

areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities, operate in accordance with the standards established under Section 311 of this Code for such effects which result from surface coal mining operations: Provided, That the Director shall make such modifications in the requirements imposed by this subparagraph as are necessary to accommodate the distinct difference between surface and underground coal mining;

- (11) to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values, and achieve enhancement of such resources where practicable; and
 - (12) locate openings for all new drift mines working acid-producing or iron-producing coal seams in such a manner as to prevent a gravity discharge of water from the mine.
- (c) In order to protect the stability of the land, the CCRO shall suspend underground coal mining under urbanized areas, cities, towns, and communities and adjacent to industrial or commercial buildings, major impoundments, or permanent streams if imminent danger to inhabitants of the urbanized areas, cities, towns, and communities are found.
- (d) The provisions of this Code relating to Crow Tribal and Federal programs, permits, bonds, inspections and enforcement, public review, and administrative and judicial review shall be applicable to surface operations and surface impacts incident to an underground coal mine with such modifications to the permit application requirements, permit approval or denial procedures, and bond requirements as are necessary to accommodate the distinct difference between surface and underground coal mining. The Director of the CCRO shall promulgate such modifications in accordance with the rulemaking procedure established in Section 311 of this Code.

Sec. 313. Annual Mining and Reclamation Report

- (a) A permittee shall file with the CCRO a report on each mining operation conducted during the calendar year. The report must be filed on or before March thirty-first of each year in which the mining operation is conducted, unless otherwise approved by the CCRO. The annual report must be on a form provided by the CCRO which must, in addition to any other permit requirements or data required by the CCRO, include:

- (1) the permit number or numbers and the name and address of the permittee, landowner, and of the person or entity conducting the mining operation, and, if any of these are corporations, limited liability companies, or other business entities, the names and addresses of their principal officers or managers, and resident agent for service of process;
 - (2) a report in such detail as the CCRO shall require, supplemented with maps, cross sections, or other material indicating the extent to which mining operations have been carried out, the progress of all reclamation work, including the type of planting or seeding, mixture and amount of seed, date of planting or seeding, and area of land planted, the extent to which permit requirements have been met and the extent to which expectations and predictions made in the original application have been fulfilled and any deviation therefrom, and the number and location of acres affected by year; maps must be of sufficient detail to show the boundaries of the affected land, topographic detail, the location and names of all streams, roads, railroads, and utility lines and pipes on or immediately adjacent to the affected land, and the location of access roads;
 - (3) a revised schedule or timetable of operations and reclamation and an estimate of the number and location of acres to be affected during the next 1-year period;
 - (4) the cubic yardage of mineral mined and overburden disturbed by the mining operation for the calendar year covered by the report;
 - (5) an estimate of the cubic yardage of mineral to be mined and overburden to be disturbed by the coal mining operation during the calendar year next 1-year period; and
 - (6) the date of completion or abandonment of all or part of the mining operation, if completed or abandoned.
- (b) Upon receipt of the annual report, the CCRO may make further inquiry and request further information and, if it does so, shall allow a reasonable opportunity for the operator to respond.
- (c) When problem situations are revealed by review of new information or as a result of field inspections, the CCRO may order such changes in the mining and reclamation plans as are necessary to insure compliance with this part.

Sec. 314. Inspections and Monitoring

- (a) The CCRO shall cause to be made such inspections of any coal mining and reclamation operations as are necessary to evaluate the administration of approved Tribal programs, or to develop or enforce any CCRO program, and for such purposes authorized representatives of the Director of the CCRO shall have a right of entry to, upon, or through any coal mining and reclamation operations.
- (b) The monitoring data collection and analysis required by this section shall be conducted according to standards and procedures set forth by the CCRO in order to assure their reliability and validity.
- (c) For the purpose of developing or assisting in the development, administration, and enforcement of any approved Tribal or Federal program under this Code or in the administration and enforcement of any permit under this Code, or of determining whether any person is in violation of any requirement of any such Tribal or Federal program or any other requirement in this Code:
 - (1) the CCRO shall require any permittee to:
 - (A) establish and maintain appropriate records;
 - (B) make monthly reports to the CCRO;
 - (C) install, use, and maintain any necessary monitoring equipment or methods;
 - (D) evaluate results in accordance with such methods, at such locations, intervals, and in such manner as the CCRO shall prescribe; and
 - (E) provide such other information relative to coal mining and reclamation operations as the CCRO deems reasonable and necessary;
 - (2) for those coal mining and reclamation operations which remove or disturb strata that serve as aquifers which significantly insure the hydrologic balance of water use either on or off the mining site, the CCRO shall specify those:

- (A) monitoring sites to record the quantity and quality of surface drainage above and below the minesite as well as the potential zone of influence;
 - (B) monitoring sites to record level, amount, and samples of ground water and aquifers potentially affected by the mining and also directly below the lowermost (deepest) coal seam to be mined;
 - (C) records of well logs and borehole data to be maintained; and
 - (D) monitoring sites to record precipitation;
- (3) the authorized representatives of the CCRO, without advance notice and upon presentation of appropriate credentials:
 - (A) shall have the right of entry to, upon, or through any coal mining and reclamation operations or any premises in which any records required to be maintained under paragraph (1) of this subsection are located; and
 - (B) may at reasonable times, and without delay, have access to any copy any records, inspect any monitoring equipment or method of operation under this Code.
- (d) The inspections by the CCRO shall:
 - (1) occur on an irregular basis averaging not less than one partial inspection per month and one complete inspection per calendar quarter for the coal mining and reclamation operation covered by each permit;
 - (2) occur without prior notice to the permittee or his agents or employees except for necessary on-site meetings with the permittee or his agents; and
 - (3) include the filing of inspection reports adequate to enforce the requirements of this Code and to carry out the terms and purposes of this Code.
- (e) Each permittee shall conspicuously maintain at the entrances to the coal mining and reclamation operations a clearly visible sign which sets forth the name, business address, and telephone number of the permittee and the permit number of the coal mining and reclamation operations

- (f) Each inspector, upon detection of each violation of any requirement of this Code, shall forthwith inform the operator in writing, and shall promptly report in writing any such violation to the CCRO.
- (g) Copies of any records, reports, inspection materials, or information obtained under this Title by the CCRO shall be made immediately available to the public at central and sufficient locations, within the Crow Indian Reservation, so that they are conveniently available to residents in the areas of mining.
- (h)
 - (1) Any person who is or may be adversely affected by a mining and reclamation operation may notify the Director of the CCRO or any representative of the CCRO responsible for conducting the inspection, in writing, of any violation of this Code which he has reason to believe exists at the coal mining and reclamation site. The Director of the CCRO shall, by regulation, establish procedures for informal review of any refusal by a representative of the CCRO to issue a citation with respect to any such alleged violation. The Director of the CCRO shall furnish such persons requesting the review a written statement of the reasons for the CCRO's final disposition of the case.
 - (2) The Director of the CCRO shall also, by regulation, establish procedures to ensure that adequate and complete inspections are made. Any such person may notify the Director of the CCRO of any failure to make such inspections, after which the Director of the CCRO shall determine whether adequate and complete inspections have been made. The CCRO shall furnish such persons a written statement of the reasons for the CCRO's determination that adequate and complete inspections have or have not been made.

Sec. 315. Penalties

- (a) In the enforcement of the Code any permittee who violates any permit conditions or who violates any other provisions of this Code, may be assessed a civil penalty by the Director of the CCRO, except that if such violation leads to the issuance of a cessation order under Section 318 the civil penalty shall be assessed. Such penalty shall not exceed \$5,000 for each violation. Each day of continuing violation may be deemed a separate violation for purposes of penalty assessment. In determining the amount of the penalty, consideration shall be given to the permittee's history of previous violations at the particular coal mining operation; the seriousness of the violation, including any irreparable harm to the

environment and any hazard to the health or safety of the public; whether the permittee was negligent; and the demonstrated good faith of the permittee charged in attempting to achieve rapid compliance after notification of the violation.

