

APRIL 2012 CROW TRIBAL LEGISLATURE

BILL NO. CLB 12-02

**INTRODUCED BY CEDRIC BLACK EAGLE, CHAIRMAN
CROW TRIBE EXECUTIVE BRANCH**

**A BILL FOR AN ACT ENTITLED:
“APPENDIX B – ADMINISTRATIVE LAW PROVISIONS FOR THE
CROW COAL MINING AND RECLAMATION CODE”**

WHEREAS, regulation of surface coal mining and reclamation in the United States is governed by Public Law 95-87, the Surface Mining Control and Reclamation Act of 1977 (SMCRA), which is administered by the Office of Surface Mining and Reclamation Enforcement ("OSM") within the U.S. Department of the Interior; and

WHEREAS, the Congress amended SMCRA in 2006 to allow for Tribes to assume the primary role administering SMCRA on Reservation land under the jurisdiction of the Tribes, subject to approval and continued oversight by OSM (referred to as "SMCRA primacy"); and

WHEREAS, the Crow Tribe intends to implement SMCRA primacy using a staged approach, beginning with assumption of inspection and enforcement functions and ultimately including processing and issuance of permits for new coal mines and modifications to existing mining permits; and

WHEREAS, as the first step in assuming primacy, the Crow Reclamation Office developed a comprehensive coal mining and reclamation code modeled after the provisions of the Federal SMCRA; and

WHEREAS, the Legislative Branch of the Crow Government passed "The Crow Coal Mining and Reclamation Code" (the "Code"), in the April 2010 legislative session, which was approved by the Chairman of the Executive Branch of the Government; and

WHEREAS, Section 201(c)(1) of the Code requires that the Director of the Crow Coal Regulatory Office promulgate and publish administrative rules and regulations to carry out the purposes and provisions of the Code according to procedures set forth in an Appendix B; and

WHEREAS, Section 319 of the Code requires that hearings conducted under the Code pursuant to Section 319 shall be conducted according to the procedures set forth in an Appendix B; and

WHEREAS, under the 2001 Crow Constitution, the Enumerated Powers of the Executive Branch of the Crow Government include the power to, in Article IV, Section 3(a), “represent the Crow Tribe of Indians in negotiation with Federal, State and local governments and other agencies, corporations, associations, or individuals in matters of welfare, education, recreation, social services and economic development affecting the Crow Tribe of Indians;” and

WHEREAS, the powers and duties of the Legislative Branch of the Crow Government under the 2001 Crow Constitution include in Article V, Section 2(a) the power “to promulgate and adopt laws, resolutions, ordinances, codes, regulations, and guidelines in accordance with this Constitution and federal laws for the governance of the Crow Tribe of Indians;”

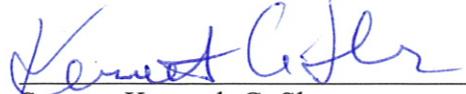
NOW, THEREFORE, BE IT ENACTED BY THE CROW TRIBAL LEGISLATURE:

Section 1. *ADOPTION.* Appendix B – Administrative Law Provisions for the Crow Coal Mining and Reclamation Code ("Appendix B"), attached hereto and incorporated herein by reference, is hereby enacted as the law of the Crow Tribe, and upon its effective date will be codified within the Crow Law and Order Code.

Section 2. *EFFECTIVE DATE.* The effective date of Appendix B shall be when all of the following conditions have been met: (1) The Code and other requirements for the Crow Coal Regulatory Office implementation of full or partial Program Primacy under SMCRA are approved by the Office of Surface Mining/Secretary of the Interior, (2) implementing regulations have been promulgated and adopted as provided in the Code, and (3) the Director of the Crow Office of Reclamation has certified in writing to the Legislature and the Chairman of the Executive Branch that staffing and all other arrangements necessary are made ready for the Crow Coal Regulatory Office to effectively administer the Code in whole or in part in accordance with approval by the Office of Surface Mining/Secretary of the Interior.

CERTIFICATION

I hereby certify that this Bill for “**Appendix B – Administrative Law Provisions for the Crow Coal Mining and Reclamation Code**” was duly enacted by the Crow Tribal Legislature with a vote of 14 for, 0 opposed, and 0 abstained and that a quorum was present on this 18th day of **April, 2012**.



Senator Kenneth G. Shane
Speaker of the House
Crow Tribal Legislature

ATTEST:



Senator R. Knute Old Crow, Sr.
Secretary, Crow Tribal Legislature



EXECUTIVE ACTION

I hereby:

X approve

_____ veto

this bill for "Appendix B – Administrative Law Provisions for the Crow Coal Mining and Reclamation Code" pursuant to the authority vested in the Chairman of the Crow Tribe by Article V, Section 8 of the Constitution and Bylaws of the Crow Tribe of Indians, on this 10th day of May, 2012.



**Cedric Black Eagle, Chairman
Crow Tribal Executive Branch**

A BILL FOR AN ACT ENTITLED: "APPENDIX B – ADMINISTRATIVE LAW PROVISIONS FOR THE CROW COAL MINING AND RECLAMATION CODE"

Bill or Resolution: JAR12-02 **Introduced by:** Chairman Cedric Black Eagle **Date of Vote:** 4/18/2012
Number

