

To Pam Grubaugh-Littig
From Keli
Pam,

Here is the deposition
transcript for Mike
Gipson of Covou.

Will you put it in
the public file??

Thank.

Kel.

Received? 11/14/06

Refer to Expandable 1142006
file in 00070045, 2006, INCOMING,
for additional information

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FILE IN Expandable 11 14 2006
Refer to Record No. 0006
in CO070045, 2006, INCOMING
for additional information

November 1, 2006

Keli Jo Beard, Esq.
Assistant Attorney General
Utah Attorney General's Office
Natural Resources
1594 West North Temple #300
Salt Lake City, UT 84116

RE: COVOL ENGINEERED FUELS
ABI FILE NO.: A0089C6
DEPOSITION OF: MICHAEL GIPSON,
taken on October 6, 2006

Dear Ms. Beard:

Enclosed please find the original transcript and one certified copy in the above-referenced matter. The original is in a sealed envelope.

If you have any questions, please contact our Customer Service Department at 800-288-3376.

Sincerely,

Atkinson-Baker, Inc.
Glendale Office

Enclosure
cc: C. Galli
file

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DEPOSITION EXHIBITS: Page
Deposition Exhibit 1 (site plan) 16
Deposition Exhibit 2 (site plan) 16
Deposition Exhibit 3 (7/6/05 letter) 67
Deposition Exhibit 4 (9/13/04 letter) 67

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1 **Q. Would you state your name and your**
2 **address, home address?**
3 A. Okay. My name is Michael Gipson, 4723
4 North Highway 6, Helper, Utah.
5 **Q. And where did you grow up?**
6 A. Actually, I grew up in Tennessee.
7 **Q. Okay.**
8 A. Yes.
9 **Q. And when did you come to Utah?**
10 A. I moved to Utah in 1993.
11 **Q. And why?**
12 A. Coal business.
13 **Q. Doing?**
14 A. I actually was a mine manager for an
15 Eastern coal company.
16 **Q. Which company?**
17 A. It was head -- or White Oak.
18 **Q. And you worked there for how long?**
19 A. Actually, I worked for White Oak in Utah
20 from '93 to '96.
21 **Q. Okay. And it was a coal company, so they**
22 **were mining?**
23 A. Coal, yes.
24 **Q. And you were the --**
25 A. Mine Manager.

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1 PROCEEDINGS
2 (October 6, 2006, 1:02 p.m.)
3 MIKE GIPSON
4 called as a witness by the Plaintiff, having
5 been duly sworn, was examined and
6 testified as follows:
7 EXAMINATION
8 BY MS. BEARD:
9 **Q. Okay. Just before we get started, I**
10 **guess, the purpose of the deposition is really just to**
11 **find out why you are listed as a witness and what you**
12 **might know with regard to this matter.**
13 **So, hopefully, if I ask questions that you**
14 **kind of wonder why I'm asking that question, just know**
15 **that I'm trying to figure out what it is that you know**
16 **and what it is, how it's relevant to the case, okay?**
17 A. Okay.
18 **Q. And have you ever been deposed before?**
19 A. Yes.
20 **Q. So, you know that all answers should be**
21 **verbal?**
22 A. Yes.
23 **Q. Speak clearly. And if I ask a question**
24 **that's confusing or it's too quiet, let me know?**
25 A. Okay.

Page 3

1 **Q. Mine Manager?**
2 A. Uh-huh.
3 **Q. Okay. So '96. So after '96, where did**
4 **you work?**
5 A. I actually went to the Horizon Mine which
6 was also owned by the Eastern coal people.
7 **Q. And you were the --**
8 A. Mine Manager there also.
9 **Q. From '96?**
10 A. Until '98.
11 **Q. And then after that?**
12 A. I went to work for Covol Technology.
13 **Q. Okay. And that's located at?**
14 A. That's located in Wellington. It was
15 their wash plant on Farnum Road.
16 **Q. They sold that, correct?**
17 A. That's correct.
18 **Q. To DTE?**
19 A. No, no. We are talking about two
20 different facilities.
21 **Q. Okay.**
22 A. The wash plant was on Farnum Road. That
23 was a facility that they built after they built the
24 synfuel plant.
25 **Q. What did they do there?**

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1 A. We actually removed pond fines to clean
2 them through a wet process.
3 **Q. Pond fines?**
4 A. Yes.
5 **Q. Which are?**
6 A. Coal pond fines.
7 **Q. Okay. And then you worked there until?**
8 A. I worked there until '99, and then I moved
9 to Covol's synfuel plant.
10 **Q. Okay. So you worked at the synfuel plant**
11 **until?**
12 A. Actually, I worked at the synfuel plant a
13 couple of times; stayed with Covol until June of 2000
14 and then moved onto a different job.
15 **Q. Okay.**
16 A. Then I came back to Covol in May or June
17 of 2001, something like that.
18 **Q. Covol at the synfuel plant?**
19 A. Yes.
20 **Q. In 2001?**
21 A. Yes.
22 **Q. And stayed there until?**
23 A. I stayed there until -- employed by Covol
24 until December of 2003.
25 **Q. Uh-huh.**

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1 A. No surface. We did have some surface
2 facilities, but I didn't manage those.
3 **Q. Okay. But they were not underground; is**
4 **that what you said?**
5 A. No, I managed underground coal mines.
6 **Q. I thought you said none.**
7 A. My accent is different.
8 **Q. Okay. Nine underground mines.**
9 A. Yes
10 **Q. How long did you hold that position?**
11 A. Actually, I started working for KTK Mining
12 at that time in 1988.
13 **Q. Okay.**
14 A. Until I moved here in '93; still with
15 those guys until '98.
16 **Q. And then after that -- so that was the**
17 **Eastern coal company that you were talking about?**
18 A. Yes.
19 **Q. And so let me ask you a little bit about**
20 **your education, and we will start going backwards?**
21 A. Okay.
22 **Q. Where did you receive your degree?**
23 A. I do not have a degree. I have a high
24 school education.
25 **Q. Did you go to college?**

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1 A. And then January 1 of 2004, I went to work
2 for DTE which owned the plant, actually kept the same
3 plant, just moved to a different company.
4 **Q. Okay. And then?**
5 A. And then in August of '05, I came back to
6 work for Covol and engineered fuels.
7 **Q. And what did you do, you said you took**
8 **some time off from Covol around 2000 --**
9 A. Yes.
10 **Q. -- what did you do?**
11 A. I went to work for General Resources.
12 They were a company that were looking -- were trying
13 to buy the wash plant from Covol, and so I worked for
14 those guys for I think it was like nine months,
15 something to that effect.
16 **Q. Is the wash plant still operational?**
17 A. It's not. It's gone.
18 **Q. Okay. Before you came to Utah, you were**
19 **in Tennessee, you said?**
20 A. Actually, before I came to Utah, I was in
21 Kentucky.
22 **Q. Okay, doing?**
23 A. I was a mine manager of nine underground
24 coal mines.
25 **Q. Surface mines?**

Page 7

1 A. I did not.
2 **Q. Did you work during high school?**
3 A. Yes, grocery stores, nothing like that,
4 no, not coal.
5 **Q. What was your first job after high school?**
6 A. Actually, my first job after high school
7 was with a foundry. I worked in the steel part of the
8 foundry.
9 **Q. And when did you get your first**
10 **coal-related job?**
11 A. In 1975.
12 **Q. And what was that?**
13 A. That was with AT Massey Coal Company.
14 That was in Jasper, Tennessee.
15 **Q. Okay. And you were doing?**
16 A. Actually, I was a laborer, started out on
17 the graveyard for a laborer for them.
18 **Q. How long were you there?**
19 A. I was there from '75 until '86.
20 **Q. And then where?**
21 A. Then I went to General Portland Cement
22 Company out of Chattanooga, Tennessee.
23 **Q. For how long?**
24 A. Was there from '86 to '88 when I first
25 moved to Kentucky.

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1 **Q. Okay. And then from there?**
2 A. That's where I was with KTK Mining.
3 **Q. All right. Good.**
4 **So you've lived in Price for about**
5 **12 years, is that correct, the Price Area?**
6 A. Yes.
7 **Q. You are familiar with -- I mean, you are**
8 **part of the mining community down there which is a**
9 **huge part of that community, so you probably know lots**
10 **of people in that area and lots of people in the**
11 **community; is that correct?**
12 A. Yes.
13 **Q. Did you -- in preparation for this**
14 **deposition, did you rely upon any documents or look at**
15 **any documents?**
16 A. No.
17 **Q. Did you have any conversations about this**
18 **deposition or about this case in general with anybody**
19 **besides your attorney?**
20 A. No.
21 **Q. You haven't talked to Keith or other**
22 **people at Headwaters about --**
23 A. About the deposition today? No.
24 **Q. And about the case in general?**
25 A. No.

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1 the plant; production, cost, that sort of things.
2 **Q. Okay. So tell me a little bit about like**
3 **a day-to-day, what do you do every day? You get to**
4 **work --**
5 A. Well, I get to work, and we have a
6 schedule of what product we are going to run that day;
7 you know, do some testing. We are always doing
8 testing and stuff with this facility right now.
9 **Q. Okay.**
10 A. Basically what coals will run or what
11 coals are coming in or going out, to that effect.
12 **Q. And product, you mean --**
13 A. Coal.
14 **Q. -- coal?**
15 **The different coal from --**
16 A. Different sites, yes.
17 **Q. Okay. And so you come in, you decide, you**
18 **know, which product you are going to run. And then**
19 **what?**
20 A. Well, when we decide what we are going to
21 run -- we usually know prior to that. And we operate
22 the plant and just, you know, go through our steps.
23 And, like I said, do different tests, and stuff, to
24 try to utilize and make the plant the best efficiency
25 that we can.

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1 **Q. Okay. So other than the meetings that**
2 **we've had and that you've attended, you really**
3 **haven't --**
4 **(Discussion off the Record.)**
5 MS. BEARD: So, other than those meetings
6 that you've attended with the Division and those
7 meetings between you and the attorneys, then you
8 haven't really had any other meetings or been a part
9 of other discussions regarding this case?
10 A. No.
11 **Q. Okay. Did you bring any papers or notes**
12 **or documents today with you?**
13 A. I did not, no.
14 **Q. Okay. And you haven't produced any**
15 **document or memorandum or anything with regard to this**
16 **case?**
17 A. No.
18 **Q. Okay. I want to talk a little bit about**
19 **what you do as the Plant Manager at Covol.**
20 **So can you just describe your basic job**
21 **description, what you do?**
22 A. My job description is -- first, is to the
23 health and safety of the employees there.
24 **Q. Okay.**
25 A. And I'm responsible for the operation of

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1 **Q. And do you actually conduct the tests?**
2 A. I have. I have helped with that, yes.
3 **Q. But, generally --**
4 A. Actually, I have a plant supervisor
5 that -- that's over, actually, the men and stuff.
6 **Q. Okay. How many employees are there?**
7 A. There's a total -- the total employees
8 there, counting myself and the office manager, seven
9 of us.
10 **Q. Okay. So you probably have an intimate**
11 **knowledge of what goes on?**
12 A. I do.
13 **Q. As --**
14 **Okay. Are you involved in contacting with**
15 **parties? Do you set up contacts with the people you**
16 **get coal from or you contract with, are you that**
17 **person?**
18 A. I have gotten names and stuff like that.
19 But, as far as setting up any contracts or doing
20 anything like that, no, I haven't done that.
21 **Q. Okay. But you are aware of the contracts**
22 **that Covol is involved with?**
23 A. Some, yes.
24 **Q. So, you know when -- if you are running**
25 **coal through your process, you know this coal belongs**

