



0009 U.S. DEPT. OF THE INTERIOR



OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT SEP 21 1994

Mine-Site Evaluation Inspection Report

File # 5

1. Permittee/Person PACIFICORP		Citizen Complaint ID# CC95-020-001		10. Type a. Permit b. RA	
2. Address ONE UTAH CENTER, 201 SOUTH MAIN, ST 2100		9. Permit Number NO PERMIT		<input type="checkbox"/> NP <input checked="" type="checkbox"/> S	
3. City SALT LAKE CITY		4. State UT		11. Inspection Date 09/15/94 <small>MM - DD - YY</small>	
5. Zip Code 84140		6. Phone Number 801-220-2000		12. Inspection Type CC	
7. Operator if Different than Permittee ENERGY WEST MINING COMPANY		14. Permit Status NA		13. Joint Inspection <input type="checkbox"/> N <input checked="" type="checkbox"/> Y/N	
8. Mine Name PREP PLANT		15. Site Status AN		16. Facility Type C	
		17. OSM Office # 020		18. RSI #	
		19. Land Code S		20. M.S.H.A. ID # 42-02052	
		21. State Code 49		22. County Code 015	
		23. AVS Permittee Entity ID Number		23b. State Office	

24. Performance Standard Categories

Codes: 1=Compliance, 2=Noncompliance, 3=Not Planned, 4=Not Started, 5=Noncompliance Identified Elsewhere

A. Administrative 1. <input type="checkbox"/> Mining within Valid Permit 2. <input type="checkbox"/> Mining within Bonded Area 3. <input type="checkbox"/> Terms & Conditions of Permit 4. <input type="checkbox"/> Liability Insurance 5. <input type="checkbox"/> Ownership and Control 6. <input type="checkbox"/> Temporary Cessation	D. Backfilling & Grading 1. <input type="checkbox"/> Exposed Openings 2. <input type="checkbox"/> Contemporaneous Reclamation 3. <input type="checkbox"/> Approximate Original Contour 4. <input type="checkbox"/> Highwall Elimination 5. <input type="checkbox"/> Steep Slopes (includes downslope) 6. <input type="checkbox"/> Handling of Acid & Toxic Materials 7. <input type="checkbox"/> Stabilization (rills and gullies)	H. Subsidence Control Plan I. Roads 1. <input type="checkbox"/> Road Construction 2. <input type="checkbox"/> Certification 3. <input type="checkbox"/> Drainage 4. <input type="checkbox"/> Surfacing and Maintenance 5. <input type="checkbox"/> Reclamation
B. Hydrologic Balance 1. <input type="checkbox"/> Drainage Control 2. <input type="checkbox"/> Inspections & Certifications 3. <input type="checkbox"/> Siltation Structures 4. <input type="checkbox"/> Discharge Structures 5. <input type="checkbox"/> Diversions 6. <input type="checkbox"/> Effluent Limits 7. <input type="checkbox"/> Ground Water Monitoring 8. <input type="checkbox"/> Surface Water Monitoring 9. <input type="checkbox"/> Drainage -- Acid-Toxic Materials 10. <input type="checkbox"/> Impoundments 11. <input type="checkbox"/> Stream Buffer Zones	E. Excess Spoil Disposal 1. <input type="checkbox"/> Placement 2. <input type="checkbox"/> Drainage Control 3. <input type="checkbox"/> Surface Stabilization 4. <input type="checkbox"/> Inspections & Certifications	J. Signs & Markers 1. <input type="checkbox"/> Signs 2. <input type="checkbox"/> Markers
C. Topsoil & Subsoil 1. <input type="checkbox"/> Removal 2. <input type="checkbox"/> Substitute Materials 3. <input type="checkbox"/> Storage and Protection 4. <input type="checkbox"/> Redistribution	F. Coal Mine Waste (Refuse Piles/Impoundments) 1. <input type="checkbox"/> Drainage Control 2. <input type="checkbox"/> Surface Stabilization 3. <input type="checkbox"/> Placement 4. <input type="checkbox"/> Inspections and Certifications 5. <input type="checkbox"/> Impounding Structures	K. Distance Prohibitions L. Revegetation 1. <input type="checkbox"/> Vegetative Cover 2. <input type="checkbox"/> Timing
	G. Use of Explosives 1. <input type="checkbox"/> Blaster Certification 2. <input type="checkbox"/> Distance Prohibitions 3. <input type="checkbox"/> Blast Survey/Schedule 4. <input type="checkbox"/> Warnings & Records 5. <input type="checkbox"/> Control of Adverse Effects	M. Postmining Land Use N. Other 1) _____ 2) _____ 3) _____