<u>Representative:</u>	Yes	No	Abstained
H. Two Leggins	<u> X </u>	<u> </u>	<u> </u>
V. Pretty Paint	<u> X </u>	<u> </u>	<u> </u>
C. J. Stewart	<u> X </u>	<u> </u>	<u> </u>
S. Backbone	<u> X </u>	<u> </u>	<u> </u>
A. Coyote-Runs, Sr.	<u> X </u>	<u> </u>	<u> </u>
L. Not Afraid.	<u> </u>	<u> </u>	<u> </u>
Covers Up, Sr.	<u> X </u>	<u> </u>	<u> </u>
P. Alden, Jr.	<u> </u>	<u> </u>	<u> </u>
M. Not Afraid	<u> </u>	<u> </u>	<u> </u>
V. Crooked Arm	<u> X </u>	<u> </u>	<u> </u>
L. DeCrane	<u> X </u>	<u> </u>	<u> </u>
C. Goes Ahead	<u> X </u>	<u> </u>	<u> </u>
B. Hugs	<u> X </u>	<u> </u>	<u> </u>
G. Real Bird, Jr.	<u> X </u>	<u> </u>	<u> </u>
M. Backbone	<u> X </u>	<u> </u>	<u> </u>
D. Wilson	<u> </u>	<u> </u>	<u> </u>
R. K. Old Crow, Sr. <i>Secretary of the House</i>	<u> X </u>	<u> </u>	<u> </u>
K. Shane <i>Speaker of the House</i>	<u> X </u>	<u> </u>	<u> </u>
Totals:	<u> 14 </u>	<u> 0 </u>	<u> 0 </u>

Result of Vote:

Passed

Not Passed

Tabled

Veto-Override



 Senator Kenneth G. Shane Date
 Speaker of the House

 4/25/12

 Senator R. Knute Old Crow, Sr. Date
 Secretary of the House

Appendix B - Administrative Law Provisions for the Crow Coal Mining and Reclamation Code

Part 1. Rulemaking Procedures

Sec. 1. Authority, Findings, and Policy.

- (a) Pursuant to Section 201(c)(1) of the Crow Coal Mining and Reclamation Code ("Code"), the Director of the Crow Coal Regulatory Office ("CCRO") is empowered to promulgate and publish rules and regulations as necessary to carry out the purposes and provisions of the Code. These rules and regulations must be promulgated according to the procedures set forth in this Appendix B.
- (b) Administrative procedures for rulemaking will assist in ensuring the protection, health, safety and welfare of Crow Tribal members, the public, and all persons residing or doing business within the Crow Reservation by formalizing tribal guarantees that no person within tribal jurisdiction shall be deprived of liberty or property by tribal government action without due process of law.
- (c) It is the policy of the CCRO to provide fair, open, and equitable procedures to guide and govern the exercise of its regulatory powers in rulemaking.

Sec. 2. Notice, Hearing, and Publication.

- (a) Prior to the adoption, amendment, or repeal of any substantive rule or regulation, not relating to internal procedures or management practices, the Director of the CCRO must provide written notice to the public of the proposed action. The written notice must include the information listed in subsection (f) of this Section. The CCRO Director must also conduct a public hearing on the proposed action. The CCRO Director may issue a single notice regarding the adoption, amendment, or repeal of several rules or regulations for a single proceeding.
- (b) The CCRO Director must provide written notice of any proposed adoption, amendment, or repeal of any substantive rule or regulation, not relating to internal procedures or management practices, to the Chairman of the Crow Tribe Executive Branch, the Speaker of the Crow Tribal Legislative Branch, the Crow Tribal Court, and the Director of the Office of Surface Mining and Reclamation ("OSM") within the U.S. Department of the Interior not later than thirty (30) days prior to the public hearing on

the proposed action. The written notice must include the information listed in subsection (f) of this Section and must include a copy of the full text of the proposal and the explanation thereof.

- (c) The CCRO Director must make a presentation to the Crow Tribal Legislature on any proposed adoption, amendment, or repeal of any substantive rule or regulation, not relating to internal procedures or management practices, not later than ten (10) days prior to the public hearing on the proposed action.
- (d) Any interested persons who have made timely requests to the CCRO to be informed of its rulemaking proceedings must be provided written notice by the CCRO Director of any proposed adoption, amendment, or repeal of any substantive rule or regulation, not relating to internal procedures or management practices, not later than thirty (30) days prior to the public hearing on the proposed action. The written notice must include the information listed in subsection (f) of this Section and must include a copy of the full text of the proposal and the explanation thereof.
- (e) Written comments on the proposed action may be submitted by any interested person and oral comment may be received from any interested person who submits a notice of intention to comment. All written comments and notices of intention to orally comment must be submitted to the Director of the CCRO no later than three (3) days prior to the date of the hearing.
- (f) Written notice of the proposed action, as required in subsection (a), must be published not later than thirty (30) days before the date set for the public hearing and shall be published once a week for two (2) consecutive weeks in a local newspaper of general circulation. The written notice must include the following:
 - 1. the subject of the proposed rule, regulation, or action;
 - 2. the reasonable necessity for the proposed action and the effect if adopted;
 - 3. the date, time, and place of the public hearing to be conducted;
 - 4. the mailing address of the person and place from which a copy of the full text of the proposal and the explanation thereof may be obtained by any interested person; and

5. the date and place for submission of written comments and for submission of an intention to make an oral comment at the hearing.

(g) Persons making an oral comment at the hearing shall be subject to questioning relevant to their testimony by the Director of the CCRO.

Sec. 3. Emergency Rule or Regulation.

(a) If the CCRO Director determines that an imminent threat to the public health, safety, or welfare requires adoption of a rule or regulation upon less notice than provided in this Section, and states in writing an emergency rule justification, including the reasons for that finding, the CCRO Director may proceed, without prior notice or with an abbreviated notice and hearing, to adopt an emergency rule or regulation.

(b) The CCRO Director must provide special notice to the Chairman of the Crow Tribe Executive Branch, the Crow Tribal Legislature, the Crow Tribal Court, the Secretary of the U.S. Department of the Interior ("Secretary"), and the Director of OSM.

