. MAINTENANCE	()	()	()	()
17. OTHER TRANSPORTATION FACILITIES	()	()	()	()
18. SUPPORT FACILITIES				
UTILITY INSTALLATIONS	()	()	()	()

jb

MN85/13

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EXHIBIT

R-50

Case # ACT/015/007

885

INSPECTION REPORT
(continuation sheet)

DATE OF INSPECTION July 5, 1989

Page 2 of 2

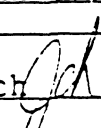
On July 5, 1989, an aerial inspection of this site was conducted by the referenced State and Federal officials. No violations were observed.

Photographs (slides), were taken and are available at the Division of Oil, Gas and Mining, Salt Lake Office as well as the Office of Surface Mining, Albuquerque Field Office.

Copy of this Report:

Mailed/filed to: John Kathmann (OSM) Joe Helfrich (DOGM)

Filed to: PFO

Inspectors Signature Joe Helfrich  Date: July 27, 1989

jb
MN47/43

JUN 29 1992

SECRETARY, BOARD OF
OIL, GAS & MINING

Permit No. INA/015/004
Inspection Date July 14, 1989

inspection report

Permittee Operator Name California Portland Cement
Business Address 695 South Rancho Avenue
City Colton State Calif Co. 92324-0514
Mine Hidden Valley ☐ Surface ☒ Underground ☐ Other
County Emery State Ut
Company Official(s) McKane
State Official(s) Bill Malencik, Bill Warmack
Time of inspection 8:00 ☒ a.m. ☐ p.m. to 1:00 ☐ a.m. ☒ p.m. ☐ Partial ☒ Complete
Date of last inspection 5/11/89 Weather conditions Pt Cloudy/Warm
Acreage 960 ☒ Permitted 7 ☐ Disturbed 7 ☐ Regraded 7 ☐ Seeded 7 ☐ Bonded
Enforcement Action None

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

	YES	NO	N/A	COMMENTS		YES	NO	N/A	COMMENTS
1. Permits	<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"/>
2. Signs and markers	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	10. Slides and other damage	<input 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"/>	11. Contemporaneous reclamation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Hydrologic balance					12. Backfilling and grading	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
— Stream channel diversions	<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 checked="" type="checkbox"/>
— Diversions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	14. Subsidence control	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
— Sediment ponds and impoundments	<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"/>
— Other sediment control measures	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16. Roads				
— Surface and groundwater monitoring	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	— Construction	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
— Effluent limitations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	— Drainage controls	<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"/>	— Surfacing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Development waste and spoil disposal	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	— Maintenance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Coal processing waste	<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"/>
8. Noncoal waste	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	18. Support facilities and utility installations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

WHITE — DOGM YELLOW — OSM PINK — PERMITTEE OPERATOR GOLDENROD — NC, FILE

DOGM-10-1

an equal opportunity employer

887

EXHIBIT

R-51

Case# ACT/015/007

INSPECTION REPORT COMMENTS

Permit No. INA/015/007

Inspection Date July 11, 1989

Please number comments to correspond with topics on previous page

General Comments: With a switch of mine sites among some inspectors, this was my first inspection of Hedden Valley Mine for long time. I was accompanied by Bill Warkentin who has been the principal past inspector.

No high intensity storms and very little rain has hit the mine site.

Signs & Markers: The entrance sign was in place. In spite of a few bullet holes the sign was legible and contained all the required information.

Revegetation: The mine site was ^{reseeded} resseeded last fall (1988). It had been previously seeded in the fall of 1986. Very few 1988 plants or seedlings were observed. The drought conditions the general area has experienced this spring and early summer has made a difficult situation impossible. Continued observations will be required. Its difficult to determine if the seedlings emerged and then died as a result of the drought or if there was insufficient moisture for seed germination.

Copy of report mailed to { John Ravis (CPC) & Karla Knoop (JBR)
OSM/Brian Smith; DOGM/Sue Helfrich

Copy of report given to PFD

Inspector's signature

[Signature]

No. 26

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

DOGM-12

7/11/89

an equal opportunity employer

JUN 29 1992

inspection report

SECRETARY, BOARD OF

OIL, GAS & MINING

Permittee Operator Name California Portland Cement
Business Address 695 South Rancho Avenue
City Colton State Calif Phone 923-24-0514
Mine Hidden Valley ☐ Surface ☒ Underground ☐ Other
County Emery State Ut
Company Official(s) DeLone
State Official(s) Bruce Chalewicz
Time of inspection 8:30 ☐ a.m. ☐ p.m. to 11:30 ☒ a.m. ☐ p.m. ☒ Partial ☐ Complete
Date of last inspection 7/11/89 Weather conditions Clear/Warm
Acreage 960 ☐ Permitted 7 ☐ Disturbed 7 ☐ Regraded 7 ☐ Seeded 7 ☐ Bonded
Enforcement Action ok

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

	YES	NO	N/A	COMMENTS
1. Permits	<input checked="" 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				
- Stream channel diversions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Diversions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Sediment ponds and impoundments	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Other sediment control measures	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
- Surface and groundwater monitoring	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- 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. Development waste and spoil disposal	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Coal processing waste	<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 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				
- Construction	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Drainage controls	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Surfacing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Maintenance	<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 and utility installations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

DCGM/IR-1

an equal opportunity employer

EXHIBIT

R-52

cause # AG/NG/127

889

INSPECTION REPORT COMMENTS

Permit No. INA/015/007Inspection Date 8/31/89

Please number comments to correspond with topics on previous page

General Comments: The mine site and surrounding areas have received several high intensity storms since the last inspection. While some concern exists over the storm intensity, nevertheless, the operator advised the Division of his intention to perform maintenance work in order to avoid possible future failure of environmental control measures that may result in adverse action by the Division. Also, he is looking to directing more of the runoff from the two Inghamville Slopes. I request the Permittee to consult with the Division Hydrologist on his water diversion plans.

Other Sediment Control: Recent storms had tested the silt fences. Its fortunate the silt fences had been constructed to a high standard because the recent storms refilled some sections, however, no end runnng was observed. The operator is currently in the process of negotiating maintenance work with prospective contractors.

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 COMMENTS

Permit No. TNA/015/007Inspection Date August 31, 1989

Please number comments to correspond with topics on previous page

Revegetation Both the road and the B Seam Slope were reseeded last fall. It doesn't appear that many seedlings survived the summer drought. The flood in Dry Creek destroyed the water gap drift fence. Since no livestock are in the area and the operator has committed to repair the drift fence before cattle graze lands adjoining the mine site, no action is recommended.

Copy of report mailed to: CAC/John Ravis; SBR Karla Knoop
OSM/Bruce Smith; DOGM/Joe Helfrich

Copy of report given to: Field Office

Inspector's signature

John J. Chalwick

No. 26

WHITE - DOGM YELLOW - OSM PINK - PERMITTEE/OPERATOR GOLDENROD - NOV RLE

DOGM/R-2

9/1/89

an equal opportunity employer

inspection report

JUN 29 1992

SECRETARY, BOARD OF

OIL, GAS & MINING

Permittee Operator Name California Portland Cement

Business Address 695 South Ranch Avenue

City Colton

State Calif

Co 92324-0514

Mine Hidden Valley

☐ Surface

☒ Underground

☐ Other

County Emery

State Ut

Company Official(s) J. Howe

State Official(s) Bruce Molenck & Bruce Warrmach

Time of inspection 8:30 ☒ a.m. ☐ p.m. to 1:00 ☐ a.m. ☒ p.m. ☐ Partial ☒ Complete

Date of last inspection 8/31/89

Weather conditions Partly Cloudy / Cool

Acres 960 ☐ Permitted 7 ☐ Disturbed 7 ☐ Regraded 7 ☐ Seeded 7 ☐ Bonded

Enforcement Action _____

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

	YES	NO	N/A	COMMENTS		YES	NO	N/A	COMMENTS
1. Permits	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	9. Protection of fish, wildlife, and related environmental values	<input checked="" 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 checked="" type="checkbox"/>	10. Slides and other damage	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Topsoil	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	11. Contemporaneous reclamation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Hydrologic balance					12. Backfilling and grading	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
— Stream channel diversions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	13. Revegetation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
— Diversions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	14. Subsidence control	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
— Sediment ponds and impoundments	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	15. Cessation of operations	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
— Other sediment control measures	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16. Roads				
— Surface and groundwater monitoring	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	— Construction	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
— Effluent limitations	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	— Drainage controls	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Explosives	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	— Surfacing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Development waste and spoil disposal	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	— Maintenance	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Coal processing waste	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	17. Other transportation facilities	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. Noncoal waste	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	18. Support facilities and utility installations	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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

DOGM/IR-1

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EXHIBIT

F-53

cause #. ACT/015/07

892

INSPECTION REPORT COMMENTS

Permit No. INA/015/007Inspection Date 9/20/89

Please number comments to correspond with topics on previous page

General Comments: The permit was approved Jan 25, 1985. Only two permit stipulations were included, both have been completed.

Signs & Markers: The TD sign has been used as a shotgun target. While still legible, it seems this sign location at the end of a dead end road receives a lot of abuse.

Disturbed markers & stream buffer signs were in place as required.

Stream Channel Downcut: In spite of the recent high intensity flows, the main riprapped channel held up well, caught a sizeable amount of sediment among and between the large rip rap and in two areas has a potential for future short circuiting. It is suggested the operator keep an eye on this potential problem area and repair and/or beef up the side rip rap the first time he has work performed on this mine site.

Other Sediment Control: The silt fence took a hard hit, but survived. The operator advised me he plans to

Copy of report mailed to _____

Copy of report given to _____

Inspector's signature _____ No. _____

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

INSPECTION REPORT COMMENTS

Permit No. INA/015/007Inspection Date 9/20/89

Please number comments to correspond with topics on pre-ins page

re-evaluate the silt fence on the A seam. His current thinking is to minimize runoff from the top of the A seam by constructing a berm/diversion which would replace the current rock berm. Further erosion matting would be installed over both the A & B seam.

He was of the opinion that such measures would require less maintenance. Also the matting would aid vegetal establishment on the steeper slopes by providing a micro climate.

Surface & Ground Water Monitoring: The MRP requires the surface flow to Dove Creek to be sampled and measured during the months of May & September. Also water quality samples must be taken at discharge points when flow is observed.

Revegetation Vegetal monitoring conducted as follows:

Qualitative - monthly for the first two years, annually thereafter

Quantitatively - years 9 & 10.

Copy of report mailed to CPC/John Raines; JBR/Karla Knapp; To SIC For OSM/Brian Smith
Donna/Helfrich

Copy of report given to FILED DEO

Inspector's signature Tom J. Orndorff


No. 26

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

DOGM-IR-2

9/22/89

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Norman H. Bangert
Governor
Dee C. Hansen
Executive Director
Dianne R. Nielson, Ph.D.
Division Director

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

355 West North Temple
3 Trade Center Suite 350
Salt Lake City, Utah 84103
801-538-5340

FILED

JUN 29 1992

INSPECTION REPORT SECRETARY, BOARD OF

OIL, GAS & MINING
INSPECTION DATE & TIME: October 19, 1989
10:00 a.m. to 12:00 noon

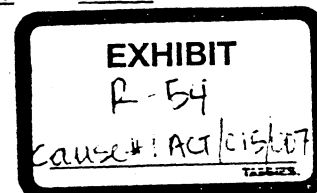
Permittee and/or Operators Name: California Portland Cement Company
Business Address: 695 South Rancho Avenue, Colton, California 92324-4260
Mine Name: Hidden Valley Permit Number: INA/015/007
Type of Mining Activity: Underground XX Surface Other
County: Emery
Company Official (s): None
State Official(s): Henry Sauer
Partial Complete: XX Date of Last Inspection: Sept. 20, 1989
Weather Conditions: Clear and Cool
Acreage: Permitted 960 Disturbed 7 Regraded 7 Seeded 7 Bonded 7
Enforcement Action: None

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

	<u>YES</u>	<u>NO</u>	<u>N/A</u>	<u>COMMENTS</u>
1. <u>PERMITS</u>	<u>(X)</u>	<u>()</u>	<u>()</u>	<u>()</u>
2. <u>SIGNS AND MARKERS</u>	<u>(X)</u>	<u>()</u>	<u>()</u>	<u>(X)</u>
3. <u>TOPSOIL</u>	<u>(X)</u>	<u>()</u>	<u>()</u>	<u>()</u>
4. <u>HYDROLOGIC BALANCE:</u>				
a. <u>STREAM CHANNEL DIVERSIONS</u>	<u>(X)</u>	<u>()</u>	<u>()</u>	<u>()</u>
b. <u>DIVERSIONS</u>	<u>(X)</u>	<u>()</u>	<u>()</u>	<u>(X)</u>
c. <u>SEDIMENT PONDS AND IMPOUNDMENTS</u>	<u>()</u>	<u>()</u>	<u>(X)</u>	<u>()</u>
d. <u>OTHER SEDIMENT CONTROL MEASURES</u>	<u>(X)</u>	<u>()</u>	<u>()</u>	<u>()</u>
e. <u>SURFACE AND GROUNDWATER MONITORING</u>	<u>(X)</u>	<u>()</u>	<u>()</u>	<u>(X)</u>
f. <u>EFFLUENT LIMITATIONS</u>	<u>(X)</u>	<u>()</u>	<u>()</u>	<u>()</u>
5. <u>EXPLOSIVES</u>	<u>()</u>	<u>()</u>	<u>(X)</u>	<u>()</u>
6. <u>DISPOSAL OF DEVELOPMENT WASTE AND SPOIL</u>	<u>()</u>	<u>()</u>	<u>(X)</u>	<u>()</u>
7. <u>COAL PROCESSING WASTE</u>	<u>()</u>	<u>()</u>	<u>(X)</u>	<u>()</u>
8. <u>NONCOAL WASTE</u>	<u>()</u>	<u>()</u>	<u>(X)</u>	<u>()</u>
9. <u>PROTECTION OF FISH, WILDLIFE AND</u> <u>RELATED ENVIRONMENTAL VALUES</u>	<u>(X)</u>	<u>()</u>	<u>()</u>	<u>()</u>
10. <u>SLIDES AND OTHER DAMAGE</u>	<u>(X)</u>	<u>()</u>	<u>()</u>	<u>()</u>
11. <u>CONTEMPORANEOUS RECLAMATION</u>	<u>(X)</u>	<u>()</u>	<u>()</u>	<u>()</u>
12. <u>BACKFILLING AND GRADING</u>	<u>(X)</u>	<u>()</u>	<u>()</u>	<u>()</u>
13. <u>REVEGETATION</u>	<u>(X)</u>	<u>()</u>	<u>()</u>	<u>(X)</u>
14. <u>SUBSIDENCE CONTROL</u>	<u>(X)</u>	<u>()</u>	<u>()</u>	<u>()</u>
15. <u>CESSATION OF OPERATIONS</u>	<u>()</u>	<u>()</u>	<u>(X)</u>	<u>()</u>
16. <u>ROADS</u>				
a. <u>CONSTRUCTION</u>	<u>(X)</u>	<u>()</u>	<u>()</u>	<u>()</u>
b. <u>DRAINAGE CONTROLS</u>	<u>(X)</u>	<u>()</u>	<u>()</u>	<u>()</u>
c. <u>SURFACING</u>	<u>(X)</u>	<u>()</u>	<u>()</u>	<u>()</u>
d. <u>MAINTENANCE</u>	<u>(X)</u>	<u>()</u>	<u>()</u>	<u>()</u>
17. <u>OTHER TRANSPORTATION FACILITIES</u>	<u>(X)</u>	<u>()</u>	<u>()</u>	<u>(X)</u>
18. <u>SUPPORT FACILITIES</u>				
<u>UTILITY INSTALLATIONS</u>	<u>(X)</u>	<u>()</u>	<u>()</u>	<u>()</u>

an equal opportunity employer

895



INSPECTION REPORT
(continuation sheet)

Page 2 of 4

PERMIT NUMBER: INA/015/007

DATE OF INSPECTION Oct. 19, 1989

(Comments are Numbered to Correspond with Topics Listed Above)

1. PERMITS
2. SIGNS AND MARKERS
3. TOPSOIL
4. HYDROLOGIC BALANCE
 - a. STREAM CHANNEL DIVERSIONS
 - b. DIVERSIONS
 - c. SEDIMENT PONDS AND IMPOUNDMENTS
 - d. OTHER SEDIMENT CONTROL MEASURES
 - e. SURFACE AND GROUNDWATER MONITORING
 - f. EFFLUENT LIMITATIONS
5. EXPLOSIVES
6. DISPOSAL OF DEVELOPMENT WASTE AND SPOIL
- d. COAL PROCESSING WASTE
8. NONCOAL WASTE
9. PROTECTION OF FISH, WILDLIFE AND RELATED ENVIRONMENTAL VALUES
10. SLIDES AND OTHER DAMAGE
11. CONTEMPORANEOUS RECLAMATION
12. BACKFILLING AND GRADING
13. REVEGETATION
14. SUBSIDENCE CONTROL
15. CESSATION OF OPERATIONS
16. ROADS
 - a. CONSTRUCTION
 - b. DRAINAGE CONTROLS
 - c. SURFACING
 - d. MAINTENANCE
17. OTHER TRANSPORTATION FACILITIES
18. SUPPORT FACILITIES UTILITY INSTALLATIONS

: Copy of this Report:

Mailed to: John Kathman-OSM and John W. Rains-CPC

Given to: Joe Helfrich-DOGM

Inspectors Signature and Number: #32 Henry Rains

Date: October 24, 1989

PERMIT NUMBER: INA/015/007

DATE OF INSPECTION Oct. 19, 1989

(Comments are Numbered to Correspond with Topics Listed Above)

General Comments

Company officials and/or representatives were not present during this complete inspection. Water monitoring, UPDES monitoring, subsidence monitoring, and other records were not reviewed except for pertinent information contained in UDOGM files.

Periodic monitoring records are on file in the permittee's business offices. Mr. William Malencik (DOGM) informed me of the upcoming maintenance work which California Portland Cement Company (CPCC) plan to initiate on October 24, 1989. This maintenance work, reportedly, will include: seeding, backfilling rills and gullies, repairing silt fences, reestablishing diversions, installation of excelsior or jute matting, etc.

2. Signs and Markers:

The mine identification sign at the end of the paved road is upright and legible. The sign has been used for target practice and is riddled with buckshot.

Along the access road and adjacent to the A and B seams, disturbed area perimeter markers are in place and visible.

4. Hydrologic Balance:

4(b) Diversions

The water bars which cross the ripped access road and feed into the main riprapped channel below the entrance gate are in need of repair. Flow is overtopping the diversion channels and scouring the backfilled material along the reclaimed road.

Additionally, access road diversion channels (water bars) are being scoured immediately below the crest of the reclaimed road as the channel gradient increases and feeds into the main riprapped channel.

4(e) Surface and Groundwater Monitoring

The laboratory results of the May 1989 stream monitoring for Ivie Creek up and downstream from the mine site has been submitted.

PERMIT NUMBER: INA/015/007

DATE OF INSPECTION Oct. 19, 1989

(Comments are Numbered to Correspond with Topics Listed Above)

13. Revegetation

The excelsior matting installed this spring seems to be functioning well. Some flow is occurring under the matting, however, sediment is being deposited and the rills are filling in.

Desirable species of grasses (*Oryzopsis hymenoides*, *Agropyron* species, etc.) are growing vigorously in ditches and small depressions where the slope is stable. This emphasizes the need to leave the seedbed in a roughened condition to enhance surface water storage and decrease runoff.

The vexar netting on the ripped access road has been removed.

13. Other Support Facilities

The fence extending out from the entrance gate on the access road is taunt and fence stays have been installed. Cattle will soon be moved to the area surrounding the mine site (winter range). Cattle must be prevented from entering the reclaimed area or the maintenance operations performed this fall may be adversely affected.

djh
AT43/53-56

FILED

JUN 29 1992

Permit No. INA/015/COM

Inspection Date Nov 2, 1989

inspection report

SECRETARY, BOARD OF
OIL, GAS & MINING

Permittee/Operator Name

Business Address

City

State

Zip

Mine

☐ Surface

☒ Underground

☐ Other

County

State

Company Official(s)

State Official(s)

Time of inspection

8:00

☒ a.m.

☐ p.m.

to 10:00

☒ a.m.

☐ p.m.

☐ Partial

☒ Complete

Date of last inspection

Oct 19 1989

Weather conditions

Clear / Pleasant Temp

Acreage

960

☐ Permitted

7

☐ Disturbed

7

☐ Regraded

7

☐ Seeded

7

☐ Bonded

Enforcement Action

None

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

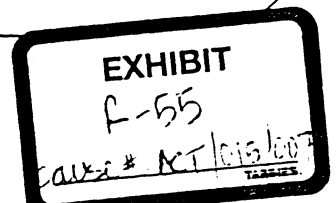
	YES	NO	N/A	COMMENTS		YES	NO	N/A	COMMENTS
1. Permits	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	9. Protection of fish, wildlife, and related environmental values	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Signs and markers	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	10. Slides and other damage	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Topsoil	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	11. Contemporaneous reclamation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Hydrologic balance					12. Backfilling and grading	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
— Stream channel diversions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	13. Revegetation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
— Diversions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	14. Subsidence control	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
— Sediment ponds and impoundments	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	15. Cessation of operations	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
— Other sediment control measures	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16. Roads				
— Surface and groundwater monitoring	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	— Construction	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
— Effluent limitations	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	— Drainage controls	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Explosives	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	— Surfacing	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Development waste and spoil disposal	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	— Maintenance	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Coal processing waste	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	17. Other transportation facilities	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. Noncoal waste	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	18. Support facilities and utility installations	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

WHITE — DOGM YELLOW — OSM PINK — PERMITTEE/OPERATOR GOLDENROD — NOV FILE

DOGM/IR-1

an equal opportunity employer

89



INSPECTION REPORT COMMENTS

Permit No. INA/015/007

Inspection Date 11/2/89

Please number comments to correspond with topics on previous page

General Comments General environmental conditions at the mine site were the same as outlined in the previous report. The operator in consultation with the Division is currently finalizing plans to do some additional on site work. The Division has requested that plans be submitted on any significant changes over current environmental control measures. I have been advised that a plan has been submitted and is currently undergoing technical review by the Division.

Sign & Marker The I.D. Sign has again received a shot gun blast. It is still legible, but one of the bolts holding the sign had been sheared. Replaced the sign as a temporary measure. Operator must reattach sign with bolts.

Stream Channel Diversion The stream channel diversion where it crosses the fence across road should be considered for additional reparation. The balance of the diversion are of nature where they are very stable and no potential signs of any.

Copy of report mailed to _____

Copy of report given to _____

Inspector's signature _____ No. _____

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

DOGM/R-2

an equal opportunity employer

11-86 201049

INSPECTION REPORT COMMENTS

Permit No. INA/015/C09

Inspection Date 11/2/89

Please number comments to correspond with topics on previous page

problem. This does not infer that the area suggested for fertilization is a current problem; however, high intensity storms and runoff may result in this undisturbed diversion getting out of compliance. Since the operator plans to have men and equipment in the area, additional work at this time may prevent a future problem.

Diversion The operator advised the Division that the ditch/basin on top of the A coal seam will be berfed up and the runoff water would be spread on a gentle area above the undisturbed diversion ditch and elongated salt fence.

Revegetation Two previous seedings have for the most part been disappointing. The operator plans to perform seedbed preparation and reseed the disturbed area again. The A & B seams will be covered with erosion netting.

Copy of report mailed to CCPC/John Rains; JBR/Karla Knoop
OSM/Brian Smith; AOGM/Joe Helrich

Copy of report given to Filed PRO

Inspector's signature

Jim J. [Signature]

No. 26

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

DOGM/R-2

11/7/89

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11 50 00'049

766



FILED

JUN 29 1992

Permit No. INA/015/007

Inspection Date Dec 13, 1989

inspection report

SECRETARY, BOARD OF

Oil, Gas & Mining Calif Portland Cement

Business Address 695 South Rancho Ave

City Colton State Calif Zip 92324

Mine Hidden ☐ Surface ☒ Underground ☐ Other

County Emery State Ut.