25. Inspection Frequency a. Date of Last State Complete Inspection <input type="text" value="//"/> Frequency for previous 4 Calendar Qtrs. b. Number of required complete inspections: <input type="text" value="0"/> / Number of complete inspections conducted: <input type="text" value="0"/> c. Number of required partial inspections: <input type="text" value="0"/> / Number of partial inspections conducted: <input type="text" value="0"/>	26. Inspection Hours <input type="text" value="0.0"/> a. Permit Review <input type="text" value="17.0"/> b. Inspection Time <input type="text" value="16.0"/> c. Travel Time <input type="text" value="20.0"/> d. Report Writing	27. Bonded Acres <input type="text" value="0.0"/> a. Total bonded <input type="text" value="0.0"/> b. Phase I released <input type="text" value="0.0"/> c. Phase II released <input type="text" value="0.0"/> d. Phase III released	28. Acres <input type="text" value="0.0"/> a. Permitted <input type="text" value="0.0"/> b. Disturbed (Estimated)
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U. S. DEPT. OF THE INTERIOR

OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

Mine-Site Evaluation Inspection Report

 Permit Number NO PERMIT

 Inspection Date 09/15/94

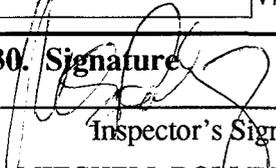
29. Identified Violation Data.

For inspection types C (Complete Random Sample) and SC or SP (Complete or Partial In-depth Review), list all violations present during the current Federal inspection and all violations, cited or uncited, identified in the last State complete inspection report. For any other inspection type, including Federal program inspections, list only violations observed during the current inspection or subject of current Federal follow-up actions.

B Per. Std. Category	C Abated (Y/N)	D State Action	E Reason if Uncited	F Cause	G Seriousness		H Impact	I OSM Action	J OSM Action Number		K Optional
					PEO	Impact					
A. Specific State Law/Regulations Violated: <u>645-300-112.400, 302-261</u> Description: <u>NO PERMIT - OFF-SITE PREP PLANT</u>											
1	A1	N	2	1	5	*	9	5	C94-020-370-002	V# 01	
A. Specific State Law/Regulations Violated: _____ Description: _____											
2											
A. Specific State Law/Regulations Violated: _____ Description: _____											
3											
A. Specific State Law/Regulations Violated: _____ Description: _____											
4											
A. Specific State Law/Regulations Violated: _____ Description: _____											
5											
A. Specific State Law/Regulations Violated: _____ Description: _____											
6											
A. Specific State Law/Regulations Violated: _____ Description: _____											
7											

- | | | | |
|---|--|--|--|
| D. State Action
1) Existed on LSCI, Cited
2) Existed on LSCI, Not Cited
3) Cited Prior to LSCI, Abatement Pending
4) Occurred Since LSCI
5) N/A Federal Program
6) N/A Permit Defect | E. State's Reason for not Citing Violation
1) Not a Violation
2) Precluded by State Policy
3) Not Included under State Program
4) Warning Given in Lieu of a Citation
5) Violation Not Recognized
6) Practice Allowed under Approved Permit
7) Too Minor to Cite
8) Working with Operator to Correct
9) Other _____ | F. Cause
1) Permit Defect
2) Unusual Weather Conditions
3) Unofficial Waiver
4) Operator Negligence
5) Other _____ | G. Probability of Event Occurrence
1) None or Unlikely
2) Likely
3) Occurred |
| H. Impact
Damage Remains Within the Permit Area
1) None or Minor
2) Moderate
3) Considerable
Damage Extends Beyond the Permit Area
4) None or Minor
5) Moderate
6) Considerable
Obstruction to Enforcement
7) None or Minor
8) Moderate
9) Considerable | I. OSM Action This Inspection
1) Deferred to State Action
2) TDN Issued
3) NOV Issued
4) FTA-CO Issued
5) IH-CO Issued (Imminent Environmental Harm)
6) ID-CO Issued (Imminent Danger to Public)
7) Previously Cited by RA, Abatement Pending
8) Abated during or before OSM Inspection
9) Follow-up of Federal Action | | |

