

STATE AND FEDERAL RECLAMATION BONDING PROGRAMS:

LESSONS LEARNED AND CURRENT CHALLENGES

Interstate Mining Compact Commission
2013 National Bonding Workshop

William T. Gorton III, Esq.

Stites & Harbison
250 West Main Street, Suite 2300
Lexington, Kentucky 40507
(859) 226-2241

wgorton@stites.com

Topics

- Financial Assurance Programs
- Forms of Financial Assurance
- Financial Assurance and Long-Term Pollution
- CERCLA and Financial Assurance
- Industry Concerns

Financial Assurance Purpose

Provides Adequate Funding to Meet
Environmental Regulatory Obligations
if Operator Defaults

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Legal Background – Coal - Cooperative Federalism -

- Surface Mining Control and Reclamation Act (“SMCRA”), 30 U.S.C. §1201 *et seq.*
- State Primacy
- Permit Required
 - Mining and Reclamation Plan
- Financial Assurances: Surety bonds, LOCs, Self Bonding, Securities and Trusts

Permittee's Obligations (SMCRA)

- Contemporaneous Reclamation
- Final Reclamation
 - Backfilling and grading – Approximate Original Contour (“AOC”)
 - Establishment of vegetation
 - Post-mining land use
 - Removal of sediment ponds
- Restoring hydrologic regime, control water pollution, including treatment if necessary

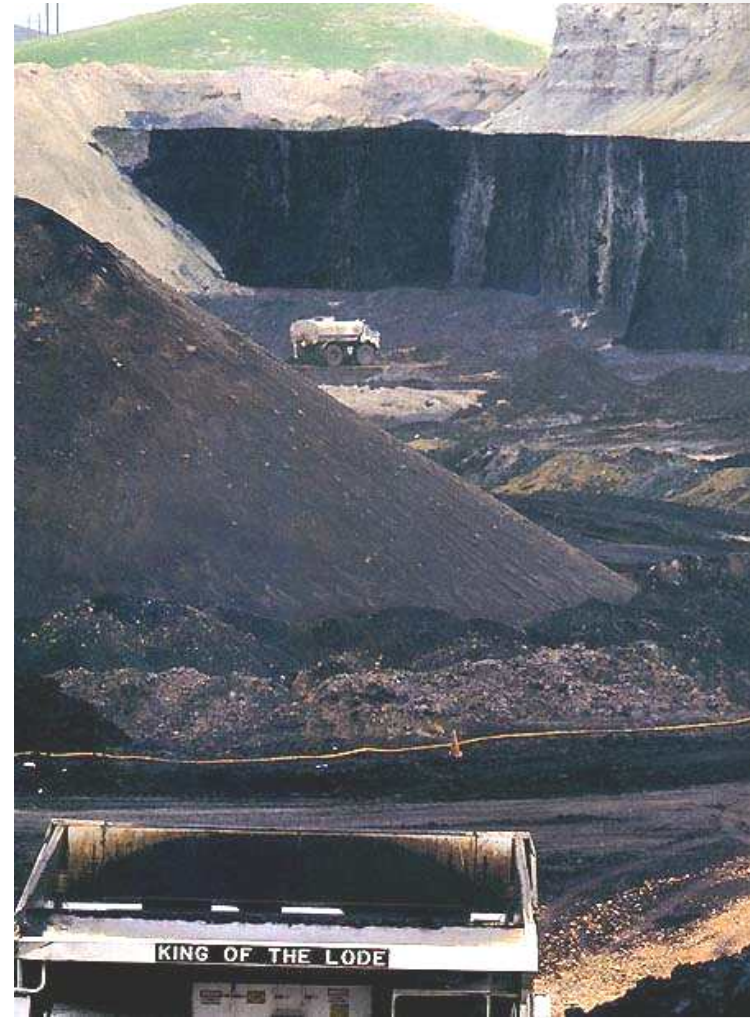
Legal Background – Hard Rock - Overlaps States -

