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# State of Utah

DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL, GAS AND MINING

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April 24, 1998

TO: File

FROM: Daron R. Haddock, Permit Supervisor

A handwritten signature in black ink, appearing to read "DRH".

RE: Division Withdrawal of Requirement to Include Loadout Area as Part of Disturbed Area, Hiawatha Coal Company, Hiawatha Mine, ACT#007#011-DO97A, Folder #3, Carbon County, Utah

## SYNOPSIS

On February 9, 1998 the Division forwarded a list of outstanding deficiencies associated with the Hiawatha mine to Hiawatha Coal Company. One of the items The Division required, was to include the loadout area along the Railroad into the disturbed area boundary. Hiawatha coal company submitted information dated April 8, 1998, which requested that this requirement be removed from the list of deficiencies.

This memo is an analysis of the information provided and provides findings which will enable the Division to determine the permitting requirements for this area.

## ANALYSIS

Under the Utah Coal Regulatory Program it is necessary for anyone who engages in or carries out any coal mining and reclamation operations to first obtain a permit (R645-300-112.400). The question that must then be asked is, whether or not the activity occurring within the railroad loadout area, constitutes "coal mining and reclamation operations"?

This term is defined at R645-100-200 as follows:

"Coal Mining and Reclamation Operations" means (a) activities conducted on the surface of lands in connection with a surface coal mine or, subject to the requirements of Section 40-10-18 of the Act, surface coal mining and reclamation 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. Such activities include all activities necessary and incidental to the reclamation of the operations, excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining; the use of explosives and blasting; in-situ distillation; or retorting, leaching, or other chemical or physical processing; and the cleaning, concentrating, or other processing or preparation of coal. Such activities also include the loading of coal for interstate commerce at or near the mine site. Provided, these activities do not include the extraction of coal incidental to the extraction of other minerals, where coal does not exceed 16-2/3 percent of the tonnage of minerals removed for purposes of commercial use or sale, or coal exploration subject to Section 40-10-8 of the Act; and, provided further, that excavation for the purpose of obtaining coal includes extraction of coal from coal refuse piles; and (b) the areas upon which the activities described under part (a) of this definition occur or where such activities disturb the natural land surface. These areas will also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new

roads or the improvement or use of existing roads to gain access to the site of those activities and for haulage and excavation, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or material on the surface, resulting from or incident to those activities.

At first reading it would appear under the above definition that "loading of coal for interstate commerce at or near the mine site" would apply in this situation and Hiawatha should be required to permit this area as part of their disturbed area. It only makes sense that activities controlled by a mine (including loading coal at the mine site) would be permitted. However, a closer look at the definition reveals that in order for the activity to be considered Coal Mining and Reclamation Operations it would have to be conducted "in connection with" a coal mine.

No definition of "in connection with" has been given since it is felt that each regulatory authority must have discretion in order to make valid decisions about the applicability of the performance standards of SMCRA in individual cases.

The preambles to Federal Rules 30 CFR parts 785 and 827 (November 22, 1988 Federal Register) provide important insight for how to apply the "in connection with" test.

The following statements should be considered when determining whether a facility is operating "in connection with" a coal mine:

- 1) "OSM is only requiring regulatory authorities to extend their permit requirements as far into the stream of commerce as those activities over which mine operators and coal handlers who directly serve them, such as coal processors, have or could have control of operations."
- 2) The level of economic reliance of a particular facility on a coal mine is a valid consideration in determining if the facility operates in connection with that mine. The 1988 rulemaking focuses not upon physical proximity of a preparation plant to a coal mining operation but rather on the economic, functional, and other types of connections or integrations with the mine operator.
- 3) OSM agrees that the application of the Act, with its primary emphasis on reclamation and post-mining land use, to industrial facilities designed for long-term use and not operated in connection with a coal mine would be inappropriate.
- 4) Does the facility have a useful life independent of the specific mine or mines which it serves?
- 5) "Congress did not intend that "shipping areas" regardless of their association with coal mines be regulated under SMCRA."
- 6) Functional or economical relationships with a mine should be considered when making a "in connection with" determination. (Does the facility receive a significant portion of their coal from a mine? Does the facility receive a significant portion of the output from

a mine? Does the facility have an economic relationship with a mine?)