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1 to this person or this party and this coal belongs to
2 this party?
3 A. That's correct, yes.
4 **Q. And do you keep track of that from the**
5 **moment the coal comes onto the site to the moment the**
6 **coal leaves the site?**
7 A. I do.
8 **Q. Okay. Before I get into anymore stuff**
9 **substantially, I want to ask you: Do you know what**
10 **this action is regarding?**
11 A. This --
12 **Q. Yes. Why I'm deposing you and for the**
13 **purpose of the Board hearing that's coming up in**
14 **January?**
15 A. Yes. Yes and no.
16 **Q. Uh-huh?**
17 A. I mean, I know parts, that it's over the
18 Division coming in to regulate Covol, yes.
19 **Q. Okay. And can you tell me how or why you**
20 **think that your testimony -- how you think it fits**
21 **into the overall picture?**
22 A. Well, you know, I am responsible for the
23 site.
24 **Q. Uh-huh?**
25 A. My testimony, I think, as an employee of

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1 MR. GALLI: What we'd typically do is
2 leave a copy with the Court Reporter to take and then
3 the Witness and Counsel will both have copies during
4 the examination. Do you want to take a break and get
5 copies?
6 MS. BEARD: Sure.
7 (Recess.)
8 (Deposition Exhibit No. 1 & 2 marked).
9 MS. BEARD: All right, the site plan.
10 Okay. I want you to walk me through the
11 process, and maybe to help me focus on what we are
12 talking about, explain where you are -- you know, I
13 want to know exactly what happens on the site. When
14 coal comes in, what happens to it then, how long it
15 sits on the site before it's cleaned, how much of it
16 is cleaned? Do you know what happens after it's
17 cleaned? Maybe you can walk me through the process in
18 as much detail as you can.
19 (Discussion off the Record.)
20 MS. BEARD: Is it still the same? Is this
21 site plan still applicable or are things different?
22 A. Yes. There is only one thing different
23 that I've seen so far, is this truck load-out hopper,
24 it's in a different area.
25 **Q. Okay. And where is it?**

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1 Covol, Headwaters, that we do a really good job and we
2 have done a good job and we are going to continue to
3 do a good job.
4 **Q. A good job at?**
5 A. As to operating the plant, taking care of
6 things, running a safe operation, safe and clean
7 operation.
8 **Q. Uh-huh.**
9 **Okay. I am going to pull out -- because I**
10 **wanted to know exactly what happens on your site, so**
11 **I'm going to pull out a site plan that you guys gave**
12 **us three years ago, maybe.**
13 **So I think that is a big picture right**
14 **there.**
15 A. Yes.
16 **Q. And this is kind of a more detailed**
17 **picture of what goes on at the various point --**
18 MR. GALLI: Excuse me, Counsel, are we
19 going to mark those as exhibits?
20 MS. BEARD: Yes, I think we should mark
21 these as exhibits.
22 MR. GALLI: Do you have copies for Witness
23 and Counsel?
24 MS. BEARD: No, I don't have copies. We
25 can make copies or you can have these.

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1 A. But this is -- actually, this road comes
2 in like this off the highway, okay, and the truck
3 loader hopper is right here.
4 **Q. Okay.**
5 A. On that side.
6 MR. ALDER: It would probably be good --
7 excuse me for interrupting -- on the exhibit over
8 there to indicate where you are pointing and maybe
9 make a mark on the exhibit, so we -- when you say
10 load-out hopper, it will be on the original.
11 THE WITNESS: Okay. (Marking).
12 MS. BEARD: Is there a new road?
13 A. It is not. This map is not exactly
14 correct.
15 **Q. Okay.**
16 A. So the road -- that's exactly where the
17 road is.
18 **Q. Okay.**
19 A. Yes.
20 **Q. Okay.**
21 A. To tell you a little bit on Exhibit 2,
22 trucks come in off the highway from either direction,
23 come in and they turn left going to this 110-foot
24 truck scale.
25 **Q. Okay.**

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1 A. The trucks are weighed, and then they come
2 to our truck dumping facility. It is a truck grizzly.
3 It has two conveyors under it, C1 conveyor and RS1
4 conveyor; RS1 is a radial stacker.
5 **Q. Okay.**
6 A. Okay. The material is dropped into the
7 grizzly and to wherever --
8 **Q. What is the grizzly?**
9 A. Okay. It is a piece of equipment that
10 when the trucks dump on it, it breaks up the coal if
11 it's stuck together, or something, for it to fall
12 through, basically. It's a feed hopper, basically, to
13 a conveyor.
14 **Q. Okay.**
15 A. Feeds out onto the C1 conveyor under this
16 grizzly, and then dumps onto the RS1 conveyor which is
17 a radial stacker.
18 **Q. Okay.**
19 A. These are just different locations for
20 stockpiles, wherever -- different materials come, if
21 we want to keep them segregated, which we do, we'll
22 move the radial stacker to that location.
23 **Q. So do you have more than three piles?**
24 A. No, we do not. We haven't had more than
25 three piles at one time. We have had that stacker in

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1 different locations, but we haven't had three
2 different piles at one time.
3 **Q. Let's say you had 15 contracts, you guys**
4 **are just booming, would you have 15 separate different**
5 **piles?**
6 A. We'd have to have some way to segregate
7 it, yes.
8 **Q. Okay.**
9 A. Okay. From that point, you can see -- on
10 Exhibit 2, you can see the loader. The coal is picked
11 up, whatever coal we are processing, put into this
12 feed hopper, okay.
13 **Q. Okay?**
14 A. This feed hopper then dumps onto C3
15 conveyor which feeds up to a separating screen and a
16 crusher.
17 **Q. Okay.**
18 A. That's where the material is sized.
19 **Q. Uh-huh.**
20 A. From that point, it dumps onto C4
21 conveyor, C5 conveyor. C4 conveyor is a fines
22 conveyor. C5 is a course.
23 **Q. Okay.**
24 A. So this material then is conveyed up to
25 three air jigs, okay. Depending on the gradation size

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1 of the coal, whether it be course or fines or both,
2 depending on what we have the most of, is how the jigs
3 are properly set up.
4 **Q. Okay.**
5 A. It could be three course jigs, three fine
6 jigs or multiple changes. It can be one, two fines
7 and one course.
8 **Q. Are the jigs -- can you recalibrate like a**
9 **specific jig to make it fine or course?**
10 A. That's correct. There's adjustments that
11 you can make on that to actually do that, yes.
12 **Q. Okay.**
13 A. From that point, C7 conveyor is a clean
14 product. C6 is a by-product conveyor.
15 Okay. The clean product is then worked
16 out onto C7 conveyor. When I say worked out, the jigs
17 have a process where they push the lighter material to
18 the top and the heavy's stay on the bottom. The
19 heavy's is the by-product.
20 **Q. Okay.**
21 A. The lighter materials is the clean product
22 which goes over the top which dumps onto C7. The
23 by-product is the heavier, drops onto C6.
24 **Q. Okay.**
25 A. At this point in time, it goes out to RS2

Page 20

1 conveyor which makes --
2 **Q. The cleaned product?**
3 A. Yes, the cleaned product, I am sorry.
4 Clean product is conveyed out to RS2
5 conveyor, radial stacker, which will make these
6 different stockpiles.
7 The by-product --
8 **Q. And these are different?**
9 A. Could be, it could be.
10 **Q. The same way --**
11 A. That's correct, yes. Could be, yes.
12 **Q. Okay.**
13 A. Then the by-product is done the same way:
14 It's dumped onto a radial stacker that can be moved
15 to --
16 **Q. And you separate the by-product also**
17 **according to the contract?**
18 A. Well, the by-product is -- yes. The
19 by-product is set for whatever the specs call on the
20 product that we are running. What I mean by specs, if
21 we have a product that's 20-percent ash contract and
22 we wanted to take it down to 15 percent, the
23 by-product would go to C6 which is higher ash product;
24 would go to the C6 conveyor.
25 **Q. Okay. It would go to the C6, it would**

Page 21

1 come out here --

2 A. Yes.

3 Q. -- and be dumped into a pile?

4 A. Yes.

5 Q. And do you separate these piles also --

6 A. Yes, they are segregated, they are.

7 Q. -- according to the contract?

8 A. Yes. To the customer, yes.

9 Q. To the customer?

10 A. Right.

11 Q. Okay. So the clean product is separated

12 also by customer?

13 A. That's correct. After that process is
14 done, the clean product at this point in time is
15 loaded out through that hopper.

16 Q. Okay.

17 A. When the material is loaded out, the
18 truck -- an empty truck would come in. It is light
19 weight. Come around the loop. Come and get loaded,
20 pull back onto the scale and get his heavy weight.

21 At that point in time, scale would give
22 him a ticket, a document, stating whatever mine
23 code -- when I say mine code. That's how we determine
24 where the coal will go and what customer it is and
25 stuff like that.

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1 differences of what has been brought out and what
2 we've cleaned.

3 Q. So it doesn't have anything to do with --
4 it doesn't tell you how much has been cleaned. It
5 doesn't tell you how much has been removed. It is
6 just for their purposes so they can --

7 A. That's right. The scale -- you know, I
8 guess I ought to back up a little bit more: On this
9 Exhibit 2, I also have a series of belt scales. C5
10 conveyor has a belt scale on it.

11 Q. Where's C5?

12 A. C5 is this conveyor right here.

13 Q. Okay.

14 A. Okay. That is typically a course jig belt
15 conveyor just about all the time.

16 Q. Okay.

17 A. So what that does: This scale goes
18 against this scale and tells us how many fines we have
19 on there. So we know exactly how many tons we have
20 going on each of those conveyors at all times.

21 Q. Okay.

22 A. Then -- I mean, it is the way it's set up
23 in the controls, and stuff, it just does the
24 calculations.

25 Q. Uh-huh.

Page 24

1 Q. Okay. The difference between the weight,
2 is that how you determine --

3 A. That's correct.

4 Q. It's the difference between the two
5 weights, that's how you determine based on the
6 contract how much coal you've cleaned or how much you
7 are going to get paid or how much you are giving them,
8 is that correct?

9 A. That's incorrect.

10 Q. Oh.

11 A. The weights -- you are correct as far as
12 determining the weight on the truck, but that's not
13 how we get paid.

14 Q. Okay?

15 A. We get paid off a C3 conveyor belt scale
16 which we get paid off a raw ton that we process
17 through the plant.

18 Q. What does that mean?

19 A. Okay. Our agreements that we have that I
20 know of, the ones that we have process, we get paid X
21 amount of dollars per raw ton to process the material.

22 Q. Okay?

23 A. The finished product is actually for the
24 customer to determine where he wants it to go. And
25 the truck scale gives him his weights, of what -- the

Page 23

1 A. On the finished product on C7, we also
2 have a belt scale on it.

3 Q. Right here?

4 A. Yes.

5 Q. Do you have a scale on the --

6 A. We do not. On the by-product, we do not.
7 It's also set up -- C7 and C6 conveyors
8 are set up in our PLC controls to determine the
9 by-products that's been -- or being produced also.

10 Q. Okay.

11 A. Just a simple subtraction or addition to
12 the feed tons.

13 Q. Once you put the coal through the air jigs
14 and the clean coal sits here, how long does it sit
15 here before it goes to the customer?

16 A. That depends. Sometimes I've had it set
17 for a few days, sometimes the day after. It depends
18 on the customer, when they get the trucks in to get
19 them shipped out.

