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

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March 22, 1994

Robert H. Hagen, Director
Albuquerque Field Office
Office of Surface Mining
Reclamation and Enforcement
505 Marquette N.W., Suite 1200
Albuquerque, New Mexico 87102

Re: Water Canyon Refuse Pile, Sunnyside Mine, ACT/007/007, Folder #2, Carbon County, Utah

Dear Mr. Hagen:

Per our conversation in January of this year, we decided that the Division would review the status of the Water Canyon permit revision request and the acceptance of the site onto the AMLIS. To that end, I am enclosing a Division finding regarding this site which provides the rationale and chronology for omitting this area from the Sunnyside permit area.

Also, as we discussed, we would be happy to tour the site with a representative from your staff. While on site, we could also review some of the evidence that has been used to conclude that this site has not been disturbed since well before the passage of SMCRA.

In the interest of program management, we would like to suggest that the opportune timing for a site visit would be in late April/early May. Please let me know what date would be convenient.

Sincerely,

A handwritten signature in cursive script that reads "Lowell P. Braxton".

Lowell P. Braxton
Associate Director, Mining

vb
Enclosure
cc: P. Grubaugh-Littig
M. Wright

Bcc PFO



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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



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February 11, 1994

TO: Lowell P. Braxton, Associate Director, Mining
FROM: Pamela Grubaugh-Littig, Permit Supervisor 
Re: Chronology of Water Canyon, Sunnyside Coal Company,
Sunnyside Mine, ACT/007/007, Folder #2, Carbon County,
Utah

Pursuant to your request, I have compiled the chronology associated with the deletion of Water Canyon from Title V jurisdiction and transferred to Title IV. I have attached the appropriate documents related to the permitting actions.

February 13, 1989

Memo to Water Canyon Site File From Chris Rohrer.

Jim Fricke notified AML of a pre-Act coal refuse pile in Water Canyon located inside the Sunnyside Mine permit area. Plate III-23 in Sunnyside Mine plan shows all disturbance in both forks of Water Canyon as being post-law disturbance. Declared ineligible for AMR Funding because it is active and there is a "continuing reclamation responsibility". It is concluded that the Water Canyon site will no longer be considered for reclamation as part of the Book Cliffs Project.

March 13, 1992

OSM Oversight inspection.

As a result of this inspection, violation #N92-32-4-1 was issued on March 16, 1992 for "failure to extinguish coal mine waste fires in accordance with the plan approved by the Division and MSHA" on the Coarse Refuse Pile and Water Canyon Refuse Pile. This violation was terminated on September 21, 1992.

Violation #N92-32-5-1 was also issued on March 16, 1992 for "failure to pass disturbed area drainage through a siltation control treatment structure(s)" on the Water Canyon Refuse Pile. This violation was terminated on May 12, 1992 because "the



Chronology of Water Canyon
Sunnyside Coal Company
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operator has submitted plans and designs for sediment control around the Water Canyon Refuse Pile. The operator must implement the approved abatement measures no later than 15 days after Division approval of amendment ACT/007/007-92D". (NOTE: This amendment was denied August 7, 1992.)

April 28, 1992

Sunnyside Coal Company submits an amendment (ACT/007/007-92D) for sediment control on the Water Canyon Refuse Pile.

August 7, 1992

Amendment ACT/007/007-92D is denied.

January 25, 1993

Amendment ACT/007/007-92D, is resubmitted for the disturbed area in Water Canyon. The permittee proposes to redefine the disturbed area to delete the refuse pile due to its pre-law nature. The proposal includes the history of the Water Canyon Refuse and divides the activity into four periods:

- 1) Early 1920's through 1952, refuse pile was actually created,
- 2) 1952 through August 1973, all material from the No.2 Mine was transported by belt to cars which were hoisted from the mine by the Fan Canyon hoist--cars were transported underground to the preparation plant, emerging from one portal and entering the opposite portal, crossing the trestle across Water Canyon,
- 3) September 1973 to 1989, no refuse was removed through the Water Canyon portals, and
- 4) June to October 1985, two small areas of the No. 2 Mine were being worked, but no refuse material was removed through the Water Canyon portals.

Permittee maintains that the disturbed area markers have been erroneously placed to include the refuse pile.

April 29, 1993

Memo to Pamela Grubaugh-Littig from Jesse Kelley.

This memo recommends that the permittee be allowed to redefine the disturbed area boundary in Water Canyon.

May 17, 1993

Memo to Lowell Braxton from Pamela Grubaugh-Littig.

This memo requests a signoff from AML to take responsibility for the pre-law pile before Title V releases the liability.

May 25, 1993

Luci Malin and Henry Sauer toured the Water Canyon Area.

July 28, 1993

Priscilla Burton and Luci Malin toured the Water Canyon Area.

September 22, 1993

Henry Sauer, Jess Kelley, Lowell Braxton, Mary Ann Wright, Luci Malin, Gary Gray and Peter Hess discussed the eligibility of the refuse pile for AML consideration on site. It was decided that the road alignment, if the road continued in a straight line until the cliff face was intercepted, would be the line between Title IV and Title V. The area to the south of that line had not been used for coal mining activities since approximately 1953, except for the placement of soil material over burning coal spoil to control the fire. The area north of the road is Title V.

cc: Mary Ann Wright