(c) The CCRO Director must submit all relevant information regarding adoption of an emergency rule or regulation to the Director of OSM, including the emergency rule justification in subsection (a) above and all information required under Section 6 of this Part. OSM approval is required for an emergency rule or regulation, as provided under Section 6 of this Part. After approval by the Director of OSM or the Secretary, an emergency rule or regulation shall become permanent and effective upon publication in the Federal Register unless the notice specifies a different effective date.

Sec. 4. Petition for Adoption, Amendment, or Repeal of a Rule or Regulation.

(a) Any interested person may petition the CCRO requesting the promulgation, amendment, or repeal of a substantive rule or regulation, not relating to internal procedures or management practices. The petition shall include a concise statement of the facts, technical justification, and law that support promulgation, amendment, or repeal of a substantive rule or regulation.

- (b) Upon receipt of the petition, the CCRO Director must determine if the petition sets forth facts, technical justification and law, which may provide a reasonable basis for issuance, amendment, or repeal of a substantive rule or regulation. Facts, technical justification or law previously considered in a petition or rulemaking on the same issue shall not provide a reasonable basis.
- (c) If the CCRO Director determines that the petition has a reasonable basis, notice shall be published in a newspaper of general circulation in the area of the CCRO and formal notice must be given to the Legislative, Judicial and Executive Branches of Crow Tribal Government seeking comments from the public on the proposed change. The CCRO Director may hold a public hearing, conduct an investigation, or take other action to determine whether the petition should be granted.
- (d) Within ninety (90) days after receipt of a petition, the Director of the CCRO either must deny the petition in writing, stating the reasons for the denial, or must initiate rulemaking proceedings in accordance with Part 1. of this Appendix B.

Sec. 5. Requisites for Validity.

- (a) The Director of the CCRO must fully consider written and oral submissions regarding a proposed substantive rule or regulation. The CCRO Director must prepare a concise statement of the principal reasons for and against adoption, amendment, or repeal of the rule or regulation, including any responding comments by the CCRO. These statements of principal reasons for and against adoption, amendment, or repeal of the rule or regulation and the corresponding comments of the CCRO must be provided without charge to any requesting person. If no written or oral submissions have been received, the statement of reasons may be omitted.
- (b) Each substantive rule or regulation adopted or amended by the CCRO must be within the scope of authority conferred by the Code and in accordance with standards prescribed by applicable tribal and federal law.
- (c) Adoption, amendment, or repeal of any substantive rule or regulation of the CCRO is subject to review and approval by the Secretary or the Director of OSM as required under subsection 710(j)(1) of the Surface Mining Control and Reclamation Act of 1977 ("SMCRA").

Sec. 6. OSM Approval, Effective Date, and Publication.

- (a) Within thirty (30) days of a public hearing regarding the adoption, amendment, or repeal of a substantive rule or regulation, the CCRO Director must submit all relevant information to the Director of OSM, including the following:
 - 1. the language of the proposed adoption, amendment, or repeal of the substantive rule or regulation;
 - 2. information obtained from the public hearing;
 - 3. a statement of the principal reasons for and against adoption, amendment, or repeal; and
 - 4. any responding comments by the CCRO.
- (b) The Director of OSM or the Secretary will approve or disapprove the proposed adoption, amendment, or repeal of the substantive rule or regulation, which will be published in the Federal Register and will be effective upon publication unless the notice specifies a different effective date. Decisions by the Director of OSM or the Secretary will be published in the Federal Register within thirty (30) days of the date of the decision.
- (c) Immediately upon the filing of a substantive rule or regulation pursuant to Section 7, the CCRO Director must provide written notice, published once a week for two (2) consecutive weeks in a local newspaper of general circulation, of the filing, effective date, and the mailing address from which the complete text of the rule or regulation, including the summary and response to comments, may be obtained.

Sec. 7. Filing and Dissemination.

- (a) The Director of the CCRO must file with the Office of the Secretary of the Crow Tribe Executive Branch, the Secretary of the Crow Tribe Legislative Branch, the Crow Tribal Court, the Tribe's Office of Legal Counsel, and the Secretary, a copy of each rule or regulation adopted, amended, or repealed under this Part upon publication in the Federal Register.
- (b) The Director of the CCRO must keep and maintain a permanent register of all rules and regulations filed, including superseded and repealed rules and regulations, which must be open to public inspection, and must provide copies of any rule or regulation upon request. The Director of the CCRO may require payment for the cost of providing such copies.

Sec. 8. Judicial Review.

- (a) Section 324(a)(1) of the Code provides for review of the rules and regulations promulgated by the CCRO by the Crow Tribal Court. The rules and regulations adopted by the CCRO will be upheld unless the Crow Tribal Court finds they are arbitrary, capricious, or otherwise inconsistent with applicable law.

Part 2. Administrative Adjudicatory Hearings

Sec. 9. Authority, Findings, and Policy.

- (a) Pursuant to Section 319 of the Code, hearings must be conducted according to the procedures set forth in Part 2 of this Appendix B.
- (b) Administrative procedures for the hearing and deciding of contested cases will assist in ensuring the protection, health, safety and welfare of Crow Tribal members, the public, and all persons residing or doing business within the Crow Reservation by formalizing tribal guarantees that no person shall be deprived of liberty or property by tribal government action without due process of law.
- (c) It is the policy of the CCRO to provide fair, open, and equitable procedures to guide and govern the exercise of its regulatory powers and to make available an opportunity for hearings and for subsequent judicial review to every person aggrieved by a regulatory action of the Crow Coal Regulatory Office.

Sec. 10. Petition for Administrative Hearing.