Company Official(s) None

State Official(s) Bill Malenick

Time of inspection 1:00 ☐ a.m. ☐ p.m. to 4:00 ☐ a.m. ☒ p.m. ☒ Partial ☐ Complete

Date of last inspection 11/2/89 Weather conditions Cool / Pt. Cloudy / Dry Mine Site

Acreage 950 ☐ Permitted ☒ Disturbed ☒ Regraded ☒ Seeded ☒ Bonded

Enforcement Action None

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

	YES	NO	N/A	COMMENTS		YES	NO	N/A	COMMENTS
1. Permits	<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"/>
2. Signs and markers	<input checked="" 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"/>
3. Topsoil	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	11. Contemporaneous reclamation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Hydrologic balance					12. Backfilling and grading	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Stream channel diversions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	13. Revegetation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
- Diversions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	14. Subsidence control	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Sediment ponds and impoundments	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	15. Cessation of operations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Other sediment control measures	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16. Roads				
- Surface and groundwater monitoring	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	- Construction	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Effluent limitations	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	- Drainage controls	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Explosives	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	- Surfacing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Development waste and spoil disposal	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	- Maintenance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Coal processing waste	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	17. Other transportation facilities	<input 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"/>	18. Support facilities and utility installations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

DOGM/12-1

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902

EXHIBIT

R-File

cause # 12/15/07

INSPECTION REPORT COMMENTS

Permit No INA/015/017

Inspection Date 12/15/89

Please number comments to correspond with topics on previous page

General Comments Since the last inspection in November, the operator subcontracted has completed maintenance and some reconstruction work.

Stream Channel Diversion Additional rewrapping was installed on the undisturbed drainage above the mine pad and contiguous to the reclaimed access road.

Diversion The diversion on top of the A seam was cleaned enlarged and routed in a northerly where the runoff could spread on a flat seeded area.

Silt fence Silt fences were replaced along the main undisturbed drainage.

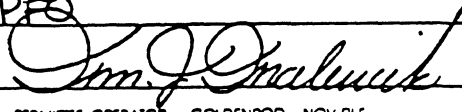
Revegetation The disturbed area was hand seeded. Moisture conditions at the mine site do not appear favorable for germination at this time. However, the seed will undoubtedly hold over for early spring germination.

{ CPC: John Ravis; JBR/Karla Knop.

Copy of report mailed to OSM; Brian Smith; DOGM/Joe Helfrich

Copy of report filed given to PRO

Inspector's signature



No. 26

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



inspection report

JUN 29 1992

Permit No. INA/015/007
Inspection Date 2/7/90

SECRETARY, BOARD OF
OIL, GAS & MINING
Permittee Operator Name Cal Portland Cement
Business Address 695 S. Ralicho Av.
City Colton State Calif Zip 92324
Mine Hidden Valley ☐ Surface ☒ Underground ☐ Other
County Emery State Ut
Company Official(s) None
State Official(s) Bill Malenich
Time of inspection 11:00 ☐ a.m. ☐ p.m. to 3:00 ☐ a.m. ☒ p.m. ☐ Partial ☒ Complete
Date of last inspection 1/5/90 Weather conditions Cloudy / Snowing
Acreage 950 ☐ Permitted ☒ Disturbed ☐ Regraded ☐ Seeded ☐ Banded
Enforcement Action None

✓ Suggested followup items i.e., not in violation of performance standards at present time.

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

	YES	NO	N/A	COMMENTS		YES	NO	N/A	COMMENTS
1. Permits	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	9. Protection of fish, wildlife, and related environmental values	<input checked="" 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 checked="" type="checkbox"/>	10. Slides and other damage	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Topsoil	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	11. Contemporaneous reclamation	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Hydrologic balance					12. Backfilling and grading	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Stream channel diversions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	13. Revegetation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Diversions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	14. Subsidence control	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
- Sediment ponds and impoundments	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	15. Cessation of operations	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
- Other sediment control measures	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16. Roads				
- Surface and groundwater monitoring	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	- Construction	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Effluent limitations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	- Drainage controls	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Explosives	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	- Surfacing	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Development waste and spoil disposal	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	- Maintenance	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Coal processing waste	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	17. Other transportation facilities	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. Noncoal waste	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	18. Support facilities and utility installations	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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

OOGM-11R-1

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904

EXHIBIT

R-57

cause#1:ACT/015/007

INSPECTION REPORT COMMENTS

Permit No. INA/015/007

Inspection Date 2/7/90

Please number comments to correspond with topics on previous page

the work was completed.

Division Required division at the upper end of the A seam should provide additional protection to the A seam outcrop. No evidence of runoff.

Revegetation No livestock or livestock tracks were observed within the fenced areas. Best for section was checked by the Division's biologist during the seeding operation. The undersigned did not observe any seeding operation.

Posts The barriers placed by the T.D. sign are shown been effective in curtailing vehicle access.

CPC: John Rains; JBR: Karla Knoop

Copy of report mailed to SLC: OSM/Brant Smith; DGM/See Helbreich

Copy of report given to Rid DFO

Inspector's signature John Helbreich

No. 26

WHITE - DGM YELLOW - CSM PINK - PERMITTEE OPERATOR GOLDENROD - NOV FILE

DCGM 12-2

2/9/90

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JUN 29 1992

Permit No. INA/015/007
Inspection Date March 23, 1990

inspection report

SECRETARY, BOARD OF

OIL, GAS & MINING

California Portland Cement

Business Address 695 South Rancho Ave.

City Colton State Calif Zip 92324

Mine Hicklen Valley ☐ Surface ☐ Underground ☐ Other

County Imperial State Ut

Company Official(s) J. Xone

State Official(s) Bill Malenick

Time of inspection 2:00 ☐ a.m. ☒ p.m. to 4:00 ☐ a.m. ☒ p.m. ☒ Partial ☐ Complete

Date of last inspection Feb 7, 1990 Weather conditions Partly Cloudy / Warm / Windy

Acreage 950 ☒ Permitted ☐ Disturbed ☐ Regraced ☐ Seeded ☐ Surfaces

Enforcement Action Close

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

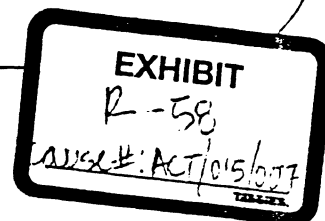
	YES	NO	N/A	COMMENTS		YES	NO	N/A	COMMENTS
1. Permits	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	9. Protection of fish, wildlife, and related environmental values	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Signs and markers	<input checked="" 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"/>
3. Topsoil	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	11. Contemporaneous reclamation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Hydrologic balance					12. Backfilling and grading	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Stream channel diversions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	13. Revegetation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
- Diversions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	14. Subsidence control	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Sediment ponds and impoundments	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	15. Cessation of operations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Other sediment control measures	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16. Roads				
- Surface and groundwater monitoring	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	- Construction	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Effluent limitations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	- Drainage controls	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Explosives	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	- Surfacing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Development waste and spoil disposal	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	- Maintenance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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8. Noncoal waste	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	18. Support facilities and utility installations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

DOGM/IR-1

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908



INSPECTION REPORT COMMENTS

Permit No. INA/015/007

Inspection Date 3/23/90

Please number comments to correspond with topics on previous page

General Comments Site conditions were dry. Environmental control measures were operational, no significant change from descriptions covered in the 2/7/90 complete inspection on compliance matters, and the mine site held up well over the winter.

Stream Channel Diversion The stream channel diversion that divides the A & B pads & portals was in good shape. The additional protection placed in the channel where it intersects the access road is fully effective and should protect the channel from a potential headcut.

Other Sediment Control Silt fences were checked and showed no evidence of short circuiting or an inadequate amount of sediment.

Revegetation The areas reseeded last fall were checked and no signs of seedling emergence was noted.

Copy of report mailed to { CPC/John Rains; JBR/Karla Knoop.
SLC: OSM/Bruce Smith; DOGM/ Joe Helfrich

Copy of report given to FILED RFO

Inspector's signature [Signature] No. 26

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

DOGM 17-2

an equal opportunity employer

FILED

JUN 29 1992

Permit No. INA/015/007

Inspection Date 4/24/90

inspection report

SECRETARY, BOARD OF

~~OIL, GAS & MINING~~

California Portland Cement

Business Address 695 South Rancho Av

City Colton

State Calif

Zip 92324

Mine Hidden Valley

☐ Surface

☒ Underground

County Emery

State Ut

Company Official(s) None

State Official(s) Bill Malenak & Susan White

Time of inspection 11 00 ☒ am ☐ pm to 3 00 ☐ am ☒ pm ☐ pm ☒ Complete

Date of last inspection 3/23/90 Weather conditions Cloudy/Raining

Acreage 950 ☒ Permitted 7 ☒ Disturbed 7 ☒ Regraded 7 ☒ Seeded 7 ☒ Erodex

Enforcement Action None

✓ Suggested items

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

	YES	NO	N/A	CONFLICTS		YES	NO	N/A	CONFLICTS
1 Permits	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	9 Protection of fish, wildlife and related environmental values	<input checked="" 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 checked="" type="checkbox"/>	10 Slides and other damage	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3 Topsoil	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	11 Contemporaneous reclamation	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4 Hydrologic balance					12 Backfilling and grading	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
— Stream channel diversions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	13 Revegetation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
— Diversions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	14 Subsidence control	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
— Sediment ponds and impoundments	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	15 Cessation of operations	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
— Other sediment control measures	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16 Roads				
— Surface and groundwater monitoring	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	— Construction	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
— Effluent limitations	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	— Drainage controls	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5 Explosives	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	— Surfacing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6 Development waste and spoil disposal	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	— Maintenance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7 Coal processing waste	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	17 Other transportation facilities	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8 Noncoal waste	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	18 Support facilities and utility installations	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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

DOGM 1R-1

an equal opportunity employer

908

EXHIBIT

R 59

cause # M.T/015/107

TABLER

INSPECTION REPORT COMMENTS

Permit No. INA/015/007

Inspection Date 4/24/90

Please number comments to correspond with topics on previous page

General Comments: The mine site and adjoining areas were wet from a general rain. It rained through out the inspection. While there was some puddling of water in depressions no runoff was taking place in the ditches. It appeared that a vehicle had been driven down the road past the gate and to the undisturbed drainage crossing. If additional vehicles access continuously, the operator should consider installing additional barricades.

Signs & Markers: The I.D. sign has been wired to the steel post, however, is at ground level. Four shotgun blasts have taken its toll on the sign. The full address is barely visible. Operator should replace the sign.

Other Sediment Control: Since the last inspection, two sections of erosion matting on the B beam have been removed. The two sections are not contiguous. One has been rolled to another segment and the other has been rolled and now lies contiguous to a pit.

Copy of report mailed to _____

Copy of report given to _____

Inspector's signature _____ No. _____

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

INSPECTION REPORT COMMENTS

Permit No. INA/015/007

Inspection Date 4/24/90

Please number comments to correspond with topics on previous page

✓ fence adjacent to the undisturbed channel. The operator must replace the erosion control matting. As a suggestion, 12" fasteners instead of 6" fasteners would hold the matting better. This should be done as soon as possible. Please advise the undersigned when you will be on site to perform the required work.

Revegetation Some seedling emergence was observed on the entire site. It appeared to be more abundant on areas covered with erosion matting.

The access road appeared to again be in failure as far as seedling emergence. Some salt bush plants were observed.

Road Road drainage controls that were augmented with additional work last fall were fully functional.

Copy of report mailed to { CDC/John Rains; UBR/Karla Knoop
GIC: OSM/Brian Smith; DOGM/Jo Heltrich

Copy of report filed PFO

Inspector's signature [Signature] No. 26

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

DOGM 12-2

4/30/90

an equal opportunity employer

FILED

JUN 29 1992

Permit No. INA/015/007

Inspection Date May 18, 1990

inspection report

SECRETARY, BOARD OF California Portland Cement
OIL, GAS & MINING

Business Address 695 South Ranchero Ave

City Colton State Calif Zip 92324

Mine Hidden Valley ☐ Surface ☒ Underground ☐ Other

County Emery State Ut

Company Official(s) J. D. Drove

State Official(s) Bill Makucik & Jess Kelley

Time of inspection 1:30 ☐ a.m. ☒ p.m. to 3:30 ☐ a.m. ☒ p.m. ☒ Partial ☐ Concrete

Date of last inspection 4/24/90 Weather conditions Clear / Warm / Dry Mine Site

Acreage 950 ☒ Permitted 7 ☐ Disturbed 7 ☐ Regraded 7 ☐ Seeded 7 ☐ Bonded

Enforcement Action touch up stems.

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

	YES	NO	N/A	COMMENTS		YES	NO	N/A	COMMENTS
1. Permits	<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"/>
2. Signs and markers	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	10. Slides and other damage	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Topsoil	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	11. Contemporaneous reclamation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Hydrologic balance					12. Backfilling and grading	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Stream channel diversions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	13. Revegetation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Diversions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	14. Subsidence control	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Sediment ponds and impoundments	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	15. Cessation of operations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Other sediment control measures	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16. Roads				
- Surface and groundwater monitoring	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	- Construction	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
- Effluent limitations	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	- Drainage controls	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Explosives	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	- Surfacing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Development waste and spoil disposal	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	- Maintenance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Coal processing waste	<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"/>
8. Noncoal waste	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	18. Support facilities and utility installations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

DOGM:IR-1

an equal opportunity employer

EXHIBIT
P-60
CORR #: ACT/015/007
TABLES

911

INSPECTION REPORT COMMENTS

Permit No INA/015/007

Inspection Date 5/18/90

Please number comments to correspond with topics on previous page

✓ Sign. The I.D. Sign is in the same condition as noted in the 4/24/90 inspection report. The Division notified the operator that the sign should be replaced.

✓ Other Sediment Control. Silt fences were all in good shape and no problems noted. Wind has continued to move the erosion matting off the B slope. Two segments of matting are now lying in a pile adjacent to the silt fence. On the lower area of the A slope the matting is being detached. longer staples installed at this time may prevent further damage i.e. detachment. The Operator should take steps to reinstall the matting as soon as possible.

Road No additional vehicle tracks were observed on the reclaimed access road. Therefore road conditions as noted in the 4/24/90 inspection report are still applicable

CCPC: John Rains; JBR Karla Knoop.

Copy of report mailed to

SLC: OSM/Bruce Smith; DOGMI/ Joe Hehrich

Copy of report given to

Filed PEO

Inspector's signature

Tom J. Mahoney

No 26

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

DOGM R-2

5/24/90

an equal opportunity employer

FILED

JUN 29 1992

Permit No. TNA/015/007
Inspection Date 6/1/90

inspection report

SECRETARY, BOARD OF
OIL, GAS & MINING

Cal Mat Co.

Business Address P.O. Box 947

City Colton

State Calif

Zip 92324

Mine Hidden Valley

☐ Surface

☒ Underground

County Emery

State Ut

Company Official(s) None

State Official(s) Bill Malencik

Time of inspection 1:00 ☐ a.m. ☒ p.m. to 4:00 ☐ a.m. ☒ p.m. ☒ Partial ☐ Some site

Date of last inspection 5/18/90

Weather conditions Pt. Cloudy / Cool

Acreage 950 ☐ Permitted 7 ☐ Disturbed 7 ☐ Regraded 7 ☐ Seeded 7 ☐ Bonded

Enforcement Action None

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

	YES	NO	N/A	COMMENTS		YES	NO	N/A	COMMENTS
1. Permits	<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"/>
2. Signs and markers	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	10. Slides and other damage	<input 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"/>	11. Contemporaneous reclamation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Hydrologic balance					12. Backfilling and grading	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
— Stream channel diversions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	13. Revegetation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
— Diversions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	14. Subsidence control	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
— Sediment ponds and impoundments	<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"/>
— Other sediment control measures	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16. Roads				
— Surface and groundwater monitoring	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	— Construction	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
— Effluent limitations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	— Drainage controls	<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"/>	— Surfacing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Development waste and spoil disposal	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	— Maintenance	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
7. Coal processing waste	<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"/>
8. Noncoal waste	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	18. Support facilities and utility installations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

DOGM - IR-1

an equal opportunity employer

913

EXHIBIT

P-61

ANALYST ACT 015 007

INSPECTION REPORT COMMENTS

Permit No. TNA/015/007

Inspection Date 6/1/90

Please number comments to correspond with topics on previous page

General Comments. It is encouraging and should be noted that the operator responded to suggestions made in the last inspection as noted by the permit supervisor.

As a suggestion the company may want to consider having their field representative accompany the Division on complete inspections.

Signs & Markers. A new I.D. sign had been installed since the last inspection.

Other Sediment Control. Erosion matting had been repaired and replaced on the B beam. The matting that had blown off the B beam is still lying adjacent to the silt fence.

Road. The former access road that had been barricaded was breached was rebarricaded with three steel posts installed on the road barrier.

CMC/John Rains; JBR Karla Knoop.

Copy of report mailed to SIC/OSM; Brian Smith/DOGMA Joe Helfrich

Copy of report ^{filed} given to REO

Inspector's signature [Signature] No. 26

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

DOGM 1R-2

6/8/90

an equal opportunity employer

U. J. J.

FILED

JUN 29 1992

ACT

Permit No. INAT-15/CC-

Inspection Date 19 July 1992

inspection report

SECRETARY BOARD OF Cal Mat Company
OIL, GAS & MINING Box 947

City Colton State California Zip 92324

Mine Hidden Valley ☐ Surface ☒ Underground ☐ Other

County Emery State Utah

Company Official(s) None

State Official(s) Jess Kelley, Bill Malencik, John Pappas

Time of inspection 1:00 ☐ a.m. ☒ p.m. to 3:00 ☐ a.m. ☒ p.m. ☐ Partial ☒ Complete

Date of last inspection 1 June 1990 Weather conditions Partly Cloudy, Warm

Acres 950 ☐ Permitted 7 ☐ Disturbed 7 ☐ Regraded 7 ☐ Seeded 7 ☐ Bonded

Enforcement Action None

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

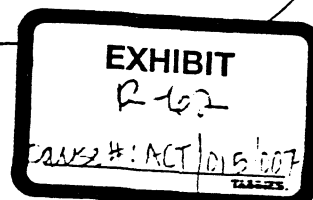
	YES	NO	N/A	COMMENT		YES	NO	N/A	COMMENT
1. Permits	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	9. Protection of fish, wildlife, and related environmental values	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Signs and markers	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	10. Slides and other damage	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Topsoil	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	11. Contemporaneous reclamation	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Hydrologic balance					12. Backfilling and grading	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Stream channel diversions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	13. Revegetation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
- Diversions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	14. Subsidence control	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
- Sediment ponds and impoundments	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	15. Cessation of operations	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Other sediment control measures	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16. Roads				
- Surface and groundwater monitoring	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	- Construction	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
- Effluent limitations	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	- Drainage controls	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Explosives	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	- Surfacing	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Development waste and spoil disposal	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	- Maintenance	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Coal processing waste	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	17. Other transportation facilities	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. Noncoal waste	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	18. Support facilities and utility installations	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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

DOGM/IR-1

an equal opportunity employer

915



INSPECTION REPORT COMMENTS

Permit No. INA/015/007

Inspection Date 19 July 1992

Please number comments to correspond with topics on previous page

4. Hydrologic Balance -

- Diversions - Ditch at top of "A" slope is functional, but some material has fallen into it from the slope above. This material should be removed before the ditch becomes blocked by additional material.
- Other Sediment Control Measures - The erosion matting over the "B" area has been completely repaired and looks good.

5. Revegetation - Grass on the site is sparse, but is coming up quite well beneath the erosion matting. Some saltbush is making an appearance on the road, but the road is covered mainly by a profuse growth of halogeton. Since halogeton is a noxious and poisonous plant, some future control measures may be required by the Division. This would be done for two reasons: 1) To control a noxious weed; and 2) To prevent competition with introduced, desirable plant species.

Copy of report mailed to John Rains/CMC; Karla Knoop/JBR; Brian Smith/OSM; Joe Helfrich/DOGM

Copy of report given to Price Field Office, DOGM

Inspector's signature James W. Kelley No. 34

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



FILED

JUN 29 1992

Permit No. INA/015/CC7

Inspection Date 8/21/90

inspection report

SECRETARY, BOARD OF

OIL, GAS & MINING

Cal Mat Co

Business Address P.O. Box 947

City Colton State Calif Zip 92324

Mine Hidden Valley ☐ Surface ☐ Underground ☐ Other

County Emery State Ut

Company Official(s) Kane

State Official(s) Bill Malewicki & Tom Munson

Time of inspection 1:00 ☐ a.m. ☒ p.m. to 3:00 ☐ a.m. ☒ p.m. ☒ Partial ☐ Complete

Date of last inspection 7/19/90 Weather conditions Clear/Warm

Acreage 950 ☐ Permitted 7 ☐ Disturbed 7 ☐ Regraded 7 ☐ Seeded 7 ☐ Erodible

Enforcement Action None

✓ Followup Item --- (Ditch On A Seam)

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

	YES	NO	N/A	COMMENTS		YES	NO	N/A	COMMENTS
1. Permits	<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"/>
2. Signs and markers	<input checked="" 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"/>
3. Topsoil	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	11. Contemporaneous reclamation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Hydrologic balance					12. Backfilling and grading	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Stream channel diversions	<input checked="" 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"/>
- Diversions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	14. Subsidence control	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Sediment ponds and impoundments	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	15. Cessation of operations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Other sediment control measures	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16. Roads				
- Surface and groundwater monitoring	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	- Construction	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Effluent limitations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	- Drainage controls	<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"/>	- Surfacing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Development waste and spoil disposal	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	- Maintenance	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
7. Coal processing waste	<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"/>
8. Noncoal waste	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	18. Support facilities and utility installations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

DOGM IR-1

an equal opportunity employer

917

EXHIBIT

R-63

cause # ACT/015/007

INSPECTION REPORT COMMENTS

Permit No. INA/015/007

Inspection Date 8/21/90

Please number comments to correspond with topics on previous page

✓ Discussion. Upper discussion saw the A seam needs to be cleaned. Some flag rock had fallen from the escarpment into the ditch. The ditch is functional. A rock hammer will be needed to break the larger rock slabs. This should be done before the next inspection.

Other Sediment Control. Silt fences were observed on site and were in good condition. It does not appear that either silt fence has had any recent runoff.

New Coal Waste. The mine site was clean of trash, debris or mine waste.

Road. The fence post barriers were in place. It currently is precluding 4-wheel drive vehicles from driving down to the gate.

CMC: John Raines; JBR Karla Knoop

Copy of report mailed to SLC - OSM/Bruce Smith; DOGM/Joe Helfrich

Copy of report given to file DFO

Inspector's signature

Tom J. Malinick

No. 26

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

DOGM - R-2

8/21/90

an equal opportunity employer

FILED

JUN 29 1992

Permit No. ACT 015/007
Inspection Date 9/27/90

inspection report

SECRETARY, BOARD OF
OIL, GAS & MINING

Cal Chat Co.

Business Address P.O. Box 947

City Colton State Calif Zip 92324

Mine Hidden Valley ☐ Surface ☒ Underground ☐ Other

County Emery State Ut

Company Official(s) None

State Official(s) Bill Makulich

Time of inspection 1:00 ☐ a.m. ☐ p.m. to 3:00 ☐ a.m. ☒ p.m. ☒ Partial ☐ Complete

Date of last inspection 8/21/90 Weather conditions Partly Cloudy

Acreage 950 ☐ Permitted 7 ☐ Disturbed 7 ☐ Regraded 7 ☐ Seeded 7 ☐ Bonded

Enforcement Action None

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

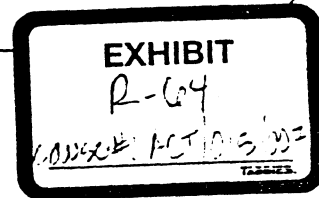
	YES	NO	N/A	COMMENTS		YES	NO	N/A	COMMENTS
1. Permits	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	9. Protection of fish, wildlife, and related environmental values	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Signs and markers	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	10. Slides and other damage	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Topsoil	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	11. Contemporaneous reclamation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Hydrologic balance					12. Backfilling and grading	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Stream channel diversions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	13. Revegetation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
- Diversions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	14. Subsidence control	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
- Sediment ponds and impoundments	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	15. Cessation of operations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Other sediment control measures	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16. Roads				
- Surface and groundwater monitoring	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	- Construction	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Effluent limitations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	- Drainage controls	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Explosives	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	- Surfacing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Development waste and spoil disposal	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	- Maintenance	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
7. Coal processing waste	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	17. Other transportation facilities	<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"/>	18. Support facilities and utility installations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

DOGM-112-1

an equal opportunity employer

919



INSPECTION REPORT COMMENTS

Permit No. ACT/015/007

Inspection Date 9/27/90

Please number comments to correspond with tables on previous page

General Comments: Discussed contents of this inspection with Mr. John Rains, Cal Mnt. engineering department. He advised me that a letter had been sent to the Division relative to the principal contact and address change.