- (b) A civil penalty shall be assessed by the Director of the CCRO only after the person charged with a violation described under subsection (a) of this section has been given an opportunity for a public hearing. Where such a public hearing has been held, the Director of the CCRO shall make findings of fact, and shall issue a written decision as to the occurrence of the violation and the amount of the penalty which is warranted, incorporating, when appropriate, an order therein requiring that the penalty be paid. When appropriate, the Director shall consolidate such hearings with other proceedings under section 318 of this Code. Any hearings conducted under this section shall be of record and shall be subject to Section 319 of this Code. Where the person charged with such a violation fails to avail himself of the opportunity for a public hearing, a civil penalty shall be assessed by the Director after the Director has determined that a violation did occur, and the amount of the penalty which is warranted, and has issued an order requiring that the penalty be paid.
- (c) Upon the issuance of a notice or order charging that a violation of this Code has occurred, the Director shall inform the operator within thirty days of the proposed amount of said penalty. The person charged with the penalty shall then have thirty days to pay the proposed penalty in full or, if the person wishes to contest either the amount of the penalty or the fact of the violation, forward the proposed amount to the CCRO for placement in an escrow account. If through administrative or judicial review of the proposed penalty, it is determined that no violation occurred, or that the amount of the penalty should be reduced, the CCRO shall within thirty days remit the appropriate amount to the person, with interest at the rate of 6 percent per year, or at the prevailing U.S. Department of the Treasury rate, whichever is greater. Failure to forward the money to the CCRO within thirty days shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.
- (d) Civil penalties owed under this Code may be recovered in a civil action brought in the Crow Tribal Court by the Tribal prosecutor or a Tribal attorney at the request of the Director of the CCRO. As a condition of their permits issued pursuant to this Code, permittees shall be deemed to have consented to the Crow Tribal Court's jurisdiction to enter judgment against them for the civil penalties owed under this Code.

- (e) Any person who willfully and knowingly violates a condition of a permit issued pursuant to this Code or who fails or refuses to comply with any order issued under section 318 or section 324, or any order incorporated in a final decision issued by the CCRO under this Code, except an order incorporated in a decision issued under subsection (b) of this section or section 407 of this Code shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than one year of both.
- (f) Whenever a corporate permittee violates a condition of a permit issued pursuant to this Code or fails or refuses to comply with any order issued under any section of this Code or any order incorporated in a final decision issued by the CCRO under this Code except an order incorporated in a decision issued under subsection (b) of this section or section 406 of this Code, any director, officer, or agent of such corporation who willfully and knowingly authorized, ordered, or carried out such violation, failure, or refusal shall be subject to the same civil penalties, fines, and imprisonment that may be imposed upon a person under subsections (a) and (e) of this section.
- (g) Whoever knowingly makes any false statement, representation, or certification, or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this Code or any order or decision issued by the CCRO under this Code, shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than one year or both.
- (h) Any operator who fails to correct a violation for which a citation has been issued under section 318(a) within the period permitted for its correction which period shall not end until the entry of a final order by the CCRO, in the case of any review proceedings under section 323 initiated by the operator wherein the CCRO orders, after an expedited hearing, the suspension of the abatement requirements of the citation after determining that the operator will suffer irreparable loss or damage from the application of those requirements, or until the entry of an order of the court, in the case of any review proceedings under section 324 initiated by the operator wherein the court orders the suspension of the abatement requirements of the citation, shall be assessed a civil penalty of not less than \$1,000 for each day during which such failure or violation continues.
- (i) Nothing herein shall be construed to eliminate or reduce the effect or validity of any additional enforcement right or procedure available under Tribal law to the CCRO but which are not specifically enumerated in this Code.

(j) Citations for criminal penalties prescribed in this Section 315 may be issued by the CCRO or the Tribal Prosecutor, shall be deemed issued under Section 518 of SMCRA, and shall be referred to the Office of Surface Mining and the U.S. Attorney for the District of Montana for prosecution. Citations for criminal penalties prescribed in this Section 315 may also be issued by the Office of Surface Mining pursuant to Section 518 of SMCRA. Pursuant to Section 710(j) of SMCRA (30 U.S.C. § 1300), any criminal action brought under this Section 315 or Section 518 of SMCRA for violations of this Code with respect to coal mining or reclamation operations shall be brought in:

- (1) the United States District Court for the District of Columbia; or
- (2) the United States District Court for the District of Montana.

Sec. 316. Release of Performance Bonds or Deposits

- (a) The permittee may file a request with the CCRO for the release of all or part of a performance bond or deposit. Within thirty days after any application for bond or deposit release has been filed with the CCRO, the operator shall submit a copy of an advertisement placed at least once a week for four successive weeks in a newspaper of general circulation in the locality of the coal mining operation. Such advertisement shall be considered part of any bond release application and shall contain a notification of the precise location of the land affected, the number of acres, the permit and the date approved, the amount of the bond filed and the portion sought to be released, and the type and appropriate dates of reclamation work performed, and a description of the results achieved as they relate to the operator's approved reclamation plan. In addition, as part of any bond release application, the applicant shall submit copies of letters which he has sent to adjoining property owners, Tribal, federal, and local governmental bodies, planning agencies, and sewage and water treatment authorities, or water companies in the locality in which the coal mining and reclamation activities took place, notifying them of his intention to seek release from the bond or deposit.
- (b) Upon receipt of the notification and request, the CCRO shall within thirty days conduct an inspection and evaluation of the reclamation work involved: Provided, however, that weather and road conditions permit such inspection and evaluation to be conducted. If weather and road conditions preclude such inspection and evaluation from being conducted within thirty days of the notification and request by the CCRO, the Director shall notify the operator in writing of the conditions causing such preclusion, and shall conduct such

inspection and evaluation at the earliest possible date. Such evaluation shall consider, among other things, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuance of future occurrence of such pollution, and the estimated cost of abating such pollution. The CCRO shall notify the permittee in writing of its decision to release or not to release all or part of the performance bond or deposit within sixty days from the inspection and evaluation, if no public hearing is held pursuant to section 316(f), and if there has been a public hearing held pursuant to section 316(f), within thirty days thereafter.

- (c) The CCRO may release in whole or in part said bond or deposit if the CCRO is satisfied the reclamation covered by the bond or deposit or portion thereof has been accomplished as required by this Code according to the following schedule:
 - (1) When the operator completes the backfilling regrading, and drainage control of a bonded area in accordance with his approved reclamation plan, the release of 60 percent of the bond or collateral for the applicable permit area.
 - (2) After revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan. When determining the amount of bond to be released after successful revegetation has been established, the CCRO shall retain that amount of bond for the revegetated area which would be sufficient for a third party to cover the cost of re-establishing revegetation and for the period specified for operator responsibility in section 311 of re-establishing revegetation. No part of the bond or deposit shall be released under this paragraph so long as the lands to which the release would be applicable are contributing suspended solids to stream flow or runoff outside the permit area in excess of the requirements set by section 311(b)(10) or until soil productivity for prime farmlands has returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to section 303(b)(16). Where a silt dam is to be retained as a permanent impoundment pursuant to section 311(b)(8), the portion of bond may be released under this paragraph so long as provisions for sound future maintenance by the operator or the landowner have been made with the CCRO.