20 Q. Okay. So you are waiting for the customer
21 to come in and pick up?

22 A. That's correct.

23 Q. Have you ever waited more than a week?

24 A. Yes, we have.

25 Q. More than a month?

Page 25

7 (Pages 22 to 25)

1 A. Not that I can recall, no. They may, but
2 I don't think so.
3 **Q. It's fairly quick, then?**
4 A. Yes, it is.
5 **Q. Okay. Okay. And the waste --**
6 A. The by-product?
7 **Q. Yes. How long does it sit there and what**
8 **happens to it?**
9 A. Presently, some of the by-product is being
10 shipped to our customer's customer. So, in other
11 words, they will take the clean product and ship it to
12 wherever they want. And then they also have the
13 option to move it to another customer, the by-product.
14 **Q. Okay. So will you give me an example of**
15 **one of your customers?**
16 A. One of our customers is Commonwealth.
17 **Q. Uh-huh?**
18 A. Okay. They take the finished product, the
19 C7 conveyor product, and they ship it to -- we ship it
20 back over to Savage for them.
21 **Q. Okay. So you take the -- Commonwealth,**
22 **you take a finished product --**
23 A. Yes.
24 **Q. -- and you ship it back to Savage?**
25 A. Yes.

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1 **Q. And you are shipping that, you are**
2 **actually --**
3 A. I'm not. They set up -- we load it. But
4 it's a customer's responsibility to set up the
5 trucking, determine where it goes. They tell me where
6 they want me to send it.
7 **Q. Okay?**
8 A. And we set up different mine codes to
9 determine the destination, what trucking company's
10 hauling it, the sort of things like that.
11 **Q. And currently then Commonwealth is in a**
12 **contract or some sort of arrangement with Savage?**
13 A. To my knowledge, yes. That's where the
14 material has been going.
15 **Q. So Commonwealth is -- all of the material**
16 **from Commonwealth?**
17 A. No. No, they -- they have used another
18 trucking company to send some of the by-product to
19 another location.
20 **Q. Okay.**
21 A. And that location would be Sunnyside
22 Co-Gen.
23 **Q. Okay. So Commonwealth is sending to**
24 **Savage and to Sunnyside and this is...**
25 **Okay, let me get this straight:**

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1 **Commonwealth is sending their finished, the clean**
2 **coal, to Savage?**
3 A. That's correct.
4 **Q. And the by-product also to Savage?**
5 A. Some.
6 **Q. Some by-product?**
7 A. Some there, yes.
8 **Q. And they are also doing the same thing,**
9 **sending both finished product and by-product to**
10 **Sunnyside?**
11 A. They are not; just the by-product to
12 Sunnyside at this time.
13 **Q. Okay. That definitely solves a big**
14 **mystery. Okay. That's good to know.**
15 **So how long does the by-product piles**
16 **typically sit there?**
17 A. Well, we still have some on site right
18 now. The by-product market, which we are working on
19 and the customers, too, so you just have to find the
20 right connection for that type of material, the right
21 sale, I guess, for that material.
22 **Q. Okay. But do you find that connection?**
23 A. I don't. I don't.
24 **Q. Does somebody at Covol find that**
25 **connection?**

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1 MR. GALLI: Objection; vagueness.
2 THE WITNESS: I don't really understand
3 the question. I mean --
4 MR. GALLI: Do you want to restate the
5 question?
6 THE WITNESS: Yes, do that.
7 MS. BEARD: Okay. So the contracting
8 party is coming and he's dumping coal, and you are
9 cleaning the coal. And then that same party is either
10 having some other party come in and get the coal or is
11 coming and getting the coal themselves; is that
12 correct? The cleaned coal, I'm sorry.
13 To the best of your knowledge?
14 A. Okay. Let me see, I don't know if I am
15 understanding where you are going, but let me try to
16 explain it, again, the way I see it.
17 **Q. Okay?**
18 A. Okay, the customer, Commonwealth, brings
19 their material to us. We weigh it. We have a mine
20 code set for it. We dump it. We process it.
21 The finished product goes into our finish
22 pile.
23 **Q. Okay.**
24 A. Trucks come to get it. We weigh it. It's
25 out. Okay.

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1 Now, the by-product, also Commonwealth has
2 set that up to take it back to Savage or to take it to
3 Sunnyside.
4 **Q. Okay. And has Commonwealth done that?**
5 **Have they taken the waste product or the by-product**
6 **back?**
7 A. They have.
8 **Q. Okay.**
9 A. They have taken that back.
10 What they do with it, I don't know. But
11 they have taken it back.
12 **Q. Have they taken all of it back?**
13 A. No, they have not. They have an
14 agreement -- maybe I shouldn't -- I don't know what
15 they have with Sunnyside. But I do know that they
16 have taken some of the by-product. And I got an
17 e-mail that they are going to start shipping more even
18 starting next week to Sunnyside of the by-product.
19 **Q. Okay. So they haven't taken it all back.**
20 **So how long has it been sitting there?**
21 A. Some has been sitting there since April.
22 **Q. Since April?**
23 A. Yes, that's -- February/April time frame
24 -- I mean, March/April time frame.
25 **Q. Okay. And are you aware of the date or**

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1 **that you have, is there another by-product pile that's**
2 **also been sitting there for quite awhile, more than a**
3 **month?**
4 A. Yes.
5 **Q. And whose is that?**
6 A. That is Pacificcorp's.
7 **Q. Okay. So, when did they first send you**
8 **their coal?**
9 A. This was sent prior to me. I don't know
10 exactly the dates on that. Keith Thompson would know
11 that. I don't know. But it was there prior to me
12 coming to work there.
13 **Q. Okay. So you -- when did you first run**
14 **Pacificcorp's coal through your process?**
15 A. Started processing it in January of this
16 year.
17 **Q. Okay. Have they removed all of their**
18 **cleaned product?**
19 A. They have.
20 **Q. And they haven't removed all of their**
21 **by-product?**
22 A. They have not.
23 **Q. Have they removed some?**
24 A. No.
25 MR. GALLI: Ms. Beard, if I may just

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1 **the time frame that it's expected to leave the site?**
2 A. No.
3 **Q. Okay. You are waiting for Sunnyside -- or**
4 **Commonwealth to set that up?**
5 A. Yes.
6 **Q. Okay.**
7 A. Yes.
8 **Q. Does Commonwealth own the refuse or the --**
9 A. They do.
10 MR. GALLI: I am going to interpose an
11 objection to the continued use of terms like waste and
12 refuse when the witness characterizes it as
13 by-product.
14 MS. BEARD: I know. I am sorry. I
15 realize that we've all been talking about different
16 terms, and I am trying to click it over in my mind.
17 But I understand that waste is a technical term so is
18 refuse.
19 And you are talking about by-product?
20 A. Yes.
21 **Q. Okay. So let me -- so there -- some of**
22 **Commonwealth by-product has been sitting there since**
23 **about March or April?**
24 A. Yes.
25 **Q. Okay. With other parties and contracts**

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1 interject: There may be just a little bit of
2 confusion and talking past each other on -- I'm not
3 objecting, I'm just pointing out an area that you may
4 want to seek clarification on. I think there's an
5 assumption that once by-product is created, that it
6 sits there and is never reprocessed.
7 MS. BEARD: Uh-huh.
8 MR. GALLI: And you may want to seek some
9 clarification on that and have the witness...
10 MS. BEARD: Actually, I did want to ask
11 about that. And maybe this would be a good time to do
12 that.
13 I wanted to ask a little bit more about
14 your cleaning process.
15 A. Okay.
16 **Q. So you have a pile from Commonwealth, and**
17 **you stick -- does the whole pile go through the**
18 **cleaning process?**
19 A. It does.
20 **Q. The whole --**
21 A. It does.
22 **Q. Okay. And you said that you could**
23 **configure this cleaning -- these air jigs depending**
24 **on --**
25 A. Sizing.

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1 Q. -- sizing, okay.
2 Can you configure them depending upon the
3 characteristics of the raw material?
4 A. The process has equipment designed in it
5 to -- as the ash content goes higher -- this whole
6 process is set up on a density-type situation. I
7 mean, rock is heavier than coal.
8 So, automatically, yes, this thing should
9 set up to clean the coal to wherever we set it, to
10 what specs that the customer wants.
11 In other words, if you are telling me --
12 you give me some guidelines, what you would like to
13 see the product to be, that is what my desire is, to
14 set up the equipment to do that.
15 Q. So, when you configure the equipment, do
16 you take into consideration the BTU of the end product
17 that your client wants?
18 A. Sure, that's in with the assets. Yes, it
19 is.
20 Q. Okay. And you can change these air jigs
21 so you can make the cleaned product a higher BTU?
22 A. That's correct.
23 Q. That's really interesting.
24 Okay. Can you also change this -- the air
25 jig so you can get a lower percentage of mercury or

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1 raw product, could you configure these air jigs to
2 make the end product contain lesser or greater mercury
3 depending on what your customer wants?
4 A. Okay. Let me see if I understand the
5 question: You are asking me: Can I set the machine
6 up to reduce mercury?
7 Q. Uh-huh.
8 A. No.
9 Q. Okay.
10 A. What my goals are is to set the machine up
11 to reduce the ash. And so I don't know what contents
12 or levels of mercury is in that.
13 Q. Okay.
14 A. So what the deal is on my standpoint is
15 the density of the rock and the coal, basically.
16 So that's how we control the -- to reduce
17 or lower the ash.
18 Q. Okay. So it's really more about the
19 weight and the density of the coal, and that's how you
20 sort of configure --
21 A. That's correct.
22 Sorry.
23 Q. Okay. Okay. I'm sorry, I just --
24 A. Sure.
25 Q. -- don't really understand this very well,

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1 ash?
2 A. The --
3 MR. GALLI: Objection; foundation.
4 MR. ALDER: Well, we are not going to get
5 into the specifics of every kind of objection. I
6 mean, this is a deposition, and we are --
7 MR. GALLI: That was not a speaking
8 objection. We don't know how his testimony will be
9 used. In fact, we are preserving our rights to file a
10 dispositive motion. I object on foundation based on
11 an assumption that there's a presence of mercury.
12 MS. BEARD: Okay.
13 MR. GALLI: So I'm perfectly within my
14 right to offer that objection.
15 MS. BEARD: I only said mercury because in
16 the contracts you have lists of BTU, mercury, sulfur,
17 ash; and so my assumption is that there is mercury.
18 But maybe there's not mercury in the coal.
19 Is there mercury in the coal?
20 A. To tell you the truth, I don't know. I
21 don't know where the mercury is at.
22 Q. Okay.
23 A. I guess that's the best way for me to
24 answer because I don't know.
25 Q. Okay. But if there were mercury in the

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1 so I'm trying to get a grasp.
2 Another question I had was: In your
3 contracts and also on here, it has a blending hopper.
4 If you clean all this pile here, why do
5 you blend the coal?
6 A. Okay, that's set it up for customized
7 coal.
8 Q. Okay.
9 A. If a customer has a low ash product, okay,
10 then his by-product is a higher ash product.
11 Typically, Utah coal is a 12 percent ash
12 product spec. So, if a customer has an eight percent
13 product that we have produced for them and they've got
14 an 18 percent by-product, okay, we could blend that to
15 get it into that spec range. So that's what that is
16 set up for.
17 Q. So you could take some of this --
18 A. That's correct.
19 Q. -- the cleaned coal, and if it's, you
20 know, ridiculously low and, you know, the client
21 doesn't need it that low, then you can bring some of
22 this by-product back in, blend some of that in to
23 bring it up to the specifications?
24 A. That's correct, yes.
25 Q. Okay. Is your air jig -- can you actually

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1 **bring the ash content to zero?**
 2 A. I wish I could tell you yes, but, no, we
 3 can't.
 4 **Q. Okay. Another thing I wanted to know is:**
 5 **Is it more expensive to make the ash content of the**
 6 **coal lower or does it matter? When you reconfigure**
 7 **this air jig, does it really affect the cost?**
 8 A. No.
 9 **Q. Okay.**
 10 A. No, it doesn't.
 11 **Q. Okay. When you decide -- when you are**
 12 **bringing this coal in and you are putting it through**
 13 **the air jig, how do you decide how to configure the**
 14 **air jig? Do you decide that based upon the content or**
 15 **the characteristics of the coal before it goes in?**
 16 A. We try to do that, yes. We try to have
 17 the sizing to where we know about what the sizing of
 18 the material is as to what we can set the jigs up to
 19 affect that, yes.
 20 **Q. Okay. You set -- and back to the point**
 21 **that Craig made -- Mr. Galli made: The by-product**
 22 **pile, do you ever send it back through the process?**
 23 A. We have.
 24 **Q. You have?**
 25 A. We have.