Signs & Markers: The operator should the address and phone number change will have to update the I.D. Sign.

Stream Channel Division: In a straight segment of the undisturbed channel the high water mark was 26" from the channel bottom. The width of the channel 25'. The particular area was immediately above the gate. Channel through mine site held up well.

Other Sediment Control: Silt fences on the undisturbed stream channel were not topped nor bypassed. However, both silt fences on the lower end require minor maintenance.

Revegetation: Some inches of new basal growth was observed on crested wheat grass plants on the mine site.

Roads: Three water bars at the discharge end require some hand work in order to prevent head cutting.

C.M.C.: John Rains; J.B.R.: Karla Knoop. cc: Lee Edmanson
S.C./OSM: Brian Smith; DSGM: Joe Helfrich

Copy of report mailed to

Copy of report given to

Inspector's signature

No. 26

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

DOGM IR-2

an equal opportunity employer

FILED

JUN 29 1992

Permit No. INA/015/007
Inspection Date 10/15/90

inspection report

SECRETARY, BOARD OF
OIL, GAS & MINING

Cal Mat Co.
Business Address 1801 E University Drive
City Phoenix State AZ Co. 85037
Mine Hidden Valley ☐ Surface ☒ Underground ☐ Other
County Emery State UT
Company Official(s) Karla Knop (JBR)
State Official(s) Susan M. White
Time of inspection 11 00 ☐ a.m. ☐ p.m. to 1 00 ☐ a.m. ☒ p.m. ☐ Partial ☒ Complete
Date of last inspection 9/27/90 Weather conditions Fair & Warm
Acreage 950 ☐ Permitted ☐ 7 ☐ Disturbed ☐ 7 ☐ Regraded ☐ 7 ☐ Seeded ☐ 7 ☐ Bonded
Enforcement Action None

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

	YES	NO	NOT	COMMENTS		YES	NO	NOT	COMMENTS
1. Permits	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	9. Protection of fish, wildlife, and related environmental values	<input checked="" 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"/>	10. Slides and other damage	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Topsoil	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	11. Contemporaneous reclamation	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Hydrologic balance					12. Backfilling and grading	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
a. Stream channel diversions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	13. Revegetation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. Diversions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	14. Subsidence control	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. Sediment ponds and impoundments	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	15. Cessation of operations	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Other sediment control measures	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16. Roads				
e. Surface and groundwater monitoring	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	- Construction	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
f. Effluent limitations	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	- Drainage controls	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5. Explosives	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	- Surfacing	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Development waste and spoil disposal	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	- Maintenance	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Coal processing waste	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	17. Other transportation facilities	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. Noncoal waste	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	18. Support facilities and utility installations	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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

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EXHIBIT

P-65

CIVIL #1050001

Form No INA/C15/CC-

Inspector Date 10/15/90

1. Records were reviewed at the Division office
Reclamation Bond is for \$68,100.00 with St. Paul Fire &
Marine Ins. Co.

Pam Grubbaugh-Littig advised the company 2 weeks ago that no ^{Liability Insurance} policy had been submitted to the Division. Lee Edmanson stated that, in order to be effective, the certificate will be sent to the Division soon.

4a. A large flow of water had passed through the rip-rapped stream channel. The channel held up very well.

4d. The tilt fences all looked good with very little sediment build-up after rains.

4.e. Water monitoring data for May had been submitted.

13. Although the site is in poor ^{vegetative} condition the vegetation is improving. Three *Atriplex* spp., 2 grass ^{spp.} and 2 other shrub spp. were observed on site. The ~~the~~ water spreading berms had been breached. These should be repaired to encourage vegetative growth.

Copy of report mailed to _____

Copy of report given to _____

Inspector's signature _____ No. _____

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

DCGM R-2

an equal opportunity employer

INSPECTION REPORT COMMENTS

Permit No. 1NA/015/007
Inspection Date 10/15/96

Please number comments to correspond with top as on previous page

16. The second water bar down from top of road continues to head cut, this requires repair.
Approximately 5 to 6 water bars up from the bottom of the road, the berm along the road needs to be reestablished to prevent rilling along the slope.

Copy of report mailed to Lee Edmonson/kmc; Karl Knoop/TBR; Brian Smith/OSM

Copy of report given to Joe Helfrich

Inspector's signature Susan M. White

No. 35

WHITE - OCGM YELLOW - OSM PINK - PERMITTEE OPERATOR GOLDENROD - NCV FILE

FILED

JUN 29 1992

Permit No. ACT/015/007
Inspection Date 11/8/90

inspection report

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

Company Cal Mat Co.
 Business Address 1801 E Univ. Dr.
 City Phoenix State AZ Zip 85034
 Mine Hidden Valley ☐ Surface ☒ Underground ☐ Other
 County Emery State UT
 Company Official(s) Lee Edmonson, Karla Knoop (IBR)
 State Official(s) Susan White
 Time of inspection 9 00 ☒ a.m. ☐ p.m. to 11 00 ☒ a.m. ☐ p.m. ☒ Partial ☒ Complete
 Date of last inspection 10/15/90 Weather conditions Partly Cloudy, Cool
 Acreage 950 ☐ Permitted 1 ☐ Disturbed 1 ☐ Regraded 7 ☐ Seeded 7 ☐ Bonded
 Enforcement Action None

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

	YES	NO	N/A	COMMENTS
1. Permits	<input checked="" 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 checked="" type="checkbox"/>
3. Topsoil	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Hydrologic balance				
a- Stream channel diversions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b- Diversions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c- Sediment ponds and impoundments	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d- Other sediment control measures	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e- Surface and groundwater monitoring	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f- 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. Development waste and spoil disposal	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Coal processing waste	<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 type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input 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				
- Construction	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Drainage controls	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Surfacing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Maintenance	<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 and utility installations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

DOGM 12-1

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924

EXHIBIT

F-66

CAUSE # ACT/015/007

TABLE 2

INSPECTION REPORT COMMENTS

Permit No ACT/C15/CCT

Inspection Date 11/8/90

Please number comments to correspond with topics on previous page

2. The mine identification sign will be changed soon to reflect the owners new address.
4. - The head cut near the top of road requires ~~more~~ additional armoring. Some work had been done.
 - The loose silt fence post was fixed.
 - The silt fence by the old sediment pond requires work. Some rocks were placed at the bottom however shovel work is required to prevent water cutting beneath the fence.
 - the water spreaders are functioning, new grass shoots were observed, however where they have been breached should be repaired.
13. The vegetation reference area was located. The area was marked with rebar stakes. The vegetation, although sparse, is improving.
16. Temporary berm was established along lower portion of the road until the ground is softened by moisture in the spring when the berm will be reestablished.

Copy of report mailed to Lee Edmonson/CMC; Brian Smith/OSM

Copy of report given to Joe Helfrich/DOGM

Inspector's signature Susan M White No. 35

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

inspection report

FILED

JUN 29 1992

Permit No. INA/015/007Inspection Date December 7, 1990

SECRETARY, BOARD OF

OIL, GAS & MINING

CalMat Company

Business Address 1801 University DriveCity PhoenixState ArizonaZip 85004Mine Hidden Valley☐ Surface☒ Underground☐ OtherCounty EmeryState Utah

Company Official(s) _____

State Official(s) Jesse KelleyTime of inspection 10 00 ☒ a.m. ☐ p.m. to 1 00 ☐ a.m. ☒ p.m. ☐ Partial ☒ CompleteDate of last inspection November 8, 1990 Weather conditions Sunny and coldAcreage 950 ☐ Permitted 7 ☐ Disturbed 7 ☐ Regraded 7 ☐ Seeded 7 ☐ BondedEnforcement Action None

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

	YES	NO	N/A	COMMENTS		YES	NO	N/A	COMMENTS
1. Permits	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	9. Protection of fish, wildlife, and related environmental values	<input checked="" 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"/>	10. Slides and other damage	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Topsoil	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	11. Contemporaneous reclamation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Hydrologic balance					12. Backfilling and grading	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
A Stream channel diversions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	13. Revegetation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
B Diversions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	14. Subsidence control	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
C Sediment ponds and impoundments	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	15. Cessation of operations	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D Other sediment control measures	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16. Roads				
E Surface and groundwater monitoring	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	A Construction	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
F Effluent limitations	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	B Drainage controls	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Explosives	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	C Surfacing	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Development waste and spoil disposal	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	D Maintenance	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Coal processing waste	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	17. Other transportation facilities	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. Noncoal waste	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	18. Support facilities and utility installations	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

DOGM: IR-1

an equal opportunity employer

EXHIBIT

P-67

cause #: ACT 015/007

926

INSPECTION REPORT COMMENTS

Permit No. INA/015/007

Inspection Date December 7, 1990

Please number comments to correspond with topics on previous page

PERMITS

-Permit INA/015/007 renewed in May, 1986.

-Liability insurance is held with Transportation Insurance Company. Policy Number
GL 00 741 3310 expires July 1, 1991.

-Reclamation bond is for 7 acres in the amount of \$68 606. Bond is held with
St. Paul Fire & Marine Insurance Company.

HYDROLOGIC BALANCE

(D) Other Sediment Control Measures-Erosion matting on all regraded slopes is in
good repair as are the silt fences along the rip rap lined channel that drains
into Ivie Creek.

(E) Surface and Groundwater Monitoring-The water of Ivie Creek is monitored at two
points; one upstream and one downstream from the mine site. Monitoring is
performed in May and September of each year and the results are sent to the
Division. Monitoring was last performed on September 22, 1990 and the results
are on file at the Division.

REVEGETATION

In general, vegetation on the site is sparse. There is, however, an incipient
growth of Russian Thistle, grass, and some winterfat.

Copy of report mailed to Lee Edmonson/CalMat; Brian Smith/OSM

Copy of report given to Joe Helfrich/DOGM

Inspector's signature

Jesse W. Kelley

No. 34

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

FILED

JUN 29 1992

inspection report

SECRETARY, BOARD OF

OIL, GAS & MINING

Permittee Operator Name

Business Address

City

State

Zip

Mine

☐ Surface☒ Underground☐ Other

County

State

Company Official(s)

State Official(s)

Time of inspection

☐ a.m.☒ p.m.

to

☐ a.m.☒ p.m.☐ Other☐ Somewhere

Date of last inspection

Weather conditions

Acreage

950

☐ Permitted

7

☐ Disturbed

7

☐ Regraced

7

☐ Seeded

7

☐ Barbed

Enforcement Action

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

	YES	NO	N/A	COMMENTS		YES	NO	N/A	COMMENTS
1. Permits	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	9. Protection of fish, wildlife, and related environmental values	<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 checked="" type="checkbox"/>	10. Slides and other damage	<input 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"/>	11. Contemporaneous reclamation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Hydrologic balance					12. Backfilling and grading	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
a Stream channel diversions	<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"/>
b Diversions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	14. Subsidence control	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c Sediment ponds and impoundments	<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"/>
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e Surface and groundwater monitoring	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	- Construction	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f Effluent limitations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	- Drainage controls	<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"/>	- Surfacing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Development waste and spoil disposal	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	- Maintenance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Coal processing waste	<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"/>
8. Noncoal waste	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	18. Support facilities and utility installations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

DOGM 10-1

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EXHIBIT

P 68

Case #: ACT 10/10/92

INSPECTION REPORT COMMENTS

Permit No. DTA/015/007
Inspection Date 12/13/90

Please number comments to correspond with topics on previous page

In general the site looked very good. No precipitation has occurred on site since the October storms. All suggested maintenance items from previous inspections had been taken care of.

2. The permit sign at the entrance to the property has been updated with the owners new address.

1. Phase I bond release was effective 7/17/88.

4.d. While fully functional some maintenance is required on the silt fence near the B seam.

Questions addressed by OSM were ASCA, and the variance which allowed AOC on the road and B seam highwall.

Copy of report mailed to John Kathman (OSM), Lee Edmonson (Cal Mat), and
Copy of report given to Joe Helfrich Karla Enoop (TBR)
Inspector's signature Susan M. White No. 35

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

JUN 29 1992

inspection report

SECRETARY, BOARD OF
OIL, GAS & MINING

Permit No ACT 015/007
Inspection Date 2/8/91

Permittee Operator Name Cal Chat Co.
Business Address 1801 University Dr.
City Phoenix State Az Zip 85034
Mine Hidden Valley ☐ Surface ☒ Underground ☐ Other
County Emery State Ut
Company Official(s) None
State Official(s) Bill Malenak
Time of inspection 1 ☐ a.m. ☒ p.m. to 4:00 ☐ a.m. ☒ p.m. ☐ Partial ☒ Complete
Date of last inspection 1/10/91 Weather conditions Clear/Dry/Pleasant Temp.
Acreage 950 ☐ Permitted 7 ☐ Disturbed 7 ☐ Regraded 7 ☐ Seeded 7 ☐ Bonded
Enforcement Action _____

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

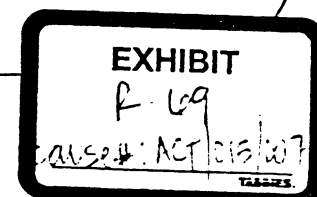
	YES	NO	N/A	COMMENTS		YES	NO	N/A	COMMENTS
1. Permits	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	9. Protection of fish, wildlife, and related environmental values	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Signs and markers	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	10. Slides and other damage	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Topsoil	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	11. Contemporaneous reclamation	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Hydrologic balance					12. Backfilling and grading	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
— Stream channel diversions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	13. Revegetation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
— Diversions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	14. Subsidence control	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
— Sediment ponds and impoundments	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	15. Cessation of operations	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
— Other sediment control measures	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16. Roads				
— Surface and groundwater monitoring	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	— Construction	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
— Effluent limitations	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	— Drainage controls	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Explosives	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	— Surfacing	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Development waste and spoil disposal	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	— Maintenance	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Coal processing waste	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	17. Other transportation facilities	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. Noncoal waste	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	18. Support facilities and utility installations	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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

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930



INSPECTION REPORT COMMENTS

Permit No. ACT/015/007

Inspection Date 2/8/91

Please number comments to correspond with topics on previous page.

General Comments. This complete inspection was ^{Performed} in coordination with Mrs. Karla Knap, D.B.E., the designated field representative (CalMat). She advised me that a Feb field trip would be made wherein she would (1) upgrade the T.D. sign and (2) review the fence locations as depicted on the Dec. 1990 Reclamation map/plate III, revised 12/18/90.

Field conditions as related to on site environmental control measures, have not change since the last inspections as described by Mrs. White and the previous oversight inspection completed in December 1990.

Pending Enforcement Items. As a result of the December inspection, OSM on 1/4/91 issued TDN 91-02-246-1 TV 2 on two issues.

(1) Failure to demonstrate alternative sediment control areas to meet effluent standards, and

(2) Failure to reshape cut & fill slopes to original contour.

Diversions All diversions appeared stable without significant erosion or sediment deposition which would limit their effectiveness to convey runoff.

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 COMMENTS

Permit No. ACT/015/007

Inspection Date 2/8/91

Please number comments to correspond with topics on previous page.

Municipal Waste. No cause or garbage was observed at the mine site including at the end of the blacktop road adjacent to the permit area.

Revegetation. The vegetation was still in a dormant stage. No significant changes could be detected over and above what had previously been reported and/or observed.

Copy of report mailed to Lee Edmonson (Calmat), Karla Knepp (JBR), John Kathman (OSM)

Copy of report given to Don Helfrich (DOSM)

Inspector's signature Don J. Helfrich

No. 26

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

**FILED**

JUN 29 1992

Permit No. ACT 1015/007Inspection Date 3/21/91

inspection report

SECRETARY, BOARD OF

OIL, GAS & MINING

Permittee Name Cal Mat Co.Business Address 1801 University DriveCity Phoenix State AZ Zip 85034Mine Hidden Valley ☐ Surface ☒ Underground ☐ OtherCounty Emery State UTCompany Official(s) Karla Knapp (JBR)State Official(s) Susan WhiteTime of inspection 9:30 ☒ a.m. ☐ p.m. to 10:30 ☐ a.m. ☒ p.m. ☒ Partial ☐ CompleteDate of last inspection 2/8/91 Weather conditions cloudy & coolAcreage 950 ☐ Permitted ☒ Disturbed ☒ Regraded ☒ Seeded ☒ BorderedEnforcement Action None

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

	YES	NO	N/A	COMMENTS		YES	NO	N/A	COMMENTS
1. Permits	<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"/>
2. Signs and markers	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	10. Slides and other damage	<input 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"/>	11. Contemporaneous reclamation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Hydrologic balance					12. Backfilling and grading	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Stream channel diversions	<input checked="" 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"/>
- Diversions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	14. Subsidence control	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Sediment ponds and impoundments	<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"/>
- Other sediment control measures	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16. Roads				
- Surface and groundwater monitoring	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	- Construction	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Effluent limitations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	- Drainage controls	<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"/>	- Surfacing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Development waste and spoil disposal	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	- Maintenance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Coal processing waste	<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"/>
8. Noncoal waste	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	18. Support facilities and utility installations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

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EXHIBIT

R-70

CAUSE # ACT 1015/007

932

INSPECTION REPORT COMMENTS

Permit No. ACT 10151007

Inspection Date 3/21/01

Please number comments to correspond with topics on previous page.

- Approximately 2 inches of heavy snow covered the entire site. Wetting depth of the soil was only about a half inch, indicating that the soil was powdery.
- All silt fences were inspected and in good order. Generally, the site appeared unchanged from previous inspections.
The permit sign had been changed to reflect the correct permit number.
- The Division reviewed the permit revision requesting a variance from approximate original contour as required in the Division Order.

Copy of report mailed to Lee Edmonson (Cal Mat), Karla Knoop (JBR), John Katherin (CS)

Copy of report given to Joe Helfrich

Inspector's signature Susan M. White

No. 35

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

Y. J. J.

JUN 29 1992

SECRETARY, BOARD OF
OIL, GAS & MINING

Permit No ACT/015/007
Inspection Date 4/26/91

inspection report

Permittee Operator Name Cal Chat Co.
Business Address 1801 University Drive
City Phoenix State Arizona Zip 85034
Mine Hidden Valley ☐ Surface ☒ Underground ☐ Other
County Emery State Ut.
Company Official(s) None
State Official(s) Bruce Matencio
Time of inspection 1:00 ☐ a.m. ☒ p.m. to 4:00 ☐ a.m. ☒ p.m. ☐ Partial ☒ Complete
Date of last inspection 3/21/91 Weather conditions Clear / Windy
Acreage 950 ☐ Permitted 7 ☐ Disturbed 7 ☐ Regraded 7 ☐ Seeded 7 ☐ Bonded
Enforcement Action None

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

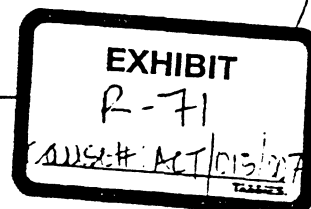
	YES	NO	N/A	COMMENTS		YES	NO	N/A	COMMENTS
1. Permits	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	9. Protection of fish, wildlife, and related environmental values	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Signs and markers	<input checked="" 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"/>
3. Topsoil	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	11. Contemporaneous reclamation	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Hydrologic balance					12. Backfilling and grading	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
— Stream channel diversions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	13. Revegetation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
— Diversions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	14. Subsidence control	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
— Sediment ponds and impoundments	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	15. Cessation of operations	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
— Other sediment control measures	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16. Roads				
— Surface and groundwater monitoring	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	— Construction	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
— Effluent limitations	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	— Drainage controls	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5. Explosives	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	— Surfacing	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Development waste and spoil disposal	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	— Maintenance	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Coal processing waste	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	17. Other transportation facilities	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. Noncoal waste	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	18. Support facilities and utility installations	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

WHITE — DOGM YELLOW — OSM PINK — PERMITTEE/OPERATOR GOLDENROD — NOV FILE

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INSPECTION REPORT COMMENTS

Permit No. ACT/015/007

Inspection Date 4/26/91

Please number comments to correspond with topics on previous page.

Stream Channel Division. The stream channel division was checked from the top to the bottom. No problems were noted.

Other Sediment Control. The silt fences below the A & B coal seams remain functional.

Non Coal Waste. The mine site was clean and no mine associated waste nor trash was observed.

Wildlife & Environmental Values. Water was running in the main creek. Only a few deer tracks were observed next to the creek.

Backfilling & Grading. The Division's position on highwalls on the Hidden Valley was sustained by OSM.

Revegetation. The mine site was dry, with minimal moisture in the top six inches of soil. It is premature to make any substantial judgments on the vegetation, especially in those areas where erosion matting was installed.

Roads. The road berms have held up with no short-circuiting of runoff. The outlope drainage areas need to be watched especially when high intensity storms hit the mine area.

Copy of report mailed to Cal Nat/hee Edmonson; OSM/Brian Smith; DOGM/ Joe Helfrich

Copy of report given to PFO

Inspector's signature Tom J. Hallock No. 26

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

5/2/91

JUN 29 1992

SECRETARY, BOARD OF
OIL, GAS & MINING

Permit No ACT/015/007

Inspection Date 5/7/91

inspection report

Permittee Operator Name Cal Mat Co.
Business Address 1801 University Drive
City Phoenix State Ariz Zip 85034
Mine Hidden Valley ☐ Surface ☒ Underground ☐ Other
County Emery State Ut
Company Official(s) None
State Official(s) Bill Malencik, Hugh Klein
Time of inspection 1:00 ☐ a.m. ☒ p.m. to 4:00 ☐ a.m. ☒ p.m. ☒ Partial ☐ Complete
Date of last inspection 4/26/91 Weather conditions Clear/Windy
Acreage 950 ☐ Permitted 7 ☐ Disturbed 7 ☐ Regraded 7 ☐ Seeded 7 ☐ Bonded
Enforcement Action None

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

	YES	NO	N/A	COMMENTS		YES	NO	N/A	COMMENTS
1. Permits	<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"/>
2. Signs and markers	<input checked="" 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"/>
3. Topsoil	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	11. Contemporaneous reclamation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Hydrologic balance					12. Backfilling and grading	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Stream channel diversions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	13. Revegetation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
- Diversions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	14. Subsidence control	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Sediment ponds and impoundments	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	15. Cessation of operations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Other sediment control measures	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16. Roads				
- Surface and groundwater monitoring	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	- Construction	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Effluent limitations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	- Drainage controls	<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"/>	- Surfacing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Development waste and spoil disposal	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	- Maintenance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Coal processing waste	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	17. Other transportation facilities	<input 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"/>	18. Support facilities and utility installations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

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EXHIBIT

R-72

00152 # ACT 015 007

INSPECTION REPORT COMMENTS

Permit No. ACT/015/007

Inspection Date 5/7/91

Please number comments to correspond with topics on previous page

General Comments On site conditions were substantially the same as covered in the previous inspection dated 4/26/91. The mine site was dry and showed no evidence of rain run-off.

Followup On Previous Inspections Division on May 6, 1991 received W. Hard Tipton's letter on TOL 91-02-370-002 TV1 relative to the elimination of highwalls. The letter indicates and orders a federal inspection.

Other Sediment Control Silt fences and the erosion matting all were checked and no problems noted.

