

**APRIL 2010 CROW TRIBAL LEGISLATURE**

**BILL NO. CLB10-03**

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

**A BILL FOR AN ACT ENTITLED:  
“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 definition of "Indian lands" in SMCRA is "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," 30 U.S.C. §701; and

**WHEREAS**, the former Chairman of the Executive Branch the Crow Tribe informed OSM of its intent to pursue primacy as authorized by SMCRA, and since that time, the Crow Reclamation Office of the Abandoned Mine Lands Program has obtained funding and technical assistance from OSM for the development of a Tribal SMCRA code, implementing regulations, and the staffing and training necessary to administer the SMCRA; 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, and with the assistance of qualified technical consultants, the Crow Reclamation Office has developed the attached comprehensive coal mining and reclamation code modeled after the provisions of the Federal SMCRA; 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, in Article IV, Section 3(k), to “negotiate and approve limited waivers of sovereign immunity when such a waiver is necessary for business purposes in accordance with Article V, Section 2(f) of this Constitution”; 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,” and, in Article V, Section 2(f) the power “to grant final approval or disapproval of limited waivers of sovereign immunity by the Executive Branch of Government when waivers are necessary for business purposes”;

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

**Section 1. *ADOPTION.*** The Crow Coal Mining and Reclamation Code (the "Code"), 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. *LIMITED WAIVER OF SOVEREIGN IMMUNITY.*** The approval granted in section 1 includes and extends to the limited waiver of sovereign immunity contained in the Code, as required by 30 U.S.C. §1300(j).

**Section 3. *EFFECTIVE DATE.*** The effective date of the Code 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.

## **CROW COAL MINING AND RECLAMATION CODE**

The Crow Tribe of Indians, in the exercise of its inherent sovereignty, and in accordance with its constitution and bylaws, and pursuant Section 710 (i) and (j) of the Surface Mining Control and Reclamation Act of 1977, Public Law 95-87 (SMCRA) with amendments through December, 2008, does hereby enact and establish the Crow Coal Mining and Reclamation Code (Code).

The Code is administered by the Crow Coal Regulatory Office (CCRO) and Director whose responsibilities include promulgation and enforcement of the Code and regulations pertaining to the Code, permitting and regulation of all coal development activities and the effects on the Crow Tribe of Indians and society, land use, cultural resources, water, air, and other environmental resources, and conservation and reclamation of the Tribe's natural resources. The CCRO enforces the Code and coordinates with other Tribal and federal authorities on other relevant Tribal and federal environmental laws with regard to coal resource development on Crow Tribal lands. The CCRO also provides permitting and regulatory assistance to those who want to develop coal resources under Tribal jurisdiction.

The code has been modeled closely after SMCRA with appropriate adaptations for administration by the Crow Coal Regulatory Office, to provide in some cases for more stringent protections for Crow Lands and cultural values, and to conform to the requirements of Section 710(j) of SMCRA for assumption of Tribal regulatory primacy. An index to this Code with cross-references to SMCRA is set forth in Appendix A.

### **TITLE I--STATEMENT OF FINDINGS AND POLICY**

#### **Sec. 101. Findings**

The Crow Tribe finds and declares that:

- (a) The health and welfare, economic security, political and cultural integrity, and future of the Crow Tribe are based upon the Tribe's natural and human resources, including coal resources. Coal mining provides a one-time monetary return and is a temporary land use. To protect the long-term interests of the Crow Tribe, the Crow People, and the general public, adequate safeguards must be established and enforced to protect the environment and maintain the value and utility of Crow Lands and resources from the adverse effects of coal mining.
- (b) Extraction of coal and other minerals from the earth can be accomplished by various methods of mining, including surface and underground mining. In the

absence of effective regulation, coal mining operations can 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 agricultural, commercial, industrial, residential, recreational, forestry, and cultural 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 and traditional Indian culture in local communities, and by counteracting governmental programs and efforts to conserve soil, water, and other natural resources.

- (c) The expansion of coal mining to provide economic benefits to the Crow people and to help meet the energy needs and national security of the United States 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.
- (d) Coal mining and reclamation technology are now developed so that effective and reasonable regulation of coal mining operations in accordance with the provisions of this Code is an appropriate and necessary means to minimize the adverse social, economic, and environmental effects of coal mining.
- (e) The Crow Tribe of Indians, through its inherent sovereignty as expressed in the 2001 Crow Constitution, and the Surface Mining Control and Reclamation Act of 1977 (SMCRA), possesses the right and the responsibility to regulate coal mining to protect the interests of the Crow Tribe, the Crow People, and the general public.
- (f) Coal mining is consistent with the interests of the Crow Tribe only if the cultural integrity, health and welfare of the Tribe are protected and if the Tribe's permanent land base is protected and preserved.

Sec. 102. Purposes

It is the purpose of this Code to:

- (a) Establish a program for all Crow Lands to protect the Tribe, its people, its land and other resources, society and the environment from the adverse effects of coal mining operations.



