

Whereas on November 30, 1979 an Administrative Directive was issued to the operators of five surface coal mining operations in Arkansas: Hixson (Permit No. 74); Titan Lamar (Permits No. 100 and 100-A-1); Titan Rowbotham (Permit No. 114 and 114-A); Titan Harmony (Permit No. 116); and Titan Philpott (Permits No. 178 and 178-A-1), and on December 20, 1979 a hearing was conducted pursuant to that directive;

Whereas the operators had failed to comply with their approved reclamation plans, and had violated the laws and regulations applicable to the various operations, and submitted a compliance schedule for correcting the violations which the Commission approved on January 25, 1980 through Minute Order 80-6.

Whereas the operators failed to comply with the terms of the compliance schedule approved in Minute Order 80-6, and continued to violate the laws and regulations applicable to the various operations, and that situation led to the initiation of a show cause proceeding by the Department to revoke the permits of the operators, foreclose the various bonds, recover the actual costs of reclamation, and other relief;

Whereas the Commission appointed Paul Means to preside over the show cause hearing, but prior to such hearing one of the parties, Robert M. Traylor, Jr., filed a Petition in Pulaski County Chancery Court (Traylor v. Williams, et al, Pulaski Chancery No. 80-5455) requesting that the Commissioners be enjoined from holding the hearing;

Whereas the Commission cancelled the hearing, intervened in the Traylor v. Williams, et al proceedings, and requested that an injunction be entered ordering the operators of the five mines to carry out their reclamation responsibilities;

Whereas the operators of the five mines have agreed to the terms of a Consent Decree to be entered in the Traylor v. Williams, et al proceedings pursuant to the Request for Injunction filed by the Commission; a copy of such proposed Consent Decree being attached hereto and incorporated herein, and that Consent Decree should be approved by the Commission;

NOW THEREFORE, BE IT RESOLVED THAT:

1. The intervention of the Arkansas Commission on Pollution Control and Ecology in the Traylor v. Williams, et al proceedings was made with the approval of the Commission and this Minute Order confirms and ratifies that approval; and
2. The Consent Decree attached hereto and incorporated herein is approved by the Commission.

COMMISSIONERS

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IN THE CHANCERY COURT OF PULASKI COUNTY, ARKANSAS

ROBERT M. TRAYLOR, JR.

PLAINTIFF AND
COUNTER DEFENDANT

VS.

NO. 80-5455

RALPH WILLIAMS, et al

DEFENDANTS AND
COUNTER CLAIMANTS

VS.

TITAN MINING, et al

INTERVENORS AND
THIRD PARTY DEFENDANTS

VS.

WILLIAM P. ROGERS, et al

THIRD PARTY DEFENDANTS

CONSENT DECREE

Now this day comes on for hearing the Counter Claim of the Intervenor, Arkansas Commission on Pollution Control and Ecology, the parties hereto having consented to the entry of a Consent Decree as evidenced by their signatures affixed:

THE COURT DOTH FIND THAT:

1. Permit No. 74 was issued for Titan I (formerly Hickson Coal Company, Inc.) mine and the operator of that mine is Titan Mining, Ltd., whose general partners are Robert M. Traylor, Jr., and Titan Mining, Inc. Reclamation of this mine is controlled by the Arkansas Open Cut Land Reclamation Act of 1971, and a Consent Decree should be issued stipulating the reclamation procedures to be followed under that act.

2. Permit No. 100 and Permit Amendment No. 100-A-1 were issued for the Titan Lamar Mine and the operator of that mine is Titan Mining, Ltd., whose general partners are Robert M. Traylor, Jr., and Titan Mining, Inc. Reclamation under Permits No. 100 and 100-A-1 is controlled by the Arkansas Open Cut Land Reclamation Act of 1977 (Act 336 of 1977) and a Consent Order should be issued stipulating the reclamation standards to be followed under the interim regulations of the Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87): 30CFR Part 715.

3. Permit No. 114 and Permit Amendment No. 114-A were issued for the Titan Rowbotham Mine and the operator of that mine is Titan Mining, Ltd., whose general partners are Robert M. Traylor, Jr., and Titan Mining, Inc. Reclamation under Permits No. 114 and 114-A is controlled by the Arkansas Open Cut Land

Reclamation Act of 1971 (Act 236 of 1971) and the Arkansas Open Cut Land Reclamation Act of 1977 (Act 336 of 1977) and a Consent Order should issue stipulating the reclamation standards to be followed under Act 336 of 1977.

4. Permit No. 116 was issued for the Titan Harmony Mine. Reclamation under Permit No. 116 is controlled by the Arkansas Open Cut Reclamation Land Act of 1971 (Act 236 of 1971) and a Consent Decree should issue stipulating the reclamation standards to be followed under that Act.