- Federal Land Policy and Management Act (“FLPMA”), 43 U.S.C. §1701 *et seq.* and 43 C.F.R. Part 3800
- Organic Administration Act, 36 C.F.R. 228
- Often Federal and State Cooperation
- Permit required
- Financial Assurances: Surety Bonds, LOCs, Securities, NO SELF BONDING ... Trusts (not USFS)

Permittee's Obligations (FLPMA)

- Concurrent Reclamation = “earliest economically feasible time”
- Topsoil storage and placement
- Final reclamation and reshaping the area
- Establishment of vegetation
- Habitat restoration
- Restoring hydrologic regime, control water pollution, including treatment if necessary

Powder River Basin



Gold Mine (Nevada)



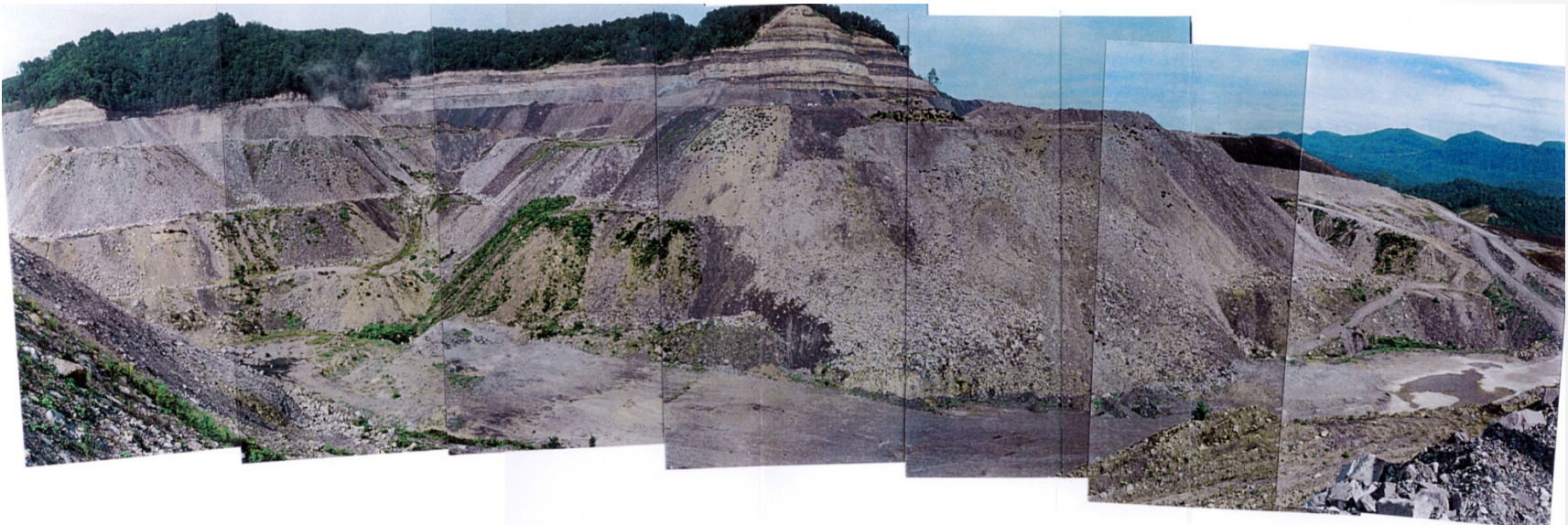
Surface Area Mine (Illinois Basin)



Reclamation Obligations Alpine Environment Surface Mine (Utah)



Reclamation Obligations Mountaintop Removal (Kentucky)



Landslides Above Homes (Central App)



Mountaintop Removal (W. Va.)