Vegetation The seeding project showed minimal response to vegetation establishment. Saltbush plants were observed along the reclaimed road. Grass plants are hard to find except in moisture depressions.

Copy of report mailed to Cal Mat / Lee Edmonson; OSM / Brian Smith; DOGM / Joe Helfrich

Copy of report ^{filed} given to RFO

Inspector's signature

Joe Helfrich

No. 26

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

5/10/91

Norman H. Bangerter
Governor
Lee C. Hansen
Executive Director
Dianne R. Nielson, Ph.D.
Division Director

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

355 West North Temple
Salt Lake City, Utah 84103-1203
801-538-5240

JUN 29 1992

INSPECTION REPORT

SECRETARY, BOARD OF

OIL, GAS & MINING INSPECTION DATE & TIME: June 12, 1991

9:00 am to 11:00 am

Permittee and/or Operator's Name: Cal Mat Co.
Business Address: 1801 University Drive Phoenix, AZ 85034
Mine Name: Hidden Valley Permit Number: ACT/015/007
Type of Mining Activity: Underground ☒ Surface ☐ Other ☐
County: Emery Company Official(s): Karla Knoop, JBR
State Officials(s): Susan White, Henry Sauer
Federal Official(s): None
Partial: ☒ Complete ☐ Date of last Inspection: 5/7/91
Weather Conditions: Fair and warm
Acreage: Permitted 950 Disturbed 7 Regraded 7 Seeded 7 Bonded 7
Enforcement Action: None

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

	YES	NO	N/A	COMMENTS
1. PERMITS	()	()	()	()
2. SIGNS AND MARKERS	()	()	()	()
3. TOPSOIL	()	()	()	()
4. HYDROLOGIC BALANCE:				
a. STREAM CHANNEL DIVERSIONS	(X)	()	()	()
b. DIVERSIONS	()	()	()	()
c. SEDIMENT PONDS AND IMPOUNDMENTS	()	()	()	()
d. OTHER SEDIMENT CONTROL MEASURES	(X)	()	()	(X)
e. SURFACE AND GROUNDWATER MONITORING	(X)	()	()	(X)
f. EFFLUENT LIMITATIONS	()	()	()	()
5. EXPLOSIVES	()	()	(X)	()
6. DISPOSAL OF DEVELOPMENT WASTE & SPOIL	()	()	(X)	()
7. COAL PROCESSING WASTE	()	()	(X)	()
8. NONCOAL WASTE	()	()	()	()
9. PROTECTION OF FISH, WILDLIFE AND RELATED ENVIRONMENTAL VALUES	()	()	()	()
10. SLIDES AND OTHER DAMAGE	()	()	()	()
11. CONTEMPORANEOUS RECLAMATION	()	()	(X)	()
12. BACKFILLING AND GRADING	()	()	()	()
13. REVEGETATION	(X)	()	()	(X)
SUBSIDENCE CONTROL	()	()	()	()
15. CESSATION OF OPERATIONS	()	()	()	()
16. ROADS				
a. CONSTRUCTION	()	()	()	()
b. DRAINAGE CONTROLS	()	()	()	()
c. SURFACING	()	()	()	()
d. MAINTENANCE	()	()	()	()
17. OTHER TRANSPORTATION FACILITIES	()	()	()	()
18. SUPPORT FACILITIES				
UTILITY INSTALLATIONS	()	()	()	()

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939

EXHIBIT

R-73

ACT/015/007

INSPECTION REPORT

(Continuation sheet)

Page 2 of 3

PERMIT NUMBER: ACT/015/007

DATE OF INSPECTION: 6/12/1991

(Comments are Numbered to Correspond with Topics Listed Above)

Sediment Controls

The silt fences adjacent to the channel are beginning to deteriorate. While these are fully functional they will need to be replaced sometime this summer. An area along this fence appears to pipe water underneath the fence. No conclusive evidence has shown where this piping is occurring. However it is suggested to the operator to investigate this during silt fence replacement.

Surface and Groundwater Monitoring

The operator stated that a letter has been sent to the Division that the second quarter water sampling was taken a week late.

Revegetation

The vegetation while still sparse is showing a big improvement. Grass that I had never noticed before were flowering. The site has not shown evidence of high precipitation events, however it appears to have had some rain. Some of the more common species include: wild rye, crested wheatgrass, bottlebrush squirrel tail, fox tail, winterfat, and several Atriplex species.

Copy of this Report:

Given to: Joe Helfrich (DOGM)

Mailed to: Lee Edmonson, Karla Knoop, John Kathman

Inspector's Signature: *Lee Edmonson* #35 Date: 6/13/91

inspection report

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

Permit No ACT/015/007
Inspection Date 7/11/91

Permittee/Operator Name Cal Mat Co.
Business Address 1801 University Drive
City Phoenix State AZ Zip 85034
Mine HIDDEN VALLEY ☒ Surface ☐ Underground ☐ Other
County EMERY State UTAH
Company Official(s) KARLA KNOOP (FSR Consultant Group Inc.)
State Official(s) HENRY SAUER
Time of inspection 11:00 ☒ a.m. ☐ p.m. to 12:15 ☐ a.m. ☒ p.m. ☒ Partial ☐ Complete
Date of last inspection 6/12/91 Weather conditions Clear and Hot
Acreage 9500 ☒ Permitted 7.0 ☒ Disturbed 7.0 ☒ Regraded 7.0 ☒ Seeded 7.0 ☒ Bonded
Enforcement Action NONE

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

	YES	NO	N/A	COMMENTS		YES	NO	N/A	COMMENTS
1. Permits	<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"/>
2. Signs and markers	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	10. Slides and other damage	<input 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"/>	11. Contemporaneous reclamation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Hydrologic balance					12. Backfilling and grading	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
— Stream channel diversions	<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 checked="" type="checkbox"/>
— Diversions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	14. Subsidence control	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
— Sediment ponds and impoundments	<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"/>
— Other sediment control measures	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16. Roads				
— Surface and groundwater monitoring	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	— Construction	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
— Effluent limitations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	— Drainage controls	<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"/>	— Surfacing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Development waste and spoil disposal	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	— Maintenance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Coal processing waste	<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"/>
8. Noncoal waste	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	18. Support facilities and utility installations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

WHITE—DOGM YELLOW—OSM PINK—PERMITTEE/OPERATOR GOLDENROD—NOV FILE

DOGM/IR-1

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EXHIBIT

P-74

ACT/015/007

INSPECTION REPORT COMMENTS

Permit No ACT/015/007

Inspection Date 7/12/91

Please number comments to correspond with topics on previous page

2) SIGNS AND Markers/-

The new improved mine identification sign is in place and clearly visible. Cal Mat Co. has opted to indicate the address of the companies general inquiry office. The address is as follows: ^{HIDDEN VALLEY COAL CO., HIDDEN VALLEY MINE} P.O. BOX 2950 Terminal Annex, Los Angeles, California 90051 PHONE: 1-800-225-6280.

4D) Hydrologic Balance - Other Sediment Control Measures:

Karla Knapp informed me that all the silt fences will be replace within a month. Additionally the suspected piping area will be investigated at that time.

13) Rerevegetation/- The *Elymus* species and *Agropyron cristatum* individuals have set seed. *Ceratoides lanata* is in awches and small sprigs of what appears to be an *Agropyron* species have recently emerged.

In general the area is drying up. The *Larkia* species are showing signs of moisture stress.

Copy of report mailed to Lee Edmonson (Cal Mat), Karla Knapp (JBF) John Kothmann (OS)

Copy of report given to Joe Helfrich (DOGM)

Inspector's signature Jimmy Fawcett

No. 321

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

FILED

JUN 29 1992

Permit No. ACT/015/007

Inspection Date 31 July 1991

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

Permittee Operator Name Cal Mat Co.
Business Address 1801 University Drive
City Phoenix State Arizona Zip 85034
Mine Hidden Valley ☐ Surface ☒ Underground ☐ Other
County Emery State Utah
Company Official(s) None
State Official(s) Jess Kelley
Time of inspection 1:00 ☐ a.m. ☒ p.m. to 3:00 ☐ a.m. ☒ p.m. ☒ Partial ☐ Complete
Date of last inspection 12 June 1991 Weather conditions Cloudy and hot
Acreage 950 ☒ Permitted 7 ☒ Disturbed 7 ☒ Regraded 7 ☒ Seeded 7 ☒ Bonded
Enforcement Action None

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

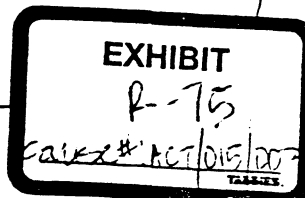
	YES	NO	N/A	COMMENTS		YES	NO	N/A	COMMENTS
1. Permits	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	9. Protection of fish, wildlife, and related environmental values	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Signs and markers	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	10. Slides and other damage	<input 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"/>	11. Contemporaneous reclamation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Hydrologic balance					12. Backfilling and grading	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
a Stream channel diversions	<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 checked="" type="checkbox"/>
b Diversions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	14. Subsidence control	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c Sediment ponds and impoundments	<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"/>
d Other sediment control measures	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16. Roads				
e Surface and groundwater monitoring	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	a Construction	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f Effluent limitations	<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"/>
5. Explosives	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	c Surfacing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Development waste and spoil disposal	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	d Maintenance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Coal processing waste	<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"/>
8. Noncoal waste	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	18. Support facilities and utility installations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

DOGM-IR-1

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943



inspection report

INSPECTION REPORT COMMENTS

Permit No. ACT/015/007

Inspection Date 31 July 1991

Please number comments to correspond with topics on previous page.

2. SIGNS AND MARKERS

Mine identification signs are accurate and in good repair. Buffer zone markers
are likewise in place and in good condition.

4. HYDROLOGIC BALANCE

c) Other Sediment Control Measures--It appears that there has been some heavy
precipitation during the past month. All sediment control structures handled
the runoff well. Waterbars along the reclaimed road have diverted the flow
effectively and silt fences have functioned well without topping or breaking.
No erosion has occurred on the road or on the 'A' and 'B' seam fills.

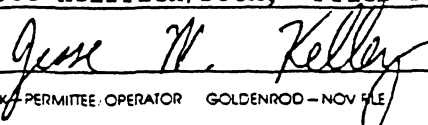
13. REVEGETATION

Because of the recent rains, vegetation looks promising. The road is covered
with halogeton but also has some grasses and saltbush. Some thick vegetation in
the form of grasses and plumes has also appeared and flourished below the seam fills.
Some grass and other small plants are coming up beneath the matting on the seam
fills.

Copy of report mailed to Lee Edmonson/CalMat; Brian Smith/OSM

Copy of report given to Joe Helfrich/DOGM; Price Field Office/DOGM

Inspector's signature



No. 34

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



Norman H. Bangertter
Governor
Dee C. Hansen
Executive Director
Dianne R. Nielson, Ph.D.
Division Director

DEPARTMENT OF NATURAL RESOURCES JUN 29 1992
DIVISION OF OIL, GAS AND MINING

355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203
801-538-5340

SECRETARY, BOARD OF
OIL, GAS & MINING

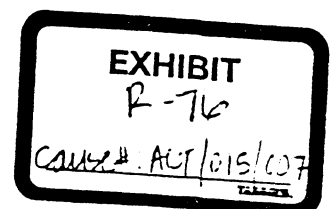
INSPECTION REPORT

INSPECTION DATE & TIME: 1200 to 1400, 10 September 1991

Permittee and/or Operator's Name: Cal Mat Company
Business Address: 1801 University Drive
Phoenix, Arizona 85034
Mine Name: Hidden Valley Permit Number: ACT/015/007
Type of Mining Activity: Underground: X Surface: Other:
County: Emery State: Utah
Company Official(s): N/A
State Official(s): Hugh Klein, Susan White, Tom Munson (DOGM)
Federal Official(s): N/A
Partial: Complete: X Date of last Inspection: 31 July 1991
Weather Conditions: Clear to partly cloudy and mild
Acreage:
Permitted: 950 Disturbed: 7 Regraded: 7 Seeded: 7 Bonded: 7
Enforcement Action: None

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

	YES	NO	N/A	COMMENTS
1. PERMITS	(X)	()	()	()
2. SIGNS AND MARKERS	(X)	()	()	(X)
3. TOPSOIL	()	()	()	()
4. HYDROLOGIC BALANCE:				
a. STREAM CHANNEL DIVERSIONS	(x)	()	()	(x)
b. DIVERSIONS	(X)	()	()	()
c. SEDIMENT PONDS AND IMPOUNDMENTS	()	()	(X)	()
d. OTHER SEDIMENT CONTROL MEASURES	(X)	()	()	(X)
e. SURFACE AND GROUNDWATER MONITORING	(X)	()	()	()
f. EFFLUENT LIMITATIONS	(X)	()	()	()
5. EXPLOSIVES	()	()	(X)	()
6. DISPOSAL OF DEVELOPMENT WASTE & SPOIL	()	()	(X)	()
7. COAL PROCESSING WASTE	()	()	(X)	()
8. NONCOAL WASTE	(X)	()	()	()
9. PROTECTION OF FISH, WILDLIFE AND RELATED ENVIRONMENTAL VALUES	(X)	()	()	(X)
10. SLIDES AND OTHER DAMAGE	(X)	()	()	()
11. CONTEMPORANEOUS RECLAMATION	()	()	(X)	()
12. BACKFILLING AND GRADING	(X)	()	()	(X)
13. REVEGETATION	(X)	()	()	(X)
14. SUBSIDENCE CONTROL	()	()	(X)	()
15. CESSATION OF OPERATIONS	()	()	(X)	()
16. ROADS				
a. CONSTRUCTION	(X)	()	()	()
b. DRAINAGE CONTROLS	(X)	()	()	(X)
c. SURFACING	(X)	()	()	()
d. MAINTENANCE	(X)	()	()	()
17. OTHER TRANSPORTATION FACILITIES	()	()	(X)	()
18. SUPPORT FACILITIES				
UTILITY INSTALLATIONS	()	()	(X)	()



INSPECTION REPORT

(Continuation sheet)

Page 2 of 3

PERMIT NUMBER: ACT/015/007 DATE OF INSPECTION: 10 SEPTEMBER 1991

(Comments are Numbered to Correspond with Topics Listed Above)

General Comments

Although the region recently experienced several periods of high intensity rainfall, the site did not appear to have received any significant moisture.

2)

The mine identification sign is clearly visible as well as legible. Disturbed area markers and stream buffer zone signs are also in place.

4a)

The stream channel diversion was observed to be without problems.

4d)

Silt fences below the A and B coal seam are functional; certain sections should be considered for maintenance or replacement in the near future. In addition, rills are becoming well formed on the west-facing slope at the end of the matted area below the A seam. There is also a rill forming in the gap between erosion mats on the slope below the B seam.

9)

Flow within the stream channel appears to be at or near the level it was observed to be in May during a partial inspection with Bill Malencik.

12)

The highwall issue has not yet been resolved. The Division and OSM are presently engaged in discussions regarding this matter.

13)

Vegetation was observed to be minimal in areas of erosion matting. The site was fairly dry with the exception of some depressions containing standing water. In a few other areas, the soil appeared damp.

INSPECTION REPORT

(Continuation sheet)

Page 3 of 3

PERMIT NUMBER: ACT/015/007 DATE OF INSPECTION: 10 SEPTEMBER 1991

(Comments are Numbered to Correspond with Topics Listed Above)

16b)

Road berms and the outslope drainage areas appear to be in good working order.


Copy of this Report:

Mailed to: Lee Edmonson (Cal Mat)

Brian Smith (OSM)

Given to: Joe Helfrich (Utah DOGM)

Utah DOGM/Price Field Office

Inspector's Signature & Number:  #40

Date: 12 September 1991

FILED

JUN 29 1992

Permit No. ACT/015/007

SECRETARY, BOARD OF

Inspection Date 8 October 1991

Permittee/Operator Name CalMat Company, OIL, GAS & MINING

Business Address 1801 University Street

City Phoenix State Arizona Zip 85034

Mine Hidden Valley ☐ Surface ☒ Underground ☐ Other

County Emery State Utah

Company Official(s) Karla Knopp

State Official(s) Jesse Kelley (DOGM), Mitch Rollings (OSM)

Time of inspection 10:00 ☒ a.m. ☐ p.m. to 2:00 ☐ a.m. ☒ p.m. ☒ Partial ☐ Complete

Date of last inspection 10 September 1991 Weather conditions Sunny and warm

Acreage 950 ☒ Permitted 7 ☒ Disturbed 7 ☒ Regraded 7 ☒ Seeded 7 ☒ Bonded

Enforcement Action None

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

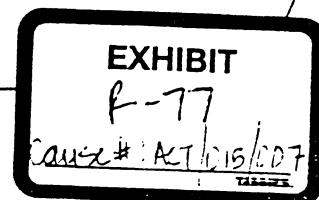
	YES	NO	N/A	COMMENTS		YES	NO	N/A	COMMENTS
1. Permits	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	9. Protection of fish, wildlife, and related environmental values	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Signs and markers	<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"/>
3. Topsoil	<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"/>
4. Hydrologic balance					12. Backfilling and grading	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
a Stream channel diversions	<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 checked="" type="checkbox"/>
b Diversions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	14. Subsidence control	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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e Surface and groundwater monitoring	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	- Construction	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f Effluent limitations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	- Drainage controls	<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"/>	- Surfacing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Development waste and spoil disposal	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	- Maintenance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Coal processing waste	<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"/>
8. Noncoal waste	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	18. Support facilities and utility installations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

DOGM/IR-1

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948



inspection report

INSPECTION REPORT COMMENTS

Permit No. ACT/015/007

Inspection Date 8 ~~11~~ October 1991

Please number comments to correspond with topics on previous page.

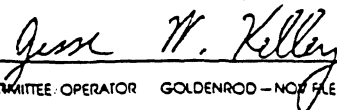
The purpose of this visit was a Federal Inspection to determine whether or not the diversion above the 'A' seam meets the highwall retention criteria of Utah rule R614-301-553.650. This rule states that a retained highwall must 1) not be significantly higher or longer than existing cliffs in the surrounding area, 2) be similar in structural composition to preexisting cliffs in the surrounding area, 3) be compatible with the visual attributes of the area, and 4) be compatible with the geomorphic processes of the area. In an April 30, 1990 letter to Dr. Dianne R. Nielson of DOGM, W. Hord Tipton of OSM stated that if, during this inspection, the 'A' seam diversion could be shown to be in compliance with these criteria, as determined both by DOGM and by OSM, then DOGM could provide to OSM a written finding to that effect and further Federal intervention in this matter could be avoided.

During this inspection, Mitch Rollings of OSM and Jesse Kelley of DOGM ~~xx~~ agreed that the 'A' seam diversion did indeed fulfill the highwall retention criteria of R614-301-553.650. However, Mr. Rollings stated that this did not settle the issue, since this part of the Utah regulations is currently the subject of a ~~XXXX~~ '732' letter. Mr. Rollings raised two other issues, neither of which was related to the 'A' seam diversion: 1) Retention of the haul road, in an altered condition, for drainage control and movement of livestock, and 2) the existence of a spoil bench between the 'A' and 'B' seam fills and Ivie Creek. Mr. Rollings stated that it was

Copy of report mailed to Lee Edmonson/CalMat; Bernie Freeman/OSM

Copy of report given to Joe Helfrich/DOGM; Price Field Office/DOGM

Inspector's signature



No. 34

WHITE - DOGM YELLOW - OSM PINK - PERMITTEE OPERATOR GOLDENROD - NOT FILE

DOGM/IR-2

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11 36 001049

INSPECTION REPORT COMMENTS

Permit No. ACT/015/007Inspection Date 8 October 1991

Please number comments to correspond with topics on previous page

his opinion that the haul road included a highwall and should not have been retained
and that the spoil pad below the seam fills was a manmade feature and should be
eliminated by placing the material against the fills.

Mr. Rollings stated that he would investigate these matters further and inform
DOGM of his and OSM's findings at a future date.

4. HYDROLOGIC BALANCE

b) Diversions--Rip-rap ditches were in good condition and appeared to have handled
the recent heavy rains well and without damage. The haul road diversion,
including water bars, was in good condition and contained a good cover of
vegetation.

c) Other Sediment Control Measures--Silt fences at the bases of the 'A' and 'B' seam
fills were in good condition.

6. DEVELOPMENT WASTE AND SPOIL DISPOSAL

As stated in the inspection synopsis above, Mr. Rollings was troubled by the
spoil at the base of the fills. Other than this, however, these areas are in good
condition and, due to the recent rains, are now sustaining a good growth of grass,
saltbush, and Russian thistle.

12. BACKFILLING AND GRADINGCopy of report mailed to Lee Edmonson/CalMat; Bernie Freeman/OSMCopy of report given to Joe Helfrich/DOGM; Price Field Office/DOGMInspector's signature Gene W. KelleyNo. 34

WHITE - DOGM YELLOW - OSM PINK - PERMITTEE/OPERATOR GOLDENROD - NOVACE

INSPECTION REPORT COMMENTS

Permit No ACT/015/007

Inspection Date 8 October 1991

Please number comments to correspond with topics on previous page

As stated in the inspection synopsis above, this visit was for the purpose of
settling the 'A' seam diversion issue. Resolution of this issue now awaits
the final response of OSM.

13. REVEGETATION

Up 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. This vegetation includes
saltbush, grass, winterfat, and Russian thistle.

Copy of report mailed to Lee Edmonson/CalMar; Bernie Freeman/OSM

Copy of report given to Joe Helfrich/DOGM; Price Field Office/DOGM

Inspector's signature Gene W. Kelley No 34

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

JUN 29 1992

SECRETARY, BOARD OF
OIL, GAS & MININGPermit No. ACT/015/007Inspection Date 1 November 1991Permittee/Operator Name CalMat CompanyBusiness Address 1801 University DriveCity Phoenix State Arizona Zip 85034Mine Hidden Valley ☐ Surface ☒ Underground ☐ OtherCounty Emery State UtahCompany Official(s) NoneState Official(s) Jess KelleyTime of inspection 10:00 ☒ a.m. ☐ p.m. to 3:30 ☐ a.m. ☒ p.m. ☐ Partial ☒ CompleteDate of last inspection 8 October 1991 Weather conditions Sunny and coldAcreage 950 ☒ Permitted 7 ☒ Disturbed 7 ☒ Regraded 7 ☒ Seeded 7 ☒ BondedEnforcement Action None

COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

	YES	NO	N/A	COMMENTS		YES	NO	N/A	COMMENTS
1. Permits	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	9. Protection of fish, wildlife, and related environmental values	<input checked="" 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 checked="" type="checkbox"/>	10. Slides and other damage	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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4. Hydrologic balance					12. Backfilling and grading	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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b Diversions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	14. Subsidence control	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c Sediment ponds and impoundments	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	15. Cessation of operations	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d Other sediment control measures	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16. Roads				
e Surface and groundwater monitoring	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	a Construction	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f Effluent limitations	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	b Drainage controls	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5. Explosives	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	c Surfacing	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Development waste and spoil disposal	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	d Maintenance	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
7. Coal processing waste	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	17. Other transportation facilities	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. Noncoal waste	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	18. Support facilities and utility installations	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

WHITE - DOGM

YELLOW - CSM

PINK - PERMITTEE/OPERATOR

GOLDENROD - NOV FILE

DOGM/IR-1

an equal opportunity employer

952

EXHIBIT

P-78

Case #: ACT/015/007

INSPECTION REPORT COMMENTS

Permit No. ACT/015/007

Inspection Date 1 November 1991

Please number comments to correspond with topics on previous page.

GENERAL COMMENTS

Besides performing a general complete inspection of this site, this inspector also photographed and observed the site in order to try to resolve the 'A' seam highwall issue. The Division has an extensive photographic record of this site from 1979 to the present. In order to compare the past and present conditions of the site and document the premining existence of the ledge above the 'A' seam fill, this inspector sought out the vantage points from which several old photographs were taken and photographed the site from these same vantage points.

2. SIGNS & MARKERS

The mine identification sign was in good repair and clearly visible at the entrance to the site.