- (b) Assure that the rights of persons with legal interests in the land on or near coal mining operations are protected from the adverse effects of such operations.
- (c) Assure that coal mining operations are not conducted where reclamation required by this Code is not feasible or in areas of important cultural value to the Crow Tribe.
- (d) Assure that 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 coal mining operations.
- (f) Provide for the development of Tribal expertise and capabilities in dealing with mineral and natural resource questions and operations.
- (g) Because of the diversity in terrain, climate, biologic, chemical, and other physical conditions in areas subject to mining operations, provide for the primary governmental responsibility for developing, authorizing, issuing, and enforcing regulations for mining and reclamation operations subject to this Code to rest with the Tribe.
- (h) Provide for the reclamation of any disturbed lands to former and potential usefulness as range, forest, agricultural and recreational land, wildlife habitat, and water storage and transfer, or other Crow Tribal uses, thereby enhancing or retaining its inherent value.
- (i) Protect adjacent as well as affected lands from the adverse effects of coal mining and maintain their productivity.
- (j) Assure that appropriate procedures are provided for public participation in the development, revision, and enforcement of regulations, standards, reclamation plans, or programs established by the Tribe under this Code.
- (k) 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 in reclamation of lands and waters affected by such, and the training of mineral engineers and scientists in the field of mining, minerals resources, reclamation, and technology, and the establishment of an appropriate research and training center.

## TITLE II--CROW COAL REGULATORY OFFICE

### Sec. 201. Office and Functions

- (a) There is established the "Crow Coal Regulatory Office", hereinafter referred to as CCRO.
- (b) The CCRO shall have a Director who shall be appointed by the Tribal Chairman, and confirmed by majority vote of the Crow Tribal Legislature, and such other employees as may be required. Such other employees shall be hired by the Director. The Director shall have the responsibilities provided under subsection (c) of this section and those duties and responsibilities relating to the functions of the CCRO as provided in this Code and the CCRO organizational structure. Such functions must be consistent with the provisions and purposes of this Code. Employees of the CCRO shall be recruited on the basis of their professional competence and capacities to administer the provisions of this Code. The CCRO may use contracted employees, employees of federal agencies and Tribal employees from other Tribal agencies to administer the provisions of this Code, providing that no such employee or entity shall, in any of his or her activities, promote the development of coal or other mineral resources.
- (c) The Director shall:
  - (1) Promulgate and publish rules and regulations as may be necessary to carry out the purposes and provisions of this Code. Unless superseded by a general Tribal law governing promulgation of Tribal administrative regulations, such regulations shall be promulgated according to the procedures set forth in Appendix B.
  - (2) Develop and implement a grant-in-aid program for administering this Code.
  - (3) Administer the programs for controlling coal mining operations which are required by this Code; review and approve, disapprove, or conditionally approve mine plans; issue, deny, or revoke permits; conduct investigations and inspections necessary to ensure compliance with this Code; conduct hearings, administer oaths, issue subpoenas and compel the attendance of witnesses; produce written material or printed material as provided for in this Code; 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 Code or any rules and regulations adopted pursuant thereto.

- (4) Develop and maintain an information and data center regarding coal mining, reclamation, and other data regarding Crow Lands and the use, both present and future, thereof.
  - (5) Develop objective criteria and appropriate procedures for designating lands unsuitable for coal mining as provided in this Code.
  - (6) Cooperate with federal agencies and other Tribal agencies to minimize duplication of inspections, enforcement, and administration and provide for the efficient administration of this Code.
  - (7) Ensure that the CCRO staff, the CCRO goals and objectives, and all other non-proprietary information regarding the CCRO is available and interpreted to Crow Tribal members in the Apsaalooke language when requested at reasonable times.
  - (8) Collect data, experiment, and conduct research regarding coal mining, reclamation, and other appropriate and related fields of endeavor.
  - (9) Perform such other duties as may be provided by law and relate to the purposes of this Code.
- (d) The CCRO shall be considered an independent regulatory agency of the Crow Tribe and shall operate independently of the Tribal agencies involved in the negotiating for and leasing or selling of coal or land resources.
- (e) Reserved.
- (f) No employee of the CCRO or any employee performing any function or duty under this Code shall have a direct or indirect financial interest in underground or surface coal mining operations: provided however that the fact that an individual is a member of the Crow Tribe does not in itself constitute a violation of this section 201(f) or Section 201 (f) of SMCRA, but no employee of the CCRO shall be eligible for a Tribal per capita distribution of any proceeds from coal mining operations conducted on Crow Reservation land under this Code. The CCRO shall, within sixty days after enactment of this Code, establish 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 report to the findings as part of the annual report on the actions taken and not taken during the preceding calendar year under this subsection.