Valleyfill Reclamation



Reclamation Obligations Gold Mine (Nevada)



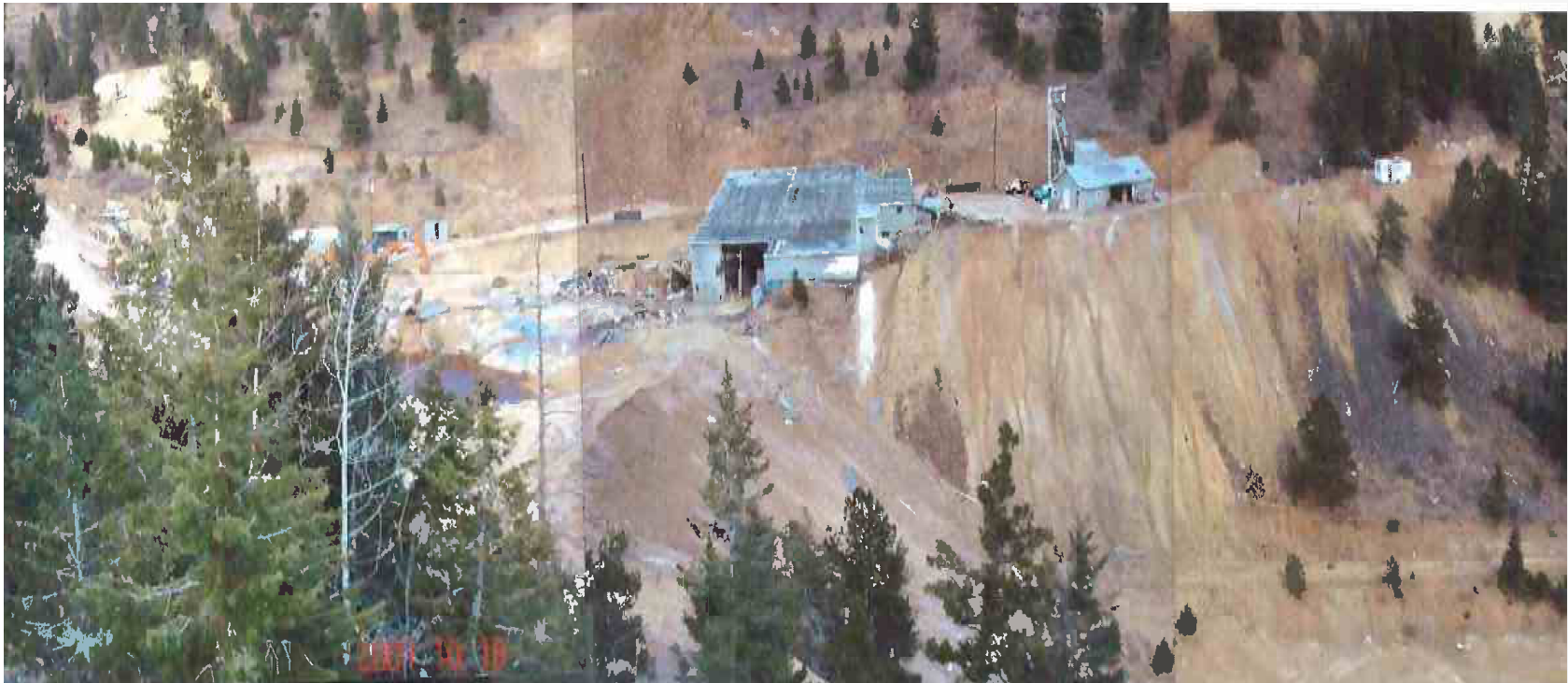
Reclamation Obligations Underground Portal (Pennsylvania)



Underground Mine Complex (Colorado)



Reclamation Obligations Mine Shafts and Surface Effects (Colorado Gold Mine)



Reclamation Obligations Gold Mine Adit (Colorado)