- (3) When the operator has completed successfully all coal mining and reclamation activities, the release of the remaining portion of the bond or deposit may be authorized by the Director, but not before the expiration of the period specified for operator responsibility in section 311: Provided, however, that no bond or deposit shall be fully released until all reclamation requirements of this Code are fully met.
- (d) If the CCRO disapproves the application for release of the bond or deposit, or portion thereof, the CCRO shall notify the permittee, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure said release and allowing opportunity for a public hearing.
- (e) When any application for total or partial release is filed with the CCRO, the CCRO shall notify all appropriate divisions of Tribal and federal government and publish in a newspaper of general circulation in the locality in the area in which a coal mining operation is located by certified mail at least thirty days prior to the release of all or a portion of the bond.
- (f) Any person with a valid legal interest which might be adversely affected by release of the bond or deposit or the responsible officer or head of any Tribal, federal, or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social or economic impact involved in the operation, or is authorized to develop and enforce environmental standards with respect to such operations shall have the right to file written objections to the proposed release from bond to the CCRO within thirty days after the last publication of the above notice. If written objections are filed, and a hearing requested, the CCRO shall inform all the interested parties of the time and place of the hearing, and hold a public hearing in the locality of the coal mining operation proposed for bond or deposit release within thirty days of the request for such hearing. The date, time, and location of such public hearings shall be advertised by the CCRO in a newspaper of general circulation in the locality for two consecutive weeks, and the CCRO shall hold a public hearing in the locality of the coal mining operation proposed for bond release or at Crow Agency, Montana, as determined by the CCRO and stated in the advertisement, within thirty days of the request for such hearing.
- (g) Without prejudice to the rights of the objectors, the applicant, or the responsibilities of the CCRO pursuant to this section, the CCRO may establish an informal conference as provided in section 309 to resolve such written objections.

- (h) For the purpose of such hearing the CCRO shall have the authority and is hereby empowered to administer oaths, subpoena witnesses, or written or printed materials, compel the attendance of witnesses, or production of materials, and take evidence including but not limited to inspections of the land affected and other coal mining operations carried on by the applicant in the general vicinity. 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.

Sec. 317. Citizen Suits

- (a) Except as provided in subsection (b) of this section, any person having an interest which is or may be adversely affected may commence a civil action in the Crow Tribal Court on his own behalf to compel compliance with this Code:
 - (1) against the CCRO if alleged to be in violation of the provisions of this Code or of any rule, regulation, order or permit issued pursuant thereto, or against any other person who is alleged to be in violation of any rule, regulation, order or permit issued pursuant to this title; or
 - (2) against the CCRO where there is alleged a failure of the CCRO to perform any act or duty under this Code which is not discretionary with the CCRO.
- (b) No action may be commenced:
 - (1) under subsection (a)(1) of this section:
 - (A) prior to sixty days after the plaintiff has given notice in writing of the violation (i) to the Director of CCRO, (ii) to the Crow Tribe, and (iii) to any alleged violator; or
 - (B) if the Director of CCRO or the Tribe has commenced and is diligently prosecuting a civil action in Tribal Court to require compliance with the provisions of this Code, or any rule, regulation, order, or permit issued pursuant to this Code, but in any such action in Tribal Court any person may intervene as a matter of right; or
 - (2) under subsection (a)(2) of this section prior to sixty days after the plaintiff has given notice in writing of such action to the Director of CCRO, in such manner as the Director shall by regulation prescribe, except that such action may be brought immediately after such notification in the case where the violation or order complained of constitutes an imminent threat

to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.

- (c)
 - (1) Any action respecting a violation of this Code or the regulations thereunder may be brought in the Crow Tribal Court.
 - (2) In such action under this section, the CCRO, if not a party, may intervene as a matter or right.
 - (3) The judgment and/or final orders of the Crow Tribal Court in an action commenced under subsection (a) of this section shall be subject to review by the Crow Court of Appeals as provided in Title 3 of the Crow Law and Order Code and the Crow Rules of Appellate Procedure. Actions against the CCRO shall not be reviewable in any court of the United States pursuant to Sections 520 and 710(j)(4)(A) of SMCRA (30 U.S.C. §§ 1270 and 1300(j)(4)(A)) unless and until all Tribal proceedings under this Code and in the Crow Tribal Court system have been completed.
- (d) The court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation (including attorney and expert witness fees) to any party, whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought require the filing of a bond or equivalent security in accordance with the Crow Rules of Civil Procedure.
- (e) Nothing in this section shall restrict any right which any person (or class of persons) may have under Tribal law to seek enforcement of any provisions of this Code and the regulations thereunder, or to seek any other relief (including relief against the CCRO).
- (f) Any person who is injured in his person or property through the violation by any operator of any rule, regulation, order, or permit issued pursuant to this Code may bring an action for damages (including reasonable attorney and expert witness fees) against the operator in the Crow Tribal Court. Nothing in this subsection shall affect the rights established by or limits imposed under Tribal or other applicable Workmen's Compensation laws.

Sec. 318. Enforcement

- (a)
 - (1) Whenever, on the basis of any information available to it, including receipt of information from any person, the CCRO has reason to believe

that any person is in violation of any requirement of this Code or any permit condition required by this Code, the CCRO shall order inspection of the coal mining operation at which the alleged violation is occurring unless the information is available to the CCRO is a result of a previous inspection of such coal mining operation. After the inspection results, the CCRO shall notify such person who provided information to cause the inspection of when the inspection is proposed to be carried out and such person shall be allowed to accompany the inspector during the inspection.

- (2) When, on the basis of any inspection, the CCRO determines that any condition or practices exist, or that any permittee is in violation of any requirement of this Code, or any permit condition required by this Code, which condition, practice, or violation also creates an imminent danger to the health or safety of the public, or is causing, or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources, the CCRO shall immediately order a cessation of coal mining and reclamation operations or the portion thereof relevant to the condition, practice, or violation. Such cessation order shall remain in effect until the CCRO determines that the condition, practice, or violation has been abated, or until modified, vacated, or terminated by the CCRO pursuant to subsection (a)(4) of this section. Where the CCRO finds that the ordered cessation of coal mining and reclamation operations, or any portion thereof, will not completely abate the imminent danger to health or safety of the public of the significant imminent environmental harm to land, air, or water resources, the CCRO shall, in addition to the cessation order, impose affirmative obligations on the operator requiring him to take whatever steps the CCRO deems necessary to abate the imminent danger or the significant environmental harm.
- (3) When, on the basis of an inspection which is carried out during the enforcement of this Code, the CCRO determines that any permittee is in violation of any requirement of this Code or any permit condition required by this Code; but such violation does not create an imminent danger to the health or safety of the public, or cannot be reasonably expected to cause significant imminent environmental harm to land, air, or water resources, the CCRO shall issue a notice to the permittee or his agent fixing a reasonable time but not more than ninety days for the abatement of the violation and providing opportunity for public hearing.

- (A) If, upon expiration of the period of time as originally fixed or subsequently extended, for good cause shown and upon the written finding of the CCRO, the CCRO finds that the violation has not been abated, the CCRO shall immediately order a cessation of coal mining and reclamation operations or the portion thereof relevant to the violation. Such cessation order shall remain in effect until the CCRO determines that the violation has been abated, or until modified, vacated, or terminated by the CCRO pursuant to subparagraph (a)(5) of this section. In the order of cessation issued by the CCRO under this subsection, the CCRO shall determine the steps necessary to abate the violation in the most expeditious manner possible, and shall include the necessary measures in the order.
- (4) When, on the basis of an inspection or inspections, the CCRO determines that a pattern of violations or any requirements of this Code or any permit conditions required by this Code exists or has existed, and if the CCRO also finds that such violations are caused by the unwarranted failure of the permittee to comply with any requirements of this Code or any permit conditions, or that such violations are willfully caused by the permittee, the CCRO shall forthwith issue an order to the permittee to show cause as to why the permit should not be suspended or revoked and shall provide opportunity for a public hearing. If a hearing is requested the CCRO shall inform all interested parties of the time and place of the hearing. Upon the permittee's failure to show cause as to why the permit should not be suspended or revoked, the CCRO shall forthwith suspend or revoke the permit.
- (5) Notices and orders issued pursuant to this section shall set forth with reasonable specificity the nature of the violation and the remedial action required, the period of time established for abatement, and a reasonable description of the portion of the coal mining and reclamation operation to which the notice or order applies. Each notice or order issued under this section shall be given promptly to the permittee or his agent by the CCRO, and all such notices and orders shall be in writing and shall be signed by the Director or his authorized representative. Any notice or order issued pursuant to this section may be modified, vacated, or terminated by the CCRO. Any notice or order issued pursuant to this section which requires cessation of mining by the operator shall expire within thirty days of

actual notice to the operator unless a public hearing is held at the site or within such reasonable proximity to the site than any viewing of the site can be conducted during the course of the public hearing.

