0066

Document Information Form

Mine Number: C/007/035

File Name: Internal

To: DOGM

From:

Person N/A

Company SunnySide Cogeneration Associates

Date Sent: January 19, 1994

Explanation:

Proposed Permit Changes in Response to Violation N93-13-1-1

cc:

File in:
C/ 007 , 035 , Internal
Refer to:
- ☐ **Confidential**
- ☐ **Shelf**
- ☐ **Expandable**

Date _____ For additional information

ANALYSIS AND FINDINGS
SUNNYSIDE COGENERATION ASSOCIATES
REFUSE AND SLURRY OPERATIONS
ACT/007/035-93P
January 19, 1994

RE: Proposed Permit Changes in response to violation N93-13-1-1, Sunnyside Cogeneration Associates, ACT/007/035-93P, Folder #3, Carbon County, Utah
+ Folder #5

SUMMARY:

Violation N93-13-1-1 requires that SCA comply by identifying, describing and locating all surface coal mining and reclamation activities by submitting adequate permit changes to the plan which effectively describe and/or incorporate those structures into the permit and affected area. The area of the violation is the road and facilities which were adjacent to the permit area at the time of the violation. The analysis and findings hereunder are in consideration of the permit changes proposed by SCA.

A proposed permit change was submitted to the Division on December 8, 1993 as part of the abatement requirements of the above violation. Information supplemental to that proposal was provided on December 21 and December 30, 1993. Changes to the plan are found in Chapter 4 of the plan. A series of drawings, Plates 1-1, 4-5, 5-3, 7-1 and 7-1A have also been revised and included in the proposal to reflect changes to the plan.

ANALYSIS:

As part of the proposed changes to the plan, SCA has proposed to incorporate the area referred to as the New Access Road into the Permit Area. The disturbed area included in the proposal will be incorporated into the drainage area which presently reports to the Pasture Sediment Pond. Road designs and supporting hydrology calculations have been provided by SCA. The structures and facilities which are proposed to be incorporated into the Permit Area include the New Access Road, a waste coal storage area within the loop of the access road, and a culvert, diversion ditch and berm system for drainage control.

SCA further asserts that other facilities and structures adjacent to the permit area are not part of the permitted mining and reclamation operations, but are an integral part of the power plant operations. In addition to those facilities described above which are to be incorporated into the permit area, SCA has described facilities and structures which SCA believes to be part of the adjacent power plant operations. These facilities include, but are not limited to, the waste coal receiving hopper, transfer conveyors, scalping screen, crusher system, stacking conveyor and three live storage silos with conveyors for the sized materials to feed onto the power plant feed conveyor. A more detailed description of these facilities is found in Chapter 4 of the proposed permit change. The location and the orientation of these facilities can be found on Sheet 4-5.

File in:
- ❑ **Confidential**
- ❑ **Shelf**
- ❑ **Expandable**

Refer to Record No 0066 **Date** 1-19-94
In C/ 007 , 035 , **Internal**
For additional information

SCA maintains that the coal-handling facilities are solely related to those structures and facilities which are required for the Sunnyside Cogeneration power plant. SCA states that the power plant activities which occur outside of the SMCRA permitted area are performed in a controlled manner, under permits from other agencies, and have been incorporated into the entire design and plan for the SCA Cogeneration facility. Evaluation of SCA's proposal must include a determination as to which of these structures and facilities are constructed and utilized in conjunction with coal mining and reclamation operations as defined under the Coal Rules.

"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."

With respect to the crushing and conveying system utilized in conjunction with the power plant facilities, analysis of the operation relies on a determination as to whether or not the coal processing operations conducted outside the permit area are being conducted in connection with a mine. Coal preparation plants are cited in the Federal Register Vol. 58, January 8, 1993, pp 3467-3469 which was written to clarify the requirements under 30 CFR 785. The FR indicates that surface coal mining regulatory authorities are not precluded from considering the element of geographic proximity in deciding whether an off-

site processing or preparation facility operates in connection with a mine, provided that proximity is not the decisive factor and that due consideration is given to the processing plant's functional relationship to the mine. The FR further indicated that an appellate court held that the Act permits, but does not require, the Secretary to regulate off-site facilities that crush and screen coal. The fact that the Secretary may regulate these facilities does not mean that he must regulate them, as long as he gives valid reasons for declining to regulate such facilities.

The function and use of the coal processing facilities for the power plant as proposed in SCA's plan constitute a valid reason for the exclusion of those coal processing facilities from coal regulatory requirements. SCA has indicated that, regardless of the source of fuel used for power generation, all of fuel materials must be properly screened and sized to be utilized in the power plant. If mining and reclamation operations cease within the permit area, the screening and crushing facilities at the power plant will continue to operate as an integral part of the power plant operations. The screening and crushing facilities are considered to be typical of those of other coal-fired power generation plants. Consequently, it can be concluded that the SCA coal processing activities are not incidental to or connected with the mining operations, but are instead integral to the power plant operations.

