

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

October 3, 1997

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

The Honorable Barbara Cubin
United States House of Representatives
Washington, D.C. 20515-5001

Dear Congresswoman Cubin:

This is in response to your June 26, 1997, letter regarding how the United States Environmental Protection Agency (EPA) regulates fugitive emissions from coal unloading at coal preparation plants. I regret that the Agency was unable to reply to your request more promptly. The issues you raised required a good deal of research and consideration within the Agency.

We understand that this issue was originally brought to your attention through correspondence sent from the ARCO Coal Company to the National Mining Association (NMA), on July 12, 1995, regarding an EPA Region VIII letter on fugitive emissions from coal unloading. Region VIII concluded that coal unloading is not regulated by the New Source Performance Standard for coal preparation plants (NSPS Subpart Y). The Region also concluded, however, that fugitive emissions from coal dumping at the site of a coal preparation plant must be counted in determining whether a coal preparation plant is a major source subject to Title V permitting requirements.

We have conducted an independent review of both the issues addressed in the Region VIII letter. We have concluded, on the basis of Title V of the Clean Air Act, its implementing regulations, and other related provisions, that fugitive emissions from coal dumping must be included in a determination of whether a coal preparation plant is a major source subject to Title V permitting requirements. -Therefore, we agree with Region VIII's conclusion that the Title V issue. However, we do not agree with Region VIII's conclusion that coal unloading is not regulated by NSPS Subpart Y. Based on our reading of NSPS Subpart Y and associated documents, we conclude that coal unloading that involves conveying coal to coal plant machinery is subject to the NSPS.

The reasons for our conclusions are discussed in the enclosed analysis, which should be viewed as an integral part of this response. This response provides the Agency's current position and supersedes Region VIII's earlier letter, to the extent it is inconsistent with this response.

This response was coordinated with Region VIII, EPA's Office of General Counsel (OGC), and the office of Air Quality Planning and Standards (OAQPS) in Research Triangle Park, North Carolina. Any questions regarding this response should be directed to Chris Oh of my staff at (202) 564-7004.

Sincerely,

Steven A. Herman

Enclosure

September 11, 1997

Analysis Regarding Regulatory Status of Fugitive Emissions From
Coal Unloading at Coal Preparation Plants

This analysis addresses the treatment of fugitive emissions from coal unloading at coal preparation plants. The first question is whether coal unloading is regulated under the New Source Performance Standard (NSPS) for coal preparation plants, 40 CFR Part 60 Subpart Y. The second question is whether fugitive emissions from coal unloading must be included in determining whether the plant is a major source subject to Title V permitting requirements. In this analysis, we use the term "coal unloading" to encompass "coal truck dumping" and "coal truck unloading," as well as dumping or unloading from trains, barges, mine cars, and conveyors.

In a February 24, 1995, letter to the Wyoming Department of Environmental Quality, signed by the Branch Chief for Air Programs, EPA Region VIII concluded that coal unloading is not regulated by NSPS Subpart (i.e., is not an "affected facility"). Region VIII approached the Title V issue by first determining whether coal unloading is part of the NSPS coal preparation plant source category. Having decided that coal unloading at the coal preparation plant site is part of the source category, Region VIII concluded that fugitive emissions from coal unloading must be included in determining whether the plant is a major source subject to Title V permitting requirements.

Our independent review of NSPS Subpart Y and associated documents leads us to conclude that coal unloading that involves conveying coal to plant machinery is regulated under Subpart Y. Thus, we disagree with the Region VIII letter to the extent it says that this type of coal unloading is not an affected facility. We agree with Region VIII's conclusion that fugitive emissions from coal unloading must be included in determining whether the plant is a major source subject to Title V permitting requirements. However, the relevant Title V regulations and related provisions indicate that the analysis should focus on the "source" rather than the "source category." In other words, the central question is not whether coal unloading is within the NSPS source category. Rather, it is whether coal unloading at a coal preparation plant is part of the source that belongs to this source category.

Accordingly, this analysis primarily addresses two issues: whether coal unloading is an affected facility under NSPS Subpart Y, and whether coal unloading is part of the source belonging to the coal preparation plant NSPS source category. Underlying the second issue is the question of whether fugitive emissions associated with coal unloading should be included in major source determinations.