4. HYDROLOGIC BALANCE

b) Diversions--The large rip-rap diversion between the 'A' and 'B' seam fill areas is in good condition and free from obstruction.

d) Other 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.

Copy of report mailed to Lee Edmonsden/CalMat; Bernie Freeman/OSM

Copy of report given to Joe Helfrich/DOGM; Price Field Office/DOGM

Inspector's signature

Gene W. Kelley

No. 34

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

INSPECTION REPORT COMMENTS

Permit No. ACT/015/007

Inspection Date 1 November 1991

Please number comments to correspond with topics on previous page.

13. REVEGETATION

Vegetation is now sparse and mostly dead. All vegetation on the reclaimed road
has died and gone to seed. Vegetation on the fills, which was in good condition
until at least October of this year, is now sparse.

16. ROADS

b) Drainage Controls--Water bars and diversions on the main reclaimed road are
functioning well and are in good condition.

d) Maintenance--Posts and earth barriers which were placed on the entrance to the
site to prevent vehicle access appear to be functioning well. There is no
indication that vehicles have entered the site in many months.

Copy of report mailed to Lee Edmonson/CalMat; Bernie Freeman/OSM

Copy of report given to Joe Helfrich/DOGM; Price Field Office/DOGM

Inspector's signature Gene W. Kelley No. 34

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

DOGM/R-2

an equal opportunity employer

11 20 001010
954

JUN 29 1992

SECRETARY, BOARD OF
OIL, GAS & MINING

Permit No.

Act 1015/001

Section Date

11/19/91

Permittee Operator Name Cal Mat Co.
Business Address 1801 University Drive
City Phoenix State Arizona Zip 85034
Mine Hidden Valley ☐ Surface ☒ Underground ☐ Other
County Emery State _____
Company Official(s) Ms. Karla Knoop (UBR)
State Official(s) Bill Makniah, DOGM; Mitch Rollings
Time of inspection 8:00 ☐ a.m. ☐ p.m. to 1:00 ☐ a.m. ☒ p.m. ☐ Partial ☒ Complete
Date of last inspection 10/8/91 Weather conditions Clear/Coal/Snow N Slopes.
Acreage 950 ☒ Permitted 7 ☒ Disturbed 7 ☒ Regraded 7 ☒ Seeded 7 ☒ Bonded
Enforcement Action CRV 91-26-8-2

1/2 Failure to maintain stable diversions, minimize erosion
2/2 Failure to seed and mark all disturbed areas.
COMPLIANCE WITH PERMITS AND PERFORMANCE STANDARDS

	YES	NO	N/A	COMMENTS		YES	NO	N/A	COMMENTS
1. Permits	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	9. Protection of fish, wildlife, and related environmental values	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Signs and markers	<input checked="" type="checkbox"/>	<input checked="" 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"/>
3. Topsoil	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	11. Contemporaneous reclamation	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Hydrologic balance					12. Backfilling and grading	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Stream channel diversions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	13. Revegetation	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
- Diversions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	14. Subsidence control	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
- Sediment ponds and impoundments	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	15. Cessation of operations	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
- Other sediment control measures	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16. Roads				
- Surface and groundwater monitoring	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	- Construction	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Effluent limitations	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	- Drainage controls	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5. Explosives	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	- Surfacing	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Development waste and spoil disposal	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	- Maintenance	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Coal processing waste	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	17. Other transportation facilities	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. Noncoal waste	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	18. Support facilities and utility installations	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

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

DOGM/IR-1

an equal opportunity employer

955

EXHIBIT

R-79

Case # ACT 1015/001

inspection report

INSPECTION REPORT COMMENTS

Permit No. ACT/015/017Inspection Date 11/19/91

with topics on previous page.

Inspection: Bill Malenick, DOGM; Mitch Rollins, OSM;
Karla Knoop (WR/Cal Mat Representative).

Location: Reclaimed Fall 1986

ghwall, DOGM/OSM/Cal Mat Field Investigation
10/18/91. Final decision has not been rendered.

-- page 1, also signs & markers, revegetation and
road drainage controls. Discussed with Ms Knoop
and Mr. Rollins at the inspection closeout.

-- installed a new I.D. sign.

marked areas were not clearly marked i.e., road
and Ice Creek upslope where rock and
soil pushed over the embankment.

91-26-B-2 revised with abatement measures

Issues:

install disturbed markers at the toe of the
road and stream outslope.

move stream buffer zone sign to the toe
of the stream outslope.

No. _____

GOLDENROD - NOV FILE

an equal opportunity employer

.. to qc:000

INSPECTION REPORT COMMENTS

Permit No. Act/015/007Inspection Date 11/19/01

and with topics on previous page.

1. Measures:

- both sides of the stream channel dimension
 - maintenance. Runoff is concentrating
 - silt fence there follows the silt fence
 - erosion at this time and exposing the bottom
 - only buried silt fence.

- silt fence needs to be installed at the
 - the silt fence and B coal seam to minimize
 - if of current hills from getting out of

- cause, trash, or mine related items were
 - the mine site.

- eroded areas that have not been seeded
 - in NOV N 91-26-8-2, 2/2. The areas
 - on upslope and road downslope; Ice Creek upslope
 - had been pushed over the embankment
 - surface where previously seedings have

No. _____

GOLDENROD - NOV FILE

an equal opportunity employer

11-20-01-023

INSPECTION REPORT COMMENTS

Permit No. Art/015/001

Inspection Date 11/15/91

Please number comments to correspond with topics on previous page.

Road Drainage Controls. Three erosion rills were included in NOV N 91-26-B-2, 1/2. Two are on the outslope below the gate with the maximum measurements as follows:

Rill #1 54" deep, 79" wide } Below Gate
Rill #2 52" deep, 82 wide }

Rill #3 26" deep, 52 wide - Above Gate

The third rill is above the gate with measurements as noted above.

Support Facilities: The drift fence was fully functional. The water bar on the upper end has vegetation and debris caught in the fence. The material should be cleaned from the fence before the high runoff season.

Copy of report mailed to Col Mat/hee Edmonson; JBR, Carla Knapp; OSM/Ann Smith; OSM/Joe Heltrich

Copy of report given to filed RFO.

Inspector's signature

Jim J. Gindewick

No. 26

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

DOGM IR-2

11/21/91

an equal opportunity employer

11-22 2010-04

INSPECTION REPORT COMMENTS

Permit No. Act/015/007

Inspection Date 11/19/91

Please number comments to correspond with topics on previous page.

Other Sediment Control Measures:

- Silt fences on both sides of the stream channel diversion needs routine maintenance. Runoff is concentrating next to the silt fence thence follows the silt fence causing minor erosion at this time and exposing the bottom of the previously buried silt fence.
- Sediment control measure needs to be installed at the upper end of the silt fence and B coal seam to minimize the possibility of current rules from getting out of compliance.

No Coal Waste. No cans, trash, or mine related items were observed at the mine site.

Revegetation. The disturbed areas that have not been seeded were included in NOV N 91-26-8-2, 2/2. The areas included the upslope and road downslope; Ice Creek upslope where material had been pushed over the embankment. Also the road surface where previously seedings have failed.

Copy of report mailed to _____

Copy of report given to _____

Inspector's signature _____ No. _____

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

Tab O



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS

INTERIOR BOARD OF LAND APPEALS

4015 WILSON BOULEVARD

ARLINGTON, VIRGINIA 22203

IN REPLY REFER TO:



INTERSOUTH MINERAL CO., INC.

v.

OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT (APPELLANT)

IBLA 89-248

Decided February 14, 1991

Petition for discretionary review of decision of Administrative Law Judge David Torbett vacating civil penalty assessment. NX 7-30-P.

Affirmed as modified.

1. Surface Mining Control and Reclamation Act of 1977: Administrative Procedure: Burden of Proof—Surface Mining Control and Reclamation Act of 1977: Civil Penalties: Generally—Surface Mining Control and Reclamation Act of 1977: Evidence: Generally—Surface Mining Control and Reclamation Act of 1977: Notices of Violation: Generally

In a proceeding concerning a petition for review of a proposed civil penalty, the issue of the validity of the underlying notice of violation may be raised. In such proceeding, the burden of going forward to establish a prima facie case that the violation occurred as alleged rests with OSM. The ultimate burden of persuasion to show that no violation occurred rests with the petitioner for review.

2. Surface Mining Control and Reclamation Act of 1977: Administrative Procedure: Burden of Proof—Surface Mining Control and Reclamation Act of 1977: Civil Penalties: Generally—Surface Mining Control and Reclamation Act of 1977: Evidence: Generally

In civil penalty proceedings, OSM bears the ultimate burden of persuasion regarding the amount of the civil penalty. OSM must establish the basis for determination of the appropriate civil penalty charged an operator for allowing gullies to develop in an access road, including the basis for its implicit conclusion that existence of gullies is likely to endanger either use of the roadway or the surrounding land. Where the sum of the evidence reveals only that the gullies temporarily affected access along a small portion of the access road, and where there is no evidence that the gullies threatened adjacent land, OSM's conclusion and its accompanying assignment of 11 points for the seriousness of the violation are properly set aside.

INDEX CODE:

30 CFR 816.150(b)	43 CFR 4.1107(g)
30 CFR 816.150(e)(1)	43 CFR 4.1155
30 CFR 845.12(b)	43 CFR 4.1170(b)
30 CFR 845.13(b)(2)	
30 CFR 845.14	
30 CFR 845.17(b)(2)	

113 IBLA 14

OFS(MIN) 13(1991)

3. Surface Mining Control and Reclamation Act of 1977:
Civil Penalties: Generally

The Board of Land Appeals may direct OSM to waive a civil penalty where the total of penalty points properly assessed was 30 or less and no cessation order was issued. The Board will so direct where only a single, isolated violation is involved; where there is an absence of proof of any substantial harm from the violation, either on- or off-site; and where the record shows that the operator abated the violation as soon as practical.

APPEARANCES: Charles R. Miller, Jr., Esq., Intersouth Mineral Co., Inc., for appellant; David B. Parks, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Knoxville, Tennessee, for the Office of Surface Mining Reclamation and Enforcement.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

By order dated June 29, 1989, we granted a petition for discretionary review filed by the Office of Surface Mining Reclamation and Enforcement (OSM), from the August 31, 1988, decision of Administrative Law Judge David Torbett. ^{1/} In that decision, Judge Torbett vacated a civil penalty assessed by OSM against Intersouth Mineral Company, Inc. (Intersouth), in connection with reclamation operations under permit No. 82-128 in Marion County, Tennessee.

OSM assessed the civil penalty pursuant to section 518(a) of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. § 1268(a) (1988), for failure to properly maintain a 1.8-mile haul road used for access to the reclamation activities at an underground mine. OSM issued notice of violation (NOV) No. 84-92-193-6 on September 18, 1984, following an inspection of the reclamation. The NOV noted that the "road contains gullies in several areas [and] also needs grad[ing]" (Exh. R-3 at 1). The NOV required Intersouth to grade the access road, filling in and covering areas containing gullies, by October 22, 1984 (Exh. R-5).

The time for abatement was subsequently extended, at Intersouth's request, until December 17, 1984 (Exh. R-6). The mine site was inspected on December 18, 1984, and the NOV terminated, as the OSM inspector found that the access road was being properly maintained (Exh. R-7).

In January 1987, more than 2 years and 2 months after the NOV was issued, OSM proposed a civil penalty of \$1,100 for the violation it named.

^{1/} Our consideration of the petition for discretionary review was delayed by the fact that OSM's petition, although mailed to the Board, was not received here. The mailing of the petition to the Board within 30 days of receipt of Judge Torbett's decision nevertheless constituted timely filing. See 43 CFR 4.1107(g), 4.1270(b).

On January 8, 1987, OSM held an assessment conference, following which the proposed penalty was adopted by the conference officer.

The civil penalty was based on application of the methodology set forth in 30 CFR 845.13 and 845.14. OSM assigned points for each of the factors enumerated in 30 CFR 845.13. Regarding the seriousness of the violation, OSM assigned 11 points for the probability of occurrence of the event that the violated standard was designed to prevent. OSM assigned eight points for the extent of damage caused by the violation. Twelve points were assigned for the operator's negligence. No credit points were assigned for Intersouth's good faith. Taking the total number of points assigned, OSM computed the appropriate penalty using the conversion table in 30 CFR 845.14. The specified penalty was \$1,100 for 31 points.

On February 9, 1987, Intersouth filed a petition for review of the proposed civil penalty. The case was assigned to Judge Torbett for a hearing and decision. A hearing was held in Chattanooga, Tennessee, on June 23, 1988. Judge Torbett subsequently rendered his August 1988 decision vacating the civil penalty assessed by OSM, which filed its petition for discretionary review.

In his decision, Judge Torbett concluded that the NOV was properly issued, as there were "sufficient facts to find that there was a deep gully in the haul road" (Decision at 3). However, Judge Torbett found other grounds to vacate the civil penalty.

The OSM inspector's testimony is summarized as follows: The access road "had an area washed across the road where some water had formed several gullies in the road" (Tr. 11). He testified that the largest was deep enough that the OSM inspector could not drive his vehicle over it, and there were other smaller ones there as well (Tr. 11-12). He stated that the gully prevented vehicular access along the road to the mine site (Tr. 12). At the time the NOV was issued, reclamation of the mine site was under way; buildings and facilities were being torn down. No one had been at the site for several days and there had been no travel on the road for several days. The road had washed out (Tr. 19). The gully was created by water draining and washing across the road. Rocks had blocked the ditch line, diverting water across the road (Tr. 24, 58). No photographs were provided of the cited condition or its effects on surrounding lands.

Intersouth presented contrary testimony that no impassable gully had been found anywhere on the road (Tr. 28), and that no one using the road following issuance of the NOV had found access impaired as suggested by the inspector (Tr. 23-29), despite the fact that its workmen went in and out repeatedly along the whole access road (Tr. 50). Intersouth's witness also testified that the road, from the access gate for the first 500 or 600 yards (evidently including the spot where the OSM inspector found the gullies) is on rock, so that it would be extremely hard for a gully to form in it (Tr. 30).

The OSM inspector speculated at the hearing that the gullies might have been removed or greatly reduced by the passage of bulldozers over the

road on their way to the work site subsequent to the issuance of the NOV (Tr. 53). This suggests that the gullies were not deep and were not disruptive to operations at the site.

[1] In a proceeding concerning a petition for review of a civil penalty, OSM has the burden of going forward to establish a prima facie case as to the fact of the violation. 43 CFR 4.1155. The ultimate burden of persuasion as to the fact of violation rests with the petitioner for review. *Id.* OSM makes a prima facie case when it presents essential facts from which it may be determined that a violation of pertinent requirements has occurred. See Coal Energy, Inc. v. OSM, 115 IBLA 385 (1989)^a; S & M Coal Co. v. OSM, 79 IBLA 350, 354, 91 I.D. 159, 161 (1984)^b; Tiger Corp., 4 IBSMA 202, 205, 89 I.D. 622, 623 (1982); Rhonda Coal Co., 4 IBSMA 124, 131, 89 I.D. 460, 464 (1982).

We hold, as did Judge Torbett, that OSM successfully met its prima facie burden of establishing that there was a violation of pertinent regulations, and that appellant did not meet its burden of persuasion that there was no violation.

At the time of issuance of the NOV, OSM had assumed direct Federal enforcement of the Tennessee permanent regulatory program. See 49 FR 15496 (Apr. 18, 1984); B & J Excavating Co. v. OSM, 89 IBLA 129, 131 (1985). Accordingly, Intersouth was cited with a violation of TAC 0400-1-15-.83 of the applicable Tennessee surface coal mining regulations. See 49 FR 21140, 21233 (May 18, 1984). Under TAC 0400-1-15-.83[2], road maintenance must include basic custodial care as required to protect the road investment and to prevent damage to adjacent resources. 42 FR 21233 (May 18, 1984). The inspector's testimony demonstrates that, by allowing gullies to form in the road such that passage was rendered difficult or impossible, at least temporarily, Intersouth failed to meet this standard. The operator's testimony, while calling into question the depth and seriousness of the gullies, fails to overcome the evidence that there were gullies in the road when the NOV was issued.

[2] In civil penalty proceedings, OSM bears the ultimate burden of persuasion regarding the amount of the civil penalty. 43 CFR 4.1155; A & S Coal Co. v. OSM, 96 IBLA 338, 342 (1987)^d. That is, OSM must establish the basis for determination of the appropriate civil penalty. One of those bases is the seriousness of the violation. 30 CFR 845.13(b)(2).

Under 30 CFR 845.13(b)(2), OSM may assign up to 30 points, based on the seriousness of the violation, broken down into three factors. Two of these, the probability of occurrence (30 CFR 845.13(b)(2)(i)) and the extent of potential or actual damage (30 CFR 845.13(b)(2)(ii)) are relevant here. 2/ OSM assigned 11 points for the probability of occurrence of the event which the violated standard was designed to prevent. By so doing, OSM effectively

2/ The third, called the "Alternative," relates to a violation of an administrative requirement, such as a requirement to keep records (30 CFR 845.13(b)(2)(iii)), and is thus inapplicable here.

a) GFS(MIN) 9(1989)

b) GFS(MIN) 65(1984)

c) GFS(MIN) 145(1985)

d) GFS(MIN) 38(1987)

*GFS EDITOR'S NOTE: Apparent

error. Cite should be 105 IBLA 385 (1988).

found it likely that the event which the violated standard was designed to prevent would occur. See 30 CFR 845.13(b)(2)(i).

We are not persuaded that CSM correctly assigned points for this factor. The requirement to fill the gullies and grade the road was designed to protect the road from the effects of erosion which could endanger use of the roadway and the surrounding land. TAC 0400-1-15-.83, 49 FR 21233 (May 18, 1984). The record does not support the conclusion that it was likely that these gullies would either endanger use of the roadway or endanger the surrounding land.

Where the record shows that the probability of occurrence of the event which the violated standard was designed to prevent is less than that determined by CSM, and that the extent and duration of a violation is limited, the Board may set aside CSM's determination as to the seriousness of a violation, including its assignment of penalty points. See Lone Star Steel Co. v. CSM, 98 IBLA 56, 66-67 (1987)⁴. The sum of the evidence here reveals only that use of the roadway was threatened to the extent that gullies formed that temporarily made access along a small portion of the access road somewhat difficult. The undisputed fact that Intersouth continued to pass heavy equipment along this road throughout the time following issuance of the NOV indicates that the road remained passable. Thus, the presence of the gullies was not a serious threat to the use of the road. In addition, there is no evidence that the gully threatened the adjacent land, and the NOV and accompanying documents do not mention any such damage, whether actual or potential. There is no photographic record of the cited condition or other evidence demonstrating that the gully was causing erosion of the road embankment or other surrounding land. We cannot agree that it was likely that any erosion endangering either the surrounding land or use of the roadway would occur and, accordingly, set aside CSM's assignment of 11 points for this criterion. 2/

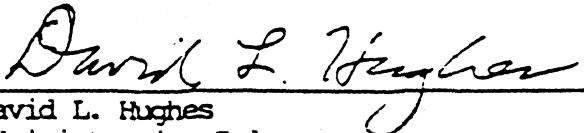
3/ CSM asserts that the governing regulation is 30 CFR 816.150, from the Federal permanent program performance standards. These standards went into effect subsequent to issuance of the NOV here, when CSM withdrew its approval of the Tennessee program effective Oct. 1, 1984, and began to enforce the Federal permanent regulatory program. See 49 FR 38874 (Oct. 1, 1984); B & J Excavating Co. v. CSM, supra at 132.

However, even if 30 CFR 816.150 is deemed controlling, we are not persuaded that the assignment of points for this criterion was accurate. Under the performance standards set out at 30 CFR 816.150(b), applied to road maintenance by 30 CFR 816.150(e)(1), roads must be maintained so as to (1) control or prevent erosion and the air pollution attendant to erosion; (2) control or prevent damage to fish, wildlife, or their habitat and related environmental values; (3) control or prevent additional contributions of suspended solids to stream flow or runoff outside the permit area; (4) neither cause nor contribute to violation of water quality standards; (5) refrain from seriously altering normal flow of water in streambeds or drainage channels; (6) prevent or control damage to public or private property; and (7) use nonacid- and nontoxic-forming substances in road surfacing. We find nothing in the record indicating that allowing the gully to form in the road was likely to cause any of the listed damage.


⁴ 98 IBLA 56 (1987)

[3] It is unnecessary to address how many points ought properly to have been assessed for this violation because, if the assessment is reduced by even one point to a total of 30, it is permissible to waive any civil penalty in this matter, as no cessation order was issued. See 30 CFR 845.12(b). The Board may order OSM to waive a civil penalty (see Lone Star Steel Co. v. OSM, 107 IBLA 134, 139 (1989)^f; Lone Star Steel Co. v. OSM, 98 IBLA at 67), and we deem it appropriate to do so here. Our decision to direct that the penalty be waived here is influenced by the fact that only a single, isolated violation is involved (see Mud Fork Coal Corp., 5 IBSMA 44, 56-57, 90 I.D. 181, 188 (1983)); by the absence of proof of any substantial harm, either on- or off-site; and by Judge Torbett's discussion of Intersouth's action in abating the violation as soon as practical. See Lone Star Steel Co. v. OSM, 98 IBLA at 67. 4/

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.


 David L. Hughes
 Administrative Judge

I concur:


 John H. Kelly
 Administrative Judge

4/ Our resolution of this matter differs from Judge Torbett's in that we do not reach the questions of whether OSM's admitted delay in providing Intersouth with a notice of proposed assessment resulted in actual prejudice under 30 CFR 845.17(b)(2) and, if so, whether the relief he fashioned under the doctrine set out in Badger Coal Co., 2 IBSMA 147, 152, 87 I.D. 319, 322 (1980), was appropriate.

^f) GFS(MIN) 27(1989)



REPLY REFER TO:

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS

4015 WILSON BOULEVARD
ARLINGTON, VIRGINIA 22203



RUTH ENERGY, INC.

v.

OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

IBLA 89-27

Decided April 9, 1991

Appeal from that part of a decision of Administrative Law Judge David Torbett vacating violation No. 2 of Notice of Violation No. 86-92-179-21. Hearings Division Docket No. NX 7-33-R.

Affirmed as modified.

1. Surface Mining Control and Reclamation Act of 1977:
Administrative Procedure: Burden of Proof--Surface
Mining Control and Reclamation Act of 1977: Evidence:
Generally

In a proceeding involving an application for review of a notice of violation, OSM has the burden of going forward to make a prima facie showing that the person named in the notice is engaged in a surface coal mining operation and violated the Surface Mining Control and Reclamation Act of 1977, the regulations, or a permit condition. The ultimate burden of persuasion rests with the applicant for review, and if OSM's evidence is not overcome by a preponderance of the evidence, the NOV will be affirmed.

2. Surface Mining Control and Reclamation Act of 1977:
Administrative Procedure: Burden of Proof--Surface
Mining Control and Reclamation Act of 1977: Evidence:
Generally

Where OSM presents evidence that an applicant for review was engaged in surface coal mining operations under a permit; that it had disturbed "adjacent land"; and that the disturbance was incidental to its coal extraction activities on the permit, a prima facie case in support of a violation of 30 CFR 773.17(a) is established. However, where the applicant shows by a preponderance of the evidence that its activity outside the permit boundaries does not constitute surface coal mining operations, the violation is properly vacated.

APPEARANCES: J. David Clayton, Esq., Office of the Field Solicitor, Knoxville, Tennessee, for the Office of Surface Mining Reclamation and Enforcement; Michael Boehm, Esq., Chattanooga, Tennessee, for Rith Energy, Inc.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

The Office of Surface Mining Reclamation and Enforcement (OSM) has appealed from that part of a decision of Administrative Law Judge David Torbett, dated August 31, 1988, vacating violation No. 2 of Notice of Violation (NOV) No. 86-92-171-21, issued by OSM to Rith Energy, Inc. (Rith), on October 16, 1986, pursuant to section 521(a) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. § 1271(a) (1988).

