



State of Utah

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

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orig File
cc LPS UB
Daron
Pam
Bill M.

January 3, 1992

TO: Files
FROM: Lowell P. Braxton, Associate Director, Mining LPS
RE: East Carbon Coal Yard: Permitting of Present Operation not Required

As enumerated in Bill Malencik's November 22, 1991 memo, attached, the above-referenced facility is located in East Carbon, Utah, and operated by Jim Miller. The operation crushes and sells lump and stoker coal purchased from permitted facilities.

SMCRA, Section 528 defines surface mining operations not subject to the ACT as:

528 (1) "the extraction of coal by a landowner for his own noncommercial use from land owned or leased by him; and

528 (2) the extraction of coal as an incidental part of Federal, State and local government-financed highway and other construction...." Equivalent Utah statutory language is found at Utah Code Ann. §40-10-5. Any other extractive coal mining requires a permit under the Utah Coal Regulatory Program."

SMCRA, Section 701(28)(A) defines and requires regulation of "surface coal mining operations" as "activities conducted on the surface of lands in connection with a surface coal mine or subject to the requirements of Section 516 surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce." Equivalent Utah statutory language is found at Utah Code Ann. §40-10-3(17).

Judge Flannary considered the issue of proximity to a mine site and the need to regulate off-site coal processing facilities under SMCRA in National Wildlife Federation et al. v. Manuel Lujan, U.S. District Court civil action nos. 88-2416, 88-3345, 88-3586, 88-3635, 89-0039, 89-0136, 89-0141 (consolidated). The Judgment and Order, August 30, 1990, in this case remanded

Memo to file
January 3, 1992

30 CFR §§785.21 and 827.1 to the Secretary "insofar as it makes proximity to a mine site the limiting factor in deciding whether to regulate an off-site coal processing facility;...." Judge Flannary notes that off-site coal processing plants "in connection" with a mine will be regulated without regard to proximity to the mine.

Each of the mines providing feed material to the East Carbon Yard is in compliance with the Utah Coal Regulatory Program by virtue of approved permits. Based upon the above-referenced report by Bill Malencik, the activities of the East Carbon Yard are not extractive.

The statutory language is silent regarding regulation of activities not "in connection with" surface coal mining operations. In the above-cited case, Judge Flannary "agrees with the Secretary that his jurisdiction under the Act (for regulation of off-site coal processing facilities) does not appear to run to the docks at Hampton Roads, Baltimore or Long Beach."

In the East Carbon Yard issue, where feed from regulated facilities is being crushed and sold, the question of permitting turns on determining "connection with" regulated activities.

None of the regulated facilities providing the feed needs the East Carbon Yard in order to perform its obligations under the Coal Regulatory Program, and the East Carbon Yard is not reliant on a specific mine in order to function. On this basis, a conclusion may be reached that commercial sales and coal handling activities at the East Carbon Yard are not "in connection with" regulated activities, and that no permit for the East Carbon Coal Yard is required.

Activities at the East Carbon Yard should be reevaluated subsequent to the promulgation of any federal and state regulations resulting from the remand of 30 CFR §§785.21 and 827.1.

vb
Attachment
ECARB



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*Tom: can we discuss this on Friday?
I think about 10 min
I will do!
Please advise
Tom*

November 22, 1991

TO: Pamela Grubaugh-Littig, Permit Supervisor
FROM: Wm. J. Malencik, Reclamation Specialist *WJM*
RE: East Carbon Coal Yard

Synopsis:

Jim Miller is operating a coal yard in East Carbon, Utah. The operations consist of (1) purchasing coal from three mines, (2) crushing some of the coal, and (3) selling lump and stoker coal. The coal is sold to East Carbon residents and the school.

His coal yard is not operating in connection with a coal mine. He is currently purchasing coal from mines mentioned below.

Facts:

- ** Date of Investigation: November 22, 1991
- ** People Present:
 - Jim Miller, owner of coal yard
Phone # 888-2300
127 Berkley Ave.
East Carbon, UT 84520
 - John M. Garr, Carbon County Commissioner, DOGM Board Member
 - Paul Clark, Mayor East Carbon
 - Bill Malencik and Steve Demczak, DOGM
- ** Land Ownership: Railroad fee land leased to Mr. Miller
- ** Size of the Coal Yard: 200' x 75'
- ** Source of Coal: Purchases coal (1) from PacifiCorp (picks up coal from Cottonwood/Wilberg refuse pile), (2) CTM (Co-Op Mining), and (3) Sunnyside (crushes coal for employees).
- ** Operation:
 - Very small operation.
 - Coal is trucked in to the coal yard.
 - Coal crushed during a two day period was observed. The volume was estimated to be about 2 tons.

*- 3 yrs. operating
an equal opportunity employer*

since the 1950's.

- Next railroad

Coal yd vs. Processing Plant

Regulations on Preparation Plants:

** State Regulations R-614-302:

260. Coal Processing Plants Not Located Within the Permit Area of a Mine.

261. R614-302-260 applies to any person who operates or intends to operate a coal processing plant outside the permit area of any coal mining and reclamation operation, other than such plants which are located at the site of ultimate coal use. Any person who operates such a processing plant will obtain a permit from the Division in accordance with the requirements of R614-302-260.

** State Definitions:

"Coal Preparation or Coal Processing" means the chemical and physical processing and the cleaning, concentrating, or other processing or preparation of coal.

"Coal Processing Plant" means a facility where coal is subjected to chemical or physical processing or the cleaning, concentrating, or other processing or preparation. Coal processing plant includes facilities associated with coal processing activities, such as, but not limited to, the following: loading facilities; storage and stockpile facilities; sheds, shops, and other buildings; water-treatment and water-storage facilities; settling basins and impoundments; and coal processing and other waste disposal areas.

** Federal Regulations:

§ 827.1 Scope.

This part sets forth requirements for coal preparation plants operated in connection with a coal mine but outside the permit area for a specific mine.

§ 827.11 General requirements.

Each person who operates a coal preparation plant subject to this part shall obtain a permit in accordance with § 785.21 of this chapter, obtain a bond in accordance with subchapter J of this chapter, and operate that plant in accordance with the requirements of this part.

On the one hand referring to 260, 261, 827.1 and 827.11, it would appear to me that Mr. Miller's plant is not operating in connection with a coal mine, but is operating as a coal yard. Therefore, his coal yard would not have to be permitted. On the other hand, reading the definitions above would lead one to believe that such coal yards must be permitted.

Recommendations:

- (1) A legal ruling be obtained on the interpretation of the regulations as related to
 - ** "in connection with a coal mine" - (Federal Regulation)
 - ** "of any coal mining and reclamation operation" - (State Regulation)
 - ** must coal yards be permitted if they crush or separate coal.
- (2) Notify Mr. Miller if his operation needs to be permitted.
- (3) I shall take enforcement action if you deem such action appropriate.