- (g) Whoever knowingly violates the provisions of the first sentence of Subsection 201(f) of this Code:
  - (1) if an Indian within the criminal jurisdiction of the Crow Tribal Court, shall be punished upon conviction by a fine of not more than \$1,000 or by imprisonment for not more than one year, or both; or
  - (2) if a person who is not within the jurisdiction of the Crow Tribal Court, shall be referred for federal prosecution as provided in Section 315(j) of this Code and punished upon conviction by a fine of not more than \$2,500 or by imprisonment for not more than one year, or both.

### TITLE III--CONTROL OF THE ENVIRONMENTAL IMPACTS OF COAL MINING

#### Sec. 301. Permits

- (a) Effective on the date the regulations promulgated under this Title are adopted by the Crow Nation Legislature and Executive Branch in accordance with approval by the Office of Surface Mining/Secretary of the Interior, no person or persons shall engage in or conduct coal mining or reclamation on any Crow Lands unless such person or persons have first obtained a permit issued by the CCRO. Coal mining permits issued by the U.S. Office of Surface Mining prior to the passage of this Code or prior to the passage of regulations promulgated under this Code shall be deemed valid by the CCRO, except that amendments may be required of the permittees when mine plans are found to be inconsistent with CCRO regulations. The CCRO shall notify existing permittees of the adequacy of their respective mine plans within 12 months of finalization and approval of regulations promulgated under this Code.
- (b) All permits issued pursuant to the requirements of this Code 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, when said successor applies within thirty days of succeeding to such interest and who is able to obtain the bond coverage of the original permittee, may continue 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) A permit shall terminate if the permittee has not commenced the coal mining operations covered by such permit within three years of the issuance of the permit: Provided, that the CCRO may grant reasonable extensions of time upon a showing that such extensions are necessary by reason of litigation precluding such commencement or a threat of 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, extensions of time may not extend beyond the period allowed for diligent development in accordance with section 7 of that Act: 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 mining operations at such time as the construction of the synthetic fuel or generating facility is initiated.
- (d) (1) Any valid permit issued pursuant to this Code shall carry with it the right of successive renewal upon expiration with respect to areas within the boundaries of the existing permit. All applications for permit renewal must comply with the public notice requirements of sections 309 and 310. The CCRO shall make written findings upon the denial of a permit renewal application. 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 in this section, unless it is established that and written findings by the CCRO are made that:
  - (A) the terms and conditions of the existing permit are not being satisfactorily met;
  - (B) the present coal mining and reclamation operation is not in compliance with the environmental protection standards of this Code or other applicable Tribal or federal laws;

- (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 CCRO might require pursuant to Section 305 of this Title;
  - (E) any additional revised or updated information required by the CCRO has not been provided. Prior to the approval of any renewal of permit the CCRO shall provide notice to the appropriate Tribal and other authorities.
- (2) An application for renewal of valid permit to extend the mining operation beyond the boundaries authorized in the existing permit shall be subject to the full standards applicable to new applications under this Code.
  - (3) Any permit renewal shall be for a term not to exceed the period of the original permit established by this Code. Application for permit renewal shall be made at least one hundred twenty (120) days prior to the expiration date of the valid permit.

Sec. 303. Application Requirements

- (a) Each application for a coal mining and reclamation permit pursuant to this Code shall be accompanied by a fee as determined by the CCRO. Such fee may be less than but shall not exceed the actual or anticipated costs of reviewing, administering, and enforcing each permit issued. The CCRO may develop procedures so as to enable the cost of the fee to be paid over the term of the permit.
- (b) The permit application shall be submitted in a manner satisfactory to the CCRO 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 including, in the case of allotments held in trust by the United States, every person holding an interest in such allotment;



- (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;
  - (E) the operator, if a person different from the applicant;
  - (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 including, in the case of allotments held in trust by the United States, every person holding an interest in such allotment;
  - (3) a statement of any current or previous 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, limited liability company or other business entity, the following where applicable: the names and addresses of every officer, partner, managing member, 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 percentum or more of any class of voting stock or membership interest of the applicant and a list of all names under which the applicant, partner, member or principal shareholder previously operated a coal mining operation within the United States within the 5 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, state, or Indian mining permit which in the 5-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, an 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 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 and reclamation operations and number of acres of land to be affected;
- (9) the applicant shall file with the CCRO 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 coal mining operations and shall provide to the CCRO a statement of those documents upon which the applicant bases his legal right to enter and commence coal mining operations on the area affected, and whether that right is the subject of pending or current court litigation: Provided, that nothing in this Code shall be construed as vesting in the CCRO the jurisdiction to adjudicate property title disputes;
- (10) the name of the watersheds and locations of surface streams or tributaries 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 CCRO 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 other 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 CCRO, 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 (including Indian cultural, historical, burial, and religious sites) existing on the date of application. Such a map or plan shall among other things specified by the CCRO 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 1,000 feet of the permit area;
- (14) cross-sections, 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 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 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 drain ways 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 immediately underneath the coal to be mined except that the provisions of this paragraph (15) may be waived by the CCRO 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 farmlands, a soil survey shall be made or obtained according to standards established by the United States Secretary of Agriculture in order to confirm the exact location of such prime farmlands, if any; and
  - (17) information pertaining to coal seams, test borings, core samplings, or soil samples as required by this section shall made available to any person with interests which are 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) (1) If the CCRO finds that the probable total annual production at all locations of a coal surface mining operator will not exceed 300,000 tons, the cost of the following activities, which shall be performed by a qualified public or private laboratory or such other public or private qualified entity designated by the CCRO, shall be assumed by the CCRO upon the written request of the operator in connection with a permit application:
- (A) the determination of probable hydrologic consequences required by subsection (b)(11), including the engineering analyses and designs necessary for the determination;
  - (B) the development of cross-section maps and plans required by subsection (b)(14);