The question of whether fugitive emissions from coal unloading should be included in major source determinations has implications for permitting requirements under Title V of the Clean Air Act ("CAA" or "the Act"). Under the current Title V implementing regulations, States must require "major sources" to obtain a permit. 40 CFR section 70.3. "Major source," in turn, is defined as "any stationary source (or any group of stationary sources that are located on one or

more contiguous or adjacent properties, and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping ..." that is also a major source under section 112 or a major stationary source under section 302 or part D of Title I of the Act. 40 CFR section 70.2. Relevant to the analysis here is the section 302(j) definition of major stationary source as any stationary source that emits or has the potential to emit 100 tons per year (tpy) or more of any air pollutant. Section 302(j) also provides that fugitive emissions count towards the 100 tpy threshold as determined by EPA by rule.

Pursuant to CAA section 302(j), the EPA has determined by rule that fugitive emission's count towards the major source threshold for all sources that belong to source categories regulated under the New Source Performance Standards (NSPS) as of August 7, 1980. 49 PR 43202, 43209 (October 26, 1984). Because coal preparation plants are regulated by an NSPS (40 CFR part 60, Subpart Y) which was proposed on October 24, 1974 and promulgated on January 15, 1976, fugitive emissions from sources that belong to the coal preparation plant source category count towards this threshold." Thus, if coal unloading is part of the source belonging to the coal preparation plant source category, then fugitive emissions from coal unloading must be included in the major source determination.

After a careful review of NSPS Subpart Y, the relevant Title V regulations, and associated documents, we conclude that: 1) Coal unloading that involves conveying coal to plant machinery is an affected facility under NSPS Subpart Y; and 2) All coal unloading at a coal preparation plant is a part of the source belonging to the coal preparation plant source category. We also determine that all coal unloading at a coal preparation plant fits within the NSPS source category. Finally, we conclude that fugitive emissions from coal unloading must be counted in determining whether a coal preparation plant is a major source subject to Title V permitting requirements. The reasons for our conclusions are discussed below.

Issue 1: Is coal unloading an affected facility under NSPS Subpart Y?

In NSPS Subpart Y, several emission points are identified and regulated as part of a coal preparation plant. Subpart Y lists the following affected facilities: thermal dryers, pneumatic coal-cleaning equipment (air tables), coal processing and conveying equipment (including breakers and crushers), coal storage systems, and coal transfer and loading systems. Because coal unloading is not specifically listed, the relevant question is whether it is covered under one of the listed affected facilities.

EPA concludes that coal unloading that involves conveying coal to plant machinery fits

within the definition of "coal processing and conveying equipment." 40 CFR section 66.251(g) defines "coal processing and conveying equipment" as "any machinery used to reduce the size of coal or to separate coal from refuse, and the equipment used to convey coal to or remove coal and refuse from the machinery. This includes, but is not limited to, breakers, crushers, screens, and conveyor belts." The key phrases are "the equipment used to convey coal to... machinery" and "but is not limited to." While the "equipment" involved in coal unloading varies from plant to plant (the definition is written broadly enough to accommodate the differences), what is important is that the equipment perform the function of conveying. It should be noted that if the coal is unloaded for the purpose of storage, then the unloading activity is not an affected facility under NSPS Subpart Y. The coal must be directly unloaded into receiving equipment, such as a hopper to be subject to the provisions of NSPS Subpart Y.

In addressing this question, we also reviewed a number of supplementary documents associated with NSPS Subpart Y.¹ The supplementary documents, with one exception, are consistent with our conclusion that coal unloading, if it involves conveying coal to plant machinery, is an affected facility.

The 1977 Inspection Manual identifies coal unloading areas as key areas for fugitive emissions. It addresses fugitive emissions from coal unloading in the context of both emission performance tests and periodic compliance inspections. The manual states that the emission performance tests are "intended to serve as a basis for determining [the] compliance status of the plant during later inspections." The manual provides a checklist for recording test results; this checklist includes places for recording emission opacity percentages associated with unloading from trucks, barges, or railroads. The manual also instructs the inspectors to use the emissions test checklist for periodic compliance inspections. The inspectors are instructed to compare current plant operations with those recorded during the emissions performance tests. Clearly, this manual, which was issued less than a year after Subpart Y was promulgated, treats coal unloading as an affected facility.

