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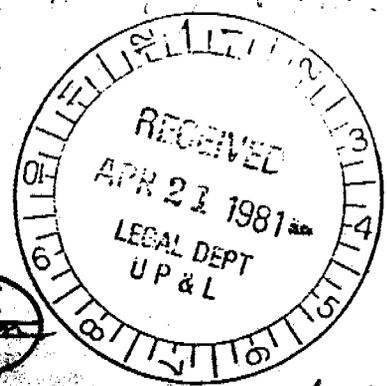
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United States Department of the Interior

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April 17, 1981

UTAH POWER & LIGHT COMPANY,

Petitioner

v.

OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT
(OSM),

Respondent

DOCKET NO. DV 0-23-P

Civil Penalty Proceeding

Notice of Violation No.
80-5-18-8

Handwritten notes: file this in the UP&L Co Deer Creek more file ACT 10/15/018A

DECISION

Appearances: Ralph L. Jerman, Salt Lake City, Utah, for petitioner;

William H. Penney, Office of the Solicitor, Department of the Interior, Denver, Colorado, for respondent.

Before: Administrative Law Judge Mesch.

This proceeding was initiated under 43 CFR 4.1150 when Utah Power & Light Company filed a Petition for Review of a proposed assessment of a civil penalty levied by OSM. A hearing was held on November 13, 1980, in Salt Lake City, Utah. The parties have filed posthearing briefs.

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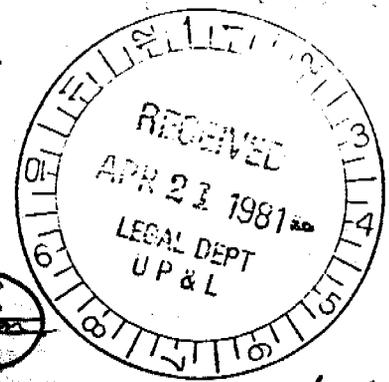
DIVISION OF OIL, GAS & MINING



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Handwritten initials and signatures: A/S, [Signature]

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This proceeding was initiated under 43 CFR 4.1150 when Utah Power & Light Company filed a Petition for Review of a proposed assessment of a civil penalty levied by OSM. A hearing was held on November 13, 1980, in Salt Lake City, Utah. The parties have filed posthearing briefs.

On January 10, 1980, OSM inspected the petitioner's Deer Creek Mine in Emery County, Utah. The mine is an underground operation. As a result of that inspection, OSM issued Notice of Violation No. 80-5-18-8 charging a violation of 30 CFR 717.17(k). The Notice of Violation specified the nature of the violation as a "[f]ailure to maintain conveyor facilities to

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DIVISION OF OIL, GAS & MINING

prevent additional contributions of suspended solids to stream flow". It described the portion of the operation to which it applied as the "[c]oal stockpile area where (near power plant) conveyor crosses Deer Creek * * *. The berm around the pile is breached at the base of the conveyor on the west side of Deer Creek". OSM subsequently proposed an assessment of \$1,200 as a civil penalty for the alleged violation.

The petitioner contends that the Notice of Violation should be vacated because OSM has no jurisdiction over the area where the alleged violation occurred. The petitioner asserts that the circumstances which resulted in the issuance of the Notice of Violation occurred at a coal storage facility used in connection with a coal-fired electric power plant; and the storage of coal at and for the operation of an electric power plant does not come within the statutory definition of surface coal mining operations. In the alternative, the petitioner contends that the violation was inadvertent and minor and did not warrant the proposed penalty assessed by OSM.

Section 701 of the Surface Mining Control and Reclamation Act, 30 U.S.C. § 1291, subsection (28), defines "surface coal mining operations" as meaning:

(A) activities conducted on the surface of lands in connection with a surface coal mine or * * * surface operations and surface impacts incident to an underground coal mine, * * *. Such activities include excavation for the purpose of obtaining coal * * *, and the cleaning, concentrating, or other processing or preparation, loading of coal for interstate commerce at or near the mine site: * * * and

(B) the areas upon which such activities occur or where such activities disturb the natural land surface. Such areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by * * * stockpiles, * * * storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities; * * *

I construe the above definition as covering any surface operations and surface impacts directly resulting from or directly incident to the operation of an underground coal mine

and any surface activities conducted in connection with, and as a part of, an underground coal mining operation.

