



State of Utah

DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
Executive Director

Division of Oil, Gas and Mining

JOHN R. BAZA
Division Director

Inspection Report

Permit Number:	C0410002
Inspection Type:	PARTIAL
Inspection Date:	Wednesday, January 14, 2015
Start Date/Time:	1/14/2015 8:00:00 AM
End Date/Time:	1/14/2015 2:00:00 PM
Last Inspection:	Thursday, December 17, 2015

Representatives Present During the Inspection:	
Company	Amanda Richard
OGM	Karl Houskeeper

Inspector: Karl Houskeeper

Weather: Overcast/Foggy, Temp. 22 Deg. F.

InspectionID Report Number: 4077

Accepted by: JHELFRIC

1/15/2015

Permittee: **CANYON FUEL COMPANY**
 Operator: **CANYON FUEL COMPANY**
 Site: **SUF CO MINE**
 Address: **597 SOUTH SR24, SALINA UT 84654**
 County: **SEVIER**
 Permit Type: **PERMANENT COAL PROGRAM**
 Permit Status: **ACTIVE**

Current Acreages

720.48	Total Permitted
49.66	Total Disturbed
	Phase I
	Phase II
	Phase III

Mineral Ownership

- Federal
- State
- County
- Fee
- Other

Types of Operations

- Underground
- Surface
- Loadout
- Processing
- Reprocessing

Report summary and status for pending enforcement actions, permit conditions, Division Orders, and amendments:

Visibility during the inspection was very limited because of the dense fog.

Karl R. Houskeeper

Inspector's Signature:

Date Wednesday, January 14, 2015

Karl Houskeeper,
Inspector ID Number: 49

Note: This inspection report does not constitute an official statement of compliance with the regulatory program of the Division of Oil, Gas and Mining. telephone (801) 538-5340 • facsimile (801) 359-3940 • TTY (801) 538-7458 • www.ogm.utah.gov



REVIEW OF PERMIT, PERFORMANCE STANDARDS PERMIT CONDITION REQUIREMENTS

1. Substantiate the elements on this inspection by checking the appropriate performance standard.
 - a. For COMPLETE inspections provide narrative justification for any elements not fully inspected unless element is not appropriate to the site, in which case check Not Applicable.
 - b. For PARTIAL inspections check only the elements evaluated.
2. Document any noncompliance situation by reference the NOV issued at the appropriate performance standard listed below.
3. Reference any narratives written in conjunction with this inspection at the appropriate performance standard listed below.
4. Provide a brief status report for all pending enforcement actions, permit conditions, Divison Orders, and amendments.

	Evaluated	Not Applicable	Comment	Enforcement
1. Permits, Change, Transfer, Renewal, Sale	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Signs and Markers	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Topsoil	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4.a Hydrologic Balance: Diversions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4.b Hydrologic Balance: Sediment Ponds and Impoundments	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4.c Hydrologic Balance: Other Sediment Control Measures	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4.d Hydrologic Balance: Water Monitoring	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4.e Hydrologic Balance: Effluent Limitations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Explosives	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Disposal of Excess Spoil, Fills, Benches	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Coal Mine Waste, Refuse Piles, Impoundments	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. Noncoal Waste	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. Protection of Fish, Wildlife and Related Environmental Issues	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. Slides and Other Damage	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. Contemporaneous Reclamation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12. Backfilling And Grading	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13. Revegetation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14. Subsidence Control	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
15. Cessation of Operations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
16.a Roads: Construction, Maintenance, Surfacing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
16.b Roads: Drainage Controls	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
17. Other Transportation Facilities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
18. Support Facilities, Utility Installations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
19. AVS Check	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
20. Air Quality Permit	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
21. Bonding and Insurance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
22. Other	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

2. Signs and Markers

Mine identification signs were observed at the sediment pond entrance, main facility and the waste rock site. The signs contained current information and all of the required items set forth as requirements by the regulations.

4.a Hydrologic Balance: Diversions

The diversions through the permit area were covered by a blanket of snow that occurred on the day prior to the inspection.

4.b Hydrologic Balance: Sediment Ponds and Impoundments

Both sediment ponds at the main facility contained water. Both ponds appeared stable.

7. Coal Mine Waste, Refuse Piles, Impoundments

The waste rock site was visited as part of the inspection the recent snow cover and dense fog prevented any detailed inspection of this facility. Doing so would be a safety hazard.

