



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

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Michael O. Leavitt
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Division Director

August 3, 1998

TO: Mary Ann Wright, Associate Director, Mining

FROM: Pamela Grubaugh-Littig, Permit Supervisor
Daron Haddock, Permit Supervisor
Joe Helfrich, Permit Supervisor

RE: Request for Attorney Assistance, Permit Transfer Situation at COVOL, NEICO, Wellington Preparation Plant, ACT/007/012, Folder #2, Carbon County, Utah

A meeting was held on July 28, 1998 with Harlan Hatfield (COVOL), Tim Thompson (JBR, consultant for COVOL), Paul Baker, Joe Helfrich, Daron Haddock, and Pamela Grubaugh-Littig. This meeting was convened to discuss the possible transfer of a small portion of the Wellington Permit Area to COVOL. COVOL currently uses this area to recover and process coal fines.

This "transfer" is requested because of a clause in COVOL's lease from EARTHCO, the operator of Wellington (NEICO is the permittee)(see attached lease agreement). EARTHCO is interested in COVOL taking over the liability for Parcel A (about 30 acres). There was a lengthy discussion about how this would occur. The small portion that is being requested to be "transferred" is only where the processing facility is located, not where the "coal" that COVOL is purchasing from EARTHCO and using at their facility (which is adjacent), nor where some of the sediment controls are located for the facility, nor where some of the material identified for reclamation is located.

The proposal that was made is to have a shared permit area, i.e. the entire permit area with an operating and reclamation agreement between the two "permittees", i.e. COVOL and NEICO. As a result, both COVOL and NEICO would be principals on the reclamation bond and the specific liabilities would be detailed in the operating and reclamation agreement, i.e. COVOL is only responsible for parcel A.

COVOL's application for a permit would consist of 1) Legal /financial information, 2) reference to the existing Wellington Operation and Reclamation Plan and 3) the operating and reclamation agreement which spells out the specifics of COVOL's and NEICO's responsibilities. The permit issued to COVOL would encompass the same area as the NEICO permit and probably be identified as - ACT/007/012-A. The "operating and reclamation agreement" would include bonding calculations, the legal description of COVOL's interest, and the responsibility of

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permit 12A. The agreement of the two permitted entities would be an allocation responsibility. COVOL would have permission to use sed ponds, etc. and discharge from the wash plant.

This concept of a shared permit area is discussed in R645-301-117.300: "The plans of a facility or structure that is to be shared by two or more separately permitted coal mining and reclamation operations may be included in one permit application and referenced in the other applications. In accordance with R645-301-800, each permittee will bond the facility or structure unless the permittees sharing it agree to another arrangement for assuming their respective responsibilities. If such agreement is reached, then the application will include a copy of the agreement between or among the parties setting forth the respective bonding responsibilities of each party for the facility or structure. The agreement will demonstrate to the satisfaction of the Division that all responsibilities under the R645 Rules for the facility or structure will be met."

Some of the specific questions that need to be answered are:

- Can the same facility be permitted by two separate entities?
- If so, can the responsibilities of the permittees be relegated to certain parcels of the permit though there may not be a clear logical parcel separation in the plan?
- Can the permittee only bond for a portion of the reclamation responsibilities? (i.e. only one permittee bonds for parcel A, but the topsoil borrow area for parcel A is in parcel B which is bonded by the other permittee.)
- Can Permittee A be held liable for things that occur in parcel B when the operating and reclamation agreement spells out that it is Permittee B's responsibility?

We are requesting a review of this proposal from the Assistant Attorney General, Dan Moquin.

Thank you.