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Norman H. Bangerter
Governor
Dee C. Hansen
Executive Director
Dianne R. Nielson, Ph.D.
Division Director

State of Utah

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203
801-538-5340

May 11, 1992

Mr. James Miller
127 Berkley Avenue
East Carbon, Utah 84520

Dear Mr. Miller:

Re: Remining Coal, Cottonwood Waste Rock Site, ACT/015/019, Des-Bee-Dove Mine, ACT/015/017, PacifiCorp Electric Operations, Folder #2, Emery County, Utah

Bill Malencik of my staff asked that I respond to a proposal you discussed with him briefly regarding removing coal from the Cottonwood/Wilberg Waste Rock Site and coal at the Des-Bee-Dove Mine. It is my understanding that you have discussed these proposals with PacifiCorp and that they suggested that Division approval of your proposal would be required.

As explained to me, your goal is to increase "coal" recovery at the Cottonwood Waste Rock Site. Currently, you are hand picking lump coal which you believe misses alot of the smaller coal. In order to increase your efficiency, you are proposing two options:

Option 1: Install a grizzly at the Cottonwood/Wilberg Waste Rock Site, and
Option 2: Install a grizzly at the Des-Bee-Dove Mine.

The Division of Oil, Gas and Mining would have to issue a permit to remine and/or mechanically process coal from the Cottonwood Waste Rock Site. Currently, PacifiCorp is permitted to dispose of underground waste rock, trommel waste, and material from sedimentation pond cleanout at this waste rock site. Remining coal at this site would require, among other things, submittal of a coal mining and reclamation plan for this site and obtaining a permit to conduct those activities, possible payment of AML fees, and posting of a reclamation bond. PacifiCorp currently has legal responsibilities for the Cottonwood Waste Rock Site. Should PacifiCorp decide to remine or mechanically process coal, they would have to amend their current permit to conduct such activities.

Regarding Option 2, the Des-Bee-Dove Mine is under temporary cessation. If the tipple area was used to process coal, the mine would most likely need to be reactivated and would no longer be under temporary cessation.

I understand that you are currently operating the East Carbon Coal yard. A determination was made by the Division Associate Director of Mining, Mr. Lowell Braxton, that this site would not have to be permitted. (See attached). However, the PacifiCorp sites with currently approved mining and reclamation plans, would have to be amended and appropriate requirements of the Utah Coal Regualtory Program complied with.

If you have any questions, please call me.

Sincerely,

Pamela Grubaugh-Littig
Permit Supervisor

pgl
Enclosure
cc: Val Payne, PacifiCorp
Lowell Braxton, Associate Director, Mining, DOGM

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cc LPB
Daron
Pam
Bill M.

Copy Reading file

January 3, 1992

TO: Files

FROM: Lowell P. Braxton, Associate Director, Mining LPB

RE: East Carbon Coal Yard: Permitting of Present Operation not Required

As enumerated in Bill Malencik's November 22, 1991 memo, attached, the above-referenced facility is located in East Carbon, Utah, and operated by Jim Miller. The operation crushes and sells lump and stoker coal purchased from permitted facilities.

SMCRA, Section 528 defines surface mining operations not subject to the ACT as:

528 (1) "the extraction of coal by a landowner for his own noncommercial use from land owned or leased by him; and

528 (2) the extraction of coal as an incidental part of Federal, State and local government-financed highway and other construction...." Equivalent Utah statutory language is found at Utah Code Ann. §40-10-5. Any other extractive coal mining requires a permit under the Utah Coal Regulatory Program."

SMCRA, Section 701(28)(A) defines and requires regulation of "surface coal mining operations" as "activities conducted on the surface of lands in connection with a surface coal mine or subject to the requirements of Section 516 surface 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." Equivalent Utah statutory language is found at Utah Code Ann. §40-10-3(17).

Judge Flannary considered the issue of proximity to a mine site and the need to regulate off-site coal processing facilities under SMCRA in National Wildlife Federation et al. v. Manuel Lujan, U.S. District Court civil action nos. 88-2416, 88-3345, 88-3586, 88-3635, 89-0039, 89-0136, 89-0141 (consolidated). The Judgment and Order, August 30, 1990, in this case remanded

Memo to file
January 3, 1992

30 CFR §§785.21 and 827.1 to the Secretary "insofar as it makes proximity to a mine site the limiting factor in deciding whether to regulate an off-site coal processing facility;...." Judge Flannary notes that off-site coal processing plants "in connection" with a mine will be regulated without regard to proximity to the mine.

Each of the mines providing feed material to the East Carbon Yard is in compliance with the Utah Coal Regulatory Program by virtue of approved permits. Based upon the above-referenced report by Bill Malencik, the activities of the East Carbon Yard are not extractive.

The statutory language is silent regarding regulation of activities not "in connection with" surface coal mining operations. In the above-cited case, Judge Flannary "agrees with the Secretary that his jurisdiction under the Act (for regulation of off-site coal processing facilities) does not appear to run to the docks at Hampton Roads, Baltimore or Long Beach."

In the East Carbon Yard issue, where feed from regulated facilities is being crushed and sold, the question of permitting turns on determining "connection with" regulated activities.

None of the regulated facilities providing the feed needs the East Carbon Yard in order to perform its obligations under the Coal Regulatory Program, and the East Carbon Yard is not reliant on a specific mine in order to function. On this basis, a conclusion may be reached that commercial sales and coal handling activities at the East Carbon Yard are not "in connection with" regulated activities, and that no permit for the East Carbon Coal Yard is required.

Activities at the East Carbon Yard should be reevaluated subsequent to the promulgation of any federal and state regulations resulting from the remand of 30 CFR §§785.21 and 827.1.

vb
Attachment
ECARB