A functional relationship between the ownership and control of the power plant operations and the mining and reclamation operations does exist in that both operations are owned and controlled by Sunnyside Cogeneration Associates. This ownership and control link was established to maintain a viable supply of fuel source material to the power plant. The proximity of the power plant to the mining operations serves to minimize the costs of transportation and delivery of the fuel source to the power plant. However, the power plant and power generation facilities are not solely dependent on the adjacent mining operations for fuel. In fact, other sources of fuel have been and will continue to be required to maintain power plant operations. Although this ownership and control link exists between the two operations and their proximity serves as an economic benefit to both operations, the power plant operations are sufficiently independent of the mining activities to be divided.

In conclusion, the Division finds that these coal preparation facilities need not be regulated under SMCRA. Although the coal processing facilities are in close proximity to the existing permit area, neither SCA's mining and reclamation operations nor any other specific mine is reliant on the power plant's coal processing facilities in order for the mine to function. At the same time, the coal processing facilities are an essential and integral part of the power plant operations.

FINDINGS:

In regard to the haul road, the Division concurs with SCA and finds that the road system is an integral part of surface coal mining and reclamation operations. The road has

been constructed for transporting and delivery of mined refuse materials (as fuel) from the permitted area to the power plant. Although incidental use of the road system may include delivery of coal or other materials to the power plant from areas which are not part of the permitted operations, the road system is designed and constructed as a primary road for handling coal waste. Accordingly, the Division finds that the New Access Road as described in the proposal must be incorporated into the permit area.

Designs of the road and surface drainage system have been provided in the submittal and are complete and adequate to meet the abatement requirements of violation N93-13-1-1. The Division considers the change to the permit area an incidental boundary change in that the incorporation of the haul road loop and associated drainage facilities increases the permit area by approximately 1.5 acres. Additional technical review and analysis of the haul road and the hydrologic calculations will be performed by the Division in conjunction with a more extensive technical review of the entire permit area. However, such revisions or changes to the plan in regard to that review are not required for abatement of the above violation.

In regard to the facilities used to deliver, store, size and feed the power plant, the Division finds that these coal processing facilities are an integral part of the power plant operations, are not in connection with the mine, and are not subject to permitting requirements under SMCRA. This determination is based on the fact that the power plant cannot function without the crushing and screening facilities. Conversely, mining and reclamation operations within the permit area could continue independently and without the operation of the power plant and its coal processing facilities. Accordingly, the Division finds that the coal processing facilities described in the proposed plan changes adjacent to the permit area will not be required to be permitted.

SCA has sufficiently described and justified the location and existence of the adjacent coal processing facilities as being an integral part of the power generation operations. The Division accepts the information in the proposed permit change as complete and accurate to meet the abatement requirements of violation N93-13-1-1. Further the Division hereby approves permit change ACT/007/035-93P for incorporation into the approved plan.

Doc. I:\007035.93P

LDB 1-21-94

ANALYSIS AND FINDINGS
SUNNYSIDE COGENERATION ASSOCIATES
REFUSE AND SLURRY OPERATIONS
ACT/007/035-93P
January 19, 1994

RE: Proposed Permit Changes in response to violation N93-13-1-1, Sunnyside Cogeneration Associates, ACT/007/035-93P, Folder #3, Carbon County, Utah
Also # 5

SUMMARY:

Violation N93-13-1-1 requires that SCA comply by identifying, describing and locating all surface coal mining and reclamation activities by submitting adequate permit changes to the plan which effectively describe and/or incorporate those structures into the permit and affected area. The area of the violation is the road and facilities which were adjacent to the permit area at the time of the violation. The analysis and findings hereunder are in consideration of the permit changes proposed by SCA.

A proposed permit change was submitted to the Division on December 8, 1993 as part of the abatement requirements of the above violation. Information supplemental to that proposal was provided on December 21 and December 30, 1993. Changes to the plan are found in Chapter 4 of the plan. A series of drawings, Plates 1-1, 4-5, 5-3, 7-1 and 7-1A have also been revised and included in the proposal to reflect changes to the plan.

ANALYSIS:

As part of the proposed changes to the plan, SCA has proposed to incorporate the area referred to as the New Access Road into the Permit Area. The disturbed area included in the proposal will be incorporated into the drainage area which presently reports to the Pasture Sediment Pond. Road designs and supporting hydrology calculations have been provided by SCA. The structures and facilities which are proposed to be incorporated into the Permit Area include the New Access Road, a waste coal storage area within the loop of the access road, and a culvert, diversion ditch and berm system for drainage control.

SCA further asserts that other facilities and structures adjacent to the permit area are not part of the permitted mining and reclamation operations, but are an integral part of the power plant operations. In addition to those facilities described above which are to be incorporated into the permit area, SCA has described facilities and structures which SCA believes to be part of the adjacent power plant operations. These facilities include, but are not limited to, the waste coal receiving hopper, transfer conveyors, scalping screen, crusher system, stacking conveyor and three live storage silos with conveyors for the sized materials to feed onto the power plant feed conveyor. A more detailed description of these facilities is found in Chapter 4 of the proposed permit change. The location and the orientation of these facilities can be found on Sheet 4-5.

