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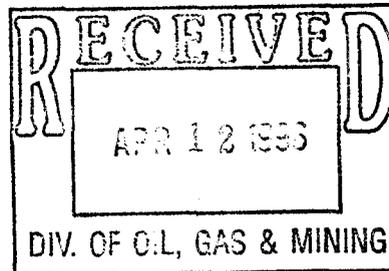
DENISE A. DRAGOO

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Orig file
ACT/007/012
#5
JWC
LPB
ZCH
4-12-96 PFO

HAND DELIVERED



April 12, 1996

James Carter, Director
UTAH DIVISION OF OIL, GAS & MINING
3 Triad Center, Suite 350
355 West North Temple
Salt Lake City, Utah 84180-1203

**RE: SUPPLEMENTAL INFORMATION -- CO-96-39-1-1, WELLINGTON
PREPARATION PLANT, PERMIT NO. ACT/007/012, INFORMAL
CONFERENCE, MARCH 26, 1996**

Dear Jim:

This letter and the enclosed Notice of Violation and Order for Compliance ("NOV"), issued by the State of Utah, Department of Environmental Quality, Division of Air Quality ("DEQ"), on April 9, 1996, supplements the record provided during the informal conference regarding Cessation Order No. 96-39-1-1 ("CO") held on March 26, 1996. As you recall, the CO was issued on January 29, 1996, by the Utah Division of Oil, Gas & Mining ("DOGM") following a joint inspection by DOGM and DEQ. DOGM cited Nevada Electric Investment Company ("NEICO"), noting on the CO that NEICO was conducting mining activities without a permit and had allegedly caused "a condition, practice or violation which is creating an imminent danger to the health or safety of the public." DOGM required the handling of asbestos materials to cease immediately and required NEICO to obtain appropriate approvals for and properly store or dispose of asbestos material by no later than April 1, 1996.

NEICO has requested that DOGM vacate the CO for lack of jurisdiction. NEICO was improperly cited by DOGM for failure to obtain a mine permit issued by DOGM under the Utah Coal Program. NEICO has obtained a mine permit No. ACT/007/012. Asbestos removal does not require a permit issued by the Division. As confirmed by the enclosed NOV, these activities are regulated by the Department of Environmental Quality, Division of Air Quality.

James Carter, Director
April 12, 1996
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The enclosed NOV, issued by DEQ, arose out of the same inspection which resulted in the DOGM's issuance of the CO. DEQ's enforcement action is taken under Utah Administrative Code R307-10-1, which incorporates by reference the National Emissions Standards for Hazardous Air Pollutants ("NESHAP") at 40 C.F.R. Part 61. DEQ is the State agency authorized to enforce the NESHAP, consistent with Section 112(l) of the Clean Air Act, 42 U.S.C. § 7412(l). Under DEQ's State Air Quality Program and the NESHAP, a notification of demolition activities must be filed with the DEQ, not DOGM. DEQ issued the April 5, 1996 NOV alleging failure to provide the Executive Secretary with a written notice of intent to demolish or renovate. In addition, the NOV alleges violations of Utah Administrative Code R307-1-8, regarding work practices for asbestos projects. NEICO had no knowledge of the activities leading to issuance of the NOV and disputes issuance of the NOV. However, NEICO has hired a certified company to remove the asbestos. The company hired by NEICO properly notified DEQ of its activities and conducted its work practices in accordance with the NESHAP and State regulations.

In sum, DEQ, not DOGM, has exclusive authority to issue approvals for the proper storage and disposal of asbestos materials at the Wellington Plant. DEQ has taken action to enforce these requirements under the federal NESHAP. Therefore, DOGM should vacate the CO and allow DEQ to proceed with its enforcement proceedings.

Once again, we would appreciate incorporation of this letter and the enclosed NOV in DOGM's informal conference record contesting the CO.

Please let me know if you have further questions regarding this matter.

Very truly yours,



Denise A. Dragoo

DAD:jmc:87672

Enclosure

cc: Thomas A. Mitchell, Esq.
Dr. Dianne R. Nielson, Ph.D., Executive Director
Russell A. Roberts, Executive Secretary
Richard L. Hinckley, Esq.