1 **Q. To?**
 2 A. Just different customers, you know. There
 3 are customers -- the product -- what I guess I'm
 4 trying to say is that the product could be used and
 5 sold, yes.
 6 **Q. You said you've done this before?**
 7 A. We have.
 8 **Q. And so do you have a pile somewhere of**
 9 **product that's been re-cleaned then on site right now?**
 10 A. I do.
 11 **Q. And is -- is it under contract to be sold?**
 12 A. Not at this point.
 13 **Q. So it doesn't belong to the contracting or**
 14 **the customer that it originally came from?**
 15 A. Let me answer that the best way I know: I
 16 know bits and pieces of the contracts, how things are
 17 set --
 18 **Q. Uh-huh?**
 19 A. -- we have the option -- and Keith
 20 Thompson would be the better to relay that to. But we
 21 actually have the option to try to sell that reusable
 22 product.
 23 **Q. Uh-huh. To anybody?**
 24 A. That's correct. To my knowledge. Now,
 25 that's my knowledge. But Keith Thompson, again, would

1 **Q. And can you tell me about that? Have you**
 2 **done it more than once?**
 3 A. I have.
 4 **Q. And can you tell me why you do that and...**
 5 A. Okay. The reasoning for that is, one, is
 6 additional testing; two, and foremost, is if we can
 7 recover some more -- some usable product, coal
 8 products, cleaner products out of that; so we have
 9 done that, yes.
 10 **Q. Okay. And then the cleaned product then**
 11 **gets put back into the same pile?**
 12 A. Well, it's a separate pile. It's
 13 segregated. We would never put it back -- a rerun
 14 product back onto the customer's pile unless they
 15 directed us to do that.
 16 **Q. Even if it met the same specifications?**
 17 A. If it met the same specifications. But,
 18 again, if the customer directed us to do that, we are
 19 having to rerun it through the whole system again to
 20 do that.
 21 **Q. Okay. So, if you rerun it through the**
 22 **system and you can separate some product from the**
 23 **by-product and you put this extra product in a**
 24 **separate pile, what happens to that?**
 25 A. It would be sold as usable product.

1 be the best person to ask that question.
 2 **Q. Okay.**
 3 **So --**
 4 MR. GALLI: Just to be clear:
 5 To sell as clean coal product?
 6 THE WITNESS: That's correct, yes.
 7 MS. BEARD: Sale as --
 8 A. A clean coal product.
 9 **Q. And what would be -- what could you use**
 10 **that in?**
 11 A. You mean where would it -- the end use
 12 would be?
 13 **Q. Yes.**
 14 A. Power plants, cement plants. It's just
 15 the same as a regular carbon product.
 16 **Q. Could you take this pile and actually burn**
 17 **it in a power plant without blending it with anything?**
 18 A. Sure.
 19 **Q. So it's that clean?**
 20 A. Yes.
 21 **Q. Okay. So you take one of these by-product**
 22 **piles, you put it through the system and you get**
 23 **another two piles, one clean coal product, another**
 24 **by-product.**
 25 A. That's correct.

1 Q. Does this by-product pile then get placed
2 in a different pile as well?
3 A. Yes.
4 Q. Okay.
5 A. It gets stored at a different location,
6 correct.
7 Q. And what happens to that pile?
8 A. That could actually be reprocessed
9 again --
10 Q. Okay.
11 A. -- to try to reclaim some more carbon out
12 of it, that's correct.
13 Q. Okay.
14 A. Also we are looking to -- for markets for
15 that type of material.
16 Q. Okay. But currently it belongs to you, to
17 Covol?
18 A. Again, you are going to have to -- Keith
19 Thompson. I can't answer that. I don't really know.
20 Q. But, as far as you know, no customer has
21 come in to claim that double by-product if I can call
22 it that?
23 A. No.
24 Q. Okay. How many tons of this double
25 by-product do you have on site?

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1 A. Is on C3 conveyor.
2 Q. I am sorry.
3 A. This conveyor right here (Indicating).
4 Q. Okay. Okay.
5 A. You have auto sampler on C7, also, the
6 finished product.
7 Q. Okay. So there's a sample taken right
8 before it's screened, and then a sample taken of the
9 cleaned product right before it is put into its piles?
10 A. That's correct.
11 Q. Do you also sample the by-product before
12 it's put into its piles?
13 A. We do.
14 Q. Uh-huh. And can you tell me -- let's take
15 the latest sample that you took of one of these
16 by-products piles. What were the characteristics if
17 you can remember?
18 A. 40 percent -- 40 percent ash, around 6 or
19 7 percent moisture, BTU is probably in the 9 to 10,000
20 range, sulfur, I don't -- it's probably a .5, .6.
21 That's a pretty good guess I would say.
22 MR. ALDER: That's pretty good.
23 MS. BEARD: Yes, that's pretty good.
24 Okay. So do you -- in these by-product
25 piles, do you keep track of, you know, the

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1 A. Estimated guess, 3 -- 3,000; 3 to 4,000
2 ton.
3 Q. Okay. I'm going to ask you a few
4 questions about the characteristics of the products,
5 both the raw, the by-product and the clean product:
6 So do you test the product before -- when
7 your customer comes in and dumps it here, do you test
8 the coal at that point for the characteristics of it,
9 the BTU, if it has ash, mercury, those type of things?
10 A. On the feed process -- on the feed coal,
11 if the customer requests that we test the material
12 prior to running it, we do.
13 Q. Uh-huh?
14 A. Okay.
15 We have done testing as far as gradation
16 size and stuff prior to that.
17 Q. Gradation size just to see --
18 A. See the sizing of the coal to try to
19 determine how to set the jigs up to process it.
20 Q. Okay.
21 A. We also have an auto sampler on the feed
22 conveyor which collects samples off that. They assume
23 standards each time we process; feed and finish to
24 that coal.
25 Q. And the feed sampler?

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1 characteristics of it? You have it probably on some
2 document --
3 A. Yes.
4 Q. -- somewhere?
5 A. Yes, we do.
6 Q. Can I get a copy of that, the various
7 tests references you have of the waste -- of the
8 by-product piles?
9 MR. GALLI: Why don't we talk about that
10 after so we know exactly what you are looking for?
11 MS. BEARD: Okay.
12 Can you tell me, on average, how many
13 pounds of by-product results from one ton of raw coal?
14 A. It depends. It depends on the initial
15 feed. But an average of some of the material we've
16 run was on -- a hundred ton would be eight to ten ton.
17 Q. Of by-product?
18 A. By-product, correct.
19 Q. So --
20 A. That's a cleaner product.
21 Q. So about eight percent?
22 A. Yes.
23 Q. Okay.
24 MS. BEARD: Can I take just a small break?
25 MR. GALLI: Absolutely, yes.

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1 (Recess.)
 2 MS. BEARD: Okay. Before I move on -- and
 3 I don't have very many more questions, but I wanted to
 4 ask you a few follow-up questions. And the first one
 5 would be to mark the exhibit, if you would, and would
 6 you mark the C3, C5, C7 belts on the exhibits?
 7 A. So you want me to mark the belt scales
 8 on --
 9 **Q. Yes, because we've referred to these by**
 10 **number, and it would be helpful if they were marked on**
 11 **the exhibit.**
 12 A. (Marking).
 13 **Q. We were just talking about the**
 14 **characteristics of the by-products, and you -- I asked**
 15 **you: What was the latest characterizes, the latest**
 16 **pile that you cleaned from -- or of the by-product.**
 17 **And I want to ask you: What characteristics do you**
 18 **test for?**
 19 A. In my day-to-day samples, is that what you
 20 are talking about?
 21 **Q. Yes.**
 22 A. What we test for is moisture --
 23 **Q. Uh-huh?**
 24 A. -- ash, sulfur, BTU, mercury.
 25 **Q. Okay. I'm wondering, pyrite, that's -- is**

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1 **Q. Would you mark C6 on there as well?**
 2 A. (Marking).
 3 **Q. And it's a hand sample. So maybe you can**
 4 **explain the difference between --**
 5 A. Okay. When I hand sample, it's the stop
 6 belt sample, basically.
 7 **Q. Okay.**
 8 A. The belt is stopped, the person pulls a
 9 sample off the belt at a designated time to try -- to
 10 stay within the collected.
 11 **Q. Okay?**
 12 A. And it's collected and turned in with the
 13 other samples daily.
 14 **Q. Okay. And they stop them -- what do you**
 15 **mean to stay within the collected?**
 16 A. ASTM standards, you have a certain amount
 17 of tons that you process, you've got to have certain
 18 amount of increments of samples collected to stay
 19 within those standards.
 20 **Q. So every 20 minutes or whatever the**
 21 **increments are, something like that?**
 22 A. Yes.
 23 **Q. It's time increments?**
 24 A. Yes.
 25 **Q. Okay.**

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1 **that taken into consideration or is that the same as**
 2 **sulfur or --**
 3 A. I can't answer that. I don't know.
 4 **Q. Okay.**
 5 A. Again, like I said, Keith, he's got all
 6 that data that you need for that stuff. But I don't
 7 know the answer to that.
 8 **Q. Okay. And you just said your day-to-day**
 9 **testing, do you have other tests besides the**
 10 **day-to-day testing?**
 11 A. No.
 12 **Q. Okay.**
 13 A. No, it is just our everyday sampling
 14 basically from our auto samplers.
 15 **Q. And the auto samplers, they are the same**
 16 **samplers that sample the by-product, the clean product**
 17 **and the pre-cleaned product?**
 18 A. No.
 19 **Q. Oh.**
 20 A. C3 and C7 has auto samplers on them --
 21 **Q. Uh-huh.**
 22 A. -- C6 is a hand sample, basically, a grab
 23 sample.
 24 **Q. And C6 is the by-product?**
 25 A. By-product.

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1 **So the ASTM testing, it tests those**
 2 **characteristics that you just named, the ash, mercury,**
 3 **sulfur, that type of stuff, that's what the collected**
 4 **require?**
 5 A. No. Collected -- what we sample, that's
 6 what we are asking for, the lab to pull those samples
 7 for us.
 8 ASTM Standards is keeping us within the
 9 amount of increments that we need to pull for the
 10 samples, to collect per ton, basically.
 11 In other words, if you are running a
 12 hundred tons, you need to collect X amount of samples
 13 for that time.
 14 **Q. That's what ASTM --**
 15 A. That's part of it, yes.
 16 **Q. It doesn't require certain**
 17 **characteristics?**
 18 A. Not to my knowledge.
 19 **Q. Okay.**
 20 **And not to beleaguer the by-product issue,**
 21 **but I want you to tell me again: So there's two**
 22 **different types of by-products: There's the**
 23 **by-product that is -- that the customer comes in and**
 24 **retrieves, or will retrieve, eventually, right?**
 25 A. (No Audible Response.)