- (b) The Director of the CCRO may request the Crow Tribal Attorney or the Crow Tribal Prosecutor to institute a civil action for relief in the Crow Tribal Court including a permanent or temporary injunction, restraining order, or any other appropriate order, whenever such permittee or his agent:
- (1) violates or fails or refuses to comply with any order or decision issued by the CCRO under this Code; or
 - (2) interferes with, hinders, or delays the CCRO or its authorized representatives in carrying out the provisions of this Code; or
 - (3) refuses to admit authorized representatives of the CCRO to the mine and permit area and/or adjacent areas under control or access agreement of permittee; or
 - (4) refuses to permit inspection of the mine and permit area and/or adjacent areas under control or access agreement of permittee by such authorized representatives of the CCRO; or
 - (5) refuses to furnish any information or report requested by the CCRO in furtherance of the provisions of this Code; or
 - (6) refuses to permit access to, and copying of, such records as the CCRO determines necessary in carrying out the provisions of this Code.

The Crow Tribal Court shall have jurisdiction to provide such relief as may be appropriate. Temporary restraining orders shall be issued in accordance with the Crow Rules of Civil Procedure as amended. Any relief granted by the court to enforce an order under clause (1) of this section shall continue in effect until the completion or final termination of all proceedings for review of such order under this Title, unless, prior thereto, the court sets it aside or modifies it.

- (c) Nothing herein shall be construed so as to eliminate any additional enforcement rights or procedures which are available under Tribal law to the CCRO but which are not specifically enumerated herein.

Sec. 319. Administrative Adjudicatory Hearings

Unless superseded by a general Tribal law governing Tribal administrative adjudicatory hearings with similar procedural requirements, hearings to be conducted under this Code pursuant to this Section 319 shall be conducted according to the procedures set forth in Appendix B.

Sec. 320. Limited Waiver of Tribal Sovereign Immunity

- (a) As required by SMCRA Sec. 710(j)(3), the Crow Tribe hereby grants a limited waiver of its sovereign immunity against suit for purposes of:
 - (1) Tribal Court review of civil actions pursuant to Sec. 315 and 324 of this Code, and Federal Court of Appeals review after full exhaustion of Tribal administrative and judicial remedies as set forth therein, and
 - (2) citizen suits in Tribal Court pursuant to Sec. 317 of this Code, and Federal Court of Appeals review, if applicable, after full exhaustion of Tribal administrative and judicial remedies as set forth therein.
- (b) The Tribe's consent to any federal court review under the limited waiver in subsection (a) shall only apply after exhaustion of all Tribal administrative and judicial remedies as set forth in this Code and under other applicable Tribal law.
- (c) The limited waiver in subsection (a) shall apply to declaratory and injunctive relief against the CCRO and the Crow Tribe, their officers and agents, provided, however, that any monetary liability of the Crow Tribe pursuant to this limited waiver shall be limited to costs of litigation (including attorney and expert witness fees) as may be awarded by the court pursuant to Section 317(d) or as elsewhere expressly provided in this Code, and in no event shall any judgment or other relief awarded pursuant to this limited waiver result in the encumbrance of any Tribal trust property or assets.

Sec. 321. Designation of Lands Unsuitable for Mining

- (a) (1) The CCRO, in consultation with any other Crow Tribal agency designated by the Chairman including but not limited to the Crow Tribal Historic Preservation Office, shall establish a planning process enabling objective decisions based upon competent and scientifically sound data and information as to which, if any, Crow coal lands are unsuitable for all or certain types of coal mining operations pursuant to the standards set forth in paragraphs (2) and (3) of this subsection. Such decisions shall not

prevent mineral exploration pursuant to this Code of any area designated as unsuitable for all or certain types of coal mining operations.

- (2) Upon petition pursuant to subsection (c) of this section, the CCRO shall designate an area as unsuitable for all or certain types of coal mining operations if the CCRO determines that reclamation pursuant to the requirements of this Code is not technologically and economically feasible.
- (3) Upon petition pursuant to subsection (c) of this section, a surface area may be designated unsuitable for certain types of coal mining operations if such operations will:
 - (A) be incompatible with existing Tribal land use plans, policies and programs; or
 - (B) affect fragile or historic lands or important cultural sites in which such operations could result in significant damage to important historic, cultural, scientific, and esthetic values and natural systems; or
 - (C) affect renewable resource lands in which such operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products, and such lands to include aquifers and aquifer recharge areas; or
 - (D) affect natural hazard lands in which such operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geology.
- (4) To comply with this section, the CCRO will be responsible for coal mining lands review and will demonstrate the Crow Tribe has developed or is developing a process which includes:
 - (A) a data base and an inventory system which will permit proper evaluation of the capacity of different land areas to support and permit reclamation of coal mining operations, which may be maintained by or shared with another Tribal agency with land use planning responsibilities;

- (B) a method or methods for implementing land use planning decisions concerning coal mining operations; and
 - (C) proper notice, opportunities for public participation, including a public hearing prior to making any designation or redesignation pursuant to this section.
- (5) Determinations of the unsuitability of land for coal mining, as provided for in this section, shall be integrated as closely as possible with present and future Tribal land use planning and regulation processes as established by Tribal law.
- (6) The requirements of this section shall not apply to lands on which coal mining operations are being conducted on the date of enactment of this Code or SMCRA or under a permit issued pursuant to this Code, or where substantial legal and financial commitments in such operation were in existence prior to January 4, 1977.
- (b) The CCRO in cooperation with other Tribal agencies with land use planning responsibilities, including but not limited to the Tribal Historic Preservation Office, shall conduct a review of Crow Lands to determine, pursuant to the standards set forth in paragraphs (2) and (3) of subsection (a) of this section, whether there are areas on Crow Lands which are unsuitable for all or certain types of coal mining operations. When the CCRO determines an area on Crow Lands to be unsuitable for all or certain types of coal mining operations, the Director shall withdraw such area or condition any mineral leasing or mineral entries in a manner so as to limit coal mining operations on such area. Prior to designating any Crow Lands unsuitable for such mining, the CCRO shall consult with the appropriate Tribal and federal agencies.
- (c) Any person having an interest which is or may be adversely affected shall have the right to petition the CCRO to have an area designated as unsuitable for coal mining operations, or to have such a designation terminated. Such a petition shall contain allegations of facts with supporting evidence which would tend to establish the allegations. Within ten months after receipt of the petition the CCRO shall hold a public hearing in the locality of the affected area, after appropriate notice and publication of the date, time, and location of such hearing. After a person having an interest which is or may be adversely affected has filed a petition and before the hearing, as required by this subsection, any person may intervene by filing allegations of facts with supporting evidence which would tend

to establish the allegations. Within sixty days after such hearing, the CCRO shall issue and furnish to the petitioner and any other party to the hearing, a written decision regarding the petition, and the reasons therefore. In the event that all the petitioners stipulate agreement prior to the requested hearing, and withdraw their request, such hearing need not be held.

- (d) Prior to designating any land areas as unsuitable for coal mining operations, the CCRO shall prepare a detailed statement on:
 - (1) the potential coal resources in the area;
 - (2) the demand for coal resources; and
 - (3) the impact of such designation on the Reservation environment and economy, and on potential Tribal revenues from the production of Tribally-owned coal.
- (e) After the enactment of this Code and subject to valid existing rights no coal mining operations except those which exist on the date of enactment of this Code or SMCRA shall be permitted:
 - (1) on any Crow Lands designated by the Crow Tribe as sacred, or as having special or exceptional cultural, historical or environmental characteristics;
 - (2) on any Crow Lands within the boundaries of the National Park system, the National Wilderness Preservation system, the National Wildlife Refuge System, the National System of Trails, the Wild and Scenic Rivers system, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act, and National Recreation Areas designated by Act of Congress;
 - 3) on any Tribal or Federal lands within the boundaries of any National Forest: Provided, however, that coal mining operations may be permitted on such lands if the applicable Federal authority finds that there are no significant recreational, timber, economic, or other values which may be incompatible with such mining operations and:
 - (A) surface operations and impacts are incident to an underground coal mine; or
 - (B) where the U.S. Secretary of Agriculture determines, with respect to lands which do not have significant forest cover within National

Forest, that mining is in compliance with other relevant Federal laws.