30. Signature



Inspector's Signature

MITCHELL ROLLINGS

Inspector's Printed Name

31. OSM Inspector ID#

ID#

Dated: 09/19/94 370

Reviewing Official: 

Review Date: 9/19/94

Page 2 of

Revised July 1, 1993

OWNER:

Pacificorp
One Utah Center
201 South Main
Suite 2100
Salt Lake City, UT 84140-0021
801-220-2000

OPERATOR:

Energy West Mining Company
P.O. Box 310
Huntington, UT 84528
801-748-5761

NO PERMIT

Cottonwood Coal Blending and Preparation Facility

9/8-9/94, 9/15/94

Citizens complaint inspection

Office of Surface Mining Reclamation and Enforcement (OSM)

Albuquerque Field Office (AFO)

Mitchell S. Rollings, 370

Interwest Mining Company

Blake Webster Permitting Administrator

Energy West Mining Company (EWM)

Jim Henrie	Preparation Plant Supervisor
Val Payne	Senior Environmental Engineer
Karl Houskeeper	Environmental Engineer
Morgan Moon	Manager of Technical Services
Jared Olsen	Summer Student Employee

Pacificorp (Hunter Power Plant)

Gary Slanina	Plant Engineer
Rod Roberts	Operations Supervisor

AFO received a citizens complaint by fax on September 7, 1994, from the Citizens Coal Council. The nature of the complaint deals with Pacificorp's coal preparation plant that is located in Emery County, Utah near the Hunter Power Plant. The complaint alleges that the coal preparation plant comes under the jurisdiction of the Surface Mining Control and Reclamation Act (SMCRA) and as such must be a permitted operation. The State regulatory authority, the Division of Oil, Gas, and Mining (DOGM), has not issued a permit for the area

and has stated that the coal preparation plant does not fall within its jurisdiction. The complainant requested the right to accompany OSM during the inspection and waived its right to confidentiality. However, the individual who signed the complaint was unavailable for the inspection. Citizens Coal Council was contacted on September 7 and 8, 1994.

The coal preparation plant was inspected by AFO on September 8 and 9, 1994. Listed above are the individuals that were interviewed during the investigation of this complaint. Messrs. Webster, Houskeeper, Henrie, and Olsen were present on site during the inspection. DOGM was notified of the inspection but declined to participate.

The coal preparation plant consists of a crushing facility, small wash plant, refuse pile, coal stockpiles, and associated structures. The refuse pile has its own sedimentation pond for drainage control. Mr. Webster stated that there have never been any fires in the refuse pile. The west side of the site, with a few small exceptions, drains to a second sedimentation pond adjacent to the main entrance road. The remainder of the site does not drain to a sedimentation pond on the preparation plant area itself, but does drain to one of the power plant ponds (per Webster). Fuel storage areas are self contained in case of leakage. About fifteen drums of used antifreeze are stored in an area that does not drain to a pond, but no leakage was observed from these drums. The individuals along during the inspection did not know how the sedimentation ponds were designed and sized. It is unknown whether the ponds were designed for a storm event, such as required by SMCRA, or some other operating requirement. However, Mr. Webster did state that the ponds were constructed as zero discharge ponds. A wash runs between the preparation plant site and the refuse pile. No one knew the name of the wash, but Mr. Webster thought it might be a perennial stream. The Utah Pollution Discharge Elimination System (UPDES) permit identifies this wash as Johnson Bench Wash. Water in this wash was clear and native vegetation was well established along the stream banks.

Prior to construction of the prep plant, the area was undisturbed except for the bathhouse and office. These facilities were used by the power plant stockpile workers. Mr. Webster said that topsoil was salvaged when the prep plant was constructed.