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1 **Q. And there's a double by-product that the**
2 **customer -- Covol can sell the by-product, this double**
3 **by-product?**
4 A. Okay. Again, I guess -- I better tell you
5 to talk to Keith about that.
6 **Q. Uh-huh.**
7 A. I guess that's probably the best way to do
8 that because I don't know for sure. I don't want to
9 say something that I don't know for sure about that.
10 **Q. Okay.**
11 A. Talk to Keith about that.
12 **Q. But you are not aware of Covol or -- you**
13 **are not a part of Covol seeking buyers for either the**
14 **by-product or the double by-product?**
15 A. Yes. Yes, I am -- I do try to help market
16 it, yes.
17 **Q. But market what?**
18 A. The by-product. Either by-product.
19 **Q. Okay. So you do market the by-product**
20 **that comes from the first run-through?**
21 A. That's correct.
22 **Q. Okay. And who do you mark it to? What**
23 **does that mean, market?**
24 A. Okay. Let me clarify that: When I say
25 market, I say help market. I haven't marketed any of

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1 the customer, some of it. Do you know -- you said
2 some of the by-product is returned to Sunnyside,
3 correct?
4 A. Correct.
5 **Q. Do you know what Sunnyside does with the**
6 **by-product?**
7 MR. GALLI: May I suggest to you that you
8 explain what a co-gen facility is?
9 THE WITNESS: Answer your first question:
10 I do know -- I have been told what they are doing with
11 it. I haven't seen it done. They are burning it in
12 their power plant.
13 **Q. Okay.**
14 A. Sunnyside Co-Gen is a high ash end user.
15 They typically 3,000 to 6,000 BTU material. So that
16 -- and that aspect, that's what Sunnyside is doing,
17 they are actually running it through their plant.
18 **Q. Okay. So Sunnyside could potentially be**
19 **used --**
20 A. Every bit of it.
21 **Q. -- every bit of your by-product --**
22 A. That's correct.
23 **Q. -- in their co-gen?**
24 MR. GALLI: Unfortunately, we have some
25 terminology that's confusing.

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1 it.
2 **Q. Okay.**
3 A. Commonwealth, that they have, they have
4 removed some of the by-product.
5 **Q. Okay. So how have you helped? Have you**
6 **helped Covol or have you helped Commonwealth?**
7 A. Either/or. That's my job, is try to help
8 us or the customer to market their product.
9 **Q. Okay. And by helping, what do you do to**
10 **help them market?**
11 A. Contact -- contacts, people asking for the
12 quality, that type of thing.
13 **Q. So you help -- have you helped**
14 **Commonwealth, then, market their by-product?**
15 A. Yes, I would say I have.
16 **Q. And what exactly did you do when you did**
17 **that?**
18 A. Commonwealth has contacted Sunnyside
19 Co-Gen, the gentleman that's the Mine Manager -- or
20 the Plant Manager has come out to look at the product,
21 and stuff like that. And that's how I've helped, yes.
22 **Q. Okay.**
23 **(Discussion off the Record.)**
24 MS. BEARD: Can you explain to me -- so
25 this by-product, let's say some of it has returned to

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1 MS. BEARD: Yes, I've --
2 MR. GALLI: By-product is used on these
3 diagrams. They call this a by-product, but, in fact,
4 it's sold as a product as well. So just to help
5 clarify the record, which I think you've done now,
6 there is some confusion about terminology.
7 MS. BEARD: Yes. And I really -- like --
8 I really did, I wrote down by-product when you started
9 using it. That's the word that he's using. I'm
10 definitely --
11 MR. GALLI: Although some by-product is
12 product, so it's confusing.
13 MS. BEARD: Okay. We'll just refer to it
14 as by-product even though I understand that some of it
15 is being sold as a product.
16 MR. GALLI: Okay.
17 MS. BEARD: Okay. So besides selling it
18 to Sunnyside, what else could it be used for?
19 A. We have -- we are hoping that some of the
20 contractors, road builders, fill, whatever can be used
21 in that type of fill as far as using as fill products,
22 stuff like that.
23 **Q. Okay.**
24 A. As long as it meets their specifications.
25 **Q. Have you contacted any of those people**

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1 that could use it in that way?
2 A. I have.
3 Q. And can they use it?
4 A. In the right situation, yes.
5 Q. What type of situation?
6 A. Well, I don't know. I mean, they are
7 telling me in the right situation they could use it.
8 I don't know what that is.
9 Q. So you have told them we have this, and
10 presumably they may call you and say: Oh, this is a
11 situation that we need that?
12 A. They have actually came and look at it, so
13 we have had people come look at it.
14 Q. But nobody has come in to buy it for that
15 purpose?
16 A. Not at this time, no.
17 Q. Okay.
18 Okay. I want to move on -- beyond the
19 site plan, and I want to ask you a little bit more
20 about the environmental permits and other permits that
21 Covol has.
22 Do you know about that -- those things?
23 A. The air quality, yes. Water storm permit,
24 yes.
25 Q. Okay. Do you know if there are other

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1 A. To my knowledge, it covers the whole --
2 the 30 acres that we have fenced in.
3 Q. Okay. When you stack the raw product, the
4 clean product and the by-product and they are in their
5 piles and they are -- presumably they are dry?
6 A. Yes.
7 Q. These piles are dry, so they are not wet.
8 When the wind comes up, does it ever pick
9 up the fines and take them -- you know, blows them
10 around in the air?
11 A. I'm sure it has, yes.
12 Q. Does the Air Quality Permit deal with
13 that?
14 A. It does.
15 Q. I understand that the facility is located
16 near Miller Creek, is that correct?
17 A. That's correct.
18 Q. Which is a tributary to the Price River?
19 A. Yes. It's in that area somewhere. I
20 don't know exactly, but it's there.
21 Q. Were you involved in gathering baseline
22 data for that permit, Storm Runoff Permit?
23 A. I was not.
24 Q. Okay. Are you aware of whether or not
25 elements found in Covol's -- on Covol's site whether

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1 environmental permits that Covol has?
2 A. Not to my knowledge.
3 Q. Okay. So there's the Air Quality and the
4 Storm Runoff Permit?
5 A. Yes.
6 Q. And do you have a NSHA Permit?
7 A. Yes.
8 Q. For the Air Quality Permit, did you help
9 prepare baseline data and other types of things like
10 that for that permit?
11 A. I did not.
12 Q. Do you know the kind of baseline data that
13 was gathered for that permit?
14 A. I don't.
15 Q. Do you know what the permit allows Covol
16 to do or what it permits you to do?
17 A. I do. After our construction is complete,
18 I know what the specs call for that on that, yes.
19 Q. Okay. So you have to ensure that the --
20 whatever particulate matter, whatever the Air Quality
21 Permit calls for, whatever is being released into the
22 air from your facility doesn't violate that permit?
23 A. That's correct.
24 Q. Okay. And what area does the permit
25 cover?

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1 it's -- mercury that might be found in the coal or
2 sulfur, are you aware of whether it ever leaches into
3 the ground?
4 A. I'm not aware of that, no.
5 Q. Okay. Are you aware of what type of
6 measures have been taken to protect against those
7 types of compounds getting into the water system?
8 A. Sure, I am.
9 Q. And what can you tell me about those?
10 A. We have control ditches. We have runoff
11 ponds. Everything is contained on the site.
12 Q. As required by the permit?
13 A. That's correct.
14 Q. Okay. Have you seen wildlife near by?
15 A. Yes.
16 Q. Have you -- do you know whether there's
17 anything on your facility that might be harmful to
18 wildlife?
19 A. No.
20 Q. Do you have a permit or do the permits
21 that you have in any way discuss wildlife issues?
22 A. I haven't read that if it does.
23 Q. Okay. And are you aware of any protective
24 measures that Covol might have taken to protect
25 against harm to wildlife?

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1 A. No, I'm not.
2 **Q. Are you aware of whether -- when you were**
3 **building the facility, whether Covol saved the**
4 **topsoil?**
5 A. Yes.
6 **Q. And where is that located? Maybe you can**
7 **show me on this site plan to bring it back out.**
8 A. I'll draw on this one here. This map
9 doesn't show down in here, but there is a pile here, a
10 pile here.
11 **Q. Okay.**
12 A. And this is not in the exact location, but
13 it's in the vicinity.
14 **Q. Okay. Now, I understand that Covol sent**
15 **the Mayor of Wellington a letter of assurance. And it**
16 **is in the exhibit packet, probably the last -- no, not**
17 **the last one, the second thing, the second document,**
18 **called the Letter of Assurance to Mayor Karl**
19 **Housekeeper.**
20 **Do you have any knowledge of this letter?**
21 **Have you seen this before?**
22 A. No, other than today, no.
23 **Q. Okay. So are you aware of any measures or**
24 **actions taken for post-operational cleanup?**
25 A. I'm not.

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1 **Q. Okay.**
2 **Now, you said you were involved in the**
3 **Covol Technologies Synfuel Plant?**
4 A. Yes.
5 **Q. Do you -- I understand that might shut**
6 **down soon. I'm wondering if Covol Engineered Fuels is**
7 **planning on or do you know whether they are capable of**
8 **doing similar type of thing, making a synfuel product**
9 **for a tax benefit?**
10 MR. GALLI: Objection; vagueness.
11 MS. BEARD: Here in this plan, in this
12 site plan, I haven't heard you say anything about any
13 type of structure that would allow you to administer
14 some sort of additive, chemical additive or something
15 other than that, to make your product into a synfuel
16 product. Is there anything on the site?
17 A. There's not.
18 **Q. Okay. And are you aware of any plans to**
19 **build such structures?**
20 A. I'm not.
21 **Q. Okay.**
22 **(Discussion off the Record.)**
23 MS. BEARD: Coming back to the Air Quality
24 Permit: What measures do you take to protect air
25 quality?

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1 A. What measures I take?
2 **Q. Or Covol?**
3 A. We have an emissions terminology that's in
4 those things, and we have applied water sprays, things
5 to that effect; we have a water truck to keep the
6 fugitive dust down, and stuff; and some of the things
7 that are still being -- is -- it's in construction.
8 MR. GALLI: Counsel, are you also asking
9 the witness to talk about the emissions controls
10 technologies like the bag houses?
11 MS. BEARD: Yes, sure.
12 A. Yes, we do. We have bag houses in place.
13 **Q. Where are the bag houses?**
14 A. If you see on Exhibit 2, it says three
15 complete bag houses --
16 **Q. Uh-huh?**
17 A. -- with fans and stacks.
18 **Q. Okay. So on top of the air jigs?**
19 A. Is tied in with the air jigs, that is
20 correct.
21 **Q. Okay. And the fugitive dust and the water**
22 **spraying, is that on the coal piles and the by-product**
23 **piles?**
24 A. It could be, yes.
25 **Q. Okay. As well as on the ground as well?**

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1 A. That's correct.
2 **Q. Are there coal fines and coal dust on the**
3 **ground?**
4 A. Yes, there is -- it's a coal facility, so
5 it is.
6 **Q. Is it a thick -- was it placed there or is**
7 **it just kind of --**
8 A. No, placed. Placed material, yes.
9 **Q. Okay.**
10 **Now, I want to ask you about specific**
11 **contracts. How many contracts are you aware of?**
12 A. Two contracts I know of is PacifiCorp and
13 Commonwealth. That's the only contracts that I know
14 of. I don't know all the details to that. Again,
15 Keith Thompson will have to answer your questions on
16 that.
17 **Q. Are you -- so are those the only parties**
18 **that you are aware -- or customers that you are aware**
19 **of that drop coal off, pick them up?**
20 A. Oh, no.
21 **Q. No?**
22 A. No.
23 **Q. So tell me about the other customers that**
24 **are doing that.**
25 A. The other customer that we have is Utah

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1 America now, but it was Andalex, so that's the Andalex
 2 Group.
 3 **Q. And Andalex or the Utah American, the coal**
 4 **mine?**
 5 A. That's correct.
 6 (Discussion off the Record.)
 7 MS. BEARD: Which coal mine?
 8 A. It is now called Crandall Canyon and West
 9 Ridge.
 10 **Q. West Ridge, okay.**
 11 **Is that the only coal mine under the**
 12 **Andalex relationship?**
 13 A. Yes -- no, they have other coal mines, but
 14 that's all I know.
 15 **Q. Okay.**
 16 **So besides the Andalex and besides**
 17 **Commonwealth and PacifiCorp, are there anybody else?**
 18 A. No.
 19 **Q. Okay. And the PacifiCorp contract and the**
 20 **Commonwealth contract, have you read the contracts?**
 21 A. I haven't.
 22 **Q. Okay. And are they still continuing to**
 23 **bring you coal to process or has either one of those**
 24 **stopped?**
 25 A. PacifiCorp stopped, yes.