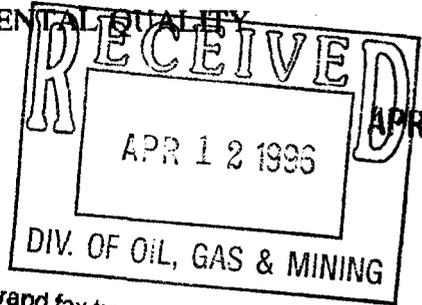


State of Utah

DEPARTMENT OF ENVIRONMENTAL QUALITY DIVISION OF AIR QUALITY

Michael O. Leavitt
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APR 9 1996

DAQH-330-96

CERTIFIED MAIL

April 5, 1996

Dennis Schwehr
Nevada Elec. Investment Co.
6226 W Sahara Ave M/S 30
Las Vegas, Nevada 89102

Post-It™ brand fax transmittal memo 7871

To	Denise Drasco	From	Dennis Schwehr	# of pages	
Co.		Co.	NEVADA ZWERTZ CO		
Dept.		Phone #	(702) 367-5678		
Fax #	801 534 0058	Fax #			

Dear Mr. Schwehr:

RE: NOTICE OF VIOLATION AND ORDER FOR COMPLIANCE of Utah Administrative Code (UAC) R307-10-1 (National Emission Standard for Asbestos) and UAC R307-1 8.5 (Notification) and 8.6 (Asbestos Work Practices) - Carbon County

The enclosed NOTICE OF VIOLATION AND ORDER FOR COMPLIANCE is based on findings documented during inspections conducted on Jan. 11, 1996, and Jan. 29, 1996. Please be advised that compliance with this ORDER is mandatory and will not relieve the company of liability for any past violations.

You will be contacted, after you have submitted written methods to prevent future violations, to arrange a meeting date to discuss the violation and possible administrative penalties. If you have any questions regarding this NOTICE OF VIOLATION AND ORDER FOR COMPLIANCE, please contact Bowen Call at 536-4007.

Sincerely,

Russell A. Roberts, Executive Secretary
Utah Air Quality Board

RAR:ABC:svw

Enclosure: Notice of Violation and Order for Compliance

cc: Southeastern Utah District Health Department
EPA Region VIII, Brenda South
Dept. of Environmental Quality, Dianne R. Nielson
Attorney General's Office, Denise Chancellor
Utah OSHA, Tori Burns



THE UTAH AIR QUALITY BOARD

ooOoo

In the Matter of : NOTICE OF VIOLATION
 Covol Technologies, Inc : AND ORDER FOR
 & : COMPLIANCE
 Nevada Electric Investment Company : No. 960300003

ooOoo

This NOTICE OF VIOLATION AND ORDER FOR COMPLIANCE is issued by the UTAH AIR QUALITY BOARD ("Board") pursuant to the Utah Air Conservation Act ("Act") Section 19-2-101, et seq., Utah Code Annotated 1953, as amended. The Executive Secretary is authorized to issue Notices of Violation pursuant to Section 19-2-110 of the Utah Code Annotated. The Board has delegated to the Executive Secretary authority to issue ORDERS in accordance with Section 19-2-107(2)(g) of the Utah Code Annotated.

FINDINGS

1. Nevada Electric Investment Company (NEICO) owns the Wellington Wash Plant, located in Wellington, Utah. Covol Technologies (COVOL) had an option to buy the property from NEICO and was allowed access to the property.
2. An asbestos project was conducted by Covol Technologies at the Wellington Wash Plant on January 6, 1996. The renovation project consisted of the removal of asbestos-containing pipe insulation from two overhead pipes, each approximately 250 feet long, and the clean up of asbestos-containing materials that had fallen from the pipes onto the ground. The pipes ran between the wash building and the dryer silo approximately 40 feet above ground and crossed a rail siding. Neither NEICO nor COVOL are certified asbestos contractors in the State of Utah.
3. Utah Administrative Code (UAC) R-307-10-1, incorporates 40 Code of Federal regulations (CFR) Part 61, Subpart M, National Emission Standards for Hazardous Air Pollutants (NESHAP), by reference, except that any reference to the "Administrator" in 40 CFR Part 61, shall refer to the Executive Secretary of the Utah Air Quality Board. These regulations provide requirements for the notification of demolition activities in facilities. The following citations from 40 CFR Part 61 (NESHAP) apply to Covol Technologies Inc. (COVOL), and Nevada Electric Investment Company, (NEICO):