5. Permit No. 178 and Permit Amendment No. 178-A-1 were issued for the Philpot No. 1 Mine and the operator of that mine is Titan Mining III, Ltd., whose general partner is SMA, Inc. Reclamation under Permits No. 178 and 178-A-1 is controlled by the Arkansas Open Cut Land Reclamation Act of 1977 (Act 336 of 1977) and a Consent Order should issue stipulating the reclamation standards to be followed under the interim regulations of the Surface Mining Control and Reclamation Act of 1977 (Public Law No. 95-87): 40CFR Part 715.

6. This Consent Decree applies to all areas affected by the respective operations, including those areas outside the bounds of the permits.

7. The following Consent Decree is entered in five (5) parts to correspond to the five (5) identified mines, and the terms contained in the respective parts of this Consent Decree shall be binding on the signatories thereto.

8. In interpreting this Decree, no reclamation shall be required during the term of any of the identified permits which would stop or impede the mining of coal pursuant to a subsequent permit.

9. The parties hereto do not waive hereby and expressly reserve their right to object to the entry of a Contempt Order

for failure to comply with the terms of this Order in the event the cost of reclamation exceeds the amount of the bond; and whether the parties to this Order may be held in contempt or assessed with liability of any type in the event reclamation costs exceed the amount of the bond shall be determined by this Court.

10. The signatories may by mutual consent, amend or change the terms herein to best accomplish the general intent of reclamation consented to hereby.

11. In implementing revegetation requirements of each of the five parts herein, the permit holders shall first consult with and obtain the services of the County Extension Agent and/or the U.S.D.A. Soil Conservation Service.

12. To implement the provisions of this Decree, the enforcement officer for the Department and the Commission shall be Floyd Durham or his successor.

13. Any grading plan or revegetation schedule required to be submitted to the Department or to the Commission under any of the five parts herein shall be approved in writing by the operator and the enforcement officer and thereafter such plan(s) shall become a part of this Decree.

PART I
(Permit 74)

THE COURT DOTH ORDER THAT:

1. The high wall shall be fenced and warning signs shall be posted at two hundred (200) foot intervals.

2. All ridges and peaks of land (excluding the high wall) affected by open cut mining shall be graded to a rolling or terraced topography traversible by machines necessary for maintenance in accordance with planned use. A copy of the grading plans shall be sent to the Commission on or before seven (7) days after the entry of this Decree. In lieu of sloping the north side of the spoil pile to 3:1, a diversion ditch and sediment pond shall be constructed to capture runoff from the said north slope to a sediment pond.

3. If the operator plans to leave any water impoundments on the premises at the completion of reclamation, the operator may construct earth dams where lakes may be formed, in accordance with sound engineering practices making provisions to ensure that a pH of 6 to 8 is maintained.

4. The above measures shall be completed on or before twenty-one (21) working days, excluding days when weather conditions prohibit operations, calculated from January 26, 1981.

5. Upon completion of item 2 above, laboratory soil tests and recommendations for soil amendments, establishment and maintenance of vegetation cover upon all effected areas, shall be obtained either by the State Highway Commission, the State Soil and Water Conservation Commission, the State Game and Fish Commission, the State Forestry, the Agricultural Extension Service, the Geology Commission, the University of Arkansas Cooperative Extension Service, or other agencies or individuals having experience in foresting and reclaiming open cut mined

lands with forest or agronomic or horticultural species, based on scientific knowledge from research and to reclaiming and utilizing forest and agronomic species on open cut mined lands. The operator shall designate which parts of the affected lands shall be reclaimed for forest, pasture, crop, horticultural, home site, recreational, industrial, or other uses including food, shelter and ground cover for wildlife and shall show the same by appropriate designation on a reclamation map. A copy of the recommendations shall be mailed to the Commission along with the date upon which the recommendations will be carried out; said date to be as soon as possible after receipt of the recommendations. The Commission shall inspect the premises during this phase of reclamation and shall report the status of the operator in complying with this part to the Court.

TITAN MINING LIMITED

By

Robert M. Traylor, Jr
General Partner

By

Jim P. Elliott, Authorized Officer
Titan Mining, Inc., General
Partner

PART II

(Permits 100 and 100-A-1)

1. A permanent impoundment shall be constructed at the east end of the property.

2. The existing pit shall be filled with the spoil to within ten percent (10%) to fifteen percent (15%) of the original grade*creating a valley along the path of the pit which slopes to the east so that all drainage flows to the permanent impoundment. The large boulders shall be removed from the graded surface and buried in the impoundment or placed in the valley for riprap. The topsoil spoil pile shall be spread over the area. No final slope shall be greater than three (3) horizontal to one (1) vertical. A copy of the grading plan shall be submitted to the Commission on or before June 1, 1981.