- (a) An applicant, permittee, or any person with an interest that is or may be adversely affected may petition for a hearing on the following decisions of the CCRO by submitting a written request to the CCRO stating the reason for the request within thirty (30) days after any of the following:
 - 1. approval or denial of an application for a permit or revisions to a permit, including decisions on challenges to an ownership or control listing or finding, suspension or rescission of improvidently-issued permits, and findings concerning a demonstrated pattern of willful violations, pursuant to Sections 306 through 310 of the Code;

2. notice of a violation of permit conditions or any other provision of the Code with charges of a civil penalty and orders pertaining to the suspension or revocation of permits pursuant to Sections 315 and 318 of the Code;
 3. approval or denial of an application for release of performance bond or deposit pursuant to Section 316 of the Code;
 4. notice to abate a violation of the Code or any permit condition required by the Code, issuance of a cessation order, or order to show cause regarding why a permit should not be suspended or revoked pursuant to Section 323 of the Code;
 5. notice of a designation or redesignation of lands as unsuitable for mining pursuant to Section 321 of the Code;
- (b) Any party to an investigation of an alleged discriminatory act under Section 406 of the Code may make a written request for a hearing to the CCRO within sixty (60) days after an application is made to the CCRO for review of the alleged discriminatory act.
- (c) A written request for a hearing under subsection (a) or (b) of this Section must include the following:
1. The name, mailing address, and phone number of the petitioner and the petitioner's authorized representative, if any;
 2. The place of organization and the principal place of business, if the petitioner is a business;
 3. A statement of the facts constituting the alleged injury to the petitioner's interests; and
 4. The relief requested.
- (d) Upon receipt of a written request to petition for a hearing, the CCRO must transmit the petition, including the administrative record of the matter, to a Hearing Officer, who is appointed and authorized in accordance with Section 12. No later than ten (10) days after receipt of a petition, the Hearing Officer must set a schedule for a hearing and send notice of the schedule to all parties, including a copy of the petition and the administrative record of the matter. The hearing must be held within forty-five (45) days of the date of the notice of schedule unless the time is extended by the Hearing Officer for good cause. Alternatively, the hearing must be expedited if required by law or for good cause shown by the petitioner.

- (e) The respondent must have fifteen (15) days from receipt of a copy of a petition to file an answer or response with the Hearing Officer and simultaneously serve copies of that document on all other parties and persons participating in the proceeding.

Sec. 11. Petition for Temporary Relief.

(a) Filing Requirements

An application for temporary relief may be filed by any party to a proceeding at any time prior to a decision by the Hearing Officer. The application must be filed with the Hearing Officer to whom the case has been assigned the applicant shall simultaneously serve copies of the document on all other parties and persons participating in the proceeding.

(b) Contents of Application

The application must include:

1. A detailed written statement setting forth the reasons why relief should be granted;
2. A showing that there is a substantial likelihood that the findings and decision of the Hearing Officer in the matters to which the application relates will be favorable to the applicant;
3. A statement that the relief sought will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources;
4. If the application relates to an order of cessation issued pursuant to Section 318(a)(2) or (a)(3) of the Code, a statement of whether the requirement of Section 323(c) of the Code for decision on the application within 5 days is waived; and
5. A statement of the specific relief requested.

(c) Response to Application

Except as provided in subsection (e) below, all parties to a proceeding to which the application relates must have 5 days from the date of receipt of the application to file a written response. Further, except as provided in subsection (e) below, the Hearing Officer may hold a hearing on any issue raised by the application deemed appropriate by the Hearing Officer.

(d) Determination on Application Concerning Notice of Violation pursuant to Section 318 of the Code

Where an application has been filed requesting temporary relief from a notice of violation issued under Section 318 of the Code, the Hearing Officer must expeditiously issue an order or decision granting or denying such relief.

(e) Determination on Application Concerning Order of Cessation

If the 5-day requirement of Section 323(c) of the Code is waived, the Hearing Officer must expeditiously conduct a hearing and render a decision on the application. If there is no waiver of the 5-day requirement of Section 323(c) of the Code, the following special rules must apply:

1. The 5-day time for decision must not begin to run until the application is filed pursuant to subsection (a) of this Section.
2. The applicant shall serve any other parties with a copy of the application simultaneously with the filing of the application. If service is accomplished by mail, the applicant shall inform such other parties by telephone at the time of mailing that an application is being filed, the contents of the application, and with whom the application was filed.
3. All other parties may indicate their objection to the application by communicating such objection to the Hearing Officer and the applicant by telephone. However, no ex parte communication as to the merits of the proceeding may be conducted with the Hearing Officer. All other parties must simultaneously reduce their objections to writing. The written objections must be immediately filed with the Hearing Officer and immediately served upon the applicant.
4. Upon receipt of communication that there is an objection to the request, the Hearing Officer must immediately order a location, time, and date for the hearing by communicating such information to all parties and the applicant by telephone. The Hearing Officer must reduce such communications to writing in the form of a memorandum to the file.
5. The Hearing Officer may require the parties to submit proposed findings of fact and conclusions of law at the hearing which may be orally supplemented on the record at the hearing or where written proposed findings of fact and conclusions of law have not been submitted at the hearing, they may be orally presented for the record at the hearing. The Hearing Officer must either rule from the bench on the application, orally stating the reasons for his

decision or shall within 24 hours of completion of the hearing, issue a written decision. If the Hearing Officer makes an oral ruling, his approval of the record of the hearing shall constitute the written decision.

6. The order or decision of the Hearing Officer must be issued within five (5) working days of the receipt of the application for temporary relief.
7. If at any time after the initiation of this expedited procedure, the applicant requests a delay or acts in a manner so as to frustrate the expeditious nature of this proceeding or fails to supply the information required, such action shall constitute a waiver of the 5-day requirement of Section 323(c) of the Code.