Other sources of information to consider when making the "in connection with" test include a December 15, 1997 Interior Board of Land Appeals decision (IBLA 94-366) finding that a railroad and pipeline used to transport coal from surface mines are not regulated by the federal Surface Mining Control and Reclamation Act. The decision states the following, *"We find nothing in section 701(28)(B) of SMCRA, or its legislative history, which expressly provides that transportation facilities, especially ones that carry processed coal to a remote point of sale/use, should generally be considered "surface coal mining operation," subject to regulation under SMCRA... Congress made no specific provision for regulating the transportation of processed coal, even though that activity is itself a "major industrial sector," which encompasses railroads, barges, trucks, and pipelines "that collectively stretch over thousands of miles throughout the nation."... The fact that it did not, strongly indicates that Congress did not intend to regulate the transportation of processed coal under SMCRA, presumably leaving it to regulation pursuant to other Federal and state laws."*

To support their contention that the loadout along the railroad should not be included as part of their disturbed area, Hiawatha Coal Company provides the following information in a letter dated April 8, 1998 (attached):

- a) The loadout area is owned and operated by Utah Railway Company, and is not a part of the Hiawatha mining complex.
- b) The loadout has in the past and continues to be used by many companies for loading Coal.
- c) Hiawatha Coal Company does not control the loading storage or operations within the Utah Railway Property.
- d) Hiawatha Coal Company does not have any coal stored within the loadout area.
- e) All loading activities are controlled by and overseen by Utah Railway Company, not HCC.
- f) All areas currently being used by Hiawatha Coal Company to conduct coal mining and reclamation operations are within their existing disturbed areas.

In a letter from the Utah Railway Company dated April 7, 1998 (attached), it is made clear that the Railroad:

- a) is the sole owner of the property.
- b) allows various shippers to utilize the area for loading coal. There is no exclusive use of this area by Hiawatha Coal Company.
- c) intends to keep the property and track available as a loadout into the future.
- d) does not intend to have the property included in Hiawatha's permit as disturbed area.

The act of loading and transporting coal is not a regulated activity under SMCRA unless it is done "in connection with" a mine. Certainly the Utah Railway would not be required to permit this activity, particularly since there are other loadouts such as Levan and Railco that are not regulated.

An argument could still be made that since the loadout area is at or near a mine site it should be made part of the disturbed area of the mine, however, this would serve no real purpose. The Railroad intends to keep the site as a loadout into the future. The primary emphasis of SMCRA, reclamation,

becomes a moot issue. Besides, while the loadout may be in the proximity of the mine, it is not "in connection with" the mine.

**FINDINGS:**

- 1) Hiawatha Coal Company does not own, operate or control the loadout area along the Utah Railway tracks.
- 2) The Utah Railway has made it clear that they do not want this area included as part of the Hiawatha Coal Company disturbed area.
- 3) Activity within the subject loadout area consists entirely of stockpiling and loading coal which in itself is not considered to be a mining and reclamation operation.
- 4) The loadout facility does not service any specific mine but receives its materials from various sources and operates independent of any given mine.
- 5) The Railroad intends to keep the site as a loadout into the future.
- 6) There does not appear to be a functional or economic tie between the loadout and any given mine. While benefiting the mines, the loadout is not necessary for any of the mines to continue operating. The loadout might receive a significant amount of material from a particular mine but would not be tied to that mine. The coal could come from a variety of different sources.
- 7) The loadout could continue to exist even though the mine might be shut down. The loadout is not dependant on the mine for its existence.

**CONCLUSION:**

The subject loadout area along the Railroad Right of Way is not being used "in connection with" a coal mine. As such it does not require permitting under the Utah Coal Regulatory Program since it is not considered coal mining and reclamation operations.

If the nature of Hiawatha Coal Company's activity in this area changes, revised findings or other conclusions may be necessary. Should Hiawatha become associated with the loadout or involved in the ownership or control of it or conduct mining activity within the loadout area they may fall under the purview of the Coal Regulatory Program.

cc: Mary Ann Wright  
Joe Helfrich  
Paul Baker  
PFO

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