- (A) Subparagraph 61.141 defines "facility" as "any institutional, commercial, public, industrial, or residential structure, installation, or building (including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units); any ship; and any active or inactive waste disposal site. For purposes of this definition, any building, structure, or installation that contains a loft used as a dwelling is not considered a residential structure, installation, or building. Any structure, installation or building that was previously subject to this Subpart is not excluded, regardless of its current use or function."
- (B) Subparagraph 61.141 defines "owner or operator of a demolition or renovation activity" as "any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operation, or both."
- (C) Subparagraph 61.141 defines "adequately wet" as "to sufficiently mix or penetrate with liquid to prevent the release of particulate. If visible emissions are observed coming from asbestos-containing material, then that material has not been adequately wetted. However, the absence of visible emissions is not sufficient evidence of being adequately wet."
- (D) Subparagraph 61.141 defines "friable asbestos material" as "any material containing more than 1 percent asbestos as determined using the method specified in appendix A, Subpart F, 40 CFR part 763 section 1, Polarized Light Microscopy, that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure..."
- (E) Subparagraph 61.141 defines "leak-tight" as "that solids or liquids cannot escape or spill out. It also means dust-tight."
- (F) Subparagraph 61.141 defines "regulated asbestos-containing material (RACM)" as "(a) friable asbestos material..."
- (G) Subparagraph 61.141 defines "remove" as "to take out RACM or facility components that contain or are covered with RACM from any facility."

- (H) Subparagraph 61.141 defines "renovation" as "altering a facility or one or more facility components in any way, including the stripping or removal of RACM from a facility component. Operations in which load-supporting structural members are wrecked or taken out are demolitions."
- (I) Subparagraph 61.141 defines "strip" as "to take off RACM from any part of a facility or facility components."
- (J) Subparagraph 61.141 defines "visible emissions" as "any emissions, which are visually detectable without the aid of instruments, coming from RACM or asbestos-containing waste material, or from any asbestos milling, manufacturing, or fabricating operation. This does not include condensed, uncombined water vapor."
- (K) Subparagraph 61.141 defines "waste generator" as "any owner or operator of a source covered by this Subpart whose act or process produces asbestos-containing waste material."
- (L) Subparagraph 61.141 defines "asbestos-containing waste materials" as "...regulated asbestos-containing material waste and materials contaminated with asbestos including disposable equipment and clothing."
- (M) Subparagraph 61.145(b)(1) requires the owner or operator of a demolition operation to provide the Executive Secretary with written notice of intention to demolish or renovate.
- (N) Subparagraph 61.145(c)(1) requires the owner or operator of a renovation project to remove all RACM from a facility being demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal.
- (O) Subparagraph 61.145(c)(3) requires that when RACM is stripped from a facility component while it remains in place in the facility, the RACM must be adequately wetted during the stripping operation.
- (P) Subparagraph 61.145(c)(6)(i) requires, for all RACM, including material that has been removed or stripped, adequately wet the material and ensure that it remains wet until collected and contained or treated in preparation for disposal in accordance with Sec. 61.150.
- (Q) Subparagraph 61.145(c)(8) requires that no RACM shall be stripped, removed, or otherwise handled or disturbed at a facility regulated by this section unless at least one on-site representative, such as

a foreman or management-level person or other authorized representative, trained in the provisions of this regulation and the means of complying with them, is present.

(R) Subparagraph 61.150(a) requires the owner or operator to discharge no visible emissions to the outside air during the collection, processing (including incineration), packaging, or transporting of any asbestos-containing waste material generated by the source.

4. The Utah Administrative Code (UAC) R307-1-8 provides regulations for the notification, disposal, and work practices for asbestos projects in facilities. The following citations from the UAC R307-1-8 apply to COVOL:

(A) UAC R307-1-8.1 defines the following terms:

"Asbestos-containing material" means any material containing more than one percent (1%) asbestos as determined using the method specified in Appendix A, Subpart F, 40 CFR Part 763 Section 1, Polarized Light Microscopy. If the asbestos content is less than 10% as determined by a method other than point counting using polarized light microscopy (PLM), verify the asbestos content by point counting using PLM.

"Asbestos project" means any activity, involving the removal, encapsulation, enclosure, renovation, repair, demolition, salvage, disposal, or other disturbance of friable asbestos-containing material."

"Adequately wet" means to sufficiently mix or penetrate with liquid to prevent the release of particulate. If visible emissions are observed coming from asbestos containing material, then that material has not been adequately wetted. However, the absence of visible emissions is not sufficient evidence of being adequately wet.