3. The above measures shall be completed on or before November 20, 1981.

4. Immediately upon completion of item 2 above, laboratory soil tests and recommendations for soil amendments, establishment and maintenance of vegetation cover upon all affected areas, shall be obtained either by the State Highway Commission, the State Soil and Water Conservation Commission, the State Game and Fish Commission, the State Forestry, the Agricultural Extension Service, the Geology Commission, the University of Arkansas Cooperative Extension Service, or other agencies or individuals having experience in foresting and reclaiming open cut mined lands with forest or agronomic or horticultural species, based on scientific knowledge from research and to reclaiming and utilizing forest and agronomic species on open cut mined lands. The operator shall designate which parts of the affected lands shall be reclaimed for forest, pasture, crop, horticultural, home site, recreational, industrial, or other uses including food, shelter and ground cover for wildlife and shall show the same by appropriate designation on a reclamation map. A copy of the

recommendations shall be mailed to the Commission along with the date upon which the recommendations will be carried out; said date to be as soon as possible after receipt of the recommendations. The Commission shall inspect the premises during this phase of reclamation and shall report the status of the operator in complying with this part to the Court.

TITAN MINING LIMITED:

By _____
Robert M. Traylor, Jr.
General Partner

By _____
Jim P. Elliott, Authorized Officer
Titan Mining, Inc.--General Partner

PART III

(Permits 114 and 114-A)

THE COURT DOTH ORDER THAT:

1. The coal on the coal storage pads shall be scraped off and sold or properly disposed of in the pit or at a location approved by the Commission.

2. The high wall shall be fenced and warning signs shall be posted at 200 foot intervals.

3. All affected areas excluding the high wall shall be reduced to a rolling topography with no final slope steeper than one (1) vertical to three (3) horizontal. The large rocks shall be separated from the final grade and buried in the pit. A copy of the grading plan shall be submitted to the Commission on or before February 20, 1981.

4. If the operator plans to leave any water impoundments on the premises at the completion of reclamation, the operator may construct earth dams where lakes may be formed, in accordance with sound engineering practices. Appropriate measures shall be taken to insure that a pH of 6.0 to 8.0 is maintained.

5. The above measures shall be completed on or before June 30, 1981.

6. Immediately upon completion of item 3 above, laboratory soil tests and recommendations for soil amendments, establishment and maintenance of vegetation cover upon all affected areas, shall be obtained either by the State Highway Commission, the State Soil and Water Conservation Commission, the State Game and Fish Commission, the State Forestry, the Agricultural Extension Service, the Geology Commission, the University of Arkansas Cooperative Extension Service, or other agencies or individuals having experience in foresting and reclaiming open cut mined

lands with forest or agronomic or horticultural species, based on scientific knowledge from research and to reclaiming and utilizing forest and agronomic species on open cut mined lands. The operator shall designate which parts of the affected lands shall be reclaimed for forest, pasture, crop, horticultural, home site, recreational, industrial, or other uses including food, shelter and ground cover for wildlife and shall show the same by appropriate designation on a reclamation map. A copy of the recommendations shall be mailed to the Commission along with the date upon which the recommendations will be carried out; said date to be as soon as possible after receipt of the recommendations. The Commission shall inspect the premises during this phase of reclamation and shall report the status of the operator in complying with this part to the Court.

TITAN MINING LIMITED:

By _____
Robert M. Traylor, Jr.
General Partner

By _____
Jim P. Elliott, Authorized Officer
Titan Mining, Inc.--General Partner

PART IV
(Permit 116)

1. The spoil material on the south embankment that has spilled into the creek and a sufficient amount of spoil to maintain a working area and buffer for the creek shall be removed and placed in the pit. The slope of the embankment shall be reduced to retard the flow of runoff, and a diversion berm and sediment pond shall be constructed to prevent runoff from reaching the creek.

2. The exposed coal seam on the high wall, if found to contain acid forming materials, shall be covered with at least three feet (3') of earth or spoil material if not covered by water, or by a permanent water impoundment to seal off such seam from atmospheric exposure and minimize leaching action. If the operator plans to leave any water impoundments on the premises at the completion of reclamation, the operator may construct earth dams where lakes may be formed in accordance with sound engineering practices, making provisions to insure that a final pH of 6 to 8 is maintained.

3. The high wall shall be fenced and warning signs shall be posted at two hundred foot (200') intervals.

4. All ridges and peaks of land affected by the mining under this permit, excluding the high wall and those areas covered by a lake, shall be graded to a rolling or terraced topography with no final slope steeper than one (1) vertical to three (3) horizontal traversible by machines necessary for maintenance in accordance with planned use. The operator may submit a grading plan for approval by the enforcement officer suggesting an alternate final slope.