22. Other

Information relative to the coal storage/load out facility at the junction of SR10 and SR 24 was received from Chris Hansen via email on 12/17/14. This information comes from their attorney. The information was forwarded to Daron Haddock, Steve Christensen and Dana Dean with DOGM. During a fact of violation conference for SUFCO Dana Dean Ass. Director over Coal Program indicated that the information had been received and that she and Director John Baza and Division Attorney agreed with SUFCO Attorneys submittal that this facility should not be regulated by the Division. A copy of the email and the submittal by SUFCO's Attorney is attached to the PDF version of this inspection report.



Karl Houskeeper <karlhouskeeper@utah.gov>

Legal Determination regarding the SR-10 Loadout

1 message

Chris Hansen <chansen@bowieresources.com>

Wed, Dec 17, 2014 at 8:38 PM

To: "Karlhuskeeper@utah.gov" <Karlhuskeeper@utah.gov>

Cc: Vicky Miller <vmiller@bowieresources.com>, Amanda Richard <arichard@bowieresources.com>, John Byars <jbyars@bowieresources.com>, Chris Hansen <chansen@bowieresources.com>, Wyatt Shakespear <WShakespear@bowieresources.com>

Karl:

Please find attached to this email a copy of a letter I received from Wells Parker, an attorney with Dorsey and Whitney, LLP, that researched the issue of why permitting the SR-10 Loadout under SMCRA is not necessary. We were not able to come up with the original legal decision documents that would have been prepared while we were designing the site and still owned by Arch Coal. If you have any questions, please let us know.

I did have this document with me at Sufco today but just missed catching up to you. We'll see you on the 23rd of December.

Thanks,

*Chris D. Hansen**Director of Regulatory Compliance and Government Relations**Bowie Resource Partners, LLC**Work: (435) 448-2669**Cell: (970) 261-1425*

 SR-10 Loadout.pdf
580K

December 16, 2014

VIA ELECTRONIC MAIL

Canyon Fuel Company, LLC
Sufco Mine
Attn: Chris Hansen
5976 SR24
Salina, UT 84654
chansen@bowieresources.com

Re: SR-10 Loading Facility – SMCRA Regulation

Chris:

At your request we have conducted research into whether the SR-10 Loading Facility (the "SR-10 Facility") owned and operated by Canyon Fuel Company LLC ("CFC") is required to be permitted under the Surface Mining Control and Reclamation Act¹, its implementing regulations ("SMCRA") and parallel state statutes in Utah. Currently, coal is transported to the SR-10 Facility, where it is centralized for eventual transportation to power plants and other coal purchasers, principally located in Utah. No coal processing or preparation takes place at the SR-10 Facility; the coal is off-loaded at the yard and subsequently loaded for transportation with no physical or chemical processing or other beneficiation performed at any time. Currently, the SR-10 Facility is not covered by a permit under SMCRA or its state counterpart.

Surface Mining Control and Reclamation Act and Related Law

SMCRA requires that "no person shall engage in or carry out on lands within a State any surface coal mining operations unless such person has first obtained a permit issued by such State pursuant to an approved State program..."² Loading facilities can fall within the regulatory scope of SMCRA (i) under the general provisions regulating "surface coal mining operations", which includes loading facilities located at or near the mine site, or (ii) as a "coal preparation plant," which covers sites where coal is processed away from a mine site.

Under SMCRA, states may assume exclusive jurisdiction from the federal government over the regulation of surface coal mining and reclamation operations.³ Utah has assumed such responsibility for surface coal mining regulation.⁴ Utah's statutes and rules regarding off-site coal processing plants, promulgated under SMCRA, attempt to follow SMCRA's implementing statutes and regulations.

Utah has codified its coal mining statutes at U.C.A. Title 40, Chapter 10. The provisions of the relevant Utah statutes are implemented through rules promulgated by the Utah Division of Oil, Gas, and Mining (the "Division").⁵ These rules are located in the Utah Administrative Code ("U.A.C.") under U.A.C. Title R645.

Surface Coal Mining Operations

SMCRA defines the term "surface coal mining operations" as "activities conducted on the surface of lands in connection with a surface coal mine.... Such activities include...chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, [and] loading of coal for interstate commerce at or near the mine site...."⁶ A similar definition for "surface coal mining operations" is contained in Federal regulations implementing SMCRA.⁷

The definition of "surface coal mining operations," for the purposes of Utah's statute is substantially the same as the statutory language of SMCRA.⁸ Under the Division's rules, the definition of "coal mining and reclamation operations" parallels the definition of "surface coal mining operations" found in the Federal regulations, and identifies the following as being within the meaning of the term: "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."⁹

In interpreting the application of SMCRA and its implementing state statutes and regulations under a delegated state program, regulators often look to the interpretation of the Office of Surface Mining Reclamation and Enforcement ("OSM"), the Interior Board of Land Appeals ("IBLA") and Federal courts.

