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**State of Utah**  
DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL, GAS AND MINING

*Mine file*

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March 22, 1994

TO: Mine File and Abandoned Mine Reclamation File

FROM: Lowell P. Braxton, Associate Director, Mining *LB*

RE: Finding of Regulatory Discretion, Water Canyon Refuse Pile, Sunnyside Mine, ACT/007/007, Folder #2, Carbon County, Utah

**Background**

The coal refuse pile located in Water Canyon was included in the Sunnyside Mine permit area when the original application for a mining and reclamation plan (MRP) was submitted to the Division of Oil, Gas and Mining. The Division's Coal Regulatory Program and Abandoned Mine Reclamation Program (AMR) discussed the necessity of keeping this site under the regulatory program in 1989, and concluded that the refuse pile should be kept under the domain of the regulatory program, although the basis for this conclusion did not include a review of historic mine activity at the Water Canyon refuse pile.

In 1992, the Division issued Notice of Violation (NOV) N92-32-4-1 to Sunnyside Coal Company, the operator of the Sunnyside Mine, for failure to extinguish waste fires in accordance with the plan approved by the Division and MSHA. At the same time, the Division issued NOV N92-32-5-1 for "failure to pass disturbed area drainage through a siltation control treatment structure(s)" on the Water Canyon refuse pile. Both violations were terminated.

In January of 1993, Sunnyside Coal submitted an amendment to its mining and reclamation plan to remove the coal refuse pile from the permit area. Members of the Division's AMR and Coal Regulatory staffs visited the Water Canyon site to determine viability of excluding the refuse pile from the mining and reclamation plan.

In October 1993, Henry Sauer, Jess Kelley, Lowell Braxton, Mary Ann Wright, and Luci Malin evaluated historic mining records presented by Peter Hess and Gary Gray that substantiated that no refuse had been placed upon the Water Canyon refuse pile subsequent to approximately 1953. This group concurred with excising the refuse pile from the Sunnyside MRP, and proposed a field criteria for determining the boundary between pre-SMCRA and permitted disturbances.



Division records substantiate that there has been no post-SMCRA mining activity beneath the refuse pile that could result in future subsidence resulting from regulated mining activities.

On October 27, 1993, the Division's (AMR) Program submitted data to the Office of Surface Mining (OSM) to include the refuse pile in the AMR Program. This data indicated the refuse pile was thought to have been part of a post-law permit until the October 1993 site visit documented 1953 as the most recent placement of refuse. The materials submitted to OSM substantiated the location in Water Canyon, a side drainage of Fan Canyon. The pile has surface hot spots, with smoking and venting gases. Charred, barren areas on the surface indicate constant and recent surface burning. The refuse pile is accessible via the East Carbon City Dump, and through the Sunnyside Mine access system. The area near the refuse pile is used by hunters, off-road vehicle enthusiasts, and other recreationists. The evidence of burning supports the contention that the refuse pile is a public safety hazard. Similar situations in Utah have resulted in personal injury when the surface crust above a burn has collapsed after being walked over.

On November 5, 1993, the OSM rejected the AMR proposal, citing that it was inappropriate to include lands that had been subject to notice of violation under Title V in a Title IV reclamation proposal.

In January 1994, the oversight meeting between the Division and OSM's Albuquerque Field Office (AFO) agreed to visit the basis for OSM's denial of Title IV reclamation funding based upon presentation of information by the Division to the AFO.

A chronology and supporting information are attached to support this background and the following findings and conclusions.

### **Finding**

Evidence submitted by Sunnyside Coal in support of amending the MRP to remove the Water Canyon refuse pile supports a contention that no activities defined under the Utah Coal Regulatory Program as "coal mining and reclamation operations" have occurred on the Water Canyon refuse pile subsequent to SMCRA. This history is summarized in the Division's PAD, dated October 25, 1993, and is supported by observations of Lowell Braxton, Jesse Kelley, Henry Sauer, Mary Ann Wright and Lucia Malin's September 22, 1993, field inspection.

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The Division acted prudently in citing violations of the Utah Coal Regulatory Program within the boundary of the Sunnyside Mine permit area.

Sunnyside Coal's failure to contest the fact of violations N92-32-4-1 and N92-32-5-1 is not itself evidence that post-SMCRA activity occurred on the Water Canyon refuse pile. Suppression of coal refuse fires is not an activity falling within the definition of coal mining and reclamation operations under the Utah Coal Regulatory Program.

### **Conclusions**

For reasons not fully documented in the MRP, Sunnyside Coal Company included the Water Canyon refuse pile in its permit application package. Under Utah Admin. R. 645-303-220 an operator may apply for a permit change. Permit changes not characterized as "significant permit revisions" shall be characterized and processed as permit amendments.

The Water Canyon refuse pile was not disturbed by post-SMCRA activity. Should Sunnyside Coal opt not to utilize the Water Canyon refuse pile for post-SMCRA coal mining and reclamation operations, there is no programmatic requirement for Sunnyside to permit the refuse pile.

Given an appropriately submitted application for permit change, the Division may approve a change to the Sunnyside Mine MRP to exclude the Water Canyon refuse pile. Unless specific data direct otherwise, a permit change to remove the Water Canyon refuse pile from the MRP would be characterized as a permit amendment.

vb  
Attachments  
cc: P. Grubaugh-Littig  
M. Wright  
Price Field Office  
WATERCYN