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State of Utah

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

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December 9, 1992

Mr. David Pearce
Sunnyside Cogeneration Associates
P.O. Box 58087
Salt Lake City, Utah 84158-0087

Dear Mr. Pearce:

Re: Coal Subject to Royalties-30CFR 206.253, Sunnyside Cogeneration Associates, Sunnyside Slurry and Coarse Refuse, PRO/007/035, Folder #2, Carbon County, Utah

Enclosed please find a copy of the above-noted regulation that refers to coal subject to royalties. Section (c) refers to waste piles or slurry ponds that are reworked to recover coal. This issue was brought to my attention recently by Mr. Rick Holbrook at the Office of Surface Mining in Denver.

I contacted Mr. Barry Grosely, Bureau of Land Management in Price regarding this. He stated that there was a similar situation at the Hiawatha Mine. However, a determination as to whether or not the coal royalties must be paid, must be addressed.

Please submit the determination to the Division as to whether or not the royalties will be paid before the end of the year.

Sincerely,


Pamela Grubaugh-Littig
Permit Supervisor

Enclosure

cc: Brian Burnett, Callister, Duncan, and Nebeker
Lowell P. Braxton

Called Barney Grody 12/1/92. He will create ~~_____~~ *(Sometimes had same situation)* w/ ~~_____~~ *(Sometimes had same situation)*

screening, storing, mixing, loading, treatment with substances including chemicals or oils, and other preparation of the coal to the extent that the lessee is obligated to perform them at no cost to the Federal Government or Indian lessor. Gross proceeds, as applied to coal, also includes but is not limited to reimbursements for royalties, taxes or fees, and other reimbursements. Tax reimbursements are part of the gross proceeds accruing to a lessee even though the Federal or Indian royalty interest may be exempt from taxation. Monies and other consideration, including the forms of consideration identified in this paragraph, to which a lessee is contractually or legally entitled but which it does not seek to collect through reasonable efforts are also part of gross proceeds.

Indian allottee means any Indian for whom land or an interest in land is held in trust by the United States or who holds title subject to Federal restriction against alienation.

Indian Tribe means any Indian Tribe, band, nation, pueblo, community, rancheria, colony, or other group of Indians for which any land or interest in land is held in trust by the United States or which is subject to Federal restriction against alienation.

Lease means any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States for a Federal or Indian coal resource under a mineral leasing law that authorizes exploration for, development or extraction of, or removal of coal—or the land covered by that authorization, whichever is required by the context.

Lessee means any person to whom the United States, an Indian Tribe, or an Indian allottee issues a lease, and any person who has been assigned an obligation to make royalty or other payments required by the lease. This includes any person who has an interest in a lease as well as an operator or payor who has no interest in the lease but who has assumed the royalty payment responsibility.

Like-quality coal means coal has similar chemical and physical characteristics.

ties and otherwise in a condition that it will be accepted by a purchaser under a sales contract typical for that area.

Mine means an underground or surface excavation or series of excavations and the surface or underground support facilities that contribute directly or indirectly to mining, production, preparation, and handling of lease products.

Net-back method means a method for calculating market value of coal at the lease or mine. Under this method, costs of transportation, washing, handling, etc., are deducted from the ultimate proceeds received for the coal at the first point at which reasonable values for the coal may be determined by a sale pursuant to an arm's-length contract or by comparison to other sales of coal, to ascertain value at the mine.

Net output means the quantity of washed coal that a washing plant produces.

Person means by individual, firm, corporation, association, partnership, consortium, or joint venture.

Selling arrangement means the individual contractual arrangements under which sales or dispositions of coal are made to a purchaser.

Spot market price means the price received under any sales transaction when planned or actual deliveries span a short period of time, usually not exceeding one year.

[54 FR 1523, Jan. 13, 1989, as amended at 56 FR 35433, Aug. 30, 1990]

§ 206.252 Information collection.

The information collection requirements contained in this subpart have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 et seq. The forms, filing date, and approved OMB clearance numbers are identified in 30 CFR 210.10 and 30 CFR 218.10.

§ 206.253 Coal subject to royalties—general provisions.

(a) All coal (except coal unavoidably lost as determined by BLM pursuant to 43 CFR Group 3400) from a Federal

the lessee on or off the lease.
(b) If a lessee receives compensation for unavoidably lost coal through insurance coverage or other arrangements, royalties at the rate specified in the lease are to be paid on the amount of compensation received for the coal. No royalty is due on insurance compensation received by the lessee for other losses.

In the event waste piles or slurry ponds are reworked to recover coal, the lessee shall pay royalty at the rate specified in the lease at the time the recovered coal is used, sold, or otherwise finally disposed of. The royalty rate shall be that rate applicable to the production method used to initially mine coal in the waste pile or slurry pond; i.e., underground mining method or surface mining method. Coal in waste pits or slurry ponds initially mined from Federal or Indian leases shall be allocated to such leases regardless of whether it is stored on Federal or Indian lands. The lessee shall maintain accurate records to determine to which individual Federal or Indian lease coal in the waste pit or slurry pond should be allocated. However, nothing in this section requires payment of a royalty on coal for which a royalty has already been paid.

§ 206.254 Quality and quantity measurement standards for reporting and paying royalties.

(a) For leases subject to § 206.257 of this subpart, the quality of coal on which royalty is due shall be reported on the basis of percent sulfur, percent ash, and number of British thermal units (Btu) per pound of coal. Coal quality determinations shall be made at intervals prescribed in the lessee's sales contract. If there is no contract, or if the contract does not specify the intervals of coal quality determination, the lessee shall propose a quality test schedule to MMS. In no case, however, shall quality tests be performed less than quarterly using standard industry-recognized testing methods. Coal quality information shall be reported on the appropriate forms required under 30 CFR part 216.

short tons (of 2,000 pounds each) by methods prescribed by the BLM. Coal quantity information shall be reported on appropriate forms required under 30 CFR part 216 and on the Report of Sales and Production Information, Form 30 CFR

OPTIONAL FORM 90 (7-90)
FAX TRANSMITTAL
of pages 1

TO: PAM G-11776
FROM: RAY HOLLIBROOK
DEPT./AGENCY: DT DGM
PHONE #:
FAX #:

5095-101
GENERAL SERVICES ADMINISTRATION
30 CFR, 206.253(c)

5095-101-317-7388
30 CFR, 206.253(c)

(a) This section is applicable to coal leases on Federal, Indian Tribal, allotted Indian lands (except leases on the Osage Indian Reservation) which provide for the determination of royalty on a cents-per-ton (or other quantity) basis.

(b) The royalty for coal from leases subject to this section shall be based on the dollar rate per ton prescribed in the lease. That dollar rate shall be applicable to the actual quantity of coal used, sold, or otherwise finally disposed of, including coal which is unavoidably lost as determined by BLM pursuant to 43 CFR part 3400.

(c) For leases subject to this section, there shall be no allowances for trans-