The 1980 Review, in contrast, states that "[a] significant source of potential fugitive emission not regulated by current NSPS are coal 'unloading' or 'receiving' systems." This is later tempered by the statement that "coal unloading systems were not mentioned as affected facilities." The 1980 Review does not explore whether coal unloading, although not specifically listed, might be covered by the definition of "coal processing and conveying equipment."

The documents used in this discussion are the following: EPA document number 340/1-77-022 (dated 11/77): "Inspection Manual for Enforcement of New Source Performance Standards: Coal Preparation Plants" ("1977 Inspection Manual"); EPA document number 450/3-86-022 (dated 12/80): "A Review of Standards of Performance for New Stationary Sources - Coal Preparation Plants" ("1980 Review"); EPA document number 450/3-88-001 (dated 2/88): "Second Review of New Source Performance Standards for Coal Preparation Plants" ("1988 Review").

The 1988 review does not specifically address coal unloading as an affected facility, but it assumes that coal unloading is one of the sources of fugitive emissions covered by the NSPS. For example, the 1988 Review identifies truck dumps as one of the sources of fugitive emissions at a coal preparation plant and lays out the cost of controlling fugitive emissions sources at the plant. These cost figures are used in calculating the cost effectiveness of the existing NSPS. This cost effectiveness calculation is based on the premise that complying with the NSPS means controlling fugitive emissions, including emissions from truck dumps.

In light of the above information, EPA concludes that coal unloading that involves conveying coal to machinery at coal preparation plants is an affected facility under the NSPS for coal preparation plants (40 CFR Part 60, Subpart Y) and is subject to all requirements applying to "coal processing and conveying equipment." We recognize that past determinations the applicability of Subpart Y to coal unloading varied from Region to Region. Therefore, we will notify all Regional Offices of this conclusion. In the Regions that have been exempting coal unloading from NSPS Subpart Y, no penalties will be sought for past violations. We expect that coal preparation plants will be able to control emissions from such coal unloading in the future through use of add-on controls.

Issue 11: Is coal unloading part of the source that belongs to the source category for coal 'Preparation plants?

Whether a facility has been regulated as an affected facility does not determine whether fugitive emissions from that facility are to be counted in determining whether the source as a whole is major under Title*V. Rather, if the facility is part of a source that falls within a source category which has been listed pursuant to section 302(j) of the Act, then all fugitive emissions of any regulated air pollutant from that facility are to be included in determining whether that source is a major stationary source under section 302 or part D of Title I of the Act and accordingly required to obtain a Title V permit.

Section 302(j) of the Act provides that EPA may determine whether fugitive emissions from a "stationary source" count towards the major source threshold. For purposes of the 302(j) rulemaking, the term "stationary source" is defined as "any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the Act." 40 CFR sections 51.166(b)(5) and 52.21(b)(5). Building, structure facility, or installation means "all of the pollutant emitting activities which belong to the same industrial grouping, ate located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel." 40 CFR sections 51.166(b)(6) and 52.21(b)(6).

EPA has determined by rule that fugitive emissions count toward the major source threshold for all sources that belong to the source category regulated by NSPS Subpart Y. 49 FR 43202, 43209 (October 26, 1984). Under the definition of source used in the 302(j) rulemaking, all types of coal unloading at coal preparation plants are covered. Coal unloading normally belongs to the same industrial grouping as other activities at coal preparation plants, is located on contiguous or adjacent property, and is under common control. Therefore, we conclude that all coal unloading at a coal preparation plant is part of the source belonging to the source category

for coal preparation plants.

Coal unloading of all types also fits within the NSPS source category. A survey of EPA Regional Offices indicated that the majority of the Regions treat coal unloading at a coal preparation plant as being within the NSPS source category. Coal unloading that is regulated under Subpart Y is clearly within the source category. Common sense would dictate that coal unloading for temporary storage be treated no differently. It is performed at the same facility and is an integral part of the operations at that facility. The latter type of coal unloading is simply an optional first step in the coal preparation process.

We conclude that fugitive emissions from coal unloading must be counted in determining whether a coal preparation plant is a major source subject to Title V permitting requirements.