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1 **Q. Okay. And you, Covol, are you working out**
 2 **details as to when they are going to pick it up?**
 3 A. Okay. That is tied in with the
 4 contract --
 5 **Q. Uh-huh?**
 6 A. -- again, and Keith will answer -- can
 7 answer that better than I. I don't want to speculate
 8 on nothing.
 9 **Q. Have you talked to anybody at Covol?**
 10 A. I have not, no.
 11 **Q. Have you helped PacifiCorp market the**
 12 **by-product in any way?**
 13 A. I have not.
 14 **Q. Okay. So, although you have done that for**
 15 **Commonwealth, it hasn't been an issue, the PacifiCorp**
 16 **by-product?**
 17 A. That's correct.
 18 **Q. The Commonwealth, are you aware of whether**
 19 **they are still bringing you coal to clean?**
 20 A. At this point, no.
 21 **Q. So that has completely stopped at this**
 22 **point?**
 23 A. At this point, yes.
 24 **Q. And when did they start -- when did they**
 25 **first bring their first bit of coal over?**

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1 **Q. Do you know whether that's the end of the**
 2 **contract or whether it's going to resume?**
 3 A. Again, Keith would have to answer that.
 4 **Q. Although PacifiCorp has stopped bringing**
 5 **you coal, PacifiCorp still has all of their by-product**
 6 **on your site, is that correct?**
 7 MR. GALLI: Objection; vagueness.
 8 MS. BEARD: So PacifiCorp has brought you
 9 how many tons of coal since you began processing?
 10 A. Okay. PacifiCorp brought the coal prior
 11 to me there.
 12 **Q. Okay.**
 13 A. There was 27,000, something like that.
 14 **Q. Have they brought any coal since then?**
 15 A. They have not.
 16 **Q. Okay. So it was just that initial term.**
 17 **And PacifiCorp, have they picked up all of**
 18 **their cleaned coal product?**
 19 A. Yes.
 20 **Q. Have they picked up any of their**
 21 **by-product?**
 22 A. No.
 23 **Q. But it's their by-product. Do they own**
 24 **the by-product?**
 25 A. Yes.

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1 A. I believe it was in March of this year.
 2 **Q. Uh-huh?**
 3 A. I'm not really sure, but I believe it was
 4 in March of this year.
 5 **Q. And when did it stop?**
 6 A. About two weeks ago, two to three weeks
 7 ago.
 8 **Q. But you don't know why it stopped?**
 9 A. Well, yes, I do.
 10 **Q. Oh, you do?**
 11 A. The quality, the quality of the higher ash
 12 product coming in.
 13 **Q. So you -- Covol stopped the contract?**
 14 A. No, we did not.
 15 **Q. Oh?**
 16 A. They stopped it because of the quality
 17 right now.
 18 **Q. The quality of?**
 19 A. The raw feed.
 20 **Q. The raw feed.**
 21 **So they couldn't meet the specifications**
 22 **required by Covol, so they stopped bringing over the**
 23 **coal?**
 24 A. Not to my knowledge. My knowledge of the
 25 reason they stopped it is because the product got so

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1 high in ash that they wanted to regroup, basically,
2 see what they needed to do.
3 **Q. And it's the product -- the pre-cleaned**
4 **product that you are talking about?**
5 A. That's correct, the feed.
6 **Q. Okay. But -- okay. The Andalex -- I**
7 **should call them the Utah American -- are they still**
8 **bringing coal?**
9 A. Not at this time, no.
10 **Q. When did that begin?**
11 A. May or June time frame.
12 **Q. And when did it end?**
13 A. Last -- first of this month if I'm not
14 mistaken, first of October.
15 **Q. First of October?**
16 A. Yes.
17 **Q. Do you know why?**
18 A. Yes.
19 **Q. Why?**
20 A. Because of their buyout. They have to get
21 things in line with Utah America, basically.
22 **Q. Okay. So it's more of an internal issue?**
23 A. To my knowledge, yes.
24 **Q. Okay.**
25 MS. BEARD: Okay. I think that that is --

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1 the Division wasn't going to.
2 **Q. And who did you talk to about that?**
3 A. With Keith.
4 **Q. And what did he tell you?**
5 A. From the best I can remember where he had
6 talked to Mary Ann Wright, and didn't think it would
7 fall under the Division's jurisdiction.
8 **Q. Okay. Did he ever tell you that it was**
9 **still being decided or --**
10 A. No. I mean -- first knowledge of that is
11 December meeting.
12 **Q. Okay. Are you familiar with the financial**
13 **situation of Covol?**
14 A. Of my particular plant?
15 MR. GALLI: Objection; vagueness.
16 MS. BEARD: Of your particular plant? Do
17 you keep track of the books or do you keep the books
18 or are you in control of the books, the financial
19 books?
20 A. I do not.
21 **Q. Okay. Are you aware of the financial -- I**
22 **mean, are you aware of how much it cost to run the air**
23 **jigs?**
24 MR. THOMPSON: I'm not sure -- I think
25 that's competitive information. I don't know if we

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1 well, let me ask you just one other:
2 Have you read the final -- or the
3 preliminary determination that was issued by the
4 Division asserting jurisdiction over Covol?
5 A. I just saw that today, yes.
6 **Q. Oh. Maybe we can mark that as Exhibit 4,**
7 **I guess.**
8 **(Deposition Exhibit No. 3 & 4 marked).**
9 MS. BEARD: Okay. Have you read the
10 preliminary determination before today?
11 A. I just saw it today. I haven't read all
12 the way through it, no.
13 **Q. When Covol was constructing -- you've been**
14 **with Covol since they have been constructing their**
15 **facility, is that correct?**
16 A. That's correct.
17 **Q. Were you involved in -- or did you know**
18 **about the financing -- financial situation of the**
19 **company while it was being built?**
20 A. I did not.
21 **Q. So you don't know -- maybe you do, maybe**
22 **you had some understanding that the Division would or**
23 **would not regulate Covol when you started operations**
24 **-- or when you started building?**
25 A. What I was -- the understanding was that

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1 are able to make an objection or how do you want to
2 address that?
3 MR. GALLI: Counsel, could you explain
4 your specific question? I'm not sure I'm following
5 you.
6 MS. BEARD: Okay. I want to know how much
7 it costs -- well, you don't have to tell me specific
8 numbers, but I want to know, basically, if you are
9 making a profit, if you are making a profit from when
10 this guy right here dumps his coal, brings it through
11 here, dumps it here, now you have by-product and clean
12 product and if you are making a profit, what's the
13 profit; notwithstanding the fact that you've put in a
14 bunch of money to build the facility so maybe
15 currently you are not in the blue but --
16 MR. ALDER: Black is the word.
17 MR. GALLI: Counsel, may I just clarify?
18 Your question is simply: Is Covol's facility making a
19 profit now?
20 MS. BEARD: No. My question is:
21 You are presumably paid by the customer to
22 clean the coal, is that correct?
23 A. That's correct.
24 **Q. And let's say they pay you a hundred**
25 **dollars and you run the coal through the air jigs and**

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1 **it's dumped out here and the by-product is dumped here**
2 **and the clean coal is dumped here, they come and pick**
3 **it up, have you made money on that process?**
4 MR. GALLI: Do you know the answer to
5 that?
6 THE WITNESS: I do -- well, I don't. I
7 don't know all the stuff entailed in that.
8 MS. BEARD: Can you give me what you do
9 know? What do you know about that?
10 A. I don't know --
11 MR. GALLI: If you know, answer the
12 question.
13 THE WITNESS: I can tell you what my cost
14 is to run a ton through there.
15 MR. THOMPSON: And that's what I am --
16 MR. GALLI: Let's pause there for a
17 minute.
18 We can mark this exhibit -- I am sorry,
19 this deposition transcript as Confidential Business
20 Information. We don't have a confidentiality
21 agreement with the Division.
22 MS. BEARD: Uh-huh.
23 MR. GALLI: We can certainly enter into
24 one. I was certainly not aware that we were going to
25 get into that issue here.

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1 REPORTER'S CERTIFICATE
2
3
4 State of UTAH)
5 County of SALT LAKE)
6
7 I, CARLTON WAY, Certified Shorthand
8 Reporter, Registered Professional Reporter, and Notary
9 Public for the State of Utah, do hereby certify:
10 THAT the foregoing deposition was taken by
11 me in shorthand and reduced to writing to the best of
12 my ability.
13 THAT the foregoing pages contain a true and
14 correct transcription of my said shorthand notes to
15 the best of my ability.
16 IN WITNESS WHEREOF, I have subscribed my
17 name and affixed my seal this 22nd day of October,
18 2006.
19
20 _____
21 CARLTON WAY, CSR/RPR
22 My commission expires
23 December 6, 2006
24
25

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1 MS. BEARD: Okay.
2 MR. GALLI: But I don't object to asking
3 the witness questions. But I would put Counsel on
4 notice that the witness has already said that
5 Mr. Thompson --
6 MS. BEARD: Uh-huh.
7 MR. GALLI: -- is far more familiar with
8 the details of that questioning. So my -- I can't
9 tell you how to run the deposition, but my strong
10 preference would be: Let's enter into a
11 confidentiality agreement relating to the confidential
12 business information protections in Doggins
13 Regulations (Phonetic) and in Utah law, and then we
14 can get into that with Mr. Thompson to the extent you
15 wish to; is that okay?
16 MR. ALDER: Yes, I think that's probably a
17 better way to take it.
18 Can we go off the record?
19 (Discussion off the Record.)
20 (Signature waived.)
21 (Deposition adjourned at 3:07)
22
23
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A0089C6
MICHAEL GIPSON OCTOBER 6, 2006

<p style="text-align: center;">A</p> <p>ability 72:12,15 able 69:1 about 5:19 8:17,19 10:4,17,18,22,23,24 11:18 12:2 16:12 24:15 31:15,19,23 33:11,13 36:18 38:17 39:1 43:4 45:9 45:21 46:13,20 50:5 50:9,11 53:6 54:20 54:22 57:9 59:12 60:9 61:10,23 65:6 66:4 67:18 68:2 70:9 Absolutely 45:25 accent 8:7 according 21:17 22:7 acres 56:2 action 14:10 actions 58:24 actually 4:6,14,19 5:5 6:1,12 7:2,20 8:11 9:6,16 13:1,4,5 17:1 20:11 23:23 27:2 33:10 37:25 40:21 41:16 42:8 52:17 54:12 addition 25:11 additional 39:6 additive 59:14,14 address 4:2,2 69:2 adjourned 71:21 adjustments 20:10 administer 59:13 affect 38:7,19 affixed 72:17 after 5:3,11,23 8:16 9:5 9:6 16:16 22:13 25:17 45:10 55:17 again 29:16 39:18,19 40:25 42:9,18 47:5 49:21 50:4 61:14 63:3 64:6 against 24:18 57:6,25 ago 15:12 65:6,7 agreement 30:14 70:21 71:11 agreements 23:19 air 19:25 25:13 33:23 34:20,24 36:1 37:25 38:7,13,14 54:23 55:3,8,20,22 56:10 56:12 59:23,24 60:18,19 68:22 69:25 ALDER 2:3 17:6 35:4 44:22 69:16 71:16 allow 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BEFORE THE STATE OF UTAH
DEPARTMENT OF NATURAL RESOURCES

ORIGINAL

In the matter of:)
)
COVOL ENGINEERED FUELS) Deposition of:
)
) MICHAEL GIPSON
)

October 6, 2006, 1:02 p.m.

