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

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Michael O. Leavitt
Governor
Lowell P. Braxton
Division Director

Mine file

June 19, 1998

CERTIFIED RETURN RECEIPT REQUESTED
No. P 074 976 894

Layne Ashton, Administrator of Operations
COVOL Technologies, Inc.,
3280 North Frontage Road
Lehi, Utah 84043

Re: Findings of Fact, Conclusions of Law and Order and Finalized Assessment for N98-41-2-1, Nevada Electric Investment Company, Wellington Preparation Plant, ACT/007/012, Folder No. 5, Carbon County, Utah

Dear Mr. Ashton:

On June 9, 1998, an informal hearing was held to review the fact of violation for state violation N98-41-2-1 (the NOV), Wellington Preparation Plant, Nevada Electric Investment Company. No assessment conference was requested. As a result of a review of all pertinent data and facts, including those presented in the informal hearing and assessment conference, the following shall constitute the findings of fact, conclusions of law and order:

Fact of Violation

Violation N98-41-2-1 was written for: "Failure to locate and construct diversions according to designs in the operation and reclamation plan; failure to construct diversions to be stable; failure to conduct operations only as described in the approved operation and reclamation plan."

Provisions of the regulations violated:

R645-300-142
R645-301-742.300
R645-301-752

Portion of the operation to which the NOV applies: "Culverts and ditches in the new modular preparation plant area. Also, waste water and other materials from the operations flowing in the operational diversions."

At the informal hearing, the Division was represented by Senior Reclamation Specialist, Paul Baker (the inspector); by Permit Supervisor, Joe Helfrich; Permit Supervisor, Pamela Grubaugh-Littig; and the Assessment Officer. The Permittee was represented by Lane Ashton, Project Administrator, COVOL Technologies, and Harlan Hatfield, staff counsel, COVOL.

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Wellington Prep Plant
ACT/007/012
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Paul Baker explained that at the time of the inspection resulting in the NOV, certain ditches and culverts had been constructed in a manner that conflicted with the designs in the approved mining and reclamation plan, including but not limited to:

Culvert CVL-C1 was not installed.

Designs for culvert CVL-C3 were for a 24-inch culvert; a 12-inch was installed.

Ditches CVL-D1, CVL-D3, CVL-D4 and part of CVL-D5 below the flotation cell were not built.

A coal stockpile was located at the designated site for CVL-D4.

Culvert CVL-C2 had not been installed. A 12-inch culvert had been substituted for a 24-inch culvert and run under the road paralleling where ditch CVL-D3 was supposed to have been located.

Undesigned flows contributed to erosion in certain ditches.

COVOL's representatives noted that at the time of the inspection leading to the NOV construction operations were still ongoing, and provided documentation that plant startup followed release of the construction contractor on April 16, 1998. They submitted that compliance with approved designs could not fully exist so long as construction operations were ongoing. Responding to the conference officer's question, COVOL's representatives noted that the ditches and culverts in question had been constructed by COVOL.

Findings

1. The request for the informal hearing was timely made and appropriately noticed.
2. R 645-301-742.311 reads (in part): "All diversions will be designed to minimize adverse impacts to the hydrologic balance within the permit and adjacent areas, to prevent material damage outside the permit area and to assure the safety of the public."
3. Undesigned ditches were constructed by COVOL as noted in the NOV.
4. R 645-301-752 reads: "Sediment Control Measures. Sediment control measures must be located, maintained, constructed and reclaimed according to plans and designs given under R 645-301-732, R 645-301-742 and R 645-301-760."
5. COVOL constructed diversions and culverts that were not part of the designs and were not at locations specified in the approved mining and reclamation plan.
6. R 645-300-142 reads: "The permittee will conduct all coal mining and reclamation operations only as described in the approved application, except to the extent that the Division otherwise directs in the permit."
7. The portions of the operations to which the NOV applies were not constructed as

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designed in the approved mining and reclamation plan, and the Division of Oil, Gas and Mining had not reviewed and approved the modifications to the mining and reclamation plan prior to COVOL's construction of the modifications.

Order

Notice of Violation N98-41-2-1 is upheld.

Remarks

It is recognized that the site of this particular operation is one that has historically been used for "coal preparation activities" as defined by the Utah Coal Regulatory Program, and in the case of this NOV no environmental harm was documented. That aside, it is incumbent upon a permittee to seek approval from the Division of Oil, Gas and Mining prior to modifying the terms and conditions of the approved Mining and Reclamation Permit.

Assessment Conference

None was requested.

Finalized Assessment

No change from the proposed.

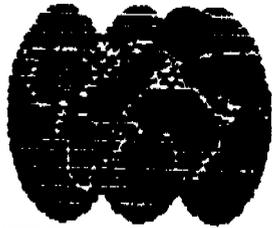
Within fifteen (15) days of your receipt of this letter, you or your agent may make a written appeal of this decision, the fact of the violation and/or the finalized assessment to the Board of Oil, Gas and Mining.

Sincerely,



Lowell P. Braxton
Assessment Conference Officer

vb
cc: S. Traweek, Earthco
R. Hinckley, NEICO
P. Collins, Mt. Nebo Scientific
M. Wright
PFO
P:\GROUPS\MINES\WP\PENALTIE\WEL4821.WPD



EARTHCO

Reclaiming the Earth's Resources

3584 Hwy 31 South #190 • Pathem, AL 35124 • (205) 665-0405 • (205) 665-2045 Fax

Fax cover sheet

DATE: 6-16-98

TO: Ms GRUBAUGH-LITIG

FAX: _____

FROM: STEVE TRAWIECK

TOTAL PAGES: 2 (INCLUDING FAX COVER SHEET)

MESSAGE:

ACT 1057/012 #~~2~~
5
NOV file
Copy Vicki
Bailey

Ms. Pam Grubaugh Littig
Permit Coordinator
State of Utah
Department of Natural Resources
Division of Oil, Gas and Mining
1594 West North Temple, Suite 1210
Box 1458
Salt Lake City, Utah 84114-5801

Re: NOV #98-41-3-1

Dear Ms. Grubaugh-Littig:

We are requesting a formal meeting to review the validity of NOV #98-41-2-1. Please arrange and get back to us on a schedule of dates available.

Should you have any questions, please feel free to call me at (205) 665-0405.

Sincerely,
EarthCo



Steve Traweck
Sr. Project Manager/Resident Agent - Wellington Preparation Plant

cc: Harlan M. Hatfield, Covol Technologies, Inc.
W. Layne Ashton, Covol Technologies, Inc.

P 074 976 894 DAP

LAYNE ASHTON ADMIN OPRNRS
COVOL TECHNOLOGIES INC
3280 N FRONTAGE RD
LEHI UT 84043

DDCM VB ACT/067/012 N98-41-2-1 FLDR #5



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LEHI UT 84043

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PS Form 3811, December 1994

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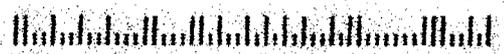
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