DATE: Sept 22, 2005
FAX#: 801 359-3940
ATTN: Wayne Hedberg
COMPANY: DOGM/coal program.
DEPARTMENT:

NUMBER OF PAGES (INCLUDING THIS ONE): 7

FROM: Prisilla Burton - PFO.

If you do not receive all of the pages, or if they are illegible, please call (435) 613-1148. We are sending from a Hewlett Packard 1010 facsimile machine. Our telecopier number is (435) 613-1152.

MESSAGES: finding document for Carol.

RECEIVED
SEP 22 2005
DIV. OF OIL, GAS & MINING
Dear Mr. Brown:

This letter is in response to your letter of July 11, 1996 about whether or not the proposed activity by COVOL Technologies will require a permit under the Utah Coal Regulatory Program. It is the Division’s understanding that coal fines, i.e., “coal” is being converted from the “fines” to a “briquette” with no waste being generated. If this is the case, then no coal mining and reclamation permit is required.

However, if coal waste (e.g., slurry or coarse refuse) is used as the source material to be processed and waste is generated, a mining and reclamation permit could be required. Additionally if any other facts change from those identified by Covol or discovered by the Division, a permit may be required. Mining of the coal waste at the host site would also need to be addressed through the coal regulatory process.

If you require further clarification or have any questions, please let me know.

Sincerely,

Mary Ann Wright
Associate Director of Mining
PRISCILLA, 
As we discussed, I am forwarding DTE Utah-related documents I believe you will find helpful. Included with this fax are the following:

- August 22, 1996 letter from Mary Ann Wright to Covol determining that a coal mining and reclamation permit is not required for the synfuel facility (DTE received as a fax from Headwaters on September 13, 2001).

- Sept - Nov 2001 correspondence to/from State of Utah Department of Environmental Quality notifying of facility Ownership Change and Company Name Change to DTE Utah Synfuels (6 pages)

- Cover sheets from Division of Air Quality and Division of Water Quality demonstrating current permits are issued in the name of DTE Utah Synfuel

Please do not hesitate to contact me if you have any further questions regarding this facility. I can be reached at 734.302.8235. I would also appreciate a copy of your site visit report (fax: 734.302.5330).

Thank you,
Katie Panczak
SYNOPSIS

On July 11, 1996 the Division received a proposal from Covol Technologies which discusses the installation of a coal fines extrusion/briquetting facility in Carbon County. Their plans are to use waste coal fines from coal mining and processing operations as raw materials in the production of coal pellets. Covol feels that this activity would not fall under the purview of the Utah Coal Regulatory Program and has asked for the Division’s concurrence.

This memo is an analysis of the proposal and provides findings which will enable the Division to determine the permitting requirements for this type of facility.

ANALYSIS

Under the Utah Coal Regulatory Program it is necessary for anyone who engages in or carries out any coal mining and reclamation operations to first obtain a permit (R645-300-112.400). The question that must then be asked is, whether or not the Covol activity constitutes “coal mining and reclamation operations”?

This term is defined at R645-100-200 as follows:

"Coal mining and Reclamation Operations" means (a) activities conducted on the surface of lands in connection with a surface coal mine or, subject to the requirements of Section 45-10-13 of the Act, surface coal mining and reclamation operations and surface impoundments incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include all activities necessary and incidental to the reclamation of the operations, extraction for the purpose of obtaining coal, including such common methods as mining, wash, sugar, surface removal, benching, open pit, and area mining, the use of explosives and blasting.
Covol describes their activity as follows:

The facility will utilize Covol's proposed process to convert approximately 400,000 tons of coal fines per year into a synthetic fuel similar to run-of-mine coal. The facility will consist of a power screen to remove any oversized material from the coal fines and then the fines will be stored in a storage silo. The materials will then be mixed with water and Covol's patented binder and then either briquetted or compacted into pellets. The materials will then be thermally dried to meet final product moisture requirements and then the material for blending purposes. The material will then be moved with the over sized material and stockpiled until it is either trucked or shipped by rail to the end user.

At first reading it would appear that Covol's proposed activity would fall under the chemical or physical processing of coal criteria, found in the above definition and would require permitting. However, a closer look at the definition reveals that in order for the activity to be considered Coal Mining and Reclamation Operations it would have to be conducted "in connection with" a coal mine.

No definition of "in connection with" has been given since it is felt that each regulatory authority must have discretion in order to make valid decisions about the applicability of the performance standards of SMCRA in individual cases.

The preamble to Federal Rules 30 CFR parts 785 and 827 (November 22, 1988 Federal Register) provide important insight for how to determine if a processing plant is being operated in connection with a coal mine.

The following statements should be considered when determining whether a facility is operating "in connection with" a coal mine:

1) "OSM is only requiring regulatory authorities to extend their permit requirements as far into the stream of commerce as those activities over which..."
mine operators and coal handlers who directly serve them, such as coal processors, have or could have control of operations.

2) The element of proximity is a valid consideration in determining whether a facility is regulated. (Activities at the site of a mine would be permitted.)

3) Coal preparation facilities which are being operated only in connection with another industrial facility, such as a power plant do not operate in connection with a mine and are not subject to regulation.

4) Does the facility have a useful life independent of the specific mine or mines which it serves?

5) Coal preparation facilities operated by retail sales dealers tend to be closely linked to end users and are generally not considered operating in connection with a coal mine.

6) Functional or economical relationships with a mine should be considered when making a “in connection with” determination. (Does the facility receive a significant portion of their coal from a mine? Does the facility receive a significant portion of the output from a mine? Does the facility have an economic relationship with a mine?)

FINDINGS:

1) Covol Technologies Inc. does not own, operate or control any coal mining operation.

2) Covol’s facility is not located at the site of a mine.

3) The briquetting or extrusion of pellets for use as an industrial fuel seems to be more closely associated to an industrial or end use than to mining.

4) Covol’s facility would not service any specific mine but could receive its raw materials from various sources and operate independent of any given mine.

5) Covol would be acting similar to a retail sales dealer by purchasing coal fines from various entities and then marketing and selling their end product under the Covol name.
CONCLUSION:

The proposed Covol activity is not being done "in connection with" a coal mine. As such it would not require permitting under the Utah Coal Regulatory Program since it is not considered coal mining and reclamation operations.

If the nature of Covol's activity changes, revised findings or other conclusions may be necessary. Should Covol become associated with a mine or involved in the ownership or control of a mining entity or conduct mining activity such as extraction of coal from refuse piles or excavation for the purpose of obtaining coal they would certainly fall under the purview of the Coal Regulatory Program.

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