- (C) the geologic drilling and statement of results of test borings and core samplings required by subsection (b)(15);
  - (D) the collection of archaeological information required by subsection (b)(13) and any other archaeological and historical information required by the CCRO, and the preparation of plans necessitated thereby;
  - (E) pre-blast surveys required by section 311 (b)(15)(E); and
  - (F) the collection of site-specific resource information and production of protection and enhancement plans for fish and wildlife habitats and other environmental values required by the CCRO under this Code.
- (2) The Director of the CCRO may provide or assume the cost of training coal operators that meet the qualifications stated in paragraph (1) concerning the preparation of permit applications and compliance with the regulatory program, and shall ensure that qualified coal operators are aware of the assistance available under this subsection.
- (d) Each applicant for a permit shall be required to submit to the CCRO as part of the permit application a reclamation plan which shall meet the requirements of this Code.
  - (e) Each applicant for a coal mining and reclamation permit shall file a copy of his application for public inspection at an appropriate public office designated by the CCRO near where the mining is proposed to occur, except for that information pertaining to the coal seam itself.
  - (f) Each applicant for a permit shall be required to submit to the CCRO as part of the permit application a certificate issued by an insurance company authorized to do business in the State of Montana or on the Crow Indian Reservation certifying that the applicant has a public liability insurance policy in force for the mining and reclamation operations for which such permit is sought, or evidence that the applicant has satisfied other federal or Tribal 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 mining and reclamation operations including use of explosives and entitled to compensation

under the applicable provisions of Tribal, federal, or state laws. 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) Each applicant for a coal mining and reclamation permit shall submit to the CCRO 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 311(b) (15) of this Code.
- (h) A coal operator that has received assistance pursuant to subsection (c) (1) or (2) shall reimburse the CCRO for the cost of the services rendered if the Director finds that the operator's actual and attributed annual production of coal for all locations exceeds 300,000 tons during the 12 months immediately following the date on which the operator is issued the coal mining and reclamation permit.
- (i) Applications for coal mining and reclamation permits pursuant to this Code shall be submitted to the CCRO in a format approved by the CCRO.

Sec. 304. Reclamation Plan Requirements

- (a) Each reclamation plan submitted as part of a permit application under the provisions of this Code shall include, in the degree of detail necessary to demonstrate that reclamation required by the CCRO can be accomplished, a statement of:
  - (1) the identification of the lands subject to 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;
    - (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 303(b)(16) of this Code; and



- (C) the productivity of the land prior to mining, including appropriate classification as prime farmlands, 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, Tribal, federal or local governments or agencies thereof which would have to initiate, implement, approve, authorize, or maintain the proposed use of the land following reclamation;
- (4) a detailed description of how the proposed post mining 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 applicable sections of this Code and regulations promulgated hereunder; 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 311 of this Code;
- (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 mining and reclamation operations consistent with surface owner plans, and applicable Tribal 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; such steps

shall include a detailed description of how the applicant proposes to conduct dust abatement during mining and reclamation operations;

- (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 CCRO, 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 CCRO shall prescribe by regulations.
- (b) Any information required by this section which is not on public file pursuant to Tribal law shall be held in confidence by the CCRO.

Sec. 305. Performance Bonds

- (a) After a coal mining and reclamation permit application has been approved but before such a permit is issued, the applicant shall file with the CCRO, on a form prescribed and furnished by the CCRO, a bond for performance payable, as appropriate, to the Crow Tribe of Indians, and conditional upon faithful performance of all the requirements of this Code and the permit. The bond shall cover that area of land within the permit area upon which the operator will initiate and conduct coal mining and reclamation operations within the initial term of the permit. As succeeding increments of coal mining and reclamation operations are to be initiated and conducted within the permit area, the permittee shall file with the CCRO 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 CCRO. 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 CCRO in the event of forfeiture and in no case shall the bond for the entire area under one permit be less than \$25,000. All bonds for performance payable to the Crow Tribe of Indians shall be deposited in a manner and at an institution mutually acceptable to the CCRO and the applicant.
- (b) Liability under the bond shall be for the duration of the coal mining and reclamation operation and for a period coincident with the operator's responsibility for revegetation requirements in section 311. The bond shall be executed by the operator and a corporate surety licensed to do business on the Crow Indian Reservation or, in the absence of a Tribal licensure system, in the State of Montana, except that the operator may elect to deposit cash, negotiable bonds of the United States Government or the Crow Tribe of Indians, or negotiable certificates of deposit or any bank organized or transacting business in the United States: Provided, that the manner of deposit and the institution through which such deposit occurs shall be mutually acceptable to the CCRO and the applicant.