- (4) which will adversely affect any publicly owned park or places included in the National Register of Historic Sites or places unless approved jointly by the CCRO, the Crow Tribal Legislature and the Chairman of Executive Branch, and appropriate Federal or local agency with jurisdiction over the park or the historic site;
 - (5) within one hundred feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join such right-of-way line and except that the CCRO may permit such roads to be re-located or the area affected to lie within one hundred feet of such road, if after public notice and opportunity for public hearing in the locality a written finding is made that the interests of the Tribe, the general public and the landowners affected will be protected; or
 - (6) within three hundred feet from any occupied dwelling, unless waived by the owner thereof, nor within three hundred feet of any public building, school, church, community, or institutional building, public park, or within one hundred feet of a cemetery, defined as any place where human bodies are interred.
- (f) Notwithstanding any other provision of this Section, any lands overlying Tribally-owned coal shall be designated as unsuitable for coal mining by the CCRO upon receipt of a resolution of the Crow Tribal Legislature, approved by the Chairman of the Executive Branch, designating such lands as unsuitable for any reason, which designation shall not be subject to review.

Sec. 322. Tribal or Public Agencies, Utilities, and Corporations

Any agency, unit or instrumentality of the Crow Tribe, Federal State or local government including any publicly owned utility or publicly owned corporation of Tribal, Federal State or local government, which proposes to engage in coal mining operations which are subject to the requirements of this Code, shall comply with this Code.

Sec. 323. Review by CCRO

- (a) (1) A permittee issued a notice or order by the CCRO pursuant to the provisions of subparagraphs (a)(2) and (3) of section 318 of this Code, or pursuant to a Tribal or federal program or the federal lands program or any

person having an interest which is or may be adversely affected by such notice or order or by any modification, vacation, or termination of such notice or order, may apply to the Director of CCRO for review of the notice or order within thirty days of receipt thereof or within thirty days of its modification, vacation, or termination. Upon receipt of such application, the Director shall cause such investigation to be made as deemed appropriate. Such investigation shall provide an opportunity for a public hearing, at the request of the applicant or the person having an interest which is or may be adversely affected, to enable the applicant or such person to present information relating to the issuance and continuance of such notice or order of the modification, vacation, or termination thereof. The filing of an application for review under this subsection shall not operate as a stay of any order or notice.

- (2) The permittee and other interested persons shall be given written notice of the time and place of the hearing at least five days prior thereto. Any such hearing shall be of record and subject to section 319 of this Code.
- (b) Upon receiving the report of such investigation, the Director shall make finding of fact, and shall issue a written decision, incorporating therein an order vacating, affirming, modifying, or terminating the notice or order, or the modification, vacation, or termination of such notice or order complained of and incorporate his findings therein. Where the application for review concerns an order for cessation of coal mining and reclamation operations issued pursuant to the provisions of subparagraph (a)(2) or (a)(3) of section 318 of this Code, the Director shall issue the written decision within thirty days of the receipt of the application for review, unless temporary relief has been granted by the Director pursuant to subparagraph (c) of this section or by the Tribal Court pursuant to subparagraph (c) of section 324 of this Code.
- (c) Pending completion of the investigation and hearing required by this section, the applicant may file with the Director a written request that the Director grant temporary relief from any notice or order issued under section 318 of this code, a Tribal or federal program or the federal lands program together with a detailed statement giving reasons for granting such relief. The Director shall issue an order or decision granting or denying such relief expeditiously: *Provided*, That where the applicant requests relief from an order or cessation of coal mining and reclamation operations issued pursuant to subparagraph (a)(2) or (a)(3) of section 318 of this title, the order or decision on such a request shall be issued within five

days of its receipt. The Director may grant such relief, under such conditions as he may prescribe, if:

- (1) a hearing has been held in the locality of the permit area on the request for temporary relief in which all parties were given an opportunity to be heard;
 - (2) the applicant shows that there is substantial likelihood that the findings of the Director will be favorable to him; and
 - (3) such relief will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources.
- (d) Following the issuance of an order to show cause as to why a permit should not be suspended or revoked pursuant to section 318, the Director shall hold a public hearing after giving written notice of the time, place and date thereof. Any such hearing shall be of record pursuant to Section 319 of this Code. Within sixty days following the public hearing, the Director shall issue and furnish to the permittee and all other parties to the hearing a written decision, and reasons therefore, concerning suspension or revocation of the permit. If the Director revokes the permit, the permittee shall immediately cease coal mining operations on the permit area and shall complete reclamation within a period specified by the Director, or the Director shall declare as forfeited the performance bonds for the operation.
- (e) Whenever an order is issued under this section, or as a result of any administrative proceeding under this Code, at the request of any person, a sum equal to the aggregate amount of all costs and expenses (including attorney fees) as determined by the Director to have been reasonable incurred by such person for or in connection with his participation in such proceedings, including any judicial review of agency actions, may be assessed against either party as the court, resulting from judicial review or the Director, resulting from administrative proceedings, deems proper.

Sec. 324. Judicial Review

- (a) (1) Any action of the CCRO to prepare or promulgate a Tribal program pursuant to this Code shall be subject to judicial review by the Crow Tribal Court. Any action by the CCRO promulgating rules or regulations including standards pursuant to sections 301, 311 and 312 shall be subject

to judicial review by the Crow Tribal Court. Any action subject to judicial review under this subsection shall be affirmed unless the findings conclude that such action is arbitrary, capricious, or otherwise inconsistent with law. A petition for review of any action subject to judicial review under this subsection shall be filed in the Crow Tribal Court within sixty days from the date of such action, or after such date if the petition is based solely on grounds arising after the sixtieth day. Any such petition may be made by any person who participated in the administrative proceedings and who is aggrieved by the action of the CCRO.

- (2) Any order or decision issued by the CCRO in a civil penalty proceeding or any other proceeding required to be conducted pursuant to Section 319 of this Code shall be subject to judicial review on or before thirty days from the date of such order or decision in accordance with subsection (b) of this section in Crow Tribal Court. In the case of a proceeding to review an order or decision issued by the CCRO under the penalty sections of this Code, the court shall have jurisdiction to enter an order requiring payment of any civil penalty assessment enforced by its judgment. This availability of review established in this subsection shall not be construed to limit the rights established in Section 317 of this Code.
- (b) The court shall hear such petition or complaint solely on the record made before the Director of the CCRO. Except as provided in subsection (a), the findings of the Director of the CCRO, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may affirm, vacate, or modify any order or decision or may remand the proceedings to the Director of the CCRO for such further action as it may direct.
- (c) In the case of a proceeding to review any order or decision issued by the Director of the CCRO under this Code, including an order or decision issued pursuant to subparagraph (c) or (d) of section 323, of this title pertaining to any order issued under subparagraph (a)(2), (a)(3), or (a)(4) of section 318 of this title for cessation of coal mining and reclamation operations, the court may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate pending final determination of the proceedings if:
 - (1) all parties to the proceedings have been notified and given an opportunity to be heard on a request for temporary relief;

- (2) the person requesting such relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceeding; and
- (3) such relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air, or water resources.
- (d) The commencement of a proceeding under this section shall not, unless specifically ordered by the court, operate as a stay of the action, order, or decision of the Director of the CCRO.
- (e) Action of the CCRO pursuant to this Code shall be subject to judicial review only in accordance with this Section, but the availability of such review shall not be construed to limit the operation of the rights established in Section 317 except as provided therein.
- (f) Judgments and/or final orders of the Crow Tribal Court in actions brought under this Section 324 and Section 315 shall be subject to review by the Crow Court of Appeals as provided in Title 3 of the Crow Law and Order Code and the Crow Rules of Appellate Procedure. Actions of the CCRO shall not be reviewable in any court of the United States pursuant to Section 710(j)(4)(A) of SMCRA (30 U.S.C. §1300(j)(4)(A)) unless and until all Tribal proceedings under this Code and in the Crow Tribal Court system have been completed.