A determination of whether a loading facility is subject to regulation under SMCRA and related state statutes must satisfy the test of whether the facility is located "at or near the mine site" as provided under SMCRA. The IBLA has addressed this issue in the case of *Ann Lorentz Coal Co., Inc. v. Office of Surface Mining Reclamation and Enforcement*, 79 IBLA 34 (1984). Therein, the IBLA considered the appropriateness of a SMCRA notice of violation issued to a tipple facility in West Virginia. After determining that the loading activities carried out at the tipple facility were not "surface coal mining operations" subject to regulation under SMCRA, the IBLA next considered whether the loading facility was "located at or near the mine site." The IBLA acknowledged the relative nature of the word "near," but determined that "at or near" expressed "a concern for geographic proximity between the surface coal mine and the loading facility." The IBLA then concluded that the phrase "at or near the mine site":

should be construed to include a loading facility which operates on the same permit area as the minesite or a loading facility which is physically integrated with the minesite to the extent that any potential or actual environmental damage associated with the mining operation cannot be effectively addressed by OSM without regard to the loading operation. In other words, the loading facility would be perceived as part and parcel of the minesite operations.

The IBLA determined that the tipple facility was not "at or near the mine site." In reaching this conclusion, the IBLA found particularly persuasive the "road distance from the extraction activities to the tipple itself," which was approximately 2.5 miles (even though the tipple facility was located only 600 yards from the mine permit area). The path from the mine site to the tipple was largely over public roads, leading the IBLA to hold that the tipple facility and the mine site were "not physically integrated" and "not part of the same operation."

Coal Preparation Plants

Even if a loading facility is not located "at or near a mine site" it may still be subject to SMCRA regulation if it is considered a coal preparation plant. One of the facilities regulated under SMCRA by the regulations at 30 C.F.R. Chapter 7 are coal preparation plants. 30 C.F.R. § 785.21 provides as follows: "This section applies to any person who operates or intends to operate a coal preparation plant in connection with a coal mine but outside the permit area for a specific mine. Any person who operates such a preparation plant shall obtain a permit from the regulatory authority in accordance with the requirements of this section."

30 C.F.R. Chapter 7 defines a "coal preparation plant" to mean "a facility where coal is subjected to chemical or physical processing or cleaning, concentrating, or other processing or preparation."¹⁰ It includes facilities associated with coal preparation activities, and may include loading facilities where coal preparation activities occur. "Coal preparation" is defined to mean "chemical or physical processing and the cleaning, concentrating, or other processing or preparation of coal."¹¹

State regulations applicable to the delegated Utah state program under SMCRA contain similar definitions for coal preparation and coal preparation plants. The U.A.C. defines "Coal Preparation or Coal Processing" as "the chemical and physical processing and the cleaning, concentrating, or other processing or preparation of coal."¹² The same section defines "Coal Processing Plant" to mean "a facility where coal is subjected to chemical or physical processing or the cleaning, concentrating, or other processing or preparation. Like the federal regulations, the U.A.C. includes a section addressing coal processing plants located outside of a mine permit area."¹³ Such plants need a permit to operate, and such permits must be obtained in accordance with the requirements of the U.A.C.¹⁴

On the Federal level, rules regarding the regulation of coal processing and coal processing plants under SMCRA are promulgated by the OSM and published in the Federal Register. When OSM publishes proposed regulations in the Federal Register, the public is provided an opportunity to submit comments and questions relating to the proposed regulations, and OSM is provided with the opportunity to respond to the questions and comments. OSM's responses to such comments provide useful interpretations of SMCRA and its implementing regulations that are often closely followed by state regulators under delegated state programs.