(f) Application for Temporary Relief from Alleged Discriminatory Acts

1. On or after ten (10) days from the filing of an application for review under this Section, any party may file an application for temporary relief from alleged discriminatory acts.
2. The application shall be filed with the Hearing Officer and include:
 - i. A detailed written statement setting forth the reasons why relief should be granted;
 - ii. A showing that the complaint of discrimination was not frivolously brought;
 - iii. A description of any exigent circumstances justifying temporary relief; and
 - iv. A statement of the specific relief requested.
3. All parties to the proceeding to which the application relates must have five (5) days from receipt of the application to file a written response with the Hearing Officer and simultaneously serve copies of that document on all other parties and persons participating in the proceeding.
4. The Hearing Officer may convene a hearing on any issue raised by the application deemed appropriate by the Hearing Officer.
5. The Hearing Officer must expeditiously issue an order or decision granting or denying such relief.

6. If all parties consent, before or after the commencement of any hearing on an application for temporary relief, the Hearing Officer may order the hearing on the application for review of alleged discriminatory acts to be advanced and consolidated with the hearing on the application for temporary relief.

(g) Appeals

Any party desiring to appeal a decision of the Hearing Officer granting or denying temporary relief may seek judicial review pursuant to Section 324(a) of the Code.

Sec. 12. Hearing Officers.

(a) Scope of Authority

Hearing Officers are authorized to conduct hearings pursuant to Section 319 of the Code, which includes hearing, considering, and determining matters within the jurisdiction of the CCRO in accordance with the Code and the Crow Coal Regulatory Office Coal Mining and Reclamation Regulations ("CMRR").

(b) Appointment and Term of Hearing Officers

The Chairman of the Crow Tribe Executive Branch must appoint a person with suitable qualifications to serve as a Hearing Officer on an as-needed basis for a term of four (4) years, with confirmation by the Crow Tribal Legislature.

(c) Qualifications

In making the appointment of Hearing Officers, the following qualifications must be considered:

1. education or experience in the application of administrative law and procedures;
2. education or experience in conducting contested case hearings;
3. writing skills and ability to summarize findings of fact and conclusions of law; and
4. substantive knowledge or experience in the discipline or field or expertise related to the activities of the CCRO and the activities conducted under the Code.

(d) Compensation and Reimbursement

Hearing Officers may receive such compensation for services rendered as provided by the CCRO, including reimbursement for travel and per diem expenses incurred by reason of required attendance for matters and hearings pursuant to this Appendix B.

(e) Vacancies and Removal

1. A vacancy occurring in the position of Hearing Officer, other than by expiration of a term, must be filled by appointment for the remainder of unexpired term in accordance with subsection (b) of this Section.
2. A Hearing Officer may be removed by the Chairman of the Crow Tribe Executive Branch, for cause, after due notice to the Hearing Officer and an adequate opportunity to be heard by the Chairman of the Crow Tribe Executive Branch and the Crow Tribal Legislature.

(f) Powers and Duties of Hearing Officer

The Hearing Officer must:

1. Administer rules of practice for contested case hearings;
2. Receive all petitions for hearing of contested cases made pursuant to the procedures set forth in this Part 2 of Appendix B and set times and places for hearings;
3. Transmit a written report on or before the end of January each year to the Tribal Chairman and the Crow Legislative Branch on:
 - i. the numbers, types, and disposition of contested cases heard, the costs associated with such hearings; and
 - ii. any recommendations the Hearing Officer may have for amendments or improvements to the administrative procedures of the CCRO
4. Conduct any hearing on the record and in accordance with the procedures contained in this Part 2 of Appendix B and determine by final order or decision any contested matter so heard; and
5. Make complete and accurate records of all proceedings associated with the hearing and disposition of contested cases.

(g) Additional Powers of Hearing Officer

A Hearing Officer may:

1. Require the CCRO to provide secretarial and/or court reporter services and supplies for purposes of conducting and recording the hearing on a contested case to which the CCRO is a named party;
2. Utilize the services of the support staff of the Crow Tribe's Office of Legal Counsel for routine clerical activities;
3. Take judicial notice of the files, documents, records, and maps of the CCRO and the Bureau of Indian Affairs; and
4. Exercise all powers necessarily incidental to the Hearing Officer's authority to conduct hearings of contested cases and determine their disposition, including the following:
 - i. to issue notice,
 - ii. to issue subpoenas requiring the attendance of persons and the production of documents,
 - iii. to administer oaths and affirmations,
 - iv. to provide for the taking of testimony and depositions,
 - v. to set the time and place for hearings,
 - vi. to set motion and briefing schedules, if applicable,
 - vii. by mutual consent of the parties, to hold conferences to consider narrowing or simplifying the issues,
 - viii. to rule on the relevancy, materiality, and redundancy of evidence, and
 - ix. to dispose of procedural requests or similar matters.

(h) Disqualification

1. No Hearing Officer may hear or decide a contested case involving the personal interests of the Officer or of a person in the immediate family of the Officer. Immediate family in this context shall mean a spouse or former spouse, any person related by blood, marriage or adoption to the Officer in the first or second degree.
2. A party may file in good faith a timely and sufficient affidavit of personal bias, disqualification by law, or other disqualification of the Hearing Officer. The affidavit must state the facts and reasons for the belief that the Hearing Officer should be disqualified and must be filed with the Hearing Officer and the Director of the CCRO not less than ten (10) days before the hearing in a contested case.
3. The Hearing Officer will consider the objections and decide whether to withdraw or proceed with the hearing.
4. If the Hearing Officer does not withdraw, the objecting party may, after the hearing, present its objections to the Crow Tribal Court as reasons for changing, modifying, or reversing the Hearing Officer's decision.

Sec. 13. Adjudications.