On October 16, 1986, OSM Inspector Edzel R. Pugh inspected Rith's surface mining and reclamation operation at its Eagle Ferguson Mine No. 1, located in Bledsoe County, Tennessee, which was operating under Permit No. 2583 issued by OSM's Division of Tennessee Permitting. As a result of his inspection in the area of Cut No. 8, south of the Vander-Ferguson County Road, Pugh issued NOV No. 86-92-179-21, citing two violations, only the second of which is at issue in this appeal. 1/ Violation No. 2 charged that Rith had violated 30 CFR 773.17(a) 2/ by disturbing "lands outside of lands designated as the approved permit area." 3/ The lands in question lie just outside the eastern permit boundary in an area where Rith was working to realign the Vander-Ferguson County Road. On January 6, 1987, OSM terminated violation No. 2.

Rith filed a timely application for review of the NOV, and following a hearing, Judge Torbett issued his decision. He found that violation No. 2 was "not properly issued," explaining:

1/ The first violation cited Rith for a failure to backfill and rough grade the disturbed area south of the proposed location of the Vander-Ferguson County Road. In his decision, Judge Torbett sustained that violation and Rith has not appealed that ruling.

2/ 30 CFR 773.17(a) provides that:

"The permittee shall conduct surface coal mining and reclamation operations only on those lands that are specifically designated as the permit area on the maps authorized for the term of the permit and that are subject to the performance bond or other equivalent guarantee in effect pursuant to Subchapter J of this chapter."

3/ The NOV described the portion of the operation to which the notice applied as the "area between the Vader-Ferguson [sic] road and the eastern edge of the permit where the proposed relocation of the Vader-Ferguson [sic] Road will enter [sic] the permit" (Edh. R-1 at 3). As remedial action, OSM required Rith to secure OSM approval of a revision to the permit to include the off-site relocation of the county road and reclamation associated therewith. Abatement was to be completed on Dec. 16, 1986, or 2 days after denial of the permit revision.

OSM itself by letter of October 7, 1986, granted Rith an extension of time ". . . for the area to be disturbed for the proposed construction of the new county road." (R-7) [4/]. Rith had a right to rely on this extension. Further, it is questionable whether OSM would have jurisdiction over the road construction which was off the permit site. The road here was clearly off the permit site and was not used to facilitate mining. Thus, the undersigned finds that Respondent has not met its burden of establishing a prima facie case on count No. 2 of the NOV, and it is consequently vacated.

(Decision at 5).

On appeal, counsel for OSM argues that Judge Torbett erred by ruling that OSM has no jurisdiction over Rith's road construction adjacent to the permit site and by holding that representations in its October 7 letter estopped OSM's issuance of an NOV to Rith for its actions with respect to the adjacent unpermitted area.

Counsel for OSM states that section 701(28)(A) of the Act, 30 U.S.C. § 1291(28)(A) (1988), provides a comprehensive definition of "surface coal mining operations" and that section 701(28)(B) of the Act further expands the definition to include "adjacent land the use of which is incidental to any such activities." 5/ Counsel asserts that the unpermitted lands disturbed by Rith fall within this definition because they are adjacent to Rith's permitted lands and Rith's disturbance was incidental to its surface mining activities. With respect to the representations made in OSM's October 7 letter, counsel concedes that the letter was intended to grant a time extension for reclamation of some of the lands within the permitted

4/ On Aug. 18, 1986, OSM added a special condition to Permit No. 2583, requiring Rith to complete reclamation on the exposed portion of Cut No. 8 on the south side of the existing Vander-Ferguson County Road by backfilling and grading that area by Oct. 15, 1986. By letter dated Sept. 30, 1986, Rith sought an extension of that time. On Oct. 7, 1986, OSM granted Rith a limited extension for only that area "to be disturbed for the proposed construction of the new county road" (Edh. R-7). It specifically required, however, that "[a]ll of the area south and east of proposed new road * * * must be completely reclaimed according to the approved reclamation plan by October 15, 1986." Id. Pugh's Oct. 16, 1986, inspection was for the purpose of determining compliance with the reclamation deadline.

5/ Section 701(28)(A) of the Act defines "surface coal mining operations" as "activities conducted on the surface of lands in connection with a surface coal mine," including "excavation for the purpose of obtaining coal, the use of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical process, and the cleaning, concentrating, or other processing or preparation, loading of coal for interstate commerce at or near the minesite." 30 U.S.C. § 1291(28)(A) (1988); see 30 CFR 700.5.

area, but argues that the Judge misinterpreted the letter to include the area cited in violation No. 2, which was outside the permit boundaries.

Although Rith did not file a substantive response to OSM's brief, it claimed, at page 2 of its application for review, that "the disturbance outside of the permit area was unrelated to its mining operations but rather was the result of the relocation of the Vander-Ferguson Road over which OSM has no jurisdiction."

For the reasons set forth below, we find that, although Judge Torbett erred in finding that OSM had failed to meet its burden of establishing a prima facie case regarding violation No. 2, he, nevertheless, properly vacated that violation.

[1] In a proceeding involving an application for review of an NOV, OSM's initial burden is limited to going forward to make a prima facie showing that the person named in the notice is engaged in a surface coal mining operation and violated the Act, the regulations, or a permit condition. Harry Smith Construction Co. v. OSM, 78 IBLA 27, 29-30 (1983); Rhonda Coal Co., 4 IBAMA 124, 134, 89 I.D. 460, 465 (1982); 43 CFR 4.1171(a). 6/ If OSM meets its burden of establishing a prima facie case, the ultimate burden of persuasion rests with the applicant for review, and if OSM's evidence is not overcome by a preponderance of the evidence, the NOV will be affirmed. See Coal Energy, Inc. v. OSM, 105 IBLA 385, 387-88 (1988); 43 CFR 4.1171(b). As discussed below, OSM presented sufficient evidence to establish a prima facie case for the existence of the violation.

In this case, Pugh testified that on the day of his inspection he observed an area outside Rith's permit boundaries that had been disturbed (Tr. 17-18). He depicted the extent of the disturbance on Exhibit R-4, a permit map (Tr. 18). Photographs introduced as evidence show that the area in question had been bulldozed (Exhs. R-8, R-9, and R-10; Tr. 19-21). Pugh stated that the purpose of the disturbance was "to disturb that area to move the road over so that they can mine the existing road, under the existing road" (Tr. 32).

[2] Thus, the evidence submitted by OSM showed that Rith was engaged in surface coal mining operations under Permit No. 2583; that it had disturbed "adjacent land"; and that the disturbance was incidental to its coal extraction activities on the permit. Such evidence established a prima facie case in support of the violation charged by OSM.

The question presented is whether Rith satisfied its burden of persuasion to establish by a preponderance of the evidence that no violation occurred. We believe that it did.

6/ A prima facie case is made where sufficient evidence is presented to establish the essential facts and which will justify, but not compel, a finding in favor of the one presenting it. S. M. Coal Co. v. OSM, 79 IBLA 350, 354, 91 I.D. 159, 161 (1984).

At the hearing, William H. Ring, President of Rith, testified with regard to the off-permit disturbance that the company had applied to the Knoxville OSM office for permission to relocate the Vander-Ferguson County Road, which divided Rith's permit area (Tr. 46; Exh. R-4). Ring indicated that the purpose of moving the road was two-fold: to correct a very bad curve in the road which had been the scene of several accidents and to allow removal of the coal under the portion of the old road right-of-way located on the permit area (Tr. 54). He stated that relocation of the road was to take place under the direction and supervision of the Bledsoe County Road Supervisor (Tr. 47). Ring testified that the Road Supervisor came to the minesite and instructed Rith personnel to "take the bulldozer and cut that roadway through there so he could make sure that we had the proper alignment for the center lines of the road" (Tr. 47). 7/

On cross-examination, Pugh was asked whether the area in question was ever "included in the mining of coal or in any permit" (Tr. 27). Pugh responded that "it had to be in order to revise the road." Id. However, he admitted that he had terminated the notice of violation without knowing whether the permit boundaries had been changed (Tr. 29). 8/ Upon examining Exhibit R-12, which was a copy of the January 6, 1987, notice of termination of the violation, he stated: "The reason given here is that the road relocation portion of the permit revision was separate from the original revision application and was approved as a separate revision" (Tr. 29). To the best of Pugh's knowledge, in order to relocate the road, Rith was required first to get the approval of the county and then take the county's approval to OSM (Tr. 30). 9/

Rith established by a preponderance of the evidence that it was not conducting surface coal mining operations on the area cited in the NOV. Although such lands were, in fact, "adjacent land" within the meaning of 30 U.S.C. § 1291(28)(B) (1988), the use of those lands was not incidental to any activities listed in 30 U.S.C. § 1291(28)(A) (1988). Rith has shown

7/ Ring's testimony is consistent with Exhibit A-3 which is a copy of a Feb. 4, 1987, letter from the Road Supervisor to an OSM Assessment Conference Officer, concerning "Rith Energy, Inc.- Vander-Ferguson Road Relocation," stating:

"The purpose of this letter is to advise your office that the clearing work that was done by the mining company along the new right-a-way was done at my request so that the alignment could be seen. The clearing work allowed us to check the planned road width and see that the center line was located to solve the problem of the section of road that it was replacing."

8/ Ring testified that the permit boundaries were not changed to include the area in question and that Rith never intended to mine any coal under that area and, in fact, did not mine that area (Tr. 49).

9/ Pugh's understanding is consistent with a representation made by an engineering firm representing Rith in a letter to OSM dated Sept. 23, 1986, in which he stated that "[t]he county has approved the relocation and an application for permit revision is now in the public notice and permit review process" (Exh. R-5).

IBLA 89-27

that it bulldozed those lands at the direction of the Bledsoe County Road Supervisor to secure the county's approval to relocate the Vander-Ferguson County Road, and that county approval was a condition precedent to OSM action on a permit revision for the road relocation. 10/ Under the circumstances, Rith's action was clearly incidental to the relocation of the Vander-Ferguson County Road, not to its surface coal mining activities. As Judge Torbett found: "The road here [at least the area in question] was clearly off the permit site and was not used to facilitate mining" (Decision at 5). We conclude that OSM had no jurisdiction over the disturbed area outside Rith's permit boundaries because Rith was not conducting surface coal mining operations in that area at the time of the disturbance or at the time of the inspection. 11/

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.



Bruce R. Harris
Administrative Judge

I concur:



R. W. Mulley
Administrative Judge

10/ The remedial action required by OSM in the NOV was to obtain OSM approval of a permit revision for the road relocation. The record shows, however, that the off-permit disturbance was necessary to acquire county approval, which was a prerequisite of OSM approval.

11/ We agree with OSM that its Oct. 7, 1986, letter to Rith did not relate to areas outside the permit area, and, therefore, Judge Torbett erred in concluding that Rith had a right to rely on that extension regarding the area in question. However, given our conclusion that Rith was not conducting surface coal mining operations on the lands outside the permit boundaries, that error is harmless.

119 IBLA 88



REPLY REFER TO:

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS

4015 WILSON BOULEVARD
ARLINGTON, VIRGINIA 22203



OREGON CEDAR PRODUCTS CO.

IBLA 88-637

Decided April 9, 1991

Appeal from decisions of the Oregon State Office, denying protests against Eagle Rock Land Exchange OR 44047.

Appeal dismissed.

1. Appeals: Generally--Rules of Practice: Appeals: Dismissal

An appeal is properly dismissed as moot if, as a result of events occurring after the appeal is filed, there is no effective relief which the Board can afford the appellant and no reasonable expectation or demonstrated probability that the same controversy will again occur involving the same complaining party. Where an appeal was taken in reliance on a provision of law appearing in an annual appropriations act prohibiting export of unprocessed timber from Federal lands, but the provision appearing in the appropriations act was later replaced by a more detailed statute, the probability the same controversy will be repeated is slight.

APPEARANCES: James L. Hershner, Esq., Eugene, Oregon, for appellant Oregon Cedar Products Company; Roger Nesbitt, Esq., U.S. Department of the Interior, Office of the Regional Solicitor, for the Bureau of Land Management; David Brewer, Esq., Eugene, Oregon, for Murphy Sales Company.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Oregon Cedar Products Company (Oregon Cedar) appeals from decisions of the Oregon State Office, Bureau of Land Management (BLM), dated July 21 and August 4, 1988, denying Oregon Cedar's July 11 and 22, 1988, protests against the Eagle Rock Land Exchange OR 44047, between BLM and Murphy Sales Company (Murphy Sales). 1/ The Notice of Realty Action for the Eagle Rock exchange was published in the Federal Register (53 FR 12476) on April 14, 1988. A Statement of Intent to Complete Land Exchange was executed by BLM and Murphy Sales on June 15, 1988. Oregon Cedar protested, arguing that the exchange violated a congressional mandate that no part of any appropriation for the Department of the Interior would be used to process a sale of

1/ Two decisions were rendered before it became apparent that the same protestant had made both protests.

119 IBLA 89

applicable to the present matter. The Trustee argues to the contrary, contending that these payments were not ordinary course payments under the § 547(c)(2) exception since they pertained to terms of long term commercial notes which are not within the § 547(c)(2) exception. The parties have stipulated that the payments totalling \$42,755.88 were made preferentially (Stip. No. 12), with \$10,066.68 of those payments protected from avoidance under provisions of § 547(c)(2). See, Stips. Nos. 4 and 13. Remarkably, the Stipulation No. 4 provides:

4. That prior to the year before the commencement of the within bankruptcy case. HNB made one or more commercial loans to the Debtor.... All of the foregoing loans were made in the ordinary course of business affairs of the Debtor and HNB, and according to ordinary business terms.

Recent case law within this Circuit does not support the Trustee's argument. "Long-term debt is as amenable to the exception of § 547(c)(2) as is any other type of debt, so long as the facts of the situation bring it within the ordinary course of business or financial affairs' language." *In re Finn*, 909 F.2d 903 (6th Cir.1990). Thusly, the § 547(c)(2) exception may be applicable to the prepetition payments totalling \$42,755.88.

CONCLUSION

Accordingly, the Trustee's motion for a grant of partial summary judgment is sustained in part and is overruled in part. HNB's motion for summary judgment is overruled, in part, and is sustained, in part.

IT IS SO ORDERED.



UNITED STATES of America

v.

Donovan LUEKING d/b/a Lueking
Coal Company.

Civ. No. 3-90-377.

United States District Court,
E.D. Tennessee, N.D.

Oct. 22, 1990.

Government sued mining company to recover civil penalties assessed under Surface Mining Control and Reclamation Act. Mining company asserted defenses of statute of limitations, res judicata, and discharge in bankruptcy. Both parties moved for summary judgment. The District Court, Hull, Chief Judge, held that: (1) five-year statute of limitations governing collection of civil penalties began to run on date Government issued notice of violations and cessation orders; (2) Government was precluded from seeking civil penalties for violations actually raised in earlier suit for injunctive relief; and (3) civil penalties were clearly penal in nature and were non-dischargeable in bankruptcy.

Motions granted in part and denied in part.

1. Limitation of Actions ⇐59(1)

Five-year statute of limitations governing collection of civil penalties by United States pursuant to Surface Mining Control and Reclamation Act of 1977 began to run from time Secretary of Interior issued notices of violations and cessation orders. 28 U.S.C.A. §§ 1355, 2462; Surface Mining Control and Reclamation Act of 1977, §§ 101 et seq., 518(d), 30 U.S.C.A. §§ 1201 et seq., 1268(d).

2. Mines and Minerals ⇐92.6, 92.20

Government was precluded from seeking civil penalties for violations of Surface Mining Control and Reclamation Act actually raised in previous actions by Government for injunctive relief, where action for injunctive relief was not sought on emergency basis. Surface Mining Control and

Reclamation Act of 1977, § 101 et seq., 30 U.S.C.A. § 1201 et seq.

3. Mines and Minerals ⇐92.20

Government was not required to combine in single lawsuit each of its enforcement actions under Surface Mining and Control and Reclamation Act of 1977 for injunction and penalties for separate violations occurring at separate times and separate locations, and often involving separate business entities. Surface Mining Control and Reclamation Act of 1977, § 101 et seq., 30 U.S.C.A. § 1201 et seq.

4. Bankruptcy ⇐3358

Civil penalties imposed under Surface Mining Control and Reclamation Act of 1977 on mining company were penal in nature and were nondischargeable in bankruptcy, where calculation of penalties bore no relationship to cost of reclaiming mines, there was no requirement that penalties collected be used to reclaim mine, and Government had not suffered any pecuniary loss as result of violations. Bankr. Code, 11 U.S.C.A. § 523(a)(7); Surface Mining Control and Reclamation Act of 1977, § 101 et seq., 30 U.S.C.A. § 1201 et seq.

Gerald A. Thornton, U.S. Dept. of the Interior, Knoxville, Tenn., for plaintiff.

John F. Weaver and C. Mark Troutman, McCord, Weaver & Troutman, P.C., Knoxville, Tenn., for defendant.

ORDER

HULL, Chief Judge.

This is an action to recover civil penalties assessed under the Surface Mining Control and Reclamation Act of 1977 [the Act]. Jurisdiction is predicated on 30 U.S.C. § 1268(d) and 28 U.S.C. § 1355, and is not in dispute. In this lawsuit, the United States claims that defendant Donovan Lueking d/b/a Lueking Coal Co. is liable to it for \$158,300.00 in civil penalties, plus prejudgment interest, late-payment penalties, and costs. Defendant Lueking does not deny that the violations occurred or that the penalties were assessed, but denies that he owes any money on the

grounds that the statute of limitations has run; that the doctrine of *res judicata* prevents the United States from collecting due to prior litigation; that the debt was discharged in bankruptcy; and that the United States is guilty of laches. The case is now before the Court on cross-motions for summary judgment.

It is undisputed that Mr. Lueking conducted surface coal mining operations subject to the Act in Morgan County, Tennessee. Following various inspections of this mining operation, the Secretary of the Interior issued certain notices of violations [NOVs] and cessation orders [COs]. Later, for each NOV and CO, a Notice of Penalty Assessment [NOPA] was served on the company. Lueking Coal Company made no attempt to invoke the administrative remedies available to challenge the notices and orders and, eventually, the Office of Surface Mining issued "Final Orders" on behalf of the Secretary assessing civil penalties for each NOV and CO. Lueking Coal Company failed to pay these penalties and this lawsuit ensued.

THE STATUTE OF LIMITATIONS QUESTION

[1] The parties are in agreement that the general, federal five-year statute of limitations governing the collection of civil penalties, 28 U.S.C. § 2462, is the statute which controls this case. They disagree about when this statute begins to run. Obviously, a cause of action accrues only when it comes into existence as a legally enforceable claim. The United States takes the position that its claims did not accrue until the Secretary issued the Final Orders for each enforcement action. The defendant contends that the claims accrued on the dates of the original COs and NOVs in question. If the defendant is correct, all but three of the eleven civil penalties at issue in this case are time-barred.

Unfortunately, there appear to be no reported cases on point. Two, unpublished, district court cases have been brought to the Court's attention, *United States v. McCune*, No. C-2-87-1387 (S.D. Ohio, December 13, 1989) and *United States v. Gra-*

ham, No. 87-1843, 1989 WL 248111 (W.D. Penn., July 20, 1989). Both of these cases are directly on point, meaning that they both involve actions to recover civil penalties assessed under the Surface Mining Control and Reclamation Act of 1977, and both involve situations in which the defendant mining company failed to invoke any administrative relief from the government's enforcement actions. In the *McCune* case, the Ohio district court reasoned that the United States would have no claim upon which it could file suit until the Secretary of the Interior had determined, by his Final Order, that a penalty was due. The Pennsylvania Court, in *Graham*, on the other hand, ruled that, in the absence of clear and convincing evidence of dilatory tactics which would support equitable tolling of the statute of limitations, the government's cause of action first accrued when the original notices of violation and cessation orders were made.

Various Circuit Courts of Appeal have grappled with the question of when the federal five-year statute of limitations, 28 U.S.C. § 2462, begins to run, but these cases have all involved penalty enforcement actions under other federal statutes. And these cases too have produced conflicting rulings. For example, when that statute of limitations is applied to actions to enforce penalties under the Export Administration Act's antiboycott regulations, the First Circuit, in *United States v. Meyer*, 808 F.2d 912 (1st Cir.1987), has held that the limitations period is triggered on the date the civil penalty is administratively imposed, but the Fifth Circuit, in *United States v. Core Laboratories, Inc.*, 759 F.2d 480 (5th Cir.1985), has held that the limitations period begins to run on the date of the underlying violation.

There are a few Supreme Court cases, treating other federal statutes of limitations, which may shed some light on this confused picture. In *Unexcelled Chemical Corp. v. United States*, 345 U.S. 59, 73 S.Ct. 580, 97 L.Ed. 821 (1953), which involved an action under the Walsh-Healy Act to recover liquidated damages from a government contractor who had knowingly employed child labor, the Supreme Court held that the cause of action accrued when

the minors were employed rather than when the administrative determination of the employer's liability was eventually made. However, in *Crown Coat Front Co. v. United States*, 386 U.S. 503, 87 S.Ct. 1177, 18 L.Ed.2d 256 (1967), which was an action brought by a government contractor against the United States involving the six-year limitations period in 28 U.S.C. § 2401(a), the Court held that the contractor's cause of action accrued at the termination of the administrative proceedings rather than when the contract was completed. The Supreme Court's ruling in *Crown Coat* turned on the fact that completion of the adjudicatory administrative proceedings was a prerequisite to filing suit in federal court.

There is no such prerequisite under the Surface Mining Control and Reclamation Act and no adjudicatory administrative proceedings take place unless the charged party elects to invoke his administrative remedies. At least in cases like the one before the Court, where the defendant waives any right of review, it would appear that the statute of limitations should run from the time when the government first had notice of the violations and issued its COs or NOVs. Accordingly, the Court FINDS that all but the last three of the eleven civil penalties at issue are time-barred.

THE RES JUDICATA QUESTION

[2] This instant action was filed on April 2, 1990. It is by no means the first case the Secretary of the Interior has brought against defendant Donovan Lueking or his businesses. On August 22, 1985, the United States filed a complaint, *United States of America v. Whizco, Inc.*, CIV-3-85-823. This complaint was amended on October 8, 1985, to add Mr. Lueking, the owner of Whizco, as an additional defendant. That lawsuit sought injunctive relief against both defendants relating to several violations of the Surface Mining Control and Reclamation Act occurring at coal mines in Scott County, Tennessee. On December 6, 1985, the United States filed another complaint, *United States of America v. Donovan F. Lueking, individually*

and d/b/a Lueking Coal Company, CIV-3-85-1194, seeking injunctive relief for two alleged violations of the Act which were occurring at mines in Morgan County. (One of the violations involved in CIV-3-85-1194 gave rise to one of the civil penalties at issue in the present case). Shortly thereafter, on December 10, 1985, the United States filed a motion to consolidate these two actions and this motion was granted. On July 3, 1986, the United States filed a notice of dismissal, pursuant to Rule 41(a)(1)(i), dismissing CIV-3-85-1194 (the action against Lueking and Lueking Coal Company). The *Whizco* action was fully litigated.

Relying on *Kremer v. Chemical Construction Corp.*, 456 U.S. 461, 102 S.Ct. 1883, 72 L.Ed.2d 262 (1982), defendant Lueking argues that the final judgment in *Whizco* precludes the United States from relitigating issues that were *or could have been* raised in that action. All of the penalty assessments involved in the instant case had already been made and in every instance the defendant had already waived his right to challenge them before either of the prior actions for injunctive relief were filed. There is no question that the United States could have brought its claims for all the penalties at issue in this case in the two previous actions for injunctive relief.

While the United States acknowledges that it could have brought all of its present claims for penalties in the previous actions for injunctive relief, it denies that it was required to do so. It argues that each enforcement action under the Act is a separate transaction which gives rise to a distinctly different cause of action for civil penalties and there is no requirement that they be brought simultaneously. It also points out that, while the law of the Sixth Circuit is that suits for injunctive relief usually preclude later claims for damages on the same cause of action, *Falls Stamping & Welding v. International Union, UAW*, 744 F.2d 521 (6th Cir.1984), there are exceptions to this general rule when injunctive relief may be sought on an emergency basis.