5. The grading plan shall be submitted on or before July 1, 1981. Item 1 above shall be completed on or before October

15, 1981. Items 2, 3 and 4 shall shall be completed on or before May 30, 1982.

6. Immediately upon completion of item 4 above, laboratory soil tests and recommendations for soil amendments, establishment and maintenance of vegetation cover upon all affected areas shall be obtained from either the University of Arkansas Cooperative Extension Service, the State Soil and Water Conservation Commission, the State Game and Fish Commission, the State Forestry Division, the Agricultural Extension Service, the Geology Commission or other agencies or individuals having experience in foresting and reclaiming open cut mined lands with forest agronomic or horticultural species, based upon scientific knowledge from research and to reclaiming and utilizing forest and agronomic species on open cut mined lands. The operator shall designate which parts of the affected lands shall be reclaimed for forests, pasture, crop, horticultural, home site, recreational, industrial or other uses including food, shelter and ground cover for wildlife and shall show the same by appropriate designation on the reclamation map. A copy of the recommendations together with the reclamation map shall be mailed to the Commission along with the date upon which the recommendations will be carried out; said date to be as soon as possible after receipt of the recommendations. The Commission shall inspect the premises during this phase of reclamation and report the status of the operator in complying with this part to the Court.

TITAN MINING, INC.

Jim P. Elliott
Authorized Officer

PART V

(Permits 178 and 178-A-1)

THE COURT DOTH ORDER THAT:

1. The existing pit shall be filled with the spoils to a contour approximating the original but with a valley fifteen (15) feet deep so constructed that half of the affected area drains to a permanent impoundment at the east and half of the affected area drains to a permanent impoundment at the west. The impoundment shall be no larger than necessary to retain sediment from runoff. The operator, however, may submit grading plans for Commission approval suggesting alternate reclamation concepts. A copy of the grading plan shall be submitted to the Commission on or before July 1, 1981.

2. The available top soil shall be spread over the area not inundated by a lake or impoundment.

3. All items above shall be completed on or before May 30, 1982.

4. Immediately upon the completion of item 3 above, laboratory soil tests and recommendations for soil amendments, establishment and maintenance of vegetation cover upon all affected areas shall be obtained from either the University of Arkansas Cooperative Extension Service, the State Highway Commission, the State Soil and Water Conservation Commission, the State Game and Fish Commission, the State Forestry Division, the Agricultural Extension Service, the Geology Commission or other agencies or individuals having experience in foresting and reclaiming open cut mined lands with forests or agronomic or horticultural species, based upon scientific knowledge from research and in reclaiming and utilizing forest and agronomic species on open cut mined lands. The permit holder shall designate which parts of the lands shall be reclaimed for forest, pasture, crop, horticultural, home site, recreational, industrial or other uses

including food, shelter and ground cover for wildlife and shall show the same by appropriate designation on the reclamation map. A copy of the recommendations shall be made to the Commission together with the reclamation map along with the date upon which the recommendations will be carried out; said date to be as soon as possible after receipt of the recommendations. The Commission shall inspect the premises during this phase of reclamation and report the status of the operator in complying with this part to the Court.

TITAN MINING, III, LTD.

SMA, INC., GENERAL PARTNER

Jim P. Elliott
Authorized Officer

THE COURT DOTH FURTHER ORDER THAT WITH RESPECT TO ALL OPERATORS:

1. There shall be filed with this Court by the 10th day of each month, a report of all the progress made during the preceding month, said report shall be jointly prepared by the operators of the five mines and filed with the Court with copies served upon all attorneys of record.

2. The operators upon completion of reclamation of each of the five mines shall be entitled to reimbursement from the bond proceeds now held or controlled by the Commission for such mine to reimburse the operators for their actual cost experienced in reclaiming, provided that the Commission shall retain \$200.00 per acre for all acres affected by the operation from the bond for each mine site until revegetation efforts at that mine site are successful. If following reclamation of all the mines covered by this Consent Decree bond funds remain on all or any one of the reclaimed mines, said funds shall not be distributed to the operator(s) but shall be retained by the Commission until revegetation on all the mine sites is deemed to be successful.

3. All deadlines for reclamation herein shall be extended for a period of time necessary to compensate for the intervention of events, Acts of God and landowner disputes not in the control of the signatories hereto which defy or impede reclamation, said events shall be identified in the monthly reports to this Court.

CHANCELLOR

DATE: _____

APPROVED:

H. Clay Robinson
Attorney for Robert M. Traylor, Jr.

Charles R. Nestrud
Attorney for Arkansas Commission
on Pollution Control and Ecology

Charles D. Matthews
Attorney for Titan Mining Limited,
Titan Mining III Limited, Titan
Mining, Inc., SMA, Inc.