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Reported by Carlton Way, CSR/RPR
in and for the State of Utah

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1 P R O C E E D I N G S

2 (October 6, 2006, 1:02 p.m.)

3 MIKE GIPSON

4 called as a witness by the Plaintiff, having
5 been duly sworn, was examined and
6 testified as follows:

7 EXAMINATION

8 BY MS. BEARD:

9 Q. Okay. Just before we get started, I
10 guess, the purpose of the deposition is really just to
11 find out why you are listed as a witness and what you
12 might know with regard to this matter.

13 So, hopefully, if I ask questions that you
14 kind of wonder why I'm asking that question, just know
15 that I'm trying to figure out what it is that you know
16 and what it is, how it's relevant to the case, okay?

17 A. Okay.

18 Q. And have you ever been deposed before?

19 A. Yes.

20 Q. So, you know that all answers should be
21 verbal?

22 A. Yes.

23 Q. Speak clearly. And if I ask a question
24 that's confusing or it's too quiet, let me know?

25 A. Okay.

1 Q. Would you state your name and your
2 address, home address?

3 A. Okay. My name is Michael Gipson, 4723
4 North Highway 6, Helper, Utah.

5 Q. And where did you grow up?

6 A. Actually, I grew up in Tennessee.

7 Q. Okay.

8 A. Yes.

9 Q. And when did you come to Utah?

10 A. I moved to Utah in 1993.

11 Q. And why?

12 A. Coal business.

13 Q. Doing?

14 A. I actually was a mine manager for an
15 Eastern coal company.

16 Q. Which company?

17 A. It was head -- or White Oak.

18 Q. And you worked there for how long?

19 A. Actually, I worked for White Oak in Utah
20 from '93 to '96.

21 Q. Okay. And it was a coal company, so they
22 were mining?

23 A. Coal, yes.

24 Q. And you were the --

25 A. Mine Manager.

1 Q. Mine Manager?

2 A. Uh-huh.

3 Q. Okay. So '96. So after '96, where did
4 you work?

5 A. I actually went to the Horizon Mine which
6 was also owned by the Eastern coal people.

7 Q. And you were the --

8 A. Mine Manager there also.

9 Q. From '96?

10 A. Until '98.

11 Q. And then after that?

12 A. I went to work for Covol Technology.

13 Q. Okay. And that's located at?

14 A. That's located in Wellington. It was
15 their wash plant on Farnum Road.

16 Q. They sold that, correct?

17 A. That's correct.

18 Q. To DTE?

19 A. No, no. We are talking about two
20 different facilities.

21 Q. Okay.

22 A. The wash plant was on Farnum Road. That
23 was a facility that they built after they built the
24 synfuel plant.

25 Q. What did they do there?

1 A. We actually removed pond fines to clean
2 them through a wet process.

3 Q. Pond fines?

4 A. Yes.

5 Q. Which are?

6 A. Coal pond fines.

7 Q. Okay. And then you worked there until?

8 A. I worked there until '99, and then I moved
9 to Covol's synfuel plant.

10 Q. Okay. So you worked at the synfuel plant
11 until?

12 A. Actually, I worked at the synfuel plant a
13 couple of times; stayed with Covol until June of 2000
14 and then moved onto a different job.

15 Q. Okay.

16 A. Then I came back to Covol in May or June
17 of 2001, something like that.

18 Q. Covol at the synfuel plant?

19 A. Yes.

20 Q. In 2001?

21 A. Yes.

22 Q. And stayed there until?

23 A. I stayed there until -- employed by Covol
24 until December of 2003.

25 Q. Uh-huh.

1 A. And then January 1 of 2004, I went to work
2 for DTE which owned the plant, actually kept the same
3 plant, just moved to a different company.

4 Q. Okay. And then?

5 A. And then in August of '05, I came back to
6 work for Covol and engineered fuels.

7 Q. And what did you do, you said you took
8 some time off from Covol around 2000 --

9 A. Yes.

10 Q. -- what did you do?

11 A. I went to work for General Resources.
12 They were a company that were looking -- were trying
13 to buy the wash plant from Covol, and so I worked for
14 those guys for I think it was like nine months,
15 something to that effect.

16 Q. Is the wash plant still operational?

17 A. It's not. It's gone.

18 Q. Okay. Before you came to Utah, you were
19 in Tennessee, you said?

20 A. Actually, before I came to Utah, I was in
21 Kentucky.

22 Q. Okay, doing?

23 A. I was a mine manager of nine underground
24 coal mines.

25 Q. Surface mines?

1 A. No surface. We did have some surface
2 facilities, but I didn't manage those.

3 Q. Okay. But they were not underground; is
4 that what you said?

5 A. No, I managed underground coal mines.

6 Q. I thought you said none.

7 A. My accent is different.

8 Q. Okay. Nine underground mines.

9 A. Yes

10 Q. How long did you hold that position?

11 A. Actually, I started working for KTK Mining
12 at that time in 1988.

13 Q. Okay.

14 A. Until I moved here in '93; still with
15 those guys until '98.

16 Q. And then after that -- so that was the
17 Eastern coal company that you were talking about?

18 A. Yes.

19 Q. And so let me ask you a little bit about
20 your education, and we will start going backwards?

21 A. Okay.

22 Q. Where did you receive your degree?

23 A. I do not have a degree. I have a high
24 school education.

25 Q. Did you go to college?

1 A. I did not.

2 Q. Did you work during high school?

3 A. Yes, grocery stores, nothing like that,
4 no, not coal.

5 Q. What was your first job after high school?

6 A. Actually, my first job after high school
7 was with a foundry. I worked in the steel part of the
8 foundry.

9 Q. And when did you get your first
10 coal-related job?

11 A. In 1975.

12 Q. And what was that?

13 A. That was with AT Massey Coal Company.
14 That was in Jasper, Tennessee.

15 Q. Okay. And you were doing?

16 A. Actually, I was a laborer, started out on
17 the graveyard for a laborer for them.

18 Q. How long were you there?

19 A. I was there from '75 until '86.

20 Q. And then where?

21 A. Then I went to General Portland Cement
22 Company out of Chattanooga, Tennessee.

23 Q. For how long?

24 A. Was there from '86 to '88 when I first
25 moved to Kentucky.

1 Q. Okay. And then from there?

2 A. That's where I was with KTK Mining.

3 Q. All right. Good.

4 So you've lived in Price for about
5 12 years, is that correct, the Price Area?

6 A. Yes.

7 Q. You are familiar with -- I mean, you are
8 part of the mining community down there which is a
9 huge part of that community, so you probably know lots
10 of people in that area and lots of people in the
11 community; is that correct?

12 A. Yes.

13 Q. Did you -- in preparation for this
14 deposition, did you rely upon any documents or look at
15 any documents?

16 A. No.

17 Q. Did you have any conversations about this
18 deposition or about this case in general with anybody
19 besides your attorney?

20 A. No.

21 Q. You haven't talked to Keith or other
22 people at Headwaters about --

23 A. About the deposition today? No.

24 Q. And about the case in general?

25 A. No.

1 Q. Okay. So other than the meetings that
2 we've had and that you've attended, you really
3 haven't --

4 (Discussion off the Record.)

5 MS. BEARD: So, other than those meetings
6 that you've attended with the Division and those
7 meetings between you and the attorneys, then you
8 haven't really had any other meetings or been a part
9 of other discussions regarding this case?

10 A. No.

11 Q. Okay. Did you bring any papers or notes
12 or documents today with you?

13 A. I did not, no.

14 Q. Okay. And you haven't produced any
15 document or memorandum or anything with regard to this
16 case?

17 A. No.

18 Q. Okay. I want to talk a little bit about
19 what you do as the Plant Manager at Covol.

20 So can you just describe your basic job
21 description, what you do?

22 A. My job description is -- first, is to the
23 health and safety of the employees there.

24 Q. Okay.

25 A. And I'm responsible for the operation of

1 the plant; production, cost, that sort of things.

2 Q. Okay. So tell me a little bit about like
3 a day-to-day, what do you do every day? You get to
4 work --

5 A. Well, I get to work, and we have a
6 schedule of what product we are going to run that day;
7 you know, do some testing. We are always doing
8 testing and stuff with this facility right now.

9 Q. Okay.

10 A. Basically what coals will run or what
11 coals are coming in or going out, to that effect.

12 Q. And product, you mean --

13 A. Coal.

14 Q. -- coal?

15 The different coal from --

16 A. Different sites, yes.

17 Q. Okay. And so you come in, you decide, you
18 know, which product you are going to run. And then
19 what?

20 A. Well, when we decide what we are going to
21 run -- we usually know prior to that. And we operate
22 the plant and just, you know, go through our steps.
23 And, like I said, do different tests, and stuff, to
24 try to utilize and make the plant the best efficiency
25 that we can.

1 Q. And do you actually conduct the tests?

2 A. I have. I have helped with that, yes.

3 Q. But, generally --

4 A. Actually, I have a plant supervisor
5 that -- that's over, actually, the men and stuff.

6 Q. Okay. How many employees are there?

7 A. There's a total -- the total employees
8 there, counting myself and the office manager, seven
9 of us.

10 Q. Okay. So you probably have an intimate
11 knowledge of what goes on?

12 A. I do.

13 Q. As --

14 Okay. Are you involved in contacting with
15 parties? Do you set up contacts with the people you
16 get coal from or you contract with, are you that
17 person?

18 A. I have gotten names and stuff like that.
19 But, as far as setting up any contracts or doing
20 anything like that, no, I haven't done that.

21 Q. Okay. But you are aware of the contracts
22 that Covol is involved with?

23 A. Some, yes.

24 Q. So, you know when -- if you are running
25 coal through your process, you know this coal belongs

1 to this person or this party and this coal belongs to
2 this party?

3 A. That's correct, yes.

4 Q. And do you keep track of that from the
5 moment the coal comes onto the site to the moment the
6 coal leaves the site?

7 A. I do.

8 Q. Okay. Before I get into anymore stuff
9 substantially, I want to ask you: Do you know what
10 this action is regarding?

11 A. This --

12 Q. Yes. Why I'm deposing you and for the
13 purpose of the Board hearing that's coming up in
14 January?

15 A. Yes. Yes and no.

16 Q. Uh-huh?

17 A. I mean, I know parts, that it's over the
18 Division coming in to regulate Covol, yes.

19 Q. Okay. And can you tell me how or why you
20 think that your testimony -- how you think it fits
21 into the overall picture?

22 A. Well, you know, I am responsible for the
23 site.

24 Q. Uh-huh?

25 A. My testimony, I think, as an employee of

1 Covol, Headwaters, that we do a really good job and we
2 have done a good job and we are going to continue to
3 do a good job.

4 Q. A good job at?

5 A. As to operating the plant, taking care of
6 things, running a safe operation, safe and clean
7 operation.

8 Q. Uh-huh.

9 Okay. I am going to pull out -- because I
10 wanted to know exactly what happens on your site, so
11 I'm going to pull out a site plan that you guys gave
12 us three years ago, maybe.

13 So I think that is a big picture right
14 there.

15 A. Yes.

16 Q. And this is kind of a more detailed
17 picture of what goes on at the various point --

18 MR. GALLI: Excuse me, Counsel, are we
19 going to mark those as exhibits?

20 MS. BEARD: Yes, I think we should mark
21 these as exhibits.

22 MR. GALLI: Do you have copies for Witness
23 and Counsel?

24 MS. BEARD: No, I don't have copies. We
25 can make copies or you can have these.

1 MR. GALLI: What we'd typically do is
2 leave a copy with the Court Reporter to take and then
3 the Witness and Counsel will both have copies during
4 the examination. Do you want to take a break and get
5 copies?

6 MS. BEARD: Sure.

7 (Recess.)

8 (Deposition Exhibit No. 1 & 2 marked).