The petitioner is an electric utility located in Salt Lake City, Utah. It supplies electric energy to most of Utah and to portions of Idaho and Wyoming. It operates seven coal-fired generating plants, including one in Huntington, Utah, and one near downtown Salt Lake City. All coal-fired power plants operated by the petitioner have coal storage facilities. In all cases the coal is processed and ready for use in the power plants before it is placed in the storage piles. The coal storage piles correspond to raw material warehouses in industrial operations.

The petitioner's Huntington Plant is located in Huntington Canyon, two and one-tenth miles below the Deer Creek Mine. The Deer Creek Mine is owned by the petitioner. It holds a mining permit from the State of Utah to operate the mine. The mining operations are conducted by an independent contractor, Emery Mining Corporation. The Huntington Plant and its coal storage facility are not within the boundaries of the mine permit area. A public road provides access from the power plant to the mine. The properties separating the mine and the plant are owned by the petitioner, the State of Utah and the United States. There is a conveyor belt system running from a coal storage pile at the mine to the Huntington Plant storage facility. The conveyor belt system is owned by the petitioner.

The operations conducted by Emery Mining Corporation under its contract with the petitioner consist of mining the coal, processing the coal by crushing and cleaning, stockpiling the coal at the mine site, and transporting the coal by the conveyor system from the mine stockpile to the area of the plant stockpile. The conveyor from the mine stockpile enters a building at the plant storage facility. At that point, the petitioner assumes responsibility for the operations and the coal is transferred from the conveyor belt to a weigh belt in order that the plant will know how much to "pay the mine" for the coal. The coal is then placed in the plant stockpile. A separate conveyor belt system operated by the petitioner transports the coal from the plant stockpile to bunkers in the Huntington Plant.

Substantially all of the coal extracted at the Deer Creek Mine goes by conveyor to the Huntington Plant stockpile. The Deer Creek Mine has a truck load-out facility and coal is sometimes shipped to stockpiles at other plants operated by the petitioner. Most of the coal burned at the Huntington Plant comes from the Deer Creek Mine. However, some coal is trucked in from other mines and placed in the plant storage pile.

Prior to March of 1977, when the petitioner purchased the Deer Creek Mine, the mine and the conveyor facilities down to the weigh building at the plant stockpile were owned and operated by Peabody Coal Company. The petitioner purchased coal from Peabody under a coal supply agreement. Except for the change of ownership, the operations remained the same after the mine and conveyor facilities were acquired by the petitioner.

All of the petitioner's coal-fired generating plants have similar conveying systems which pick up coal from their respective storage facilities and carry it to bunkers in the power plants. Only the Huntington Plant and one other plant receive coal at the plant storage area by means of a conveyor system. The other five plants receive their stockpile of coal by truck or railroad.

The Notice of Violation was issued because of a breach in a berm below and near the conveyor system that transports coal in an east-west direction from the plant stockpile to the power plant. The breach was not near the conveyor system that transports coal in another direction from the mine stockpile to the plant stockpile. The berm that was breached was a second line of defense for the coal stockpile area and was intended to protect an area about the size of a city lot. There was another berm and a diversion system that protected the coal storage area. The area covered some 20 to 30 acres. The breach in the berm occurred when a large fire line running underneath the conveyor broke and washed out a section of earth. The washing action resulted in some coal fines being deposited in Deer Creek, an ephemeral stream.

I agree with the petitioner's principal contention. The alleged violation occurred at a coal storage facility used in connection with a coal-fired electric power plant. The storage of coal at and for the operation of an electric power plant does not constitute surface operations and surface impacts directly resulting from or directly incident to the operation of an underground coal mine. The storage of coal as a necessary incident to the operation of a coal-fired electric power plant does not constitute a surface activity conducted in connection with, and as a part of, an underground coal mining operation. I can see no distinction between this case and the issuance of a Notice of Violation by OSM for an occurrence at the petitioner's coal storage facility at its plant near downtown Salt Lake City where the coal is transported in by truck or railroad.

The Notice of Violation is vacated.

If this decision becomes the final decision of the Department, OSM shall remit, within the 30-day time periods specified in 43

CFR 4.1157(c), the sum of \$1,200, with appropriate interest, to the petitioner.

The parties may petition the Board of Surface Mining and Reclamation Appeals to review this decision according to the procedure set forth in 43 CFR 4.1270.

Robert W. Mesch

Robert W. Mesch
Administrative Law Judge

Distribution:
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Ralph L. Jerman
1407 West North Temple
Salt Lake City, UT 84116

William H. Penney
Office of the Regional Solicitor
U. S. Department of the Interior
P.O. Box 25007
Denver Federal Center
Denver, CO 80225

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