(a) Notice

Parties entitled to notice of a hearing of a contested case must be informed within thirty (30) days of the hearing of:

1. A statement of the time, place, and nature of the hearing;
2. A reference to the particular section(s) of the Code involved; and
3. A short and plain statement of the matters asserted.

Except for expedited review proceedings and temporary relief proceedings where time is of the essence, notice given under this Section must be in writing.

In an expedited proceeding when there is only opportunity to give oral notice, the Hearing Officer must enter that fact contemporaneously on the record by a signed and dated memorandum describing the notice given.

(b) Ex Parte Communication

A Hearing Officer must not communicate with any party or their representative in connection with any issue of fact or law. Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this subsection, the Hearing Officer may, to the extent consistent with the interests of justice and the policy of the underlying laws, require the party to show why their claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected as a result of such violation.

(c) Ancillary Matters

1. A party is entitled to appear in person or by or with legal counsel or other authorized representative in a proceeding before a Hearing Officer. A person compelled to appear in person before a Hearing Officer may be accompanied, represented, and advised by legal counsel or other authorized representative, provided that such counsel or representative is employed by said person at his or her own costs.
2. Subpoenas shall be issued by a Hearing Officer to a party on request or when required by a Hearing Officer on a showing of general relevance and reasonable scope of the evidence sought.
3. In fixing the time and place for a hearing, due regard must be made for the convenience and necessity of the parties or their representatives. When private persons are the moving parties, other parties to the proceeding shall provide prompt notice of issues that are controversial in fact or law, and the Hearing Officer, may in his or her discretion, require a responsive pleading.
4. A Hearing Officer, may in his or her sound discretion, issue a declaratory order to terminate a controversy or remove uncertainty, with the same effect as a final order.
5. Disposition of any contested case may be made by stipulation, agreed settlement, consent order, or default.

(d) Conduct of Hearings

1. The Hearing Officer must ensure that all parties are afforded the opportunity to respond and present evidence and argument on all issues involved.

2. The hearing is open to attendance by the public, except for such portions closed by the Hearing Officer pursuant to an applicable law or regulations expressly authorizing closure.

3. The hearing, including all testimony, must be reported verbatim by any appropriate means, including video cameras. A copy of such proceedings will be furnished to any party upon written request and the payment of a reasonable fee. If one or more parties desire the hearing transcribed by a certified court reporter, they must make the necessary arrangements and bear the costs thereof.

4. Absent a determination by the Hearing Officer that the interests of justice require otherwise, the order of a hearing is as follows:
 - i. The Hearing Officer must announce that the hearing is convened and must indicate the title of the case to be heard;
 - ii. Any motions or preliminary matters must be heard;
 - iii. Any opening statements requested or allowed by the Hearing Officer, to briefly explain the party's position and outline the proposed evidence which will be offered along with its purpose;
 - iv. Presentation of evidence by the party asserting a claim for relief (the petitioner);
 - v. Cross-examination by the opposing party (respondent);
 - vi. Rebuttal testimony as allowed and directed by the Hearing Officer; and
 - vii. Any closing statements requested or allowed by the Hearing Officer.

5. All testimony must be given under oath or affirmation.

6. The burdens of proof and persuasion must be as follows. For the burden of proof, a prima facie case is made when sufficient evidence is presented to establish essential facts that provide sufficient proof if not contradicted. To satisfy the burden of persuasion, a case must be proven by a preponderance of the evidence, which is evidence that is of greater weight or more convincing than the evidence which is offered in opposition to it.
 - i. In civil penalty proceedings, the CCRO shall have the burden of going forward to establish a prima facie case as to the fact of the violation and the amount of the civil penalty and the ultimate burden of persuasion as to the amount of the civil penalty. The person who petitioned for review must have the ultimate burden of persuasion as to the fact of the violation.
 - ii. In civil penalty proceedings:
 - a. The CCRO shall have the burden of going forward with evidence to establish a prima facie case that:
 - (1) A corporate permittee either violated a condition of a permit issued under the Code or failed or refused to comply with an order issued under Section 318 of the Code or an order incorporated in a final decision by the CCRO under the Code, unless the fact of violation or failure or refusal to comply with an order has been upheld in a final decision in a proceeding under Part 2 of this Appendix B, and the individual is one against whom the doctrine of collateral estoppel may be applied to preclude relitigation of fact issues;
 - (2) The individual, at the time of the violation, failure or refusal, was a director, officer, or agent of the corporation; and
 - (3) The individual willfully and knowingly authorized, ordered, or carried out the corporate permittee's violation or failure or refusal to comply.

- b. The individual shall have the ultimate burden of persuasion by a preponderance of the evidence as to the elements set forth in paragraph (1) of this subsection (d)6.ii.a.
 - c. The CCRO shall have the ultimate burden of persuasion by a preponderance of the evidence as to the elements set forth in paragraphs (2) and (3) of this subsection (d)6.ii.a. and as to the amount of the individual civil penalty.
- iii. In review of Section 318 notices of violation or orders of cessation, or the modification, vacation, or termination thereof, including expedited review, the CCRO shall have the burden of going forward to establish a prima facie case as to the validity of the notice, order, or modification, vacation, or termination thereof. The ultimate burden of persuasion shall rest with the applicant for review.
 - iv. For hearings regarding a demonstrated pattern of willful violations under Section 306(c) of the Code, the CCRO shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion as to the existence of a demonstrated pattern of willful violations of such nature and duration with such resulting irreparable damage to the environment as to indicate an intent not to comply with the Code, the CMRR, the regulatory program, or the permit, issued in accordance with the Code.
 - v. For review of approval, denial, or revisions of a permit issued in accordance with the Code:
 - a. In a proceeding to review a decision on an application for a new permit:
 - (1) If the permit applicant is seeking review, the CCRO shall have the burden of going forward to establish a prima facie case as to the failure to comply with the applicable requirements of the Code or the CMRR or as to the appropriateness of the permit terms and conditions, and the permit applicant shall have the ultimate burden of persuasion as to entitlement to the permit or

as to the inappropriateness of the permit terms and conditions.