Sec. 325. Coal Mining Operations Not Subject To This Code

The provisions of this Code shall not apply to any of the following activities:

- (1) the extraction of coal by a landowner for his own noncommercial use from land owned or leased by him; and
- (2) the extraction of coal as an incidental part of Tribal, Federal, State or local government-financed highway or other construction under regulations established by the CCRO.

TITLE IV--Administrative and Miscellaneous Provisions

Sec. 401. Definitions

For the purposes of this Code:

- (1) "alluvial valley floors" means the unconsolidated stream laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities but does not include upland areas which are generally overlain by a thin veneer of colluvial deposits chiefly of debris from sheet erosion, deposits by unconcentrated runoff of slope wash, together with talus, other mass movement accumulation and wind-blown deposits;
- (2) "approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all high walls and spoil piles eliminated; water impoundments may be permitted where the CCRO determines that they are in compliance with applicable sections of this Code;
- (3) "Chairman" means the elected Chairman of the Crow Nation Executive Branch;
- (4) "coal mining and reclamation operations" means coal mining operations and all activities necessary and incidental to the reclamation of such operations after the date of enactment of this Code and SMCRA;
- (5) "coal mining operations" means:
 - (A) activities conducted on in connection with a coal mine subject to the requirements of this Code, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include excavation for the purpose of obtaining coal including such common methods as contour, strip, underground, auger, mountaintop removal, box cut, open pit, and area mining, the uses of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal for interstate commerce at or near the mine site: Provided, however, that such activities do not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16 2/3 percentum of the tonnage of minerals removed for purposes of commercial use or sale or coal explorations subject to applicable sections of this Code; and
 - (B) the areas upon which such activities occur or where such activities disturb the natural land surface or surface or underground water. Such areas shall

also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities;

- (6) "Code" means this Crow Coal Mining and Reclamation Code;
- (7) "Crow Coal Regulatory Office" or "CCRO" means the Crow Tribal regulatory authority established pursuant to Title II of this Code; the matrix of activities conducted by the CCRO and other designated agencies, including the interim regulatory program and the permanent regulatory program, in fulfillment of the provisions of this Code and the regulations promulgated hereunder;
- (8) "Crow Lands" or "Crow Indian Lands" means all lands, including mineral interests, within the exterior boundaries of the Crow 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 the Crow Tribe of Indians;
- (9) "Crow Tribal Council" means the governing body of the Crow Tribe of Indians prior to the 2001 Crow Constitution and the general Tribal membership represented by the three branches of government since the approval of the 2001 Crow Constitution and By-Laws;
- (10) "Crow Tribe of Indians" or "Crow Tribe" or "Tribe" means the Crow Tribe of Indians of Montana, also known as the Apsaalooke Nation, a sovereign Indian Tribe recognized by the Secretary of the Interior;
- (11) "Director" means the Director of the Crow Coal Regulatory Office (CCRO);
- (12) "Federal lands" means any land, including mineral interests, owned by the United States without regard to how the United States acquired ownership of the land and without regard to the agency having responsibility for management thereof, except Indian lands;

- (13) "imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirement of this Code in a coal mining and reclamation operation, which condition, practice, or violation could reasonably be expected to cause substantial physical harm to persons outside the permit area before such condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose himself or herself to the danger during the time necessary for abatement;
- (14) "lignite coal" means consolidated lignitic coal having less than 8,300 British thermal units per pound, moist and mineral matter free;
- (15) "operator" means any person, partnership, corporation, limited liability company, or other business organization engaged in coal mining who removes or intends to remove more than two hundred fifty tons of coal from the earth by coal mining within twelve consecutive calendar months in any one location;
- (16) "other minerals" means clay, stone, sand, gravel, metalliferous and nonmetalliferous ores, any other solid material or substance of commercial value excavated in solid form from natural deposits on or in the earth, exclusive of coal and those minerals which occur naturally in liquid or gaseous form;
- (17) "permit" means a permit to conduct coal mining and reclamation operations issued by the CCRO pursuant to the provisions of this Code;
- (18) "permit applicant" or "applicant" means a person applying for a permit;
- (19) "permit area" means the area of land indicated on the approved map submitted by the operator with his application, which area of land shall be covered by the operator's bond as required by section 305 of this Code and shall be readily identifiable by markers on the site;
- (20) "permittee" means a person holding a permit;
- (21) "person" means an individual, partnership, association, society, joint stock company, firm, company, corporation, holding company, limited liability company, or other business organization;
- (22) "prime farmland" shall have the same meaning as that previously prescribed by the United States Secretary of Agriculture on the basis of such factors as moisture availability, temperature regime, chemical balance, permeability, surface layer

composition, susceptibility to flooding, and erosion characteristics, and which historically have been used for intensive agricultural purposes, and as published in the Federal Register;

- (23) "reclamation plan" means a plan submitted by an applicant for a permit from the CCRO which sets forth a plan for reclamation of the proposed coal mining operations pursuant to section 304 of this Code;
- (24) "regulatory authority" means the Crow Tribal regulatory authority where the Crow Tribe, through the Crow Coal Regulatory Office, is administering this Code under an approved Tribal Program;
- (25) "Secretary" means the Secretary of the Interior, except where otherwise described;
- (26) "Surface Mining Control and Reclamation Act" or "SMCRA" means the Surface Mining Control and Reclamation Act of 1977, Public Law 95-87, and subsequent amendments thereto (30 U.S.C. 1201 & following);
- (27) "Tribal authority" or "Tribal regulatory authority" means the Tribal department or agency which has primary Tribal responsibility for administering this Code;
- (28) "Tribal program" means a program established by the Crow Tribe of Indians pursuant to SMCRA section 503 to regulate coal mining and reclamation operations, on lands within the Crow reservation in accord with the requirements of this Code and regulations issued by the CCRO pursuant to this Code;
- (29) "unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of any violation of his permit or any requirement of this Code due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or the Code due to indifference, lack of diligence, or lack of reasonable care; and
- (30) "USDOl" means the United States Department of the Interior.

Sec. 402. Reserved

Sec. 403. Other Crow Tribal and Federal Laws

- (a) Nothing in this Code shall be construed to limit, amend, or repeal other existing Crow Tribal laws or resolutions or to diminish any rights, privileges or immunities of the Crow Tribe guaranteed under Treaties or federal law except as specifically provided in this Code: Provided, that in the event that provisions of this Code are found to be in conflict or contradiction with any prior laws or

resolutions of the Crow Tribal Council or the Crow Legislature, the provisions of this Code shall supersede such prior laws and resolutions except to the extent that such prior laws or resolutions provide for more stringent protections of the environment or due process than the conflicting provisions of this Code.