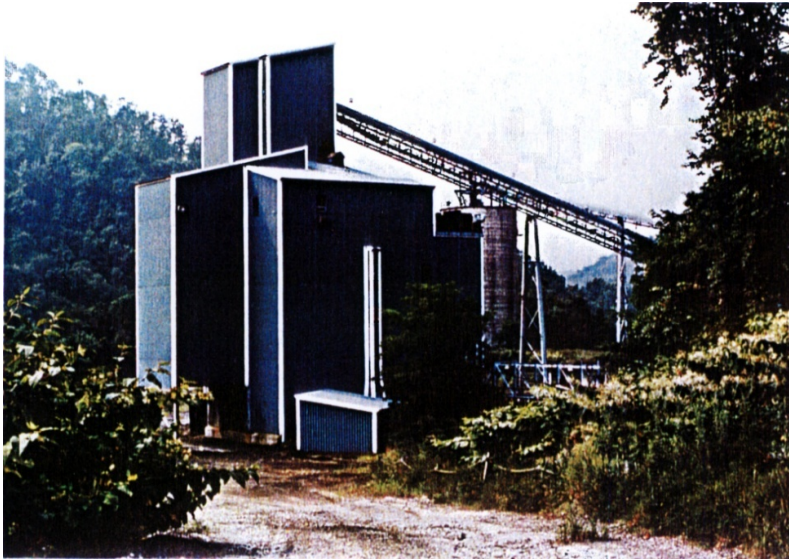
Mine Shafts



Preparation Plant and Loadout (Utah)



Preparation Plant (Pennsylvania)



Long Term Water Treatment

- Acid Mine/Rock Drainage (AMD)
- Heavy metals
- Cyanide leaching
- Permittee required to
 - Protect water quality from adverse affects of mining and reclamation
 - Protect hydrologic conditions associated with or impacted by mining

Reclamation Obligations

- Long term water treatment
Acid Mine Drainage



Polluted Discharge (Pennsylvania Mathies Mine)



Reclamation Obligations Cyanide Leach Processing (Nevada)



AMD Passive Treatment System



Financial Assurance Programs

- OSM - Surface Mine Control and Reclamation Act (“SMCRA”) - 1977
- BLM - Federal Land Policy and Management Act (“FLPMA”) - 2001
- USFS - Surface Resources Act
Organic Administration Act – 2004 Training Guide

Types of Financial Assurance

- Corporate Surety Bonds - 46%
- Letters of Credit – 29%
- Self-Bonding/ Corp. Guarantee – 24%
- Trust Funds – (Special Circumstances)

Corporate Surety Bonds

- Surety defined
 - “One who undertakes to pay money or to do any other act in event that his principal fails therein.”