9 MS. BEARD: All right, the site plan.

10 Okay. I want you to walk me through the
11 process, and maybe to help me focus on what we are
12 talking about, explain where you are -- you know, I
13 want to know exactly what happens on the site. When
14 coal comes in, what happens to it then, how long it
15 sits on the site before it's cleaned, how much of it
16 is cleaned? Do you know what happens after it's
17 cleaned? Maybe you can walk me through the process in
18 as much detail as you can.

19 (Discussion off the Record.)

20 MS. BEARD: Is it still the same? Is this
21 site plan still applicable or are things different?

22 A. Yes. There is only one thing different
23 that I've seen so far, is this truck load-out hopper,
24 it's in a different area.

25 Q. Okay. And where is it?

1 A. But this is -- actually, this road comes
2 in like this off the highway, okay, and the truck
3 loader hopper is right here.

4 Q. Okay.

5 A. On that side.

6 MR. ALDER: It would probably be good --
7 excuse me for interrupting -- on the exhibit over
8 there to indicate where you are pointing and maybe
9 make a mark on the exhibit, so we -- when you say
10 load-out hopper, it will be on the original.

11 THE WITNESS: Okay. (Marking).

12 MS. BEARD: Is there a new road?

13 A. It is not. This map is not exactly
14 correct.

15 Q. Okay.

16 A. So the road -- that's exactly where the
17 road is.

18 Q. Okay.

19 A. Yes.

20 Q. Okay.

21 A. To tell you a little bit on Exhibit 2,
22 trucks come in off the highway from either direction,
23 come in and they turn left going to this 110-foot
24 truck scale.

25 Q. Okay.

1 A. The trucks are weighed, and then they come
2 to our truck dumping facility. It is a truck grizzly.
3 It has two conveyors under it, C1 conveyor and RS1
4 conveyor; RS1 is a radial stacker.

5 Q. Okay.

6 A. Okay. The material is dropped into the
7 grizzly and to wherever --

8 Q. What is the grizzly?

9 A. Okay. It is a piece of equipment that
10 when the trucks dump on it, it breaks up the coal if
11 it's stuck together, or something, for it to fall
12 through, basically. It's a feed hopper, basically, to
13 a conveyor.

14 Q. Okay.

15 A. Feeds out onto the C1 conveyor under this
16 grizzly, and then dumps onto the RS1 conveyor which is
17 a radial stacker.

18 Q. Okay.

19 A. These are just different locations for
20 stockpiles, wherever -- different materials come, if
21 we want to keep them segregated, which we do, we'll
22 move the radial stacker to that location.

23 Q. So do you have more than three piles?

24 A. No, we do not. We haven't had more than
25 three piles at one time. We have had that stacker in

1 different locations, but we haven't had three
2 different piles at one time.

3 Q. Let's say you had 15 contracts, you guys
4 are just booming, would you have 15 separate different
5 piles?

6 A. We'd have to have some way to segregate
7 it, yes.

8 Q. Okay.

9 A. Okay. From that point, you can see -- on
10 Exhibit 2, you can see the loader. The coal is picked
11 up, whatever coal we are processing, put into this
12 feed hopper, okay.

13 Q. Okay?

14 A. This feed hopper then dumps onto C3
15 conveyor which feeds up to a separating screen and a
16 crusher.

17 Q. Okay.

18 A. That's where the material is sized.

19 Q. Uh-huh.

20 A. From that point, it dumps onto C4
21 conveyor, C5 conveyor. C4 conveyor is a fines
22 conveyor. C5 is a course.

23 Q. Okay.

24 A. So this material then is conveyed up to
25 three air jigs, okay. Depending on the gradation size

1 of the coal, whether it be course or fines or both,
2 depending on what we have the most of, is how the jigs
3 are properly set up.

4 Q. Okay.

5 A. It could be three course jigs, three fine
6 jigs or multiple changes. It can be one, two fines
7 and one course.

8 Q. Are the jigs -- can you recalibrate like a
9 specific jig to make it fine or course?

10 A. That's correct. There's adjustments that
11 you can make on that to actually do that, yes.

12 Q. Okay.

13 A. From that point, C7 conveyor is a clean
14 product. C6 is a by-product conveyor.

15 Okay. The clean product is then worked
16 out onto C7 conveyor. When I say worked out, the jigs
17 have a process where they push the lighter material to
18 the top and the heavy's stay on the bottom. The
19 heavy's is the by-product.

20 Q. Okay.

21 A. The lighter materials is the clean product
22 which goes over the top which dumps onto C7. The
23 by-product is the heavier, drops onto C6.

24 Q. Okay.

25 A. At this point in time, it goes out to RS2

1 conveyor which makes --

2 Q. The cleaned product?

3 A. Yes, the cleaned product, I am sorry.

4 Clean product is conveyed out to RS2
5 conveyor, radial stacker, which will make these
6 different stockpiles.

7 The by-product --

8 Q. And these are different?

9 A. Could be, it could be.

10 Q. The same way --

11 A. That's correct, yes. Could be, yes.

12 Q. Okay.

13 A. Then the by-product is done the same way:

14 It's dumped onto a radial stacker that can be moved
15 to --

16 Q. And you separate the by-product also
17 according to the contract?

18 A. Well, the by-product is -- yes. The
19 by-product is set for whatever the specs call on the
20 product that we are running. What I mean by specs, if
21 we have a product that's 20-percent ash contract and
22 we wanted to take it down to 15 percent, the
23 by-product would go to C6 which is higher ash product;
24 would go to the C6 conveyor.

25 Q. Okay. It would go to the C6, it would

1 come out here --

2 A. Yes.

3 Q. -- and be dumped into a pile?

4 A. Yes.

5 Q. And do you separate these piles also --

6 A. Yes, they are segregated, they are.

7 Q. -- according to the contract?

8 A. Yes. To the customer, yes.

9 Q. To the customer?

10 A. Right.

11 Q. Okay. So the clean product is separated
12 also by customer?

13 A. That's correct. After that process is
14 done, the clean product at this point in time is
15 loaded out through that hopper.

16 Q. Okay.

17 A. When the material is loaded out, the
18 truck -- an empty truck would come in. It is light
19 weight. Come around the loop. Come and get loaded,
20 pull back onto the scale and get his heavy weight.

21 At that point in time, scale would give
22 him a ticket, a document, stating whatever mine
23 code -- when I say mine code. That's how we determine
24 where the coal will go and what customer it is and
25 stuff like that.

1 Q. Okay. The difference between the weight,
2 is that how you determine --

3 A. That's correct.

4 Q. It's the difference between the two
5 weights, that's how you determine based on the
6 contract how much coal you've cleaned or how much you
7 are going to get paid or how much you are giving them,
8 is that correct?

9 A. That's incorrect.

10 Q. Oh.

11 A. The weights -- you are correct as far as
12 determining the weight on the truck, but that's not
13 how we get paid.

14 Q. Okay?

15 A. We get paid off a C3 conveyor belt scale
16 which we get paid off a raw ton that we process
17 through the plant.

18 Q. What does that mean?

19 A. Okay. Our agreements that we have that I
20 know of, the ones that we have process, we get paid X
21 amount of dollars per raw ton to process the material.

22 Q. Okay?

23 A. The finished product is actually for the
24 customer to determine where he wants it to go. And
25 the truck scale gives him his weights, of what -- the

1 differences of what has been brought out and what
2 we've cleaned.

3 Q. So it doesn't have anything to do with --
4 it doesn't tell you how much has been cleaned. It
5 doesn't tell you how much has been removed. It is
6 just for their purposes so they can --

7 A. That's right. The scale -- you know, I
8 guess I ought to back up a little bit more: On this
9 Exhibit 2, I also have a series of belt scales. C5
10 conveyor has a belt scale on it.

11 Q. Where's C5?

12 A. C5 is this conveyor right here.

13 Q. Okay.

14 A. Okay. That is typically a course jig belt
15 conveyor just about all the time.

16 Q. Okay.

17 A. So what that does: This scale goes
18 against this scale and tells us how many fines we have
19 on there. So we know exactly how many tons we have
20 going on each of those conveyors at all times.

21 Q. Okay.

22 A. Then -- I mean, it is the way it's set up
23 in the controls, and stuff, it just does the
24 calculations.

25 Q. Uh-huh.

1 A. On the finished product on C7, we also
2 have a belt scale on it.

3 Q. Right here?

4 A. Yes.

5 Q. Do you have a scale on the --

6 A. We do not. On the by-product, we do not.

7 It's also set up -- C7 and C6 conveyors
8 are set up in our PLC controls to determine the
9 by-products that's been -- or being produced also.

10 Q. Okay.

11 A. Just a simple subtraction or addition to
12 the feed tons.

13 Q. Once you put the coal through the air jigs
14 and the clean coal sits here, how long does it sit
15 here before it goes to the customer?

16 A. That depends. Sometimes I've had it set
17 for a few days, sometimes the day after. It depends
18 on the customer, when they get the trucks in to get
19 them shipped out.

20 Q. Okay. So you are waiting for the customer
21 to come in and pick up?

22 A. That's correct.

23 Q. Have you ever waited more than a week?

24 A. Yes, we have.

25 Q. More than a month?

1 A. Not that I can recall, no. They may, but
2 I don't think so.

3 Q. It's fairly quick, then?

4 A. Yes, it is.

5 Q. Okay. Okay. And the waste --

6 A. The by-product?

7 Q. Yes. How long does it sit there and what
8 happens to it?

9 A. Presently, some of the by-product is being
10 shipped to our customer's customer. So, in other
11 words, they will take the clean product and ship it to
12 wherever they want. And then they also have the
13 option to move it to another customer, the by-product.

14 Q. Okay. So will you give me an example of
15 one of your customers?

16 A. One of our customers is Commonwealth.

17 Q. Uh-huh?

18 A. Okay. They take the finished product, the
19 C7 conveyor product, and they ship it to -- we ship it
20 back over to Savage for them.

21 Q. Okay. So you take the -- Commonwealth,
22 you take a finished product --

23 A. Yes.

24 Q. -- and you ship it back to Savage?

25 A. Yes.

1 Q. And you are shipping that, you are
2 actually --

3 A. I'm not. They set up -- we load it. But
4 it's a customer's responsibility to set up the
5 trucking, determine where it goes. They tell me where
6 they want me to send it.

7 Q. Okay?

8 A. And we set up different mine codes to
9 determine the destination, what trucking company's
10 hauling it, the sort of things like that.

11 Q. And currently then Commonwealth is in a
12 contract or some sort of arrangement with Savage?

13 A. To my knowledge, yes. That's where the
14 material has been going.

15 Q. So Commonwealth is -- all of the material
16 from Commonwealth?

17 A. No. No, they -- they have used another
18 trucking company to send some of the by-product to
19 another location.

20 Q. Okay.

21 A. And that location would be Sunnyside
22 Co-Gen.

23 Q. Okay. So Commonwealth is sending to
24 Savage and to Sunnyside and this is...

25 Okay, let me get this straight:

1 Commonwealth is sending their finished, the clean
2 coal, to Savage?

3 A. That's correct.

4 Q. And the by-product also to Savage?

5 A. Some.

6 Q. Some by-product?

7 A. Some there, yes.

8 Q. And they are also doing the same thing,
9 sending both finished product and by-product to
10 Sunnyside?

11 A. They are not; just the by-product to
12 Sunnyside at this time.

13 Q. Okay. That definitely solves a big
14 mystery. Okay. That's good to know.

15 So how long does the by-product piles
16 typically sit there?

17 A. Well, we still have some on site right
18 now. The by-product market, which we are working on
19 and the customers, too, so you just have to find the
20 right connection for that type of material, the right
21 sale, I guess, for that material.

22 Q. Okay. But do you find that connection?

23 A. I don't. I don't.

24 Q. Does somebody at Covol find that
25 connection?

1 MR