- (b) Nothing in this Code shall be construed as superseding, amending, modifying, or repealing any federal law or rule or regulation promulgated thereunder except as provided herein and authorized by SMCRA.
- (c) Nothing in this Code shall affect in any way the authority of the Crow Tribe, or the heads of Federal agencies under other provisions of law to include in any lease, license, permit, contract, or other instrument such conditions as may be appropriate to regulate coal mining and reclamation operations on Crow Lands.
- (d) To the greatest extent practicable each Federal agency shall cooperate with the Director in carrying out the provisions of this Code.
- (e) Approval of the Tribal program, pursuant to SMCRA section 503(b), and adoption and approval of Tribal regulations under Section 201(c) of this Code shall not constitute a major action within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

Sec. 404. Reserved

Sec. 405. Reserved

Sec. 406. Protection of CCRO Employees

- a) No person shall discharge, or in any other way discriminate against, or cause to be fired or discriminated against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has filed, instituted, or caused to be filed or instituted any proceeding under this Code, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this Code.
- (b) Any employee or a representative of employees who believes that he has been fired or otherwise discriminated against by any person in violation of subsection (a) of this section may, within thirty days after such alleged violation occurs, apply to the Director for a review of such firing or alleged discrimination. A copy of the application shall be sent to the person or operator who will be the respondent. Upon receipt of such application, the Director shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to such review to enable the parties to present information relating to the alleged violation. The parties shall be given written notice of the time and place of the

hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to Section 319 of this Code. Upon receiving the report of such investigation the Director shall make findings of fact. If the Director finds that a violation did occur, he shall issue a decision incorporating therein his findings and an order requiring the party committing the violation to take such affirmative action to abate the violation as the Director deems appropriate, including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his former position with compensation. If he finds that there was no violation, he will issue a finding. Orders issued by the Director under this subsection shall be subject to judicial review in the same manner as orders and decisions of the Director are subject to judicial review under this Code.

- (c) Whenever an order is issued under this section to abate any violation, at the request of the applicant a sum equal to the aggregate amount of all costs and expenses (including attorneys' fees) to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the persons committing the violation.

Sec. 407. Penalty For Interference

Any person who shall, except as permitted by law, resist, prevent, impede, or interfere with the CCRO or any of its agents or employees in the performance of duties pursuant to this Code;

- (a) 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
- (b) 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 \$5,000 or by imprisonment for not more than one year, or both.

Sec. 408. Severability

If any provision of this Code or the applicability thereof to any person or circumstances is held invalid, the remainder of this Code and the application of such provision to other persons or circumstances shall not be affected thereby.

Sec. 409. Experimental Practices

- (a) In order to encourage advances in mining and reclamation practices or to allow post-mining land use for industrial, commercial, residential, agricultural, or public

use (including recreational facilities) the CCRO with approval by the Chairman and the Secretary of the Interior may authorize departures in individual cases on an experimental basis from the environmental protection performance standards promulgated under sections 311 and 312 of this Code. Such departures may be authorized if:

- (1) the experimental practices are potentially more or at least as environmentally protective during and after coal mining operations, as those practices required by promulgated standards of this Code;
- (2) the mining or reclamation operations approved for particular land-use or other experimental purposes are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practices; and
- (3) the experimental practices do not reduce the protection afforded public health and safety below that provided by promulgated standards.

Sec. 410. Protection of Property Rights

Nothing in this Code shall be construed as increasing or diminishing any property rights, including mineral interest, of the Crow Tribe or of any other landowner, including but not limited to owners of beneficial interests in allotted lands held in trust by the United States.

Sec. 411. Water Rights and Replacement

- (a) Nothing in this Code shall be construed as affecting in any way the right of any person or the Crow Tribe itself to enforce or protect, under applicable law, their interest in water resources affected by a coal mining operation on Crow Lands.
- (b) The operator of a coal mine shall replace the water supply of an owner of interest in real property (including owners of beneficial interests in allotted lands held in trust by the United States) who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source where such supply has been affected by contamination, diminution, or interruption proximately resulting from such coal mining operation.

Sec. 412. Certification of Blasters

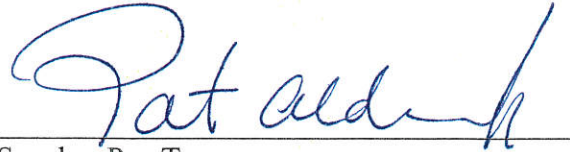
In accordance with this Code, the CCRO shall promulgate regulations requiring the examination, training, and certification of persons engaging in or directly responsible for blasting or use of explosives in coal mining operations.

Sec. 413. Subsidence

- (a) Underground coal mining operations conducted after the date of enactment of this section shall comply with each of the following requirements:
 - (1) Promptly repair, or compensate for, material damage resulting from subsidence caused to any occupied residential dwelling and structures related thereto, or non-commercial building due to underground coal mining operations. Repair of damage shall include rehabilitation, restoration, or replacement of the damaged occupied residential dwelling and structures related thereto, or non-commercial building. Compensation shall be provided to the owner of the damaged occupied residential dwelling and structures related thereto or non-commercial building and shall be in the full amount of the diminution in value resulting from the subsidence. Compensation may be accomplished by the purchase, prior to mining, of a noncancellable premium-prepaid insurance policy.
 - (2) Promptly replace any drinking, domestic, or residential water supply from a well or spring in existence prior to the application for a coal mining and reclamation permit, which has been affected by contamination, diminution, or interruption resulting from underground coal mining operations. Nothing in this section is intended to be construed to prohibit or interrupt underground coal mining operations. (b) Regulations. Within one year after the date of enactment of this section, the Director shall, after providing notice and opportunity for public comment, promulgate final regulations to implement subsection (a).

CERTIFICATION

I hereby certify that this Bill for the “**Crow Coal Mining and Reclamation Code**” was duly enacted by the Crow Tribal Legislature with a vote of 16 for, 0 opposed, and 0 abstained and that a quorum was present on this 29th day of April, 2010.



Speaker Pro-Tem
Crow Tribal Legislature

ATTEST:



Secretary Pro-Tem
Crow Tribal Legislature



EXECUTIVE ACTION

I hereby:

X approve

_____ veto

this bill for the "Crow Coal Mining and Reclamation Code" pursuant to the authority vested in the Chairman of the Crow Tribe by Article V, Section 8 of the Constitution and Bylaws of the Crow Tribe of Indians, on this 1st day of June, 2010.



Cedric Black Eagle, Chairman
Crow Tribal Executive Branch

A Bill For An Act Entitled: "The Crow Coal Mining and Reclamation Code

Bill or Resolution: CLB10-03 Introduced by: Executive Branch Date of Vote: 4/29/2010
Number

<u>Representative:</u>	<u>Yes</u>	<u>No</u>	<u>Abstained</u>
H. Two Leggins	<u>X</u>	<u> </u>	<u> </u>
V. Pretty Paint	<u>X</u>	<u> </u>	<u> </u>
C. J. Stewart	<u>X</u>	<u> </u>	<u> </u>
K. Shane	<u>X</u>	<u> </u>	<u> </u>
S. Backbone	<u>X</u>	<u> </u>	<u> </u>
O. Half, Jr.	<u>X</u>	<u> </u>	<u> </u>
W. Plainfeather	<u>X</u>	<u> </u>	<u> </u>
R. Old Crow, Sr.	<u>X</u>	<u> </u>	<u> </u>
M. Not Afraid	<u>X</u>	<u> </u>	<u> </u>
V. Crooked Arm	<u>X</u>	<u> </u>	<u> </u>
L. DeCrane	<u>X</u>	<u> </u>	<u> </u>
C. Goes Ahead	<u>X</u>	<u> </u>	<u> </u>
B. Hugs	<u>X</u>	<u> </u>	<u> </u>
G. Real Bird, Jr.	<u>X</u>	<u> </u>	<u> </u>
M. Backbone	<u>X</u>	<u> </u>	<u> </u>
D. Wilson	<u> </u>	<u> </u>	<u> </u>
P. Alden, Jr. <i>Secretary of the House</i>	<u>X</u>	<u> </u>	<u> </u>
M. Covers Up, Sr. <i>Speaker of the House</i>	<u> </u>	<u> </u>	<u> </u>
Totals:	<u>16</u>	<u>0</u>	<u>0</u>

Result of Vote:

Passed

Not Passed

Tabled

Veto-Override

Pat Alden, Jr.
Speaker Pro-Tem

4-29-10
Date

H. Noel Two Leggins
Secretary Pro-Tem

4-29-10
Date

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”**

APPENDIX A

Index to The Crow Coal Mining and Reclamation Code

With Cross-References to

The Surface Mining Control and Reclamation Act (SMCRA)