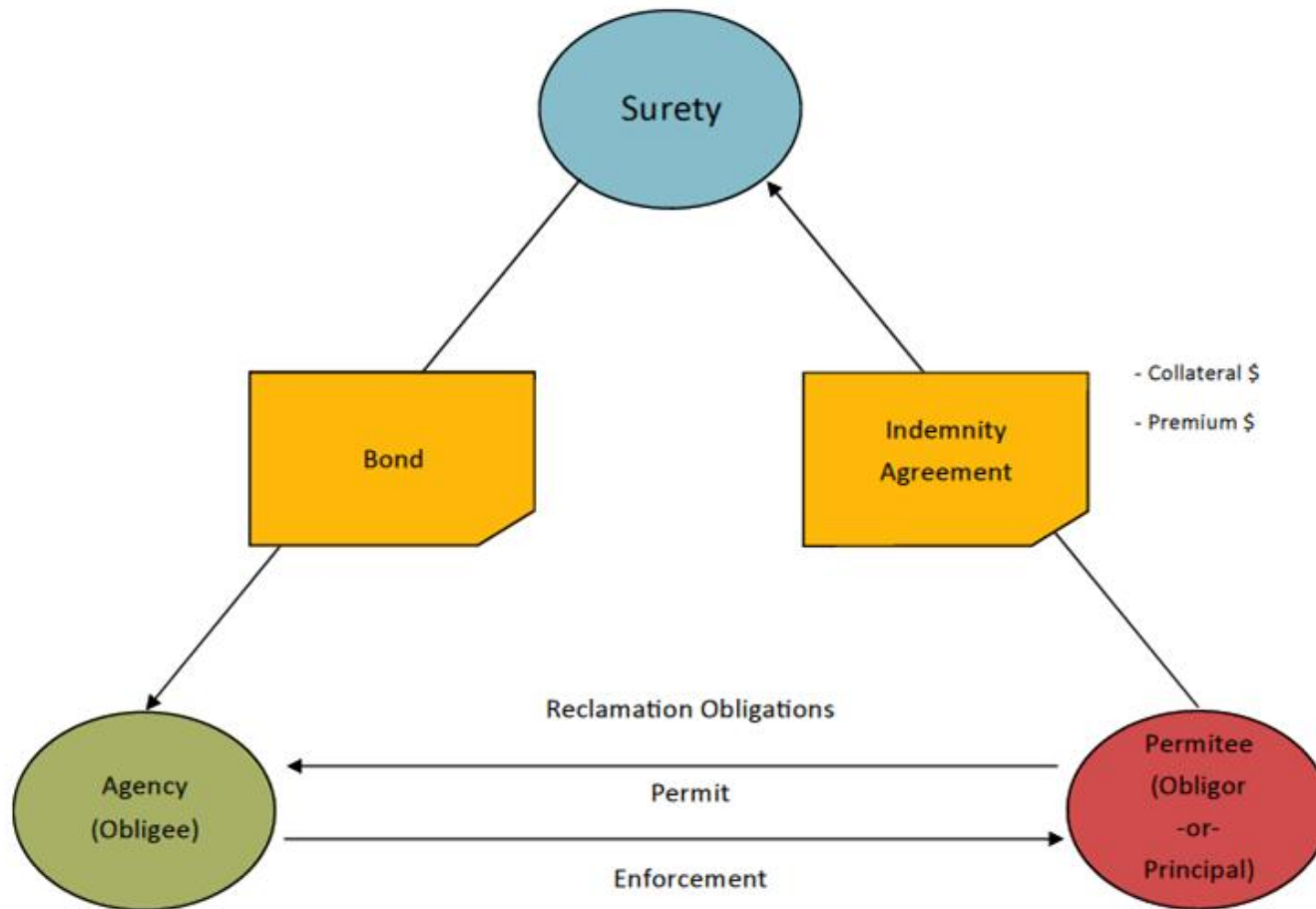
- Blacks Law Dictionary

The Surety Relationship

- Three-party Relationship
 - Principal = Permittee
 - Obligee = Regulatory Authority
 - Surety = Bonding Company