- (2) If any other person is seeking review, that person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the permit application fails in some manner to comply with the applicable requirements of the Code or the CMRR, or that the CCRO should have imposed certain terms and conditions that were not imposed.
 - b. In a proceeding to review a permit revision ordered by the CCRO, the CCRO shall have the burden of going forward to establish a prima facie case that the permit should be revised and the permittee shall have the ultimate burden of persuasion.
 - c. In a proceeding to review the approval or disapproval of an application for a permit renewal, those parties opposing renewal shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the renewal application should be disapproved.
 - d. In a proceeding to review the approval or disapproval of an application for a permit revision or an application for the transfer, assignment, or sale of rights granted under a permit:
 - (1) If the applicant is seeking review, the CCRO shall have the burden of going forward to establish a prima facie case as to the failure to comply with applicable requirements of the Code or the CMRR, and the applicant requesting review shall have the ultimate burden of persuasion as to entitlement to approval of the application; and

- (2) If any other person is seeking review, that person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the application fails in some manner to comply with the applicable requirements of the Code or the CMRR.

- vi. For review of CCRO decisions proposing to suspend or rescind or suspending or rescinding improvidently issued permits, the CCRO shall have the burden of going forward to present a prima facie case of the validity of the notice of proposed suspension or rescission or the notice of suspension or rescission. The permittee shall have the ultimate burden of persuasion by a preponderance of the evidence that the notice is invalid.

- vii. For review of CCRO decisions concerning ownership or control challenges, the CCRO shall have the burden of going forward to present a prima facie case of the validity of the decision. The person filing the request for review shall have the ultimate burden of persuasion by a preponderance of the evidence that the decision is in error.

- viii. For requests to review CCRO determinations of issues under Section 321 of the Code, if the person who requested the determination is seeking review, the CCRO shall have the burden of going forward to establish a prima facie case and the person who requested the determination shall have the ultimate burden of persuasion. If any other person is seeking review, that person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the person who requested the determination does or does not have valid existing rights.

- 7. Any part of the evidence may be received in written form if doing so will facilitate the hearing without substantial prejudice to the interests of any party. A reasonable opportunity must be afforded to all parties of the intent to introduce and rely upon written evidence within a reasonable period of time prior to the scheduled hearing, and a copy of such evidence may be requested by any party prior to the hearing.

8. Exhibits offered by a party must be marked and identify the person offering the exhibits. The petitioner's exhibits shall be marked by numbers beginning with "1" and the respondent's exhibits shall be marked by letters of the alphabet beginning with "A." All exhibits shall be preserved as part of the record of the proceedings.
9. The grounds for objection to any evidence or testimony offered must be briefly stated. Rulings on all objections shall appear in the record.
10. Irrelevant, immaterial, or unduly repetitious evidence must be excluded, without regard to whether such evidence is in verbal or written form.
11. Notice may be taken of judicially cognizable facts, along with technical or scientific facts within the Hearing Officer's specialized knowledge or information, provided that the parties are properly notified of any material facts noticed.
12. The Hearing Officer may request the parties to submit written arguments or proposed findings of fact and conclusions of law according to a schedule set by the Hearing Officer.

(e) Record

1. The record in a contested case hearing must include the following:
 - i. All formal and informal petitions, pleadings, motions, orders, and notices;
 - ii. All evidence, either written or oral, received or considered by the Hearing Officer, including matters officially noticed;
 - iii. Questions and offers of proof, objections, and rulings on objections;
 - iv. Proposed findings and any objections thereto; and
 - v. Any decision, opinion, or report by the Hearing Officer, which must be in writing.
2. Each party, or his authorized representative, must be permitted to inspect and copy, at their own expense, all documents in the case record.

3. At the request of any party, the record may be transcribed. The cost of transcription is the responsibility of the requesting party.

(f) Post Hearing Supplementation

After a hearing and before a decision has been issued, a party may file a motion with the Hearing Officer for post-hearing supplementation of the record to submit additional, newly discovered evidence on material issues. If such motion is approved by the Hearing Officer, all other parties are entitled to respond to the new evidence, with the record to be closed on a date set by the Hearing Officer.

(g) Final Orders

1. The Hearing Officer must make a final written order or decision, including findings of fact and conclusions of law, stated separately, within thirty (30) days after the close of the record.
2. The findings of fact must be based exclusively on the evidence of record and matters officially noticed.
3. Each conclusion of law must be supported by authority or by a reasoned opinion.
4. All parties must be notified either personally or by mail of any decision or order. Upon request, a copy of the decision or order must be delivered or mailed to each party and to his attorney of record.
5. The final order must be entered into the record and will, without further action, become the decision and order as a result of the hearing. The Hearing Officer must index and file the final order with the CCRO.

(h) Reconsideration

1. A party may file a motion for reconsideration of a decision of the Hearing Officer within thirty (30) days after the date of the decision. The Hearing Officer may reconsider his or her decision in extraordinary circumstances.
2. The motion may include a request that the Hearing Officer stay the effectiveness of the decision. However, a motion for reconsideration will not stay the effectiveness or affect the finality of the Hearing Officer's decision unless so ordered by the Hearing Officer for good cause.