The power plant employees union is the IBEW. The prep plant employees union is the United Mine Workers of America. A fence around the prep plant defines the boundaries for the two unions. The Occupational Safety and Health Administration (OSHA) has jurisdiction over the power plant, including safety inspections. The Mine Safety and Health Administration (MSHA) has jurisdiction over the prep plant, including safety inspections.

While not particularly relevant in determining whether or not this prep plant falls under the jurisdiction of SMCRA, I contacted MSHA to ascertain why MSHA has jurisdiction over the prep plant and not OSHA. Mr. Bill Denning, MSHA District 9, Denver, CO, stated that the authority for MSHA to regulate the prep plant, which has never been challenged by PacifiCorp, comes from the Federal Mine Safety & Health Act of 1977 (FMSHA), Public Law 91-173, as amended by Public Law 95-164. Attached to this report are Sections 3 and 4 of FMSHA that he referenced as the authority for MSHA to assert jurisdiction.

The individuals interviewed during this inspection were very helpful and forthright in providing information relative to this issue. At the conclusion of the interviews I told Messrs. Webster, Houskeeper, and Olsen that I had not reached a decision on the issue yet. There were a couple of questions regarding issues addressed in the preambles and issues Mr. Webster had raised that I first wanted to review. The following is a compilation of information from the EWM employees and Mr. Webster gathered during this inspection. This information is not weighted in any order of relevance, etc.

PacifiCorp owns, among others, the Cottonwood Coal Blending and Preparation Facility (prep plant)(no DOGM permit, Mine Safety and Health Administration (MSHA) permit 42-02052), Cottonwood/Wilberg Mine (DOGM permit ACT/015/019, MSHA permit 42-01944), Deer Creek Mine (DOGM permit ACT/015/018, MSHA permit 42-00121), and Trail Mountain Mine (DOGM permit ACT/015/009, MSHA permit 42-01211). Each facility has a separate MSHA number.

EWM is a wholly owned subsidiary of PacifiCorp and functions as the operator of the prep plant, Cottonwood/Wilberg Mine, Deer Creek Mine, and Trail Mountain Mine.

The State of Utah, Division of Water Quality, Department of Environmental Quality issued a UPDES, General Permit For Coal Mining, Permit Number UTG040000 to PacifiCorp-Coal Prep. & Blending-Hunter. The permit identifies two outfall locations; those being the two above referenced sedimentation ponds.

Mr. Jim Henrie is the Preparation Plant Supervisor and his immediate supervisor is Mr. Anthony C. Pollastro. Mr. Pollastro is the Mine Manager of the Cottonwood/Wilberg Mine. Mr. Pollastro is also identified as the person in charge of health and safety on the MSHA permit issued to the prep plant. Both of these individuals are employees of EWM.

All coal that passes through the preparation plant comes from an EWM coal mine. Coal that the power plant purchases from coal mines other than EWM coal mines is bought to specification and does not pass through the prep plant.

Of the coal run through the prep plant in 1993, 84% was from the Cottonwood/Wilberg Mine, 16% was from the Deer Creek Mine, and less than 1% was from the Trail Mountain Mine.

Initial crushing and sizing of all coal is done at the crushing facility on the permitted Cottonwood/Wilberg Mine site. If the coal quality is good, the coal is delivered directly to the power plant and is not processed through the prep plant. The facilities at the mine consist of a primary screen, rotary breaker, and truck loadout.

The prep plant was constructed to process the coal to the power plant's requirements; specifically to deal with coal quality problems of high ash.

The prep plant went on line in April 1991.

EWM is in the process of reopening the Trail Mountain Mine. Arco was the previous owner. The only coal shipped from the Trail Mountain Mine is coal that is collected by the clean-up operations currently taking place inside the mine. In 1993, Trail Mountain Mine shipped 5950.6 tons of coal and it all went to the prep plant. Year-to-date 1994, 348.6 tons of coal have been shipped. Trail Mountain Mine coal was not shipped to the prep plant when Arco owned the mine.

In 1993, the Cottonwood/Wilberg Mine sent 2,881,182.5 tons of coal to the prep plant. No coal bypassed the prep plant to the power plant. Year-to-date 1994, 1,684,850.7 tons have been sent to the prep plant and 716,638.8 tons have been bypassed to the power plant. All of the Cottonwood/Wilberg Mine coal goes to the power plant.