Surety Bond is Not Insurance

Three-Way Surety Relationship



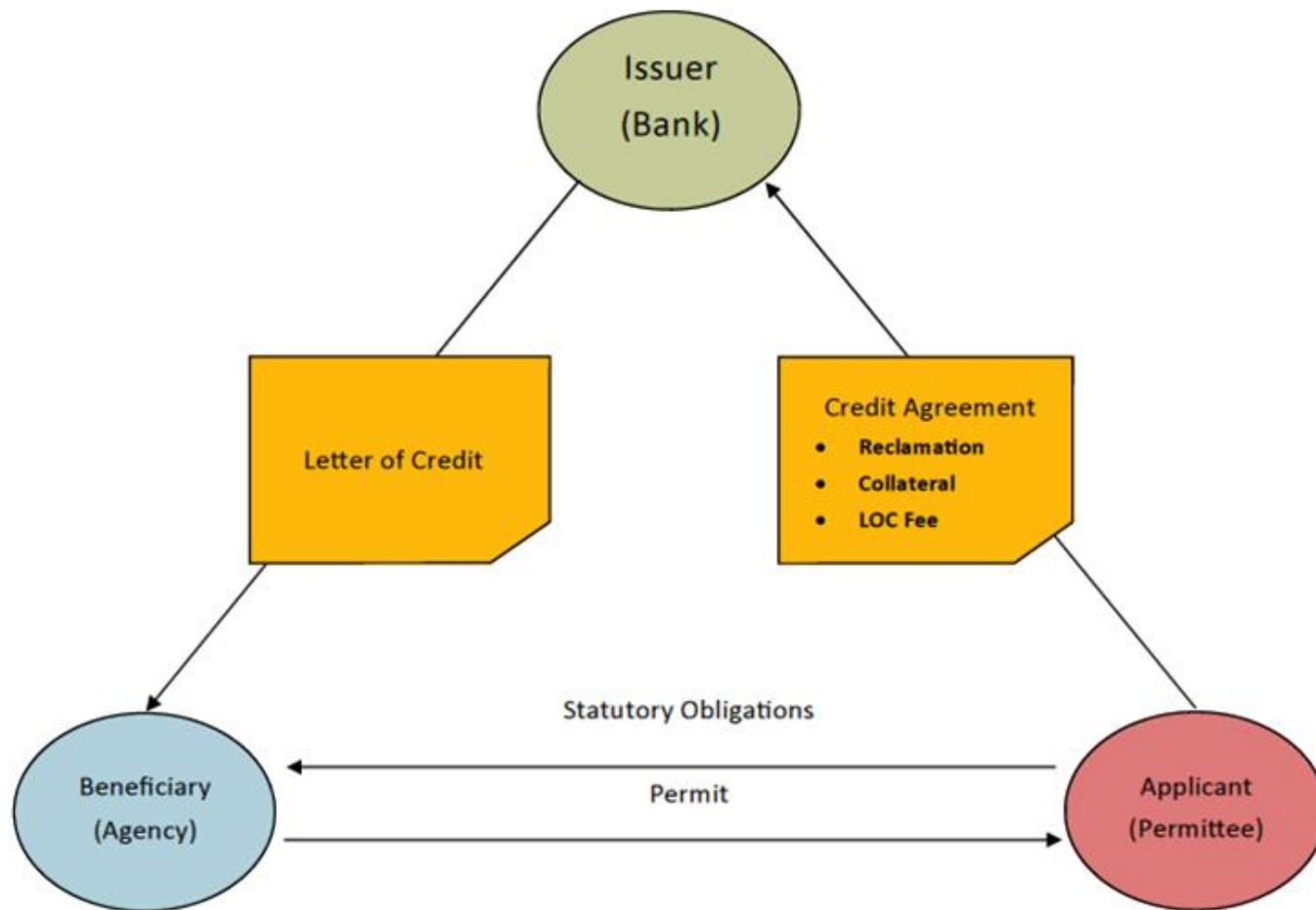
Letters of Credit

- Three parties
 - Applicant = Permittee
 - Beneficiary = Regulatory Authority
 - Issuer = Bank

Letters of Credit

- Issuer's promise to pay is irrevocable if not expired
- Issuer must honor demand ("Draw") if complies with requirements
- Issuer and Applicant have relationship
 - Fees
 - Collateral/Reimbursement/Indemnity
- Regulatory requirements
 - Evergreen

Letters of Credit



Self Bonding/Corporate Guarantee

- Eligibility factors
 - Financial solvency and continuous operation
 - Agent for service of process
- Benefits
 - Less costly for Permittee
- Generally Disfavored Due To Risk
 - No dedicated funds or third party for payment
 - Requires oversight by regulatory authority
 - Allowed Under SMCRA

Treatment Trusts

- Gaining acceptance for use in long term treatment of surface and groundwater including maintenance of facilities
- Used by OSM and BLM (and EPA in superfund consent decrees)