"Asbestos removal" means the stripping of asbestos-containing materials from surfaces or components of a structure and to take out structural components that contain or are covered with friable asbestos-containing material from a structure.

"Asbestos waste" means mill tailings or any waste that contains commercial asbestos and is generated by a source subject to R307-1-8. This term includes filters from control devices, friable asbestos-containing waste material, and bags or other similar packaging contaminated with commercial asbestos. As applied to demolition and renovations, this term includes materials contaminated with asbestos including disposable equipment and clothing.

"Asbestos worker" means a person who, in a non-supervisory capacity, performs an asbestos project.

"Certification" means an authorization issued by the executive secretary to persons who engage in asbestos projects or who act as asbestos workers, supervisors, inspectors, project designers, or management planners.

"Friable asbestos-containing material" means any asbestos-containing material that hand pressure can crumble, pulverize, or reduce to powder when dry.

"Renovation" means altering in any way one or more structural components. Operations in which load-supporting structural members are wrecked or taken out are excluded.

"Site supervisor" means a person who meets the definition of a "competent person" as cited in 29 CFR 1926.1101 (OSHA) and has the authority to act as the agent of the asbestos project operator.

"Strip" means to take off asbestos containing material from any part of a structure or structural component.

"Structure" means, for the purposes of R307-1-8: any institutional, commercial, residential, or industrial building, equipment, building component, installation, or other construction.

- (B) UAC R307-1-8.2.2 states that the work practice requirements of R307-1-8 apply to any asbestos project operator who performs an asbestos project; persons who disturb any amount of friable asbestos in an area where the general public has unrestrained access; and to asbestos workers, site supervisors, and consultants who perform work on an asbestos project.
- (C) UAC R307-1-8.3.1.A(1) requires an asbestos contractor to obtain certification from the Executive Secretary prior to performing any asbestos project.
- (D) UAC R307-1-8.6.1.A(6) requires the asbestos project operator to provide respiratory protection to all asbestos workers and others entering asbestos contaminated areas. Respirator protection shall consist of a half-mask air-purifying respirator equipped with HEPA filters.
- (E) UAC R307-1-8.6.1.A(9) requires that all asbestos waste be placed in sealed leak tight containers for disposal.

- (F) UAC R307-1-8.4.1 requires the asbestos project operator to ensure that each worker assigned to perform work on an asbestos project be trained to do asbestos work in a course approved by the Executive Secretary.
 - (G) UAC R307-1-8.6.1.A(4) & G(1)(a) requires the project operator to provide barriers to contain asbestos fibers released in the work area or adequately wet the material throughout the project.
 - (H) UAC R307-1-8.6.1.G(3) requires the project operator to use disposable drop cloths to collect asbestos waste if the physical condition of the floor or collection surface is such that the work area cannot be cleaned of visible residue.
5. An authorized representative of the Executive Secretary of the Board (inspector) performed an inspection, Jan. 11, 1996 and again on Jan. 29, 1996, at the renovation site located at the Wellington Wash Plant, Wellington, Utah. The inspector observed that a renovation project had been started and not completed. The following items were noted and observed at the time of the inspection:

Jan. 11, 1996

- (A) Asbestos-containing material (ACM) was scattered on the ground beneath a pipe rack supporting two pipes approximately 250 feet long each. ACM was still attached to both pipes on some of the joints and around the pipe hangers. All ACM scattered on the ground was dry and friable and did not look like it had been wetted at the time it was stripped from the pipes. The asbestos-containing material was not wetted during removal and collection and this fact was confirmed verbally by Russ Madsen of COVOL.
- (B) The ACM contamination, beneath the area described in A above, was spread approximately 20 feet on either side of the pipe rack, on the road crossing the railroad tracks and crossed a railroad siding. Within the contaminated area was a paper dust mask which appeared to have been used during the removal of the ACM. The contaminated area had weeds, grass, sand, dirt and rocks in it and could not easily be cleaned of visible debris from the asbestos removal project.
- (C) The total linear footage of the pipe abatement was calculated to be greater than 400 feet, making the entire project subject to the NESHAP regulations, which cover disturbances of 260 or more linear feet of RACM on pipes.

- (D) There were small piles of ACM on the road leading into the facility. These piles were dry and friable and were not containerized properly for disposal.
- (E) The asbestos-containing waste removed from the pipes was located in a dryer silo building.
- (F) At the time of the inspection the Executive Secretary had not received a written notice of intent to remove asbestos from the Wellington Wash Plant from either COVOL or NEICO.