3. Any other party to the original action may file a response to a motion for reconsideration with the Hearing Officer within twenty-one (21) days after service of the motion, unless the Hearing Officer orders otherwise.
4. A party does not need to file a motion for reconsideration in order to exhaust its administrative remedies.
5. A motion for reconsideration must:
 - i. Specifically describe the extraordinary circumstances that warrant reconsideration; and
 - ii. Include all arguments and supporting documents.
6. Extraordinary circumstances that may warrant granting reconsideration include, but are not limited to:
 - i. Error in the Hearing Officer's interpretation of material facts;
 - ii. Recent judicial development;
 - iii. Change in OSM or CCRO policy; or
 - iv. Evidence that was not before the Hearing Officer at the time the Hearing Officer's decision was issued and that demonstrates error in the decision.
7. If the motion cites extraordinary circumstances under subsection 6. above, it must explain why the evidence was not provided to the Hearing Officer during the course of the original hearing.
8. The Hearing Officer will not grant a motion for reconsideration that:
 - i. Merely repeats arguments made in the original appeal, except in cases of demonstrable error; or
 - ii. Seeks relief from the legally binding consequences of a statute or regulation.

(i) Judicial Review

1. Upon proper filing and availability for public inspection of a final order or decision of a Hearing Officer, any person aggrieved by such order or decision shall be presumed to have exhausted his administrative remedies and such aggrieved person is entitled to judicial review in the Crow Tribal Court.
2. A party may not raise any question or issue not raised before the Hearing Officer. Review by the Crow Tribal Court shall be confined to the record as defined in subsection (e) of this Section.
3. Proceedings for review in Crow Tribal Court must be initiated by:
 - i. Filing a Notice of Appeal with the Hearing Officer within thirty (30) days after the date of the final order or decision; and
 - ii. Filing a Petition for Review with the Crow Tribal Court within thirty (30) days after the date of the final order or decision.

Copies of the Petition for Review must be promptly served upon the CCRO and all parties of record.

4. Unless otherwise provided by law, the filing of a Notice of Appeal or Petition for Review shall not stay enforcement of an order or decision of the Hearing Officer.
5. A Petition for Review must include a statement of the manner in which the petitioner is aggrieved, the ground(s) upon which the petitioner contends he or she is entitled to relief, and the relief to which the petitioner believes he or she is entitled.
6. Within fifteen (15) days after receipt of a Notice of Appeal, the Hearing Officer must transmit the original or certified copy of the entire record of the proceedings under review to the Crow Tribal Court. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be charged by the Crow Tribal Court for additional costs.

7. If application is made to the Crow Tribal Court prior to the date set for the Court hearing, for leave to present additional evidence, alleging that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the Hearing Officer, the Hearing Officer may modify the findings of fact and conclusions of law by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the Court.
8. The Crow Tribal Court may not substitute its judgment for that of the Hearing Officer unless substantial rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
 - i. In violation of applicable constitutional or statutory law;
 - ii. In excess of the delegated authority of the CCRO;
 - iii. Made upon unlawful procedure;
 - iv. Substantially affected or prejudiced by error of law;
 - v. Arbitrary, capricious or characterized by an abuse of discretion;
 - vi. Clearly erroneous in view of the reliable, probative, and substantial evidence of the whole record; or
 - vii. Because findings of fact, upon issues essential to the order or decision, were not made although requested.
9. Judgments and/or final orders of the Crow Tribal Court issued pursuant to Sections 315 and 324 of the Code shall be subject to review by the Crow Court of Appeals, as provided in Title 3 of the Crow Law and Order Code and the Crow Rules of Appellate Procedure.
10. Petitions for review in the appropriate United States circuit court pursuant to Section 710(j)(4)(A) of SMCRA (30 U.S.C. § 1300(j)(4)(A)) may be pursued only after exhausting all tribal remedies and Tribal court proceedings provided under the Code and this Appendix B.



Crow Country

Legislative Branch

Pryor:

Arrow Creek

Carlson Goes Ahead
Bryce Hugs
Lawrence DeCrane

Big Horn:

**Valley of the Give
Away**

Vincent Crooked Arm
Marlin D. Not Afraid
Pat Alden, Jr.

Dunmore:

Black Lodge

Conrad J. Stewart
V. Jeannie Pretty Paint
H.Noel Two Leggings

Reno:

Center Lodge

Shawn E. Backbone
Kenneth G. Shane
Speaker of the House
Arnold Coyote-Runs, Sr.

Lodge Grass:

Valley of the Chief

Manuel Covers Up, Sr.
R. Knute Old Crow, Sr.
Secretary of the House
Leroy Not Afraid

Wyola:

Mighty Few

Dana Wilson
M. Tye Backbone
Gordon Real Bird, Jr.

Staff

Gerald Jay Harris
Staff Attorney

Leslie Plain Feather
Legal Assistant

Jackie Blacksmith,
Administrative Officer

William Old Crow
Finance Officer/Admin. Assist.

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OFFICIAL CERTIFICATE OF DELIVERY

I, R. Knute Old Crow, Sr. Secretary of the Legislative Branch of the Crow Tribal Government hereby this Transitional Action do deliver a True and Correct Official copy Of the Final Approval for the following Legislative Resolution:

INTRODUCED BY CEDRIC BLACK EAGLE, CHAIRMAN
CROW TRIBE EXECUTIVE BRANCH

A BILL FOR AN ACT ENTITLED:

“A BILL FOR AN ACT ENTITLED:
“APPENDIX B – ADMINISTRATIVE LAW PROVISIONS FOR THE CROW
COAL MINING AND RECLAMATION CODE”

CLB12-02 to Heather Whiteman Runs Him in the
Position of: Joint Lead Counsel for the
Crow Executive Branch.

Done and dated this 25 day of April, 2012 @ 10:46 a.m./p.m.


R. Knute Old Crow, Sr.
Secretary of the House
Legislative Branch of the
Crow Tribal Government

Cc: file