In 1993, the Deer Creek Mine shipped 542,827.8 tons of coal to the prep plant. Year-to-date 1994, 292,999.1 tons have been shipped to the prep plant. The Deer Creek Mine coal is also sent to the Huntington Power Plant and Carbon Power Plant, owned by Pacificorp. No figures were available on the percentages of coal produced that are sent to the various power plants.

Pacificorp owns the land on which the prep plant is located.

All coal that is supplied to the power plant from the Deer Creek Mine feeds to the surface via an underground transfer through the Wilberg portal at the Cottonwood/Wilberg Mine.

No acid or toxic materials are identified in the geologic strata at the Cottonwood/Wilberg Mine.

The life of the refuse pile at the prep plant is about thirty years.

The following information was obtained from interviews with the Pacificorp power plant employees.

EWM is the only supplier of coal at this time; primarily from the Cottonwood/Wilberg Mine and also from the Deer Creek Mine.

After the Wilberg Mine fire in 1986, the power plant utilized coal from Plateau, Consol, Sufco, and Trail Mountain (then owned by Arco).

In 1993, 600,000 tons of coal were bought from Plateau, Sufco, White Oak, and Genwal. This coal was delivered directly to the power plant storage, already sized, and was not run through the prep plant.

Pacificorp owns the facilities and land.

Coal purchased from suppliers other than Pacificorp mines is not run through the prep plant. Mr. Slanina stated that when the power plant needs coal from another source than Pacificorp it is cheaper to buy the coal to specification than to run it through the prep plant. Mr. Webster stated that the power plant did not want to buy another company's rock.

The power plant does not have its own crushing and sizing facilities.

EWM has to competitively bid for coal contracts; there are no other contracts right now.

When asked whether or not the power plant anticipates getting coal from another source this year, Mr. Slanina replied "our future is tied to Energy West". Mr. Webster explained that a study by EVA, he was unsure what the initials stood for, determined it was cheaper for a utility to own its own coal mines.

On March 13, 1979, OSM published regulations implementing the permanent regulatory program required by Title V of SMCRA. Permitting requirements and permanent program performance standards for coal processing plants and support facilities not within the permit area for a mine, were codified at 30 CFR 785.21 and 30 CFR Part 827 respectively. On November 22, 1988, OSM promulgated a final rule amending the language in 30 CFR 785.21 and 827.1 concerning the permit requirements and the scope of the performance standards for off-site coal preparation plants, to clarify that those sections apply only to such facilities that operate "in connection with" a coal mine. On January 8, 1993, OSM promulgated a final rule that did not amend the regulatory text of the November 22, 1988, final rule for 30 CFR 785.21 and 827.1, but did clarify OSM's position with regard to the issue of proximity.

The preambles addressing off-site coal preparation plant regulations provide guidance for determining whether or not a preparation plant is subject to SMCRA. Also, the issue of off-site coal preparation plants has an extensive history of litigation. OSM discusses the effects of this litigation, and the effect it has had on interpretation of SMCRA in the preambles. As part of this discussion, OSM has identified relationships between an off-site coal preparation plant and a coal mine that must be examined to determine whether or not a facility comes under the jurisdiction of SMCRA.

"OSM believes the phrase in Section 701(28)(A) of the Act and 30 CFR 700.5 "in connection with" should be interpreted broadly. Some examples of that relationship include facilities which receive a significant portion of their coal from a mine, facilities which receive a significant portion of the output from a mine, facilities which have an economic relationship with a mine, or any other type of integration that exists between a facility and a mine. A facility need not be owned by a mine owner to be in connection with a mine (emphasis added)(48 FR 20393).

1. "...facilities which receive a significant portion of their coal from a mine..." The prep plant received 84% of the coal processed in 1993, from the Cottonwood/Wilberg Mine. 16% of the coal processed in 1993, was from the Deer Creek Mine. As with the prep plant, both of these operations are owned by Pacificorp and operated by EWM.