[3] Because there was no apparent emergency about the previous action (one of which the government eventually dismissed), the court FINDS that the government is precluded from now seeking civil penalties for violations actually raised in the earlier lawsuits. However, this ruling appears to preclude only one of the eleven violations at issue in this suit, CO-84-91-10-2. The Court does not find that the United States was required to combine in a single lawsuit, each of its enforcement actions, for separate violations, occurring at separate times in separate locations, and often involving separate business entities.

THE DISCHARGE IN BANKRUPTCY

[4] Defendant Lueking was granted a general discharge in bankruptcy on December 19, 1985. Six of the civil penalties sought in this case were listed in the United States' Proof of Claim filed in that bankruptcy on November 9, 1985, and all of the eleven penalties were final orders, ripe for adjudication, which could have been listed in that claim. The question, then, is whether these penalties fall under the exception to discharge provided in 11 U.S.C. § 523(a)(7), for fines, penalties or forfeitures "payable to and for the benefit of a governmental unit" or whether, as Mr. Lueking contends, the penalties are dischargeable as "compensation for actual pecuniary loss."

The bankruptcy court in *In re Daugherty*, 25 B.R. 158 (Bankr.E.D.Tenn.1982), has held that civil penalties under the Act in question are non dischargeable debts. This Court has made a similar ruling in *United States v. Anderson*, CIV-3-85-08 (June 21, 1985), and has not changed its mind. The civil penalties involved in this suit are clearly penal in nature—the calculation of penalties bears no relationship to the cost of reclaiming the mines; there is no requirement that the penalties collected be used to reclaim a Lueking Coal Company mine; and the government has not suffered any actual pecuniary loss. Accordingly, the exception to discharge provided in 11 U.S.C. § 523(a)(7), applies to the penalties at issue in this case.

THE DEFENSE OF LACHES

Mr. Lueking's final argument is that the United States is guilty of unconscionable delay in bringing this suit and, therefore, it should be dismissed under the equitable principal of laches. While this Court has agreed with the defendant that all but three of the government's claims are time-barred, it will not dismiss the remaining claims on a laches defense.

SUMMARY

In summary, judgment is hereby ENTERED in favor of the United States of America and against defendant Donovan F. Lueking with regard to the penalties arising out of NOV-85-91-174-24; NOV-85-91-174-25; and NOV-85-91-174-27; including pre-judgment interest, late-payment penalties and costs.

All claims involving the other eight enforcement actions in this case are DISMISSED as time-barred. In addition, the Court finds that penalties arising out of CO-84-91-10-2 (a violation previously alleged in CIV-3-85-1194) is barred by the doctrine of *res judicata*.



In re SOUTHERN INDUSTRIAL BANKING CORPORATION, Debtor.

Thomas E. DuVOISIN, Liquidating
Trustee, Plaintiff,

v.

John E. COKER, as Administrator for
the Estate of John Carter Daniels,
Deceased, Defendant.

Bankruptcy No. 3-83-00372.
Adv. No. 85-0448.

United States Bankruptcy Court,
E.D. Tennessee.

March 25, 1991.

Bankruptcy trustee obtained judgment against defendant resulting from prefer-

ential transfer made to defendant by debtor. While case was on appeal to the District Court, defendant died and administrator of defendant's estate was substituted as party defendant by district court order of substitution. Following remand, defendant moved to dismiss for lack of subject matter jurisdiction due to trustee's failure to file copy of order of substitution with probate court as required by Tennessee's revivor statute. The Bankruptcy Court, John C. Cook, J., held that trustee's failure to file copy of order of substitution with clerk of probate court administering defendant's estate did not deprive bankruptcy court of subject matter jurisdiction over adversary proceedings.

Motion denied.

See also 126 B.R. 517.

1. Bankruptcy §2048(1)

Trustee's failure to file copy of district court's order substituting administrator of defendant's estate as party defendant in adversary proceeding with clerk of probate court administering estate, as required by Tennessee's revivor statute, did not deprive bankruptcy court of subject matter jurisdiction over adversary proceeding. T.C.A. §§ 30-2-307(a), 30-2-320; Tenn.Rules Civ. Proc., Rule 25; Fed.Rules Civ.Proc.Rule 25(a), 28 U.S.C.A.

2. Abatement and Revival §75(1)

Under Tennessee law, there are two procedural requirements for reviving pending action against decedent's estate: first, order of substitution must enter in pending state action substituting administrator of decedent's estate for decedent in compliance with rules of civil procedure; second, order of substitution must be filed with clerk of court in which estate of decedent is being administered in compliance with provision of Tennessee Code Annotated. T.C.A. §§ 30-2-307(a), 30-2-320; Tenn. Rules Civ.Proc., Rule 25.

3. Federal Civil Procedure §365

Under federal rules, there is no procedural requirement that order of substitu-

1236 (9th Cir.1988). The court finds that there is a sufficient nexus to illicit drugs and that the government has met its probable cause burden. Accordingly, because there are no issues of material fact left to determine, summary judgment for the government will be granted.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the government's February 15, 1991 motion for summary judgment is GRANTED.



UNITED STATES of America, Plaintiff.

v.

Dallas McCUNE, et al., Defendants.

Civ. A. No. C-2-87-1387.

United States District Court,
S.D. Ohio, E.D.

Dec. 13, 1989.

United States brought action to recover civil penalties assessed against general partner for violations of the Surface Mining Control and Reclamation Act of 1977. The United States moved for summary judgment. The District Court, Holschuh, Chief Judge, held that: (1) the suit was not barred by the five-year statute of limitations, and (2) the alleged transfer of the partnership's assets did not relieve general partner from liability.

Motion granted.

1. Limitation of Actions ⇐59(1)

United States' suit to recover civil penalties for violations of Surface Mining Control and Reclamation Act was not barred by five-year statute of limitations; Govern-

ment's "claim first accrued" within meaning of statute of limitation when final orders assessing penalties were issued, rather than when violations occurred. 28 U.S.C.A. § 2462; Surface Mining Control and Reclamation Act of 1977, § 518(d), 30 U.S.C.A. § 1268(d).

2. Mines and Minerals ⇐99(1)

General partner of partnership against which civil penalties were assessed for violations of Surface Mining Control and Reclamation Act was liable for those penalties, despite general partner's claim that assets of partnership were transferred to another corporation before penalties were assessed; general partner provided no documentation of claim, and general partner did not notify Office of Surface Mining Reclamation and Enforcement of alleged sale of assets, and thus, partnership remained permittee at all relevant times. Surface Mining Control and Reclamation Act of 1977, §§ 511(b), 518(b), 30 U.S.C.A. §§ 1261(b), 1268(b).

D. Michael Crites, U.S. Atty., Barbara L. Beran, Asst. U.S. Atty., U.S. Dept. of Justice, Columbus, Ohio (Jan U. Bellhy, Staff Atty., U.S. Dept. of the Interior, Pittsburgh, Pa., of counsel), for plaintiff.

Roderick H. Willcox, Chester. Hoffman and Willcox, Columbus, Ohio, for defendants.

OPINION AND ORDER

HOLSCHUH, Chief Judge.

Plaintiff United States of America brings this action under 30 U.S.C. § 1268(b) to recover civil penalties assessed against defendants for violations of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. §§ 1201. *et seq.* This matter is before the Court on plaintiff's motion for summary judgment against defendant Metro Energy Corporation.¹

The uncontroverted June 20, 1988 affidavit of Sean T. Spillane, Chief, Branch of Civil Penalty Collections, Division of Debt Management, Office of Surface Mining

Energy Corporation is the sole remaining defendant.

1. On January 4, 1988 default judgment was entered against defendant Dallas McCune. Metro

Reclamation and Enforcement (OSMRE). United States Department of Interior, establishes that OSMRE duly assessed civil penalties in the amount of \$125,940.00 against McFo Company, a partnership, for violations of the Surface Mining Control and Reclamation Act of 1977 (hereinafter "the Act"). The Division of Debt Management issued Cessation Orders or took other action notifying McFo of its violations of the Act and liability for civil penalties between October 1978 and November 1980. The Division issued Final Orders assessing civil penalties on August 24, 1983, May 30, 1985, February 20, 1986 and June 19, 1986. The total amount of civil penalties assessed is \$125,940.00.

Federal Rule of Civil Procedure 56(c) provides:

The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

"[T]his standard provides that the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment: the requirement is that there be no *genuine* issue of *material* fact." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-248, 106 S.Ct. 2505, 2510, 91 L.Ed.2d 202 (1986) (emphasis in original); *Kendall v. The Hoover Co.*, 751 F.2d 171, 174 (6th Cir.1984).

The purpose of the procedure is not to resolve factual issues, but to determine if there are genuine issues of fact to be tried. *Lashlee v. Sumner*, 570 F.2d 107, 111 (6th Cir.1978). Therefore, summary judgment will be granted "only where the moving party is entitled to judgment as a matter of law, where it is quite clear what the truth is, ... [and where] no genuine issue remains for trial, ... [for] the purpose of the rule is not to cut litigants off from their right of trial by jury if they really have issues to try." *Poller v. Columbia Broadcasting System, Inc.*, 368 U.S. 464, 467, 82

S.Ct. 486, 488, 7 L.Ed.2d 458 (1962); *accord*, *County of Oakland v. City of Berkeley*, 742 F.2d 289, 297 (6th Cir.1984).

In a motion for summary judgment the moving party bears the "burden of showing the absence of a genuine issue as to any material fact, and for these purposes, the [evidence submitted] must be viewed in the light most favorable to the opposing party." *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157, 90 S.Ct. 1598, 1608, 26 L.Ed.2d 142 (1970) (footnote omitted); *accord*, *Adams v. Union Carbide Corp.*, 737 F.2d 1453, 1455-56 (6th Cir.1984), *cert. denied*, 469 U.S. 1062, 105 S.Ct. 545, 83 L.Ed.2d 432 (1985).

[1] Defendant maintains that the action was not commenced within the five year statute of limitations established by 28 U.S.C. § 2462.

The Secretary may assess a civil penalty not to exceed \$5,000 for each violation of the Act. When there is a continuing violation, each day the violation continues is deemed a separate violation of the Act. 30 U.S.C. § 1268(a). Once the Secretary's assessment of a civil penalty becomes final, the Secretary is authorized to bring a civil action to collect the penalties. 30 U.S.C. § 1268(d). The Act contains no statute of limitations. The legislative history of the Surface Mining Control & Reclamation Act of 1977, P.L. 95-87, 1977 U.S. Code Cong. & Adm. News 593, 663, 708, does not discuss the statute of limitations for either assessing civil penalties or bringing suit to collect them.

Consequently, the applicable statute of limitations is 28 U.S.C. § 2462 which states:

Except as otherwise provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years *from the date when the claim first accrued* if, within the same period, the offender or the property is found within the United States in order that proper service may be made thereon.

(Emphasis added). Defendant maintains that the "claim first accrued" when McFo

violated the Act. Since the complaint here was filed November 17, 1987 and McFo's violations of the Act all occurred prior to November 1980, under defendant's construction of the statute, the government's action to collect the civil penalties would be barred. Plaintiff maintains that its "claim first accrued" when the Final Orders assessing the civil penalties were issued. Since all of the Final Orders were issued on or after August 24, 1983, under the government's construction of the statute the suit was timely filed.

There are no reported cases construing 28 U.S.C. § 2462 as a statute of limitations for an action brought under 30 U.S.C. § 1268(d) to collect civil penalties under the Act. Defendant relies on *United States v. Core Laboratories, Inc.*, 759 F.2d 480 (5th Cir.1985) which construes § 2462's "from the date when the claim first accrued" language as applied to an action by the government to collect penalties imposed under the Export Administration Act, 50 U.S.C.App. §§ 2401, *et seq.* Relying upon language in the legislative history for the Export Administration Act which stated that the five year statute of limitation imposed by 28 U.S.C. § 2462 "is reckoned from the commission of the act giving rise to liability, and not from the time of imposition of the penalty," the Fifth Circuit held that the statute of limitations period begins to run from the date of the act giving rise to liability under the Export Administration Act. *United States v. Core Laboratories, Inc.*, 759 F.2d at 482-483. This is the only reported decision so construing § 2462 in the context of an action by the government to recover a civil penalty administratively imposed.

The Fifth Circuit's construction of § 2462 was expressly rejected by the First Circuit in *United States v. Meyer*, 808 F.2d 912, 915-920 (1st Cir.1987). The First Circuit reasoned in *Meyer* that claims "first accrue" when a suit may be brought to enforce them. 808 F.2d at 914. Since no suit could be brought to recover a civil penalty under the Export Administration Act until the penalty had been assessed administratively, the Court concluded that the five year limitation period established by § 2462

did not begin to run until the penalty was administratively imposed. 808 F.2d at 914; 916, 918-919.

Here, unlike *Core Laboratories*, there is no legislative history indicating when the statute of limitations should begin to run. Consequently, this Court must construe the plain language of 28 U.S.C. § 2462. This Court finds the First Circuit's analysis to be more compelling than that of the Fifth. The statute expressly states that the five year statute of limitations begins to run "from the date when the claim first accrued...." A claim to collect an administratively imposed civil penalty cannot accrue until the penalty is administratively imposed.

There is always the danger that the administrative agency will unreasonably delay taking administrative action, thereby defeating the purpose of a statute of limitation to provide a definite time period within which a permittee's rights will be determined. Here defendant has made no argument that the Secretary unreasonably delayed administrative proceedings to deny it the benefit of the statute of limitations imposed by 28 U.S.C. § 2462. Accordingly, the Court concludes that plaintiff brought the action within the time limits imposed by that statute.

[2] Defendant also argues that it should not be liable for the civil penalties because McFo's assets were transferred to another corporation before the penalties were assessed. Defendant Metro Energy Corporation was a general partner in McFo Company. Normally, Metro Energy, as a general partner, would be liable for the civil penalties assessed. See, O.R.C. § 1775.08(A).

However, Metro Energy maintains that the assets of McFo were transferred to Y-Coal, Inc. on April 15, 1980. Although Metro Energy makes this assertion through its attorney, it provides no documentation of the claim. The uncontested record establishes that Metro Energy is a general partner of McFo. In the absence of any evidence documenting the termination of the partnership, there is no issue

of fact which would survive a motion for directed verdict at trial. See, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. at 251-252, 106 S.Ct. at 2511-2512.

Even if the assets of McFo were distributed to Y-Coal, Inc., McFo company never notified OSMRE of the sale, nor was there any approval by the regulatory authority to transfer, assign, or sell the rights granted under any permit as required by 30 U.S.C. § 1261(b). Consequently, McFo remained the permittee at all relevant times. Under these facts, defendant Metro Energy Corporation, as a general partner of McFo, is liable for the civil penalties.

For the reasons set out above, plaintiff's motion for summary judgment is GRANTED. The Clerk of Court is DIRECTED to enter JUDGMENT for plaintiff and against defendant Metro Energy Corporation in the amount of \$125,940.00.



SHONAC CORPORATION, Plaintiff,

v.

AMKO INTERNATIONAL, INC., et
al., Defendants,

and

Hyosung Corporation, et al., New
Party Defendants.

No. C2-89-613.

United States District Court,
S.D. Ohio, E.D.

March 21, 1991.

An importer of discount athletic shoes, which were later discovered to be counterfeit or otherwise violated trademark owners' rights, brought suit against a Korean export license holder and other defendants seeking recovery under the Lanham Act, Racketeer Influenced and Corrupt Organizations Act (RICO), as well as under oth-

er state and common-law theories. Upon Korean export license holder's motion for summary judgment, the District Court, Graham, J., held that: (1) importer of athletic shoes lacked standing to assert claim under the Lanham Act against the Korean export license holder, and (2) conduct of Korean export license holder, whose role in subject transactions was strictly that of an export window in indirect sales transactions and whose participation was limited to the processing and preparation of standard commercial documents, was not actionable under section of Lanham Act prohibiting false designation of origin; Korean export license holder did not "affix, apply, or annex" the trademarks to the shoes or their packaging and did not cause the goods to be shipped and there was no evidence that export license holder knew that the subject shoes were counterfeit or otherwise sold in violation of the trademark owners' rights.

Motion granted.

1. Trade Regulation ⇄544

A plaintiff who has no interest in the trade name sought to be protected cannot have standing under section of Lanham Act prohibiting false designation of origin or any false description or representation. Lanham Trade-Mark Act, § 43(a), 15 U.S.C.(1982 Ed.) § 1125(a).

2. Trade Regulation ⇄544

Importer of discount athletic shoes lacked standing under the Lanham Act to assert a claim against holder of a Korean export license to recover losses it incurred as a result of royalties and license fees it had to pay trademark owners since the importer had no interest whatsoever in the trademarks. Lanham Trade-Mark Act, § 43(a), 15 U.S.C.(1982 Ed.) § 1125(a).

3. Trade Regulation ⇄540

Importer of discount athletic shoes was not in competition with holder of Korean export license in any discernible way and therefore could not maintain claim against export license holder under section of Lanham Act prohibiting unfair competi-

Citation
 Not Reported in F.Supp. FOUND DOCUMENT
 (Cite as: 1989 WL 248111 (W.D.Pa.))

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UNITED STATES of America, Plaintiff,

v.

Maynard GRAHAM, t/d/b/a Graham Brothers Coal Co., Defendant
 No. 87-1843.

United States District Court, W.D. Pennsylvania.

July 20, 1989.

William r. Stanley, Special Asst. U.S. Atty., U.S. Dept. of the Interior,
 Office of the Sol. Pittsburgh, Pa., for plaintiff.

Allan E. MacLeod, Corapolis, Pa., for defendant.

OPINION AND ORDER

SIMMONS, District Judge.

*1 This is a suit by the United States to collect a civil penalty upon a Cessation Order issued pursuant to Sec. 518 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act), 30 U.S.C. 1268. Defendant contends that the action is barred by the applicable statute of limitations, 28 U.S.C. 2462, the Cessation Order having been issued May 1, 1981 for failure to abate an earlier Notice of Violation dated January 23, 1981, more than five years prior to institution of this suit on September 1, 1987.

Section 518(h) of the Act mandates the assessment of a civil penalty of not less than \$750 for each day during which a failure or violation continues for which a citation has been issued under section 1271(a) of the Act. The period permitted for the correction of violations may be extended only by relief through administrative review proceedings under Section 1275 of the Act or judicial proceedings under 1276 of the Act which are required to be initiated and obtained by the operator.

Sections 518(h) and 518(a) of the Act were held to impose a mandatory duty upon the Secretary to assess in cases of failure to abate resulting in a Cessation Order in a decision issued by United States District Court for the District of Columbia on September 30, 1982, *Save Our Cumberland Mountains, Inc. v. Watt*, 550 F.Supp. 979 (D.D.C.1982).

Section 518(c) of the Act provides that the Secretary shall inform the operator of the proposed amount of penalty within thirty days of the issuance of a notice or order charging that a violation of the Act has occurred. The operator, following receipt of the notice of proposed assessment has thirty days to either pay the proposed penalty in full or, if the person wishes to contest either the amount of the penalty or the fact of the violation, forward the proposed amount to the Secretary for placement in an escrow account. Failure to forward the money to the Secretary within thirty days shall result in a waiver of all legal rights to contest the violation or the amount of the penalty under the Act.

The parties have stipulated to the administrative record in this case. Plaintiff's statement of the case correctly characterizes this Stipulation with the qualification that the notice of violation, preceeding the Cessation order, was issued January 23, 1981, also mandated cessation of mining, and required application for a permit within thirty days and the obtaining of a permit within ninety days (Stipulation Ex. "B"). As of May 1, 1981, Plaintiff conclusively found that Defendant had failed to perform (Stipulation Exhibit

Plaintiff's action is barred by the applicable period of limitations.

What is perfectly clear, and as the Plaintiff's Memorandum clearly states, Defendant did not request any conference or hearing on the violation or penalty (p. 5), and has neither paid the penalty nor taken any timely steps to contest it (p. 6).

The two cases most appropriate for comparison in this case for Statute of Limitations analysis are United States v. Core Laboratories, Inc., 759 F.2d 480 (5th Cir.1985) and U.S. Department of Labor v. Old Ben Coal Co., 676 F.2d (7th Cir.1982), both of which are cited in Plaintiff's Memorandum. No cases were found specifically dealing with SMCRA.

*2 The language of Core Laboratories is most appropriate to this case and is as follows:

A limitations period that began to run only after the government concluded its administrative proceedings would thus amount in practice to little or none. As one court has explained, if the penalty does not accrue (under section 2462) until the United States makes an administrative determination that it is due, the United States has within its power to prolong the period of limitations and the producer of rice "would remain indefinitely under the hazard of having penalties imposed upon him ..." (citations omitted)

Plaintiffs detailed memorandum setting forth the various administrative review procedures available to an operator charged as somehow delaying the limitations period for filing suit is entirely misplaced. The stipulated procedural facts indicate that the defendant did nothing to delay the proceedings, as plaintiff concedes. In Core Laboratories, the Court remanded for a determination whether the government's failure to file its action within the limitations period was caused by improper dilatory tactics by Core such that equitable tolling might be appropriate, and the Court appeared to require "clear and convincing" evidence of dilatory tactics to support equitable tolling. In the present case, however, the underlying proceedings were entirely under the government's control, and the defendant did nothing whatsoever.

The Court in Core Laboratories, supra, was not convinced by the reasoning of the Court in Old Ben, supra, upon which plaintiff relies, calling the decision in Old Ben an anomaly that provides no reasons for the Court in Core Laboratories to depart from the common understanding of Section 2462.

The stipulations and plaintiff's Memorandum clearly establish that the assessments on which this action are based were assessable, required to be assessed, and were at least in part assessed well prior to the five year period for bringing suit. Stipulation 3 establishes that on May 19, 1981, plaintiff issued to defendant Graham Brothers Coal Company a Notice of Proposed Assessment of \$6,750 upon the Cessation Order as of May 15, 1981, representing nine days x \$750 per day (with a cover letter advising the basis for computation for ultimate potential assessment at 30 days x \$750, of \$22,500). Stipulation 4 states that on October 8, 1982, plaintiff issued a second Notice of Proposed Assessment in the amount of \$22,500, representing thirty days x \$750 per day. It is clear that the computation of plaintiff's penalty is a matter of mathematics, a ministerial act mandated by section 518(h) at \$750 per day. It is also clear that Section 518(c) of the Act requires the Secretary to inform the defendant-operator within thirty days of the issuance of a notice or order charging a violation of this Act. The Secretary in fact made a partial

(Cite. as: 1989 WL 248111, *2 (W.D.Pa.))

assessment within the thirty day period mandated by the Act under the Cessation Order and the remaining assessment, seventeen months later, was entirely a mathematical computation which included the amounts set forth in the earlier assessment.

*3 Save Our Cumberland Mountains, which found plaintiff's obligations under the Act mandatory under both Sections 518(a) and 518(h) was decided September 30, 1982. Nevertheless, plaintiff terminated the Cessation Order December 20, 1982, entirely of its own accord. It then vacated its termination March 22, 1983, on the basis of Save Our Cumberland Mountains. The only administrative review sought by plaintiff, which had nothing to do with the underlying assessments which were already final, was from that vacation. Administrative Law Judge Joseph McGuire upheld the vacation by Order dated July 27, 1984 (Stipulation Exhibit "G").

The language of Save Our Cumberland Mountains reiterated by Administrative Law Judge Joseph McGuire, which cuts both ways, is that the Secretary cannot convert a mandatory duty into a discretionary duty by simply deferring it for a lengthy period of time. It was the Secretary who failed to make its full assessment within the thirty day period provided by the Act and defendant did nothing whatsoever which did or could have delayed that duty.

This action was brought more than five years, actually, more than six years after the notice of violation and cessation orders in question were made. The assessment which plaintiff contends is a precondition to suit was not merely required to be made in a timely fashion, within thirty days of the violation of law charged, it was in fact made, at least in part, in the amount of \$6,750 May, 1981, with a cover letter advising of an accruing daily penalty of \$750 per day for thirty days (Stipulation Exhibit "C"). The amount sought by plaintiff is \$22,500, which represents 30 days x \$750 per day, a mere matter of mathematical computation clearly determinable within thirty days of the violation.