Interpreting its regulations in the Federal Register, OSM states in that "loading" is not a form of "processing."¹⁵ Specifically, "OSM[] interprets 'loading' and 'processing' to be distinct and different activities. Coal loading is not processing, and therefore off-site loading facilities that do not process coal are not subject to the performance standards of 30 CFR Part 827. OSM[] agrees...that loading facilities that do not process coal are not regulated unless located at or near the mine site. OSM[] construes the specific language limiting the regulation of loading facilities to those at or near the mine site to limit proximity considerations concerning off-site loading facilities."¹⁶

The decisions of the IBLA have been consistent with OSM's interpretation that off-site loading facilities that do not perform coal processing or coal preparation activities are not subject to regulation under SMCRA as coal preparation plants.¹⁷

Analysis

As described above, a facility such as the SR-10 Facility, may become subject to the permitting requirements under SMCRA by either (i) falling within the scope of "surface coal mining operations", which includes coal loading facilities located at or near the mine site or (ii) being treated as a "coal processing plant" subject to SMCRA regulation.

The SR-10 Facility does not appear to be a coal loading facility located at or near the mine site. As noted above, a determination of whether a facility is "at or near the mine site" has been interpreted by OSM and the IBLA as requiring that the loading facility be "physically integrated with the minesite to the extent that any potential or actual environmental damage associated with the mining operation cannot be effectively addressed by OSM without regard to the loading operation." The IBLA has held that a loading facility located 2.5 miles from a mine site largely over public roads does not satisfy the requirement that the facility be located at or near the mine site.

The SR-10 Facility is not located at or near the Sufco Mine site. The SR-10 Facility is located approximately 11 miles from the Sufco Mine and is accessed via the Quitchupah Creek Road, a public road owned by Sevier County. Activities at the SR-10 Facility are not physically integrated with operations at the Sufco Mine site and the potential environmental impacts of the Sufco Mine and the SR-10 Facility are not physically connected in any manner. Therefore, the SR-10 Facility does not appear to be "at or near the mine site" as provided for under the SMCRA regulations addressing loading facilities and would likely not be subject to SMCRA permitting requirements under Federal or Utah statutes and regulations.

Furthermore the SR-10 Facility does not appear to be a "coal processing plant" or include "coal preparation or coal processing" as defined under SMCRA and Utah law. Activities conducted at the SR-10 Facility involve neither separation of coal from its impurities nor physical or chemical preparation or cleaning of coal. Furthermore, OSM has clearly stated that "[c]oal loading is not processing, and therefore off-site loading facilities that do not process coal are not subject to the performance standards of 30 CFR Part 827...." Therefore, the SR-10 Facility does not appear to be subject to SMCRA permitting requirements under Federal or Utah law as a coal processing plant.

Because the SR-10 Facility does not appear to be located "at or near the mine site," and does not appear to be a coal processing plant, the SR-10 Facility should not be required to obtain a SMCRA permit.

Please let me know if you have any questions about the SMCRA regulatory and permitting requirements and their application to the SR-10 Facility.

Very truly yours,



Wells S. Parker

cc: Brian Settles
Mike Drysdale
Bill Prince

¹ 30 U.S.C. §§ 1201-1328.

² 30 U.S.C. § 1256(a).

³ 30 U.S.C. § 1253(a).

⁴ See 30 C.F.R. § 944.10; cooperative agreement between Utah and the Department of the Interior located at 30 C.F.R. § 944.30.

⁵ U.C.A. § 40-10-6.5.

⁶ 30 U.S.C. § 1291(28)(A).

⁷ 30 C.F.R. § 700.5.

⁸ U.C.A. § 40-10-3(20).

⁹ U.A.C. R645-100-200.

¹⁰ 30 C.F.R. § 701.5.

¹¹ 30 C.F.R. § 701.5.

¹² U.A.C. R645-100-200.

¹³ U.A.C. R645-302-260.

¹⁴ U.A.C. R645-302-260.

¹⁵ 53 Fed. Reg. 47,384.

¹⁶ 53 Fed. Reg. 47,384.

¹⁷ See, e.g., *Ann Lorentz Coal Co., Inc. v. Office of Surface Mining Reclamation and Enforcement*, 79 IBLA 34 (1984) ("if a facility engages only in the loading of coal for interstate commerce, it is a surface coal mining operation only if loading is conducted on the surface of lands in connection with a surface coal mine, and the facility is located at or near the minesite"); *Tommy Carpenter et al.*, 88 IBLA 286 (1985) (acknowledging that a facility performing solely loading activities not at or near a mine site would be outside the jurisdiction of OSM); *Reitz Coal Co. v. Office of Surface Mining Reclamation and Enforcement*, 83 IBLA 198 (1984) (noting the effect of the holding in *Ann Lorentz Coal Co., Inc.*, but distinguishing based on facts that Reitz was "processing" coal within the meaning of SMCRA).