



Crow Country

LEGISLATIVE BRANCH OF THE CROW TRIBAL GOVERNMENT

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Prvor:

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
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Reno:

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Lodge Grass:

Valley of the Chief

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Speaker of the House
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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



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	<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> </u>	<u> </u>	<u> </u>
C. Goes Ahead	<u> </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> X </u>	<u> </u>	<u> </u>
P. Alden, Jr.	<u> X </u>	<u> </u>	<u> </u>
<i>Secretary of the House</i>			
M. Covers Up, Sr.	<u> X </u>	<u> </u>	<u> </u>
<i>Speaker of the House</i>			
Totals:	<u> 16 </u>	<u> 0 </u>	<u> 0 </u>

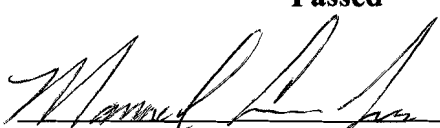
Result of Vote:

Passed

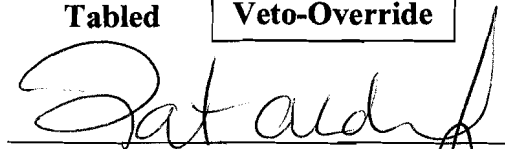
Not Passed

Tabled

Veto-Override


Manuel Covers Up, Sr.
Speaker of the House

Date


Patrick Alden, Jr.
Secretary of the House

Date

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

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 be 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

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 $16 \frac{2}{3}$ 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

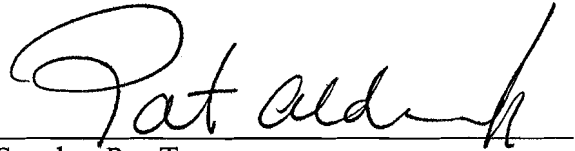
In accordance with this Code, the CCRO shall promulgate regulations requiring the examination, training, and certification of persons engaging in or directly responsible for blasting or use of explosives in coal mining operations.

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).

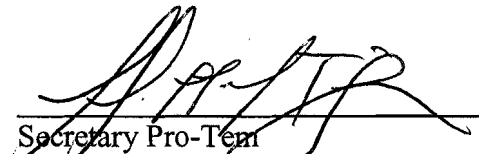
CERTIFICATION

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>	Yes	No	Abstained
H. Two Leggins	<u> X </u>	<u> </u>	<u> </u>
V. Pretty Paint	<u> X </u>	<u> </u>	<u> </u>
C. J. Stewart	<u> X </u>	<u> </u>	<u> </u>
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.	<u> X </u>	<u> </u>	<u> </u>
<i>Secretary of the House</i>			
M. Covers Up, Sr.	<u> </u>	<u> </u>	<u> </u>
<i>Speaker of the House</i>			
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

Date

H. Noel Two Leggins
Secretary Pro-Tem

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

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704	407	Penalty For Interference	
707	408	Severability	
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720	413	Coal Leasing	

**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 B

Administrative Law Provisions

April 2010