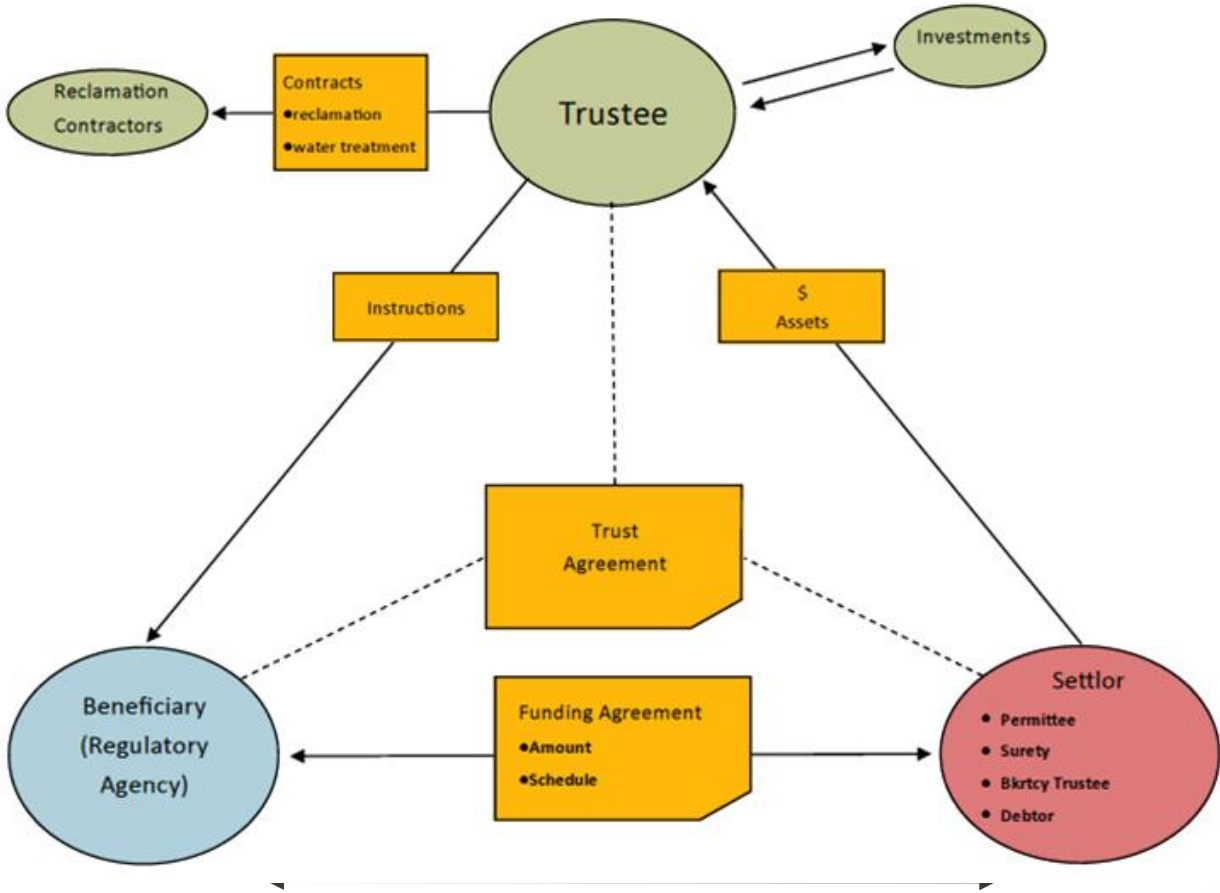
Trust Funds

- Three parties
 - Settlor = Permittee if Active or Others if Default Situation (Surety, Debtor, Purchaser)
 - Beneficiary = Regulatory Authority
 - Trustee = Third party satisfactory to Settlor and Beneficiary

Trust Funds

- Settlor, Beneficiary and Trustee negotiate terms of trust agreement, trust amount (corpus), payment schedule
- Corpus based on present value of treatment costs in perpetuity and is evaluated on periodic basis
 - Settlor may be required to contribute more
 - Excess funds may be returned to Settlor