The cash deposit or market value of securities, if such are used to fulfill the requirements of this section 305(a), shall be equal to or greater than the amount of the bond required for the bonded area.

- (c) The CCRO may accept the bond of the applicant itself without separate surety when the applicant demonstrates to the satisfaction of the CCRO 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 CCRO, with the approval of Secretary of Interior may approve as part of a CCRO program an alternative system that will achieve the objectives and purposes of the bonding program pursuant to this section. At no time shall the bond fall below the cost that would result should the CCRO have to conduct the remaining reclamation.

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

Sec. 306. Permit Approval or Denial

- (a) Upon the basis of a complete mining application and reclamation plan or a revision or renewal thereof, as required by this Code, including public notification and an opportunity for a public hearing as required by section 309 of this Code, the CCRO shall grant, require modification of, or deny the application for a permit in a reasonable time set by the CCRO and notify the applicant in writing. The applicant for a permit, or revision of a permit, shall have the burden of establishing that the application is in compliance with all the requirements of this Code. Within ten days after the granting of a permit, the CCRO shall notify the Tribal Chairman, the Speaker House of the Tribal Legislature, other appropriate Tribal officials and the County Commissioners in the County in which the area of land to be affected is located of the location of the land and that a permit has been issued.
- (b) No permit or revision application shall be approved unless the application affirmatively demonstrates and the CCRO 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 Code have been complied with;
- (2) the applicant has demonstrated that reclamation as required by this Code 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 303 (b) has been made by the CCRO and the proposed operation thereof has been designed to prevent material damage to hydrologic balance outside the permit area;
- (4) the area proposed to be mined is not included within an area designated unsuitable for coal mining pursuant to Section 321 of this Code, or is not within an area under study for such designation in an administrative proceeding commenced pursuant to section 321 (unless in such an area as to which an administrative proceeding has commenced pursuant to section 321(a)(4)(C) of this Code, 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 coal mining operation, 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 CCRO 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):

Provided, that this paragraph (5) shall not affect those coal mining operations which in the year preceding the enactment of this Code, produced coal in commercial quantities and were located within or adjacent to alluvial valley floors and which were in existence in 1976.

- (6) in cases where the private mineral estate has been severed from the private surface estate, the applicant has submitted to the CCRO:
  - (A) the written consent of the surface owner to the extraction of coal by mining methods; or
  - (B) a conveyance that expressly grants or reserves the right to extract the coal by mining methods including federal conveyance that grants or reserves minerals, or
  - (C) if the conveyance does not expressly grant the right to extract coal by mining methods or consist of a federal conveyance that grants or reserves minerals, the surface-subsurface legal relationship shall be determined in accordance with the Tribal law, if expressly provided for in the Crow Law and Order Code, or federal law (including the application of Montana law if so provided in the federal law): *Provided*, That nothing in this Code shall be construed to authorize CCRO to adjudicate property rights disputes.
- (c) The applicant shall file with his permit application a schedule listing any and all notices of violations of this Code, and any law, rule, or regulation of the Crow Tribe, United States Government, State or other Tribe, or of any department or agency of such governments, including those pertaining to land use, air or water quality, environmental protection, and cultural and archaeological resources incurred by the applicant in connection with any coal mining operation during the five-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 CCRO indicates that any coal mining operation owned or controlled by the applicant is currently in violation of this Code or such other laws referred to 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 CCRO, department, or agency which has jurisdiction over such violation and no permit shall be issued to an applicant after a finding by the CCRO, 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 Code 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 CCRO.



- (d) (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 303(b)(16), the CCRO shall, after consultation with the U.S. Secretary of Agriculture and other appropriate representatives of the Crow Tribe in matters concerning prime farmland, and pursuant to regulations issued hereunder by the CCRO, grant a permit to mine on prime farmland if the CCRO 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 311(b)(7). Except for compliance with subsection (b), the requirements of this paragraph (1) shall apply to all permits issued after the date of enactment of this Code.
- (2) Nothing in this subsection shall apply to any permit issued prior to the date of enactment of SMCRA or to any revisions or renewals thereof, or to any existing coal mining operations for which a permit was issued prior to the date of enactment of SMCRA.

