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2005 General

Attn: Tom Brunner
Jeff Franke

HEADWATERS

INCORPORATED
Bob Goring

11778 South Election Road
Suite 210
Draper, UT 84020
(801) 984-9400 Phone
(801) 984-9410 Fax

Letter regarding
Utah facility
and SUCPA

09/13/05

TO: Katie Franke
FAX#: Canyon Ashland
FROM: 734 302 5333

THIS TRANSMISSION CONTAINS: 7 PAGES (Including Cover Sheet)

COMMENTS:

9/14/05 TO: Priscilla Buxton
Fax: 435.613.1152

From
Katie Franke: fax: 734.302.5330

Oct-25-96 01:12P Loge Capital Company

(77) 687-2795

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State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

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Executive Director

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Deputy Director

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801-538-3246 (Fax)
801-538-3218 (TDD)

August 22, 1996

Steve Brown, P.E.
Vice President Engineering/Construction
COVOL
3280 No. Frontage Road
Lehi, Utah 84043

Re: Response to July 11, 1996 Letter

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

Enclosure
cc

Larry Brown
Patricia Greenough-Lewis
Daron Haddad
Joe Helrich
PFO

**DTE Energy Services***Fax Transmittal*

To: Priscilla Burton
cc: Sherry Samples, DTE Utah Synfuels
Jeff Grant/Rich Cooper, DTEES
Env Files/DTE Utah/Land Matters/Regulatory Communications
Synfuel Files (6.4.2.4)

Fax No: (435) 613-1152

From: Katie Panczak

Date: 9/16/2005

Total No. of Pages (including cover): 15

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Urgent	For Review	Please Comment	Please Reply
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Comments/Notes:

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

DTE Energy Services
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Ann Arbor, MI 48104
Phone: (734) 302-8235
Fax: (734) 302-5333



State of Utah
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August 22, 1996

TO: File
FROM: Daron R. Haddock, Permit Supervisor *D.R.H.*
RE: Proposed Coal Fines Extrusion/Briquetting Facility, Covol Technologies, Inc., Carbon County, Utah

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 40-10-13 of the Act, surface coal mining and reclamation operations and surface impact incidents in 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, excavations for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining; the use of explosives and blasting;

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in-situ dissolution; or roasting, leaching, or other chemical or physical processing; and the cleaning, reconditioning, or other processing or preparation, of coal. Such activities also include the loading of coal for interstate commerce at or near the mine site. Provided, these activities do not include the extraction of coal incidental to the extraction of other minerals, where coal does not exceed 16-2/3 percent of the tonnage of minerals removed for purposes of commercial use or sale, or coal exploration subject to Section 46-10-8 of the Act and, provided further, that excavation for the purpose of obtaining coal includes extraction of coal from coal refuse piles; and (b) the areas upon which the activities described under part (a) of this definition occur or where such activities disturb the normal land surface. These areas will also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of these activities and for haulage and excavation, workings, impoundments, dams, ventilation shafts, airways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are shed structures, facilities, or other property or material on the surface, resulting from or incident to those activities.

Covel describes their activity as follows:

The facility will utilize Covel's patented 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 oversize material from the coal fines and then the fines will be saved in a storage silo. The material will then be mixed with water and Covel's patented binder and then either briquetted or extruded into pellets. The material will then be thermally dried to meet finish product moisture requirements and harden the material for handling purposes. The material will then be mixed with the oversized material and stockpiled until it is either trucked or shipped by rail to the end user.

At first reading it would appear that Covel'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 preambles 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

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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.

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- 6) There does not appear to be a functional or economic tie between Covol and any given mine. Covol indicates in the July 11, 1996 letter that their plant is not directly associated with mining. Covol's process is not necessary for any of the mines to continue operating. Covol might receive a significant amount of their source material from a particular mine but would not be tied to that mine. The raw material could come from a variety of different sources.

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 pur-view of the Coal Regulatory Program.

O:FINDING.COV