Plaintiff's argument concerning appeal and review rights as extending its duty to act is misplaced since defendant took no appeal or review rights on either the violation or assessment and all matters at all relevant times were entirely within the plaintiff's exclusive control.

An appropriate Order will be entered.

OPINION AND ORDER

AND NOW, this 20th day of July, 1989, after consideration of the pleadings, stipulations, briefs and contentions of the parties and for the reasons set forth in the accompanying Opinion;

IT IS ORDERED that the Plaintiff's Motion for Summary Judgment be and the same is hereby DENIED; and the Defendant's Motion for Summary Judgment be and the same is hereby GRANTED; and that the above-captioned case is DISMISSED with prejudice.

W.D.Pa., 1989.

U.S. v. Graham

1989 WL 248111 (W.D.Pa.)

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must show necessity for the property taken did not mean that it must be indispensable to the proposed project. The word "necessary" as used in the statute [93-9905, RCM 1947] connoted that the particular property taken was reasonably requisite and proper for the accomplishment of the purpose for which it was sought under the peculiar circumstances of each case.

Alaska has construed A.S. 09.55.270(2), viz., "the taking is necessary to the use," similar to Montana in *City of Fairbanks v. Metro Company*.⁸ The court explained:

... once the condemnor has presented sufficient evidence to support a finding that a particular taking is "reasonably requisite" for the effectuation of the authorized public purpose for which it is sought, particular questions as to the route, location, or amount of property to be taken are to be left to the sound discretion of the condemning authority absent a showing by clear and convincing evidence that such determinations are the product of fraud, caprice, or arbitrariness.

The court's analysis of the evidence clearly reveals the application of the foregoing standard. The court observed the City had clearly met its initial burden of demonstrating its taking was reasonably necessary under the circumstances. The court continued:

Moreover, the evidence presented to the effect that the City's location of the sewer line on one side of the street as opposed to the other might entail higher acquisition and construction costs, and that a larger number of people were located on the other side by virtue of recent land development in the area, does not qualify as clear and convincing evidence that the City's determination was arbitrary or amounted to an abuse of discretion.

8. Alaska, 540 P.2d 1056, 1058 (1975).

9. 23 Utah 474, 484, 65 P. 735, 739 (1901).

10. *Salt Lake County v. Ramoselli*, Note 5 supra, is in accord with *Postal Tel. Cable*; therein

The foregoing precepts were expressed in *Postal Tel. Cable Company of Utah v. Oregon S.L.R. Company*.⁹

It is not a question whether there is other land to be had that is equally available, but the question is whether the land sought is needed for the construction of the public work. The necessity is shown to exist when it appears that it is necessary to take the land by condemnation proceedings in order to effectuate the purposes of the corporation. [Citation.] The respondent has the right to determine when and where its telegraph line shall be built. It may be said to be a general rule that, unless a corporation exercising the power of eminent domain acts in bad faith or is guilty of oppression, its discretion in the selection of land will not be interfered with. . . .¹⁰

[4] A review of the record in the instant case clearly establishes plaintiff sustained its initial burden of proof, viz., this particular taking was reasonably requisite to effect the authorized public purpose for which it was sought. The defendants presented no proof and the trial court made no finding that plaintiff's exercise of discretion in selecting this particular property was a product of bad faith, fraud, caprice, or arbitrariness. Plaintiff was entitled to condemn the property. Furthermore, since the property plaintiff sought to condemn was not already appropriated to a public use, subdivision 3 of § 78-34-4 was not applicable.

The issue of the potential interference of plaintiff's station with intervenor's cable system is strictly a matter of federal law and is within the jurisdiction of the F.C.C.

Unquestionably, federal legislation has pre-empted local regulation of radio transmission, including assignment of frequencies, interference phe-

this Court affirmed the trial court's ruling that the attempted condemnation was clear abuse of discretion.

nomena, and the content of broadcast material. [Citations] . . .¹¹

A review of the complex detailed regulations governing the authorizations for base stations [see 47 C.F.R. (1978), Subpart G—Domestic Public Land Mobile Radio Service, § 21.500 et seq.] clearly illustrates federal regulations have pre-empted control in this area.¹² Under 47 C.F.R., § 21.500, authorization for construction of plaintiff's base station is contingent on whether the public interest, convenience or necessity would be served by a grant of plaintiff's application. Intervenor will have an opportunity to set forth the interference issue before the F.C.C. If the F.C.C. undertakes to license one type of communication service and it appears likely the new service will degrade or impair the quality of existing service regulated by the F.C.C., the Commission is required under the public interest standard to balance the gains and losses to the public that will result from the changed conditions in both services.¹³

Having determined this matter by resolution of the fundamental issue, we do not reach other assigned error.

CROCKETT, C. J., and WILKINS, and HALL, JJ., concur.

STEWART, J., dissents.

CELEBRITY CLUB, INC., a Utah Nonprofit Corporation, Plaintiff,

v.

UTAH LIQUOR CONTROL COMMISSION, Defendant.

No. 16083.

Supreme Court of Utah.

Oct. 22, 1979.

Liquor license applicant filed petition seeking relief from order of the Liquor Control Commission denying application for license. The Supreme Court, Maughan, J., held that where Commission represented to applicant that applicant's plot plan complied with statute prohibiting the issuance of such licenses to clubs located within a radius of 600 feet of any public or private school, and applicant, in reliance upon such representation, expended upwards of \$200,000 to complete its club, Commission was thereafter estopped to deny the license on ground that applicant's facilities did not comply with the 600-foot requirement.

Order accordingly.

Crockett, C. J., and Wilkins, J., concurred specially and filed opinions.

1. Estoppel ¶52.15

Elements essential to invoke doctrine of equitable estoppel are: an admission, statement, or act inconsistent with claim afterwards asserted; action by other party on faith of such admission, statement, or act; and injury to such other party resulting from allowing the first party to contradict or repudiate such admission, statement, or act.

of mobile common carriers that has not been pre-empted by federal legislation.

11. *Schroeder v. Municipal Court of Los Cerritos*, 73 Cal.App.3d 841, 141 Cal.Rptr. 85, 87 (1977).

12. See *Fields v. Davis*, 31 Or.App. 607, 571 P.2d 511, 516 (1977) for the type of state regulation

13. *H. & B. Communications Corporation v. Federal Communications Commission*, C.A. D.C., 1969, 173 U.S.App.D.C. 413, 420 F.2d 638.



2. Estoppel — 62.2(2)

Where Liquor Control Commission represented to liquor license applicant that applicant's plot plan complied with statute prohibiting the issuance of such licenses to clubs located within a radius of 600 feet of any public or private school, and applicant, in reliance upon such representation, expended upwards of \$200,000 to complete its club, Commission was thereafter estopped to deny the license on ground that applicant's facilities did not comply with the 600-foot requirement. U.C.A.1953, 16-6-13.5.

Robert J. Stansfield, Salt Lake City, for plaintiff.

Robert B. Hansen, Atty. Gen., John S. McAllister, Asst. Atty. Gen., Salt Lake City, for defendant.

MAUGHAN, Justice:

Before us is a petition of the Celebrity Club, Inc., seeking relief from an order of the Utah Liquor Control Commission. The appeal is made pursuant to 32-1-32.6, U.C.A., 1953. The Commission denied the Club's application for a license which would allow it to provide for the consumption and storage of liquor, and to have a state liquor store on its premises.

We hold the Commission is estopped to deny a license to the petitioner, on the ground its facilities fall within the 600 foot proscription of 16-6-13.5. We remand for appropriate proceedings, pursuant to this opinion. All statutory references are to U.C.A., 1953, unless otherwise indicated.

Petitioner, a nonprofit corporation, applied to the Commission for a license pursuant to 16-6-13.1, et seq., wherein the Commission is authorized "to issue a license to a social club, recreational, athletic, or kindred association . . . which maintains or intends to maintain premises upon which liquor is or will be stored, consumed or sold . . ." The Commission accepted and adopted the recommendation of Kenneth F.

Wynn, its Director, that the application be denied by reason of the 600 foot restriction of 16-6-13.5, as amended 1977.

These restrictive provisions in 16-6-13.5 state:

but no original license shall be issued to any social club, recreational, athletic or kindred association where it is located within a radius of 600 feet of any public or private school, church, library, public playground or park unless the commission finds after full investigation, that the premises is located within a city of the third class or a town . . .

The Celebrity Club is located at 1037 East 3300 South in Salt Lake City, Utah. A private school, the Salt Lake Junior Academy is located at 3370 South 900 East; however, the property owned by the school extends in an easterly direction into the interior portions of the block. Prior to the construction of the necessary improvements required by statute and the rules and regulations of the Commission, petitioner contacted the compliance agents of the Commission regarding application of the 600 foot restriction to its situation. The agents advised petitioner the location of the state liquor store would have to be changed to comply with the statute, viz., to exceed the 600 foot proscription. Accordingly, petitioner modified its proposed location of the store. A subsequent physical inspection was made and petitioner was advised the new location was in compliance with the law, and a license could issue upon completion of numerous other conditions required prior to submission of an application.¹ A survey was made which indicated the nearest corner of the playground adjacent to the school building to the location of the proposed state liquor store was 622 feet.

On September 16, 1977, petitioner received the following letter:

Pursuant to your letter dated September 14, 1977, the Utah Liquor Control Commission reviewed the status of your application in relation to Section 16-6-

be submitted correctly and simultaneously before the Commission will accept an application.

13.5, Utah Code Annotated, 1953, as amended (the 600 foot requirement).

The Utah Liquor Control Commission reviewed the survey you submitted. Survey was accomplished by AAA Engineering and Drafting, Incorporated. Under the present interpretation of the statute by the State Attorney General's Office, the location of the proposed liquor store in your proposed private club facility satisfies the 600 foot requirement.

The plot plan you submitted completes one of the requirements for your application to be considered. The Utah Liquor Control Commission will consider your application for a private locker club license only when all statutory and Commission requirements have been met.

Sincerely,
Utah Liquor Control
Commission
Dennis R. Kellen,
Administrator

In reliance on the representation of the Commission that its plot plan complied with the 600 foot requirement of 16-6-13.5, as amended 1977, petitioner expended upwards of \$200,000 to complete its club. On February 21, 1978, petitioner completed the requirements to submit its formal application and filed it.

In response to the request of Director Wynn, the Attorney General's Office issued an opinion on March 28, 1978, interpreting the 600 foot rule under 16-6-13.5 and 32-1-36.15. This opinion recited the prior opinion of November 15, 1976, did not consider 16-6-13.5 and did not address itself to some specific questions. Although the opinion failed specifically to designate the matter, prior to the effective date of May 10, 1977, of the amendment to 16-6-13.5, this section did not specify a footage requirement. Previously the relevant provisions stated:

except that no license shall be issued to any club or association which establishes or intends to establish such premises in the immediate proximity of any existing school, church, library, public playground or park. [Emphasis supplied.]

The prior 1976 opinion had interpreted 32-1-36.15(2)(a), which provided:

No state store or package agency shall be located (this term was changed to "established" by an amendment in 1977 within a radius of 600 feet of any public or private school, church, library, public playground, or park . . .

The 1978 opinion stated, where a club or restaurant occupied the entire building, the 600 foot radius should be measured from the outside wall of the building nearest to the school, church, or park. If the club or restaurant were situated in a multi-use building, the 600 feet is measured from the wall within the building nearest to the school, church or park.

The 1978 opinion reiterated the statements in the 1976 opinion concerning the location of the points of measurement of the school. The point is located on the nearest wall of the building in the case of a school or church without a playground. In the case of a public playground or park, the point is located on the boundary. In the case of a school with a playground, the point is located on either the wall of the building or the boundary of the playground depending on which is closer to the wall of the proposed club or restaurant. If the school, church, etc. is bordered by property belonging to the entity, but not in use, the general rule limits the statutory definition (school, church, etc.) to that property and buildings actually used for worship, school or playground purposes.

The record indicates the school (Salt Lake Junior Academy) owns property adjoining the playground on its eastern boundary. A storage building was erected on this apparently unused property in the latter part of 1977. The residents of the area had a survey made, the point of measurement was taken from the northeast corner of the allegedly unused property, rather than from the corner of the more distant playground. The difference in the point of measurement creates a 48 foot discrepancy in petitioner's survey. Petitioner's opponents claimed, although the school property in dispute was undeveloped, it was used for school purposes.

1. A letter in the record from Director Wynn to petitioner states that twenty four exhibits must

Director Wynn, in a memorandum to the Commission, dated September 7, 1978, observed, in view of the opinion of the Attorney General of March 28, 1978, and the surveys submitted in connection with the application, the applicant is within 600 feet of a school playground; and recommended the application be denied.

At a meeting before the Commission on September 15, 1978, representatives of the school stated the undeveloped land was used for school purposes, viz., utilized for ecology studies and agricultural training. The effect of such statements on the Commission is not apparent, since the Commission specified its denial was based on the prior recommendation of its Director, Mr. Wynn.

On appeal, the parties' dispute focuses on the proper interpretation of 16-6-13.5, as amended 1977, as to the location of the point from which the measurement of 600 feet should extend and the location of the terminus of the licensed facility closest to the school.

16-6-13.5 proscribes the issuance of an original license "to any social club . . . where it is located within a radius of 600 feet of any public or private school . . ."

A "radius" is defined as a line segment extending from the center of a circle or sphere to the curve or surface.² Thus, the term "radius" in its natural meaning implies a circle with a center point, from whence the radius extends equidistantly in all directions. In some of those cases where the issue has arisen, the term "radius" has been interpreted in the geometrical sense, and the center from which it extends has been located in the center of the object, indicated as the geographical location for purposes of measurement. In *Mead v. Anton*³ one of the issues was the location of the starting point of the radius. The court stated:

2. Webster's Third New International Dictionary.

3. 33 Wash.2d 741, 207 P.2d 227, 234-235, 10 A.L.R.2d 588 (1949).

The bill of sale provides that respondents should not enter into competition with appellants 'within a radius of five hundred (500) yards of the present location of the Perkins Building,' while the assignment of the lease defines the distance as 'within a radius of Five Hundred Yards from the existing restaurant.'

We disregard the survey made from the northwest corner of the Perkins building, as the distance from that point is immaterial. The center of the circle, within which respondents were prohibited from competing with appellants, should be located either at the center of the Perkins building or, more probably, at the center of Anton's Coffee Shop in that building.

Cases setting forth an interpretation of the term "radius" as employed in contracts, statutes or ordinances as descriptive of an area, location or distance can be found in an annotation in 10 A.L.R.2d 605. The annotation provides:

Following the commonly accepted meaning of the term, the view has been taken that where a contract defines a prohibited territory as being within a radius of a certain number of miles from a certain place, the parties intended the utmost limit of the territory to be an equal distance from that place in every direction. An agreement not to practice dentistry within a "radius" of ten miles of Litchfield has been construed as excluding the practice of dentistry by the promisor within ten miles in every direction from the center of the village of Litchfield, and not within ten miles from the extreme boundaries of the village.

The term 'within' as used in the phrase 'within the radius' of a certain distance from a certain place has been construed as including all territory falling within

4. *Id.* at p. 606.

the measured circle. In *Sachs v. Legg* (1920) 219 Ill.App. 144, wherein an ordinance provided that no junk shop should be licensed on any site where two-thirds of the buildings within a radius of three hundred feet of the proposed site were used exclusively for residence and retail store purposes, or used exclusively for residence purposes, without the written consent of a majority of the property owners, according to the frontage, within a radius of three hundred feet of the proposed site, was construed as including all buildings located at all points inside the limits of three hundred feet of the proposed site, including a building on the proposed site. The court said that a radius is a straight line from the center of a circle or sphere to its periphery or surface, and a periphery is the circumference of a circle, and that the word 'within' was used as a preposition in the sense that the whole territory embraced within the limits of the three hundred feet should be included.⁵

In construing 16-6-13.5 another factor to be considered is that prior to 1977, this section proscribed the establishment of licensed premises "in the immediate proximity of any existing school . . ." The amendment, in effect, specified by measurement the meaning of "immediate proximity."

This Court has frequently set forth its duty to give effect, if such can be reasonably done, to every word, clause and sentence of a legislative enactment.⁶ Under this principle the phrase "within a radius of 600 feet of any public or private school" would be interpreted literally and the term "radius" would be construed in its geometric sense, viz., the radius would extend from the center of the school, equidistantly in all directions and not from the boundary of the land used for school purposes. It could be further argued, if the legislature so intended, it could have expressed the

5. *Id.* at p. 607.

6. *Gibb v. Dorius*, Utah, 533 P.2d 299, 302 (1975); *Maw v. Lee*, 108 Utah 99, 107, 157 P.2d 585 (1945).

proscription by stating "where it is located within a straight line distance of 600 feet from the boundary of any public or private school." Nevertheless, there is a corollary to the aforesaid principle of statutory interpretation: a statute is presumed not to be intended to produce absurd consequences, and where possible it will be given a reasonable and sensible construction. This Court has the duty to construe the law to promote the protection of the public.⁷

Included within the protected classification of 16-6-13.5 are libraries, public playgrounds and parks as well as schools and churches. Since it is reasonably probable that some of these facilities might occupy a large parcel of land devoted to their protected purposes, a 600 foot radius extending from the center might not reach the boundary of the facility. Under such circumstances the intended protection of the statute would be nullified. Such an interpretation would produce absurd consequences and fail to protect minors, as well as violate the expressed legislative policy of 32-1-4, which recognizes the rights of citizens who do not wish to be involved with alcoholic products. Thus, the practical interpretation of 16-6-13.5 by the Attorney General concerning the location of the point from which the measurement of the protected area should be made is consonant with the purpose of the statute.

In the present case, there was a conflict as to whether the undeveloped land of the Salt Lake Junior Academy was used for school purposes and, therefore, whether its boundary or the boundary of the playground constituted the appropriate point of measurement. This factual dispute was not resolved by any specific finding of fact. Generally, under such circumstances, the matter would have to be reversed for a factual determination; however, in this case petitioner has invoked the doctrine of estoppel, which is an appropriate solution in this situation and will be discussed infra.

7. *Curtis v. Harmon Electronics, Inc.*, Utah, 575 P.2d 1044, 1046 (1978).

Insofar as the location of nearest point of the licensed facility to the protected area is concerned, the 1978 opinion of the Attorney General is insufficient. A review of 16-6-13.5 clearly indicates the authority of the commission is to license the "premises upon which liquor is or will be stored, consumed or sold" There is no statutory basis to extend the authority of the commission to the entire building or grounds occupied by a social club, recreational, athletic, or kindred association.

16-6-12.1 states the definition of premises as used in this chapter shall have the meaning set forth in 32-1-3 of the Utah Liquor Control Act. Section 32-1-3, provides:

'Premises' means any room, enclosure, building or structure where alcoholic beverages may be lawfully manufactured, stored, sold, or consumed as provided in this act.

The intent of the legislature to confine the Commission's licensing authority to the area where liquor is stored, consumed or sold is further illustrated by the language of 16-6-13.6(1), wherein it is stated:

Every application shall contain a floor plan of the building indicating that part of the building where it is proposed to keep and store liquor or wine, the area provided for individual member lockers, the number thereof, and any other information the commission may require. No alterations may be undertaken in any part of the licensed premises where liquor is sold, stored or consumed, without the prior approval of the commission.

In a determination under 16-6-13.5 as to whether a license facility is situated within the proscribed area, the appropriate point

of location is the nearest wall where liquor is stored, consumed, or sold.

Finally, petitioner contends the Commission is estopped to deny the license on the ground the licensed premises are within the 600 foot proscribed area of 16-6-13.5. The facts of this case are extremely important as providing a basis for an estoppel, for the courts must be cautious in applying equitable estoppel against the State, especially when the State is functioning in its governmental, as opposed to its proprietary capacity.⁸

Equitable estoppel may be applied against the State, even when it is acting in a governmental capacity, if necessary to prevent manifest injustice, and the exercise of governmental powers will not be impaired as a result.

[1] The elements essential to invoke the doctrine of equitable estoppel are:

(1) an admission, statement, or act inconsistent with the claim afterwards asserted,

(2) action by the other party on the faith of such admission, statement, or act, and

(3) injury to such other party resulting from allowing the first party to contradict or repudiate such admission, statement, or act.¹⁰

[2] In this case petitioner was faced with a new statute which contained an apparent ambiguity (16-6-13.5 as amended (1977)). In an effort to comply with the law, petitioner sought administrative guidance from the Commission. Agents of the Commission advised as to the appropriate alterations to the premises, which petitioner followed. The Commission issued a letter advising petitioner that its club facility satisfied the 600 foot requirement of 16-6-13-

fendant Board) by his acts, representations, or admissions, or by his silence when he ought to speak, intentionally or through culpable negligence, induces another (plaintiffs) to believe certain facts to exist and that such other (plaintiffs) acting with reasonable prudence and diligence, relies and acts thereon so that he will suffer an injustice if the former (Land Board) is permitted to deny the existence of such facts."

5, as amended. Petitioner then expended, in reliance on the representation of the Commission, considerable funds to complete the club facilities, and fulfill the numerous requirements to complete its application. At this juncture the Commission is estopped to deny the license on the ground petitioner's facilities do not comply with the 600 foot requirement of 16-6-13.5.

The case of *State v. Sponburgh*,¹¹ wherein the court ruled the State Liquor Control Board was estopped to deny applicant's license, has particularly appropriate language for this case:

The doctrine of equitable estoppel is properly applicable in a case such as this, otherwise the whim of an administrative body could bankrupt an applicant who acted in good faith in reliance upon a solemn written commitment.

The conduct of government should always be scrupulously just in dealing with its citizens; and where a public official, acting within his authority and with knowledge of the pertinent facts, has made a commitment and the party to whom it was made has acted to his detriment in reliance on that commitment, the official should not be permitted to revoke that commitment.

HALL and STEWART, JJ., concur.

CROCKETT, Chief Justice (concurring with comments):

The Court's decision impresses me as being correct and justifiable under the particular facts. But I am impelled to express some reservation as to the application of the doctrine of estoppel against the state or its agencies. See reasoning and citation of authority in *Breitling Bros. v. Utah Golden Spikers, Inc.*, Utah, 597 P.2d 869 (1979).

As noted therein, those charged with the responsibility of handling the business of the state should deal with others with fairness and good conscience. For that reason, I agree that in rare exigencies, where the

interests of the public are not severely and adversely affected, and where otherwise some grave injustice may result, that the principle of estoppel may be applied.

To be considered in conjunction with the foregoing is the proposition that statutes should be given a sensible and practical application in accordance with their purpose. In this instance, that purpose seems to be to protect school students from possible improper influences that may emanate from a club which serves liquor. If the measurement were made from the school, and the area actually frequented by the students, to the area of the petitioner's property involved in the sale and drinking of liquor, there would be no violation of the 600-foot restriction. This is even more true if measured by the circuitous street travel necessary to get from one to the other, rather than taking the cross-fence crow-fly route. I think the position first taken by the Commission, that there would be no violation of the statute by petitioner, was sensible and practical; and that there should be involved no serious hazard to public welfare or morals because of a discrepancy of a few feet, depending upon how the measurement is made.

WILKINS, Justice (concurring with reservation):

I concur with reservation.

I believe petitioner should prevail and thereby not be denied a license in this case. And I concur in the reasoning and authorities of the majority opinion for this result which pertain to the Commission's being estopped from denying a license in this unusual case.

I respectfully suggest though that other stated grounds in the majority opinion for the Court's conclusion are not necessary, the doctrine of estoppel being completely dispositive herein.



8. *Metropolitan Park District of Tacoma v. State Department of Natural Resources*, 85 Wash.2d 821, 539 P.2d 854 (1975).

9. *West v. Dept. of Social and Health Services*, 21 Wash.App. 577, 586 P.2d 516, 518 (1978).

10. *Id.* Also see *Morgan v. Board of State Lands*, Utah, 549 P.2d 695, 697 (1976): " . . . Estoppel arises when a party (de-

11. 66 Wash.2d 135, 401 P.2d 635, 640 (1965).