Sec. 307. Revision of Permits

- (a) (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 CCRO.
  - (2) An application for a revision of a permit shall not be approved unless the CCRO finds that the reclamation as required by this Code can be accomplished under the revised reclamation plan. The revision shall be approved or disapproved within a period of time established by the CCRO. The CCRO 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 extension to the area covered by the permit except incidental boundary revisions must be made by application for another permit.
- (b) No transfer, assignment, or sale of the rights granted under any permit issued pursuant to this Code shall be made without the written approval of the CCRO.

- (c) The CCRO shall within a time limit prescribed in regulations promulgated by the CCRO, 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 CCRO.

Sec. 308. Coal Exploration Permits

- (a) Coal exploration operations which substantially disturb the natural land surface shall be conducted in accordance with exploration regulations issued by the CCRO. 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 CCRO 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 311 of this Code of all lands disturbed in exploration, including excavations, roads, drill holes, and the removal of necessary facilities and equipment.
- (b) Information submitted to the CCRO pursuant to this subsection as confidential or 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) 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 315.
- (d) 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 CCRO.

Sec. 309. Public Notice and Public Hearings

- (a) At the time of submission of an application for a coal mining and reclamation permit, or revision of an existing permit, pursuant to the provisions of this Code, the applicant shall submit to the CCRO 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 mine at least once

a week for four consecutive weeks. The CCRO shall notify various Tribal and other governmental bodies, planning agencies, and sewage and water treatment authorities, or water companies in the locality in which the proposed mining will take place, notifying them of the operator's intention to 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 governmental bodies, agencies, authorities, or companies may submit written comments within a reasonable period established by the CCRO 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 CCRO and shall be made available to the public at the same locations as are the mining applications.

- (b) Any person having an interest which is or may be adversely affected or the officer or head of any Tribal, 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 coal mining and reclamation operation with the CCRO within thirty days after the last publication of the above notice. Such objections shall immediately be transmitted to the applicant by the CCRO and shall be made available to the public. If written objections are filed and an informal conference requested, the CCRO shall then hold an informal conference in Crow Agency or such other place as specified by the CCRO 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 CCRO in a newspaper of general circulation in the locality of the proposed coal mining and reclamation operation at least two weeks prior to the scheduled conference date. The CCRO 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.

Sec. 310. Decisions of the CCRO and Appeals

- (a) If an informal conference has been held pursuant to section 309(b), the CCRO shall issue and furnish the applicant for a permit and persons who are parties to the administrative proceedings with the written finding of the CCRO within 60 days of the conference, granting or denying the permit in whole or in part and stating the reasons therefor.
- (b) If there has been no informal conference held pursuant to section 309(b), the CCRO shall notify the applicant for a permit within a reasonable period of time as determined by the CCRO 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 in part.
- (c) 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 CCRO 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 CCRO 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. Such hearing shall be of record and governed by Section 319, adjudicatory in nature and no person who presided at a conference under section 309(b) shall either preside at the hearing or participate in the decision thereon or in any administrative appeal therefrom. Within thirty days after the hearing the CCRO shall issue and furnish the applicant, and all persons who participated in the hearing, with the written decisions of the CCRO granting or denying the permit in whole or in part and stating the reasons therefor.
- (d) Where a hearing is requested pursuant to subsection (c), the CCRO 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) For the purpose of such hearing, the CCRO 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 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 Code shall be made, and a transcript made available on the motion of any party or by order of the CCRO.
- (f) 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 CCRO, or if the CCRO fails to act within the time limits specified in this Code, shall have the right to appeal in accordance with Section 324.

Sec. 311. Environmental Protection Performance Standards

- (a) Any permit issued pursuant to this Code to conduct coal mining operations shall require that such coal mining operations will meet all applicable performance standards of this Code, and such other requirements as the CCRO shall promulgate.
- (b) General performance standards shall be applicable to all coal mining and reclamation operations and shall require the operation as a minimum to:
  - (1) conduct 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 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 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 or Tribal law;

- (3) except as provided in subsection (c) with respect to all coal mining operations, backfill, compact (where advisable to ensure stability or to prevent leaching of toxic materials), and grade in order to restore the approximate original contour of the land with all high walls, 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 Code): Provided, however, that in 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 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 Code;
- (4) stabilize and protect all surface areas including spoil piles affected by the 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 are best able to support vegetation;
- (6) restore the topsoil or the best available subsoil which is best able to support vegetation;
- (7) for all prime farmlands as identified in section 303(b)(16) to be mined and reclaimed, specifications for soil removal, storage, replacement, and reconstruction shall be established by the CCRO in accordance with standards established by the U.S. 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 USC 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 Tribal 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 and quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, municipal, recreational, or domestic uses;
- (9) conduct any augering operation associated with other 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 CCRO 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 CCRO may prohibit augering if necessary to maximize the utilization, recoverability or conservation of the solid fuel resources or to protect against adverse water quality or other impacts;