Jan. 29, 1996

- (G) The waste in the dryer silo building was examined and was found to be dry and friable. The amount of asbestos-containing waste material in the silo was greater than 4 cubic yards of pipe insulation and related debris. The project is subject to the NESHAP since the amount of material exceeds one cubic yard of asbestos-containing material.
- (H) The asbestos-containing waste material in the silo building was not containerized for disposal and was dry and friable.

Supplemental Information

- (I) Phone conversations with Russ Madsen of COVOL verified that there was not a supervisor on the project who was trained in the provisions of the NESHAP or the State Rules dealing with asbestos removal and disposal. The workers who performed the asbestos project had not been trained as asbestos workers and did not use approved respiratory protection required for asbestos projects.

VIOLATIONS

Based on the foregoing FINDINGS, COVOL and NEICO are in violation of:

1. UAC R307-10-1, incorporating 40 CFR Part 61, Section 61.145(b)(1) by failing to provide the Executive Secretary with written notice of intention to demolish or renovate.
2. UAC R307-10-1, incorporating 40 CFR Part 61, Section 61.145(c)(1) by failing to remove all RACM from the pipes between the wash building and the dryer silo before beginning any activity that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal.

3. UAC R307-10-1, incorporating 40 CFR Part 61, Section 61.145(c)(3) by failing to adequately wet the RACM stripped from the pipes between the wash building and the dryer silo during the stripping operation.
4. UAC R307-10-1, incorporating 40 CFR Part 61, Section 61.145(c)(6)(i) by failing to adequately wet the stripped material and ensure that it remained wet until collected and contained or treated in preparation for disposal in accordance with Sec. 61.150.
5. UAC R307-10-1, incorporating 40 CFR Part 61, Section 61.145(c)(8) by failing to have a supervisor trained in the provisions and regulations of the NESHAP present during stripping, removing, or otherwise handling or disturbing of RACM.
6. UAC R307-10-1, incorporating 40 CFR Part 61, Section 61.150(a) by discharging visible emissions to the outside air during the packaging and transportation of asbestos-containing waste material.

Based on the foregoing FINDINGS, COVOL is also in violation of:

7. UAC R307-1-8.3.1.A(1) by failing to obtain certification from the Executive Secretary to be an asbestos removal contractor.
8. UAC R307-1-8.4.1 by failing to have each asbestos worker who worked on the asbestos project properly trained.
9. UAC R307-1-8.6.1.A(6) by failing to provide adequate respiratory protection to all workers performing an asbestos project.
10. UAC R307-1-8.6.1.A(9) by failing to put all asbestos waste in sealed leaktight containers for disposal.
11. UAC R307-1-8.6.G(3) by failing to use drop cloths to collect asbestos waste in an area that can not easily be cleaned of visible residue.

ORDER

Based on the foregoing FINDINGS AND VIOLATIONS, COVOL and NEICO, pursuant to Section 19-2-110 of the Utah Code Annotated, are hereby ORDERED TO:

1. Immediately initiate all actions necessary to achieve total compliance with all applicable provisions of the Act.
2. Each submit a written description, to the Executive Secretary of the Board, of the methods to be used, by COVOL and NEICO, to prevent future violations of UAC R307-10-1 and UAC R307-1-8, within 15 days of the receipt of this Notice. The plans shall include a description and dates of the steps that will be and have been taken to complete the asbestos project at the Wellington Wash Plant in compliance with the UAC R307-10-1 and UAC R307-1-8.
3. Ensure that all waste from the asbestos project is removed and disposed of in compliance with the UAC, including R307-10-1 and R307-1-8. Any contractor hired for this work must be certified in accordance with R307-1-8.

COVOL is ORDERED TO: submit to the Executive Secretary of the Board a complete list, including full name and address, of all employees who worked on the asbestos project.

COMPLIANCE, OPPORTUNITY FOR A HEARING

This ORDER is effective immediately and shall become final unless, within thirty (30) days of receipt, COVOL or NEICO, requests, in writing, a hearing pursuant to Utah Code Annotated 19-2-110. Section 19-2-115 of the Utah Code Annotated provides that violators of the Utah Air Conservation Act and/or any ORDER issued thereunder may be subject to a civil penalty of up to \$10,000.00 per day for each day of violation.

Dated 4th day of April, 1996.


Russell A. Roberts, Executive Secretary
Utah Air Quality Board

RAR:ABC:svw