April 2010

SMCRA Section	Code Section	TITLE I Statement of Findings and Policy	Code Page #
101	101	Findings	
102	102	Purposes	
SMCRA Section	CODE Section	TITLE II Crow Coal Regulatory Office	
201	201	Office and Functions	
SMCRA Section	CODE Section	TITLE III Control of the Environmental Impacts of Coal Mining	
506	301	Permits	
507	303	Application Requirements	
508	304	Reclamation Plan Requirements	
509	305	Performance Bonds	
510	306	Permit Approval or Denial	
511	307	Revision of Permits	
512	308	Coal Exploration Permits	
513	309	Public Notice and Public Hearings	
514	310	Decisions of the CCRO and Appeals	
515	311	Environmental Protection Performance Standards	
516	312	Surface Effects of Underground Coal Mining Operations	
None	313	Annual Mining and Reclamation Report	
517	314	Inspections and Monitoring	
518	315	Penalties	
519	316	Release of Performance Bonds or Deposits	
520	317	Citizen Suits	
521	318	Enforcement	
None	319	Administrative Adjudicatory Hearings	
None	320	Limited Waiver of Tribal Sovereign Immunity	
522	321	Designation Of Lands Unsuitable For Mining	
524	322	Tribal or Public Agencies, Utilities and Corporations	
525	323	Review by CCRO	
526	324	Judicial Review	
528	325	Coal Mining Operations Not Subject To This Code	
SMCRA Section	CODE Section	TITLE IV Administrative and Miscellaneous Provisions	
701	401	Definitions	
NONE	402	RESERVED	
702	403	Other Crow Tribal and Federal Laws	
NONE	404	RESERVED	
NONE	405	RESERVED	
703	406	Protection of CCRO Employees	
704	407	Penalty For Interference	
707	408	Severability	
711	409	Experimental Practices	
714	410	Surface Owner Protection	
717	411	Water Rights and Replacement	
719	412	Certification of Blasters	
720	413	Subsidies	

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APPENDIX B

Administrative Law Provisions

April 2010



Crow Country

Legislative Branch

Pryor:

Arrow Creek

Carlson Goes Ahead
Lawrence De Crane
Bryce Hugs

Big Horn:

Valley of the Give Away

Vincent Crooked Arm
Marlin D. Not Afraid
Patrick Alden, Jr.
Secretary of the House

Dunmore:Black

Lodge

Conrad J. Stewart
V. Jeannie PrettyPaint
H. Noel Two Leggins

Reno:

Center Lodge

Oliver Half, Jr.
Shawn Backbone, Sr.
Kenneth G. Shane

Lodge Grass:

Valley of the Chief

Manuel Covers Up, Sr
Speaker of the House
R. Knute Old Crow, Sr
Woodrow Plainfeather

Wyola:

Mighty Few

Dana Wilson
Gordon Real Bird, Jr.
McKinley Tye Backbone

Staff

Ronald Ameson, Esq.
Attorney At Law

Leslie Plainfeather
Legal Assistant

Gerald Jay Harris
Legal Clerk

Jackie M. Blacksmith,
Administrative Officer

William Old Crow
Finance Officer/Admin. Assist

Sheri Chandler
Office Assistant/Receptionist/
Editor

Kenny Pretty On Top
Maintenance/Custodian/
Sergeant at Arms

LEGISLATIVE BRANCH OF THE CROW TRIBAL GOVERNMENT

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NOTICE OF VETO OVERRIDE

This is an Official Notice as authorized by Law, CLB06-08 and "An Act to Establish a Time Limit for Executive Veto, A Veto Override Process and Referendum Process."

The Crow Legislature in Regular Session on July 12, 2010 took the Following **VETO OVERRIDE** Action relative to **CLB10-03** A BILL FOR AN ACT ENTITLED: "THE CROW COAL MINING AND RECLAMATION CODE"

BILL IS ATTACHED IN REFERENCE AND INCORPORATED BY REFERENCE HERETO.

Done and Dated this, 12th day of July, 2010

Senator Manuel Covers Up, Sr.

Speaker of the House

Senator Pat Alden, Jr.

Secretary of the House

CERTIFICATE OF SERVICE

Mr. William Watt, Attorney for the Executive Branch Legal Council was served from Legislative Branch Staff member, Jackie M. Blacksmith for the following:

1. NOTICE OF VETO OVERRIDE ACTION REGARDING **CLB10-03** A BILL FOR AN ACT ENTITLED: "THE CROW COAL MINING AND RECLAMATION CODE"

I,
(Signature of recipient) received as stated above from Jackie M. Blacksmith

Done and Dated this 17th day of Aug., 2010

~TO BE COMPLETED BY LEGISLATIVE BRANCH STAFF MEMBER S ONLY~

I, the undersign Legislative Branch Staff member hand delivered the above to, William C. Watt
or designee for the Executive Branch at approx. 10:29 a.m./p.m.

Done and Dated this 17th day of Aug., 2010.

Jackie M. Blacksmith
Administrative Officer
Crow Legislative Branch



EXECUTIVE ACTION
FOLLOWING VETO AND OVERRIDE
CLB10-03

The foregoing Act, CLB10-03 "The Crow Coal Mining and Reclamation Act" (the "Act"), was passed by the Legislature on April 29, 2010. The Act was approved by the Chairman of the Executive Branch on June 1, 2010. The Branches have disagreed on whether the Chairman's approval was provided within the time provided in Section 1-3-101 of the Crow Law and Order Code (as added by CLB06-08, "An Act to Establish a Time Limit for Executive Veto, a Veto Override Process, and a Referendum Process"), and the Legislature has taken the position that it was deemed to have been vetoed. The veto was overridden by vote of two-thirds of the members of the Legislature during its next regular Session (July 2010). In the interest of ensuring that there is no question about the validity and effectiveness of the Act, and to enable my appointee as the Director of the Crow Coal Regulatory Office to be timely confirmed by the Legislature as provided in the Act, the Chairman of the Executive Branch hereby waives the right to a Referendum pursuant to Article V, Section 8 of the Tribal Constitution. Pursuant to Section 1-3-103, the Executive Branch Chairman is required to sign the legislation.

Now, therefore, as required by Section 1-3-103 of the Crow Law and Order Code, I hereby affix my signature to this Act signifying its effectiveness as of August 9, 2010.

DATED this 9th day of August 2010.



Cedric Black Eagle, Chairman
Crow Tribal Executive Branch

A BILL FOR AN ACT ENTITLED: "THE CROW COAL MINING AND RECLAMATION CODE"

Bill or Resolution: CLB10-03 **Introduced by:** Executive Branch **Date of Vote:** 7/12/2010
Number

<u>Representative:</u>	Yes	No	Abstained
H. Two Leggins	X		
V. Pretty Paint	X		
C. J. Stewart	X		
K. Shane	X		
S. Backbone	X		
O. Half, Jr.	X		
W. Plainfeather	X		
R. Old Crow, Sr.	X		
M. Not Afraid	X		
V. Crooked Arm	X		
L. DeCrane			
C. Goes Ahead			
B. Hugs	X		
G. Real Bird, Jr.	X		
M. Backbone	X		
D. Wilson	X		
P. Alden, Jr.	X		
<i>Secretary of the House</i>			
M. Covers Up, Sr.	X		
<i>Speaker of the House</i>			
Totals:	16	0	0

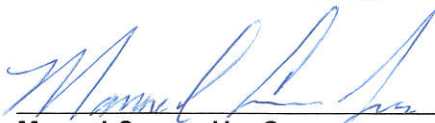
Result of Vote:

Passed

Not Passed

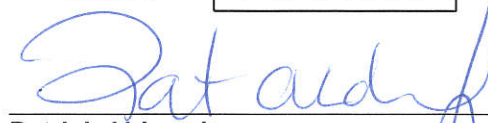
Tabled

Veto-Override



Manuel Covers Up, Sr.
Speaker of the House

Date



Patrick Alden, Jr.
Secretary of the House

Date