2. "...facilities which receive a significant portion of the output from a mine..." In 1993, the Cottonwood/Wilberg Mine ran 100% of its output, 2,881,182.5 tons of coal, through the prep plant. Year-to-date 1994, the mine has run 1,684,850.7 tons of coal through the prep plant. 716,638.8 tons of coal bypassed the prep plant to the power plant. Therefore, 57.5% of the mine's output has run through the prep plant in 1994. Figures for the Deer Creek Mine were unavailable.

3. "...facilities which have an economic relationship with a mine..." All of the mines that process coal at this prep plant, and the prep plant itself, are owned by Pacificorp. EWM is a wholly owned subsidiary of Pacificorp and is the operator of all the mines that run coal through the prep plant and the prep plant itself.

Proximity of the facility to the coal mines was an issue raised by Mr. Webster. The prep plant is approximately twelve road miles from the Cottonwood/Wilberg Mine and fifteen road miles from the Trail Mountain Mine. The Deer Creek Mine coal is transferred underground and comes to the surface at the Wilberg portal of the Cottonwood/Wilberg Mine. Therefore, while the road distance to the prep plant from the Deer Creek Mine is approximately twenty-three miles, the road distance from where the coal is shipped to the prep plant would be the same as from the Cottonwood/Wilberg Mine; twelve miles.

"...OSM's position on the proximity issue, as clarified today in this final rule, is that surface mining regulatory authorities may consider geographic proximity as a factor in determining whether off-site coal processing facilities operate in connection with a mine as long as proximity is not the decisive factor..." (58 FR 3468, 1/8/93). Given the other relationships and the fact that proximity is not a decisive factor, proximity alone would not eliminate the requirement for this prep plant to be permitted.

9/15/94

Cessation Order (CO) C94-020-370-002, TV 1, was issued this date. Present were Messrs. Houskeeper, Payne, and Henrie of EWM. Also present was Mr. Anthony C. Pollastro, Mine Manager, Cottonwood/Wilberg Mine, EWM.

The CO was issued for failure to obtain a permit in accordance with all applicable requirements of the approved Utah program as found in the State of Utah, R645 Coal Mining Rules.

The operations ceased by this CO are the receiving and processing of coal. In response to questions from the EWM personnel, the following answers were given to clarify the activities that must be ceased:

1. This CO does not include any of the operations at the coal mines or the Hunter Power Plant.
2. This CO does not cease the "bypass" coal operations where coal is not processed.
3. This CO does not cease the conveying of coal from the existing prep plant stockpiles to the power plant.
4. This CO does not cease the construction activities on site. The construction has been characterized as being in the final stages, e.g. completing the sheet metal siding on buildings, small welding jobs, "small item punch list" jobs (term used by EWM personnel), etc.
5. This CO does not cease the maintenance of equipment or structures, including ponds and ditches, at the prep plant.
6. This CO ceases the processing of coal necessary for some testing procedures after construction completion. Testing procedures that do not involve the processing of coal are not ceased.

CESSATION ORDER (CONTINUATION)

NATURE OF PERMIT CONDITION VIOLATED, PRACTICE OR VIOLATION

Failure to obtain a permit in accordance with all applicable requirements of the approved Utah program as found in the State of Utah, R645 Coal Mining Rules.

PROVISION(S) OF THE REGULATIONS, ACT OR PERMIT VIOLATED

R645-300-112.400
R645-302-261

Mark "X" in the appropriate box

- The condition, practice, or violation is creating an imminent danger to the health or safety of the public.
- The condition, practice, or violation is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.
- The permittee or operator has failed to abate Violation No. ___ of ___ included in Notice of Violation No. ___ within the time for abatement originally fixed or subsequently extended pursuant to Section 521(a)(3) of the Act.

OPERATIONS TO BE CEASED IMMEDIATELY

1. The receiving and processing of coal: This CO does not affect the "bypass" coal operations where coal of good enough quality is not processed. The receiving and processing of coal is to cease by 9/16/94 at 3⁰⁰ pm.
This operator has stated that this site is in the final stages of construction and testing the new facilities. This activity has not been ceased other than when it would involve the processing of coal.

CORRECTIVE ACTION AND TIME FOR ABATEMENT (If Applicable — Not Required if F.T.A)

Obtain a valid permit in accordance with all applicable requirements of the approved Utah program.

Complete by December 12, 1994.