(10) minimize the disturbances to the prevailing hydrologic balance at the mine site and in associated off site areas and to the quality and quantity of water in surface and ground water systems both during and after 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; and
- (iii) casing, sealing, or otherwise managing bore holes, shafts, and wells and keep acid or other toxic drainage from entering ground and surface waters;

(B) (i) conducting 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 federal and Tribal law; and

(ii) constructing any siltation structures pursuant to subparagraph (B)(i) of this subsection prior to commencement of coal mining operations, such structures to be certified by a qualified registered engineer, and 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 drain ways after disturbed areas are

- revegetated and stabilized; and depositing the silt and debris at a site and in a manner approved by the CCRO;
- (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 semi-arid parts of the Crow Indian Reservation and on other Crow Lands; and
  - (G) such other actions as the CCRO 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 Code;
- (12) refrain from 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 CCRO 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 mining activities with specific underground mine activities are jointly approved by the CCRO and appropriate federal authorities or agencies concerning with 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) ensure 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) ensure that explosives are used only in accordance with existing Tribal and federal law and the regulations promulgated by the CCRO, 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 residents or 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 and type 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 mines; and
    - (iv) change in the course, channel, volume, 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 CCRO;
  - (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 CCRO and a copy to the resident or owner making the request. The area of the survey shall be decided by the CCRO and shall include such provisions as the CCRO and/or the Crow Tribal Legislative and Executive Branches shall promulgate.
- (16) insure that all reclamation efforts proceed in an environmentally sound manner and as contemporaneously as practicable with the 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 CCRO 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 mining operations prior to reclamation:
- (A) if the CCRO 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 Code;
    - (vi) provisions for the off-site storage of spoil will comply with section 311(b)(22);
  - (B) if the Director has promulgated specific regulations to govern the granting of such variances in accordance with the provisions of this subsection and section 301, and has imposed such additional requirements as he deems necessary;
  - (C) if variances granted under the provisions of this subsections are to be reviewed by the CCRO not more than three years from the date of the issuance of the permit; and
  - (D) if liability under the bond filed by the applicant with the CCRO pursuant to section 305(b) shall be for the duration of the underground mining operations and until the requirements of sections 311(b) and 316 have been fully complied with;
- (17) ensure 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 habitats, 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 on 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;
  - (20) assume the responsibility for successful revegetation, as required by paragraph (19) above, for a period of ten full years after the last year of augmented seeding, fertilizing, irrigation, or other work in order to assure

compliance with paragraph (19) above: Provided, that when the CCRO approves a long-term intensive agricultural post mining land use, the ten-year period of responsibility for revegetation shall commence at the date of initial planting for such long-term intensive agricultural post mining land use: Provided further, that when the CCRO issues a written finding approving a long-term, intensive, agricultural post mining land use as part of the mining and reclamation plan, the CCRO may grant exception to the provisions of paragraph (19) above;

- (21) protect off site areas from slides or damage occurring during the 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 mining and reclamation activities in such a manner that:
  - (A) spoil is transported and places 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 under drains 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 CCRO, the spoil could be placed in compliance with all the requirements of this Code, 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 down slope, 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 of the provisions of this Code are met;
- (23) meet such other criteria as are necessary to achieve reclamation in accordance with the purposes of this Code, taking into consideration the physical, climatological, and other characteristics of the site;
  - (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; and
  - (25) provide for an undisturbed natural barrier beginning at the elevation of the lowest coal seam to be mined and extending from the out slope for such distance as the CCRO shall determine shall be retained in place as a barrier to slides and erosion.
- (c)
    - (1) The CCRO program shall include procedures pursuant to which the CCRO may permit mining operations for 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 311(b)(3) or 311(d)(2) and (3) of this Code may be granted for the 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) of this subsection] 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.

- (3) 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 CCRO may grant a permit for a mining operation of the nature described in subsection (c)(2) where:
  - (A) after consultation with the appropriate land use planning agencies, if any, the proposed post mining 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 land 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 Tribal and 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 post mining 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 Tribal and local land use plans and programs;
  - (D) the CCRO provides the Crow Tribe and any Tribal, local or federal agencies which the CCRO, at 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; and

- (E) all other requirements of this Code shall be met.
- (4) In granting any permit pursuant to this subsection the CCRO 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 land 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 in natural watercourses;
  - (E) spoil will be placed on the mountaintop bench as is necessary to achieve the planned post mining 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; and
  - (F) ensure stability of the spoil retained on the mountaintop and meet the other requirements of this Code.
- (5) The CCRO shall promulgate specific regulations to govern the granting of permits in accord with the provisions of this subsection, and may impose such additional requirements as the CCRO deems necessary.
- (6) All permits granted under the provisions of this subsection 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.
- (d) The following performance standards shall be applicable to steep slope coal mining and shall be in addition to those general performance standards required by this section: Provided, however, that the provisions of this subsection (d) 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 (c) hereof:

- (1) Insure that when performing coal mining on steep slopes, no debris, abandoned or disabled equipment, spoil material, or waste mineral matter be placed on the down slope below the bench or mining cut: Provided, that spoil material in excess of that required for the reconstruction of the approximate original contour under the provisions of paragraph 311(b)(3) or 311(d)(2) shall be permanently stored pursuant to section 311(b)(22).
- (2) Complete backfilling with spoil material shall be required to cover completely the high wall and return the site to the appropriate original contour, which material will maintain stability following mining and reclamation.
- (3) The operator may not disturb land above the top of the high wall unless the CCRO finds that such disturbance will facilitate compliance with the environmental protection standards of this section: Provided, however, that the land disturbed above the high wall shall be limited to that amount necessary to facilitate said compliance.
- (4) For the purposes of this subsection (d), the term "steep slope" is any slope above twenty degrees or such lesser slope as may be defined by the CCRO after consideration of soil, climate, and other characteristics of applicable parts of the Crow Indian Reservation or other regional lands.
- (e)
  - (1) The CCRO shall develop procedures pursuant to which the CCRO may permit variances for the purposes set forth in paragraph (3) of this subsection, provided that the watershed control of the area is improved; and further provided that complete backfilling with spoil material shall be required to cover completely the highwall which material will maintain stability following mining and reclamation.
  - (2) Where an applicant meets the requirements of paragraphs (3) and (4) of this subsection, a variance from the requirement to restore to approximate original contour set forth in subsection 311(d)(2) of this Code may be granted for the mining of coal where the owner of the surface knowingly requests in writing, as a part of the permit application that such a variance be granted so as to render the land, after reclamation, suitable for an industrial, commercial, residential, or public use (including recreational facilities) in accord with the further provisions of (3) and (4) of this subsection.



- (3) (A) After consultation with the appropriate land use planning or other Tribal and federal agencies, if any, the potential use of the affected land is deemed to constitute an equal or better economic or public use;
- (B) is designed and certified by a qualified registered professional engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site; and
- (C) after approval of the appropriate Tribal and federal environmental agencies, the watershed is deemed to be improved.
- (4) In granting a variance pursuant to this subsection the CCRO shall require that only such amount of spoil will be placed off the mine bench as is necessary to achieve the planned post-mining land use, ensure stability of the spoil retained on the bench, meet all other requirements of this Code, and all spoil placement off the mine bench must comply with subsection 311(b)(22).
- (5) The CCRO shall promulgate specific regulations to govern the granting of variances in accord with the provisions of this subsection, and may impose such additional requirements as the CCRO deems necessary.
- (6) All exceptions granted under the provisions of this subsection shall be reviewed not more than three years from the date of issuance of the permit, unless the permittee affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the reclamation plan.

Sec. 312. Surface Effects of Underground Coal Mining Operations

- (a) The CCRO shall promulgate rules and regulations directed toward the effects of underground coal mining operations, embodying the following requirements and in accordance with other relevant procedures established under this Code: Provided, however, that in adopting any rules and regulations the CCRO shall consider the distinct difference between surface coal mining and underground coal mining. Such rules and regulations shall not conflict with nor supersede any provision of the Federal Coal Mine Health and Safety Act of 1969 (Pub. L. 91-173), as amended by the Federal Mine Safety and Health Act of 1977 (Pub. L. 95-164), nor any regulation issued pursuant thereto, or any Crow Tribal law that

supplements, supersedes or replaces such Act, including but not limited to the Workforce Protection Act, and shall not be promulgated until the CCRO has obtained the written concurrence of the head of the department which administers such Act and the applicable Tribal laws.

- (b) Each permit issued under any approved CCRO program pursuant to this Code and relating to underground coal mining shall require the operator to:
  - (1) 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 such surface lands, except in those instances where the mining technology used requires planned subsidence in a predictable and controlled manner: 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 in accordance with procedures and provisions established under this Code and related regulations, 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;
  - (4) 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 Tribal 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 and other relevant procedures and provisions established under this Code;
  - (5) design, locate, construct, operate, maintain, enlarge, modify, and remove, or abandon, in accordance with the standards and criteria developed pursuant to this Code, 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;

- (6) establish on regarded 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;
- (7) protect offsite areas from damages which may result from such mining operations;
- (8) eliminate fire hazards and otherwise eliminate conditions which constitute a hazard to health and safety of the public;
- (9) minimize the disturbances of the prevailing hydrologic balance at the minesite and in associated offsite areas and to the quantity of water in surface ground water systems both during and after 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 to keep acid or other toxic drainage from entering ground and surface waters; and
  - (B) conducting all 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 such contributions be in excess of requirements set by applicable Tribal or Federal law), and avoiding channel deepening or enlargement in operations requiring the discharge of water from mines;
- (10) with respect to other surface impacts not specified in this subsection including the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, repair areas, storage areas, processing areas, shipping areas, and other