SCA maintains that the coal-handling facilities are solely related to those structures and facilities which are required for the Sunnyside Cogeneration power plant. SCA states that the power plant activities which occur outside of the SMCRA permitted area are performed in a controlled manner, under permits from other agencies, and have been incorporated into the entire design and plan for the SCA Cogeneration facility. Evaluation of SCA's proposal must include a determination as to which of these structures and facilities are constructed and utilized in conjunction with coal mining and reclamation operations as defined under the Coal Rules.

"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."

With respect to the crushing and conveying system utilized in conjunction with the power plant facilities, analysis of the operation relies on a determination as to whether or not the coal processing operations conducted outside the permit area are being conducted in connection with a mine. Coal preparation plants are cited in the Federal Register Vol. 58, January 8, 1993, pp 3467-3469 which was written to clarify the requirements under 30 CFR 785. The FR indicates that surface coal mining regulatory authorities are not precluded from considering the element of geographic proximity in deciding whether an off-

site processing or preparation facility operates in connection with a mine, provided that proximity is not the decisive factor and that due consideration is given to the processing plant's functional relationship to the mine. The FR further indicated that an appellate court held that the Act permits, but does not require, the Secretary to regulate off-site facilities that crush and screen coal. The fact that the Secretary may regulate these facilities does not mean that he must regulate them, as long as he gives valid reasons for declining to regulate such facilities.

The function and use of the coal processing facilities for the power plant as proposed in SCA's plan constitute a valid reason for the exclusion of those coal processing facilities from coal regulatory requirements. SCA has indicated that, regardless of the source of fuel used for power generation, all of fuel materials must be properly screened and sized to be utilized in the power plant. If mining and reclamation operations cease within the permit area, the screening and crushing facilities at the power plant will continue to operate as an integral part of the power plant operations. The screening and crushing facilities are considered to be typical of those of other coal-fired power generation plants. Consequently, it can be concluded that the SCA coal processing activities are not incidental to or connected with the mining operations, but are instead integral to the power plant operations.

A functional relationship between the ownership and control of the power plant operations and the mining and reclamation operations does exist in that both operations are owned and controlled by Sunnyside Cogeneration Associates. This ownership and control link was established to maintain a viable supply of fuel source material to the power plant. The proximity of the power plant to the mining operations serves to minimize the costs of transportation and delivery of the fuel source to the power plant. However, the power plant and power generation facilities are not solely dependent on the adjacent mining operations for fuel. In fact, other sources of fuel have been and will continue to be required to maintain power plant operations. Although this ownership and control link exists between the two operations and their proximity serves as an economic benefit to both operations, the power plant operations are sufficiently independent of the mining activities to be divided.

In conclusion, the Division finds that these coal preparation facilities need not be regulated under SMCRA. Although the coal processing facilities are in close proximity to the existing permit area, neither SCA's mining and reclamation operations nor any other specific mine is reliant on the power plant's coal processing facilities in order for the mine to function. At the same time, the coal processing facilities are an essential and integral part of the power plant operations.

FINDINGS:

In regard to the haul road, the Division concurs with SCA and finds that the road system is an integral part of surface coal mining and reclamation operations. The road has

been constructed for transporting and delivery of mined refuse materials (as fuel) from the permitted area to the power plant. Although incidental use of the road system may include delivery of coal or other materials to the power plant from areas which are not part of the permitted operations, the road system is designed and constructed as a primary road for handling coal waste. Accordingly, the Division finds that the New Access Road as described in the proposal must be incorporated into the permit area.

Designs of the road and surface drainage system have been provided in the submittal and are complete and adequate to meet the abatement requirements of violation N93-13-1-1. The Division considers the change to the permit area an incidental boundary change in that the incorporation of the haul road loop and associated drainage facilities increases the permit area by approximately 1.5 acres. Additional technical review and analysis of the haul road and the hydrologic calculations will be performed by the Division in conjunction with a more extensive technical review of the entire permit area. However, such revisions or changes to the plan in regard to that review are not required for abatement of the above violation.

In regard to the facilities used to deliver, store, size and feed the power plant, the Division finds that these coal processing facilities are an integral part of the power plant operations, are not in connection with the mine, and are not subject to permitting requirements under SMCRA. This determination is based on the fact that the power plant cannot function without the crushing and screening facilities. Conversely, mining and reclamation operations within the permit area could continue independently and without the operation of the power plant and its coal processing facilities. Accordingly, the Division finds that the coal processing facilities described in the proposed plan changes adjacent to the permit area will not be required to be permitted.

SCA has sufficiently described and justified the location and existence of the adjacent coal processing facilities as being an integral part of the power generation operations. The Division accepts the information in the proposed permit change as complete and accurate to meet the abatement requirements of violation N93-13-1-1. Further the Division hereby approves permit change ACT/007/035-93P for incorporation into the approved plan.

Doc. I:\007035.93P

LDB 1-21-94