Trust Funds



CERCLA

- Comprehensive Environmental Response, Compensation, and Liability Act 42 U.S.C. 9601 et seq.
- Superfund
 - Cleanup of hazardous waste sites
 - Costs borne by those responsible
- Remedial
- Potentially Responsible Parties (PRPs)

CERCLA and Mining

- Bunker Hill – Coeur d'Alene

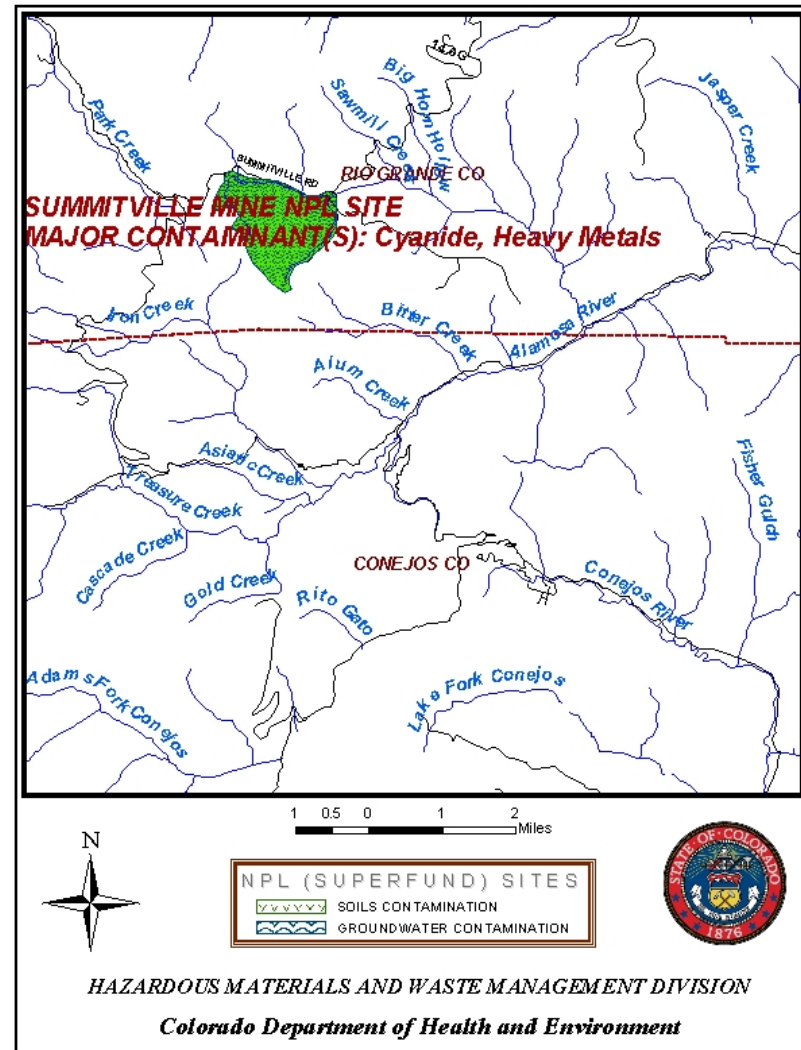


Summitville Mine



Summitville Mine Superfund Site

August 12, 1999



Difficulties in applying 108(b)

- Federal Pre-emption?
- How much financial assurance?
 - Prospective, not remedial
 - Uncertain conditions
 - Uncertain costs
 - Removal of hazardous materials, Water treatment
- Forms of financial assurance?
 - Third-party forms or self bonding?
 - Fund trusts prospectively?
 - Insurance

Industry Concerns (NMA)

- Mining already subject to extensive regulation
- Hazardous materials potential overestimated
- Current operations unlike legacy sites
- Cost and lack of availability of financial assurance

The Past is Prologue

- These issues are not new and our society has addressed them in other contexts, particularly in the coal industry.
- To see where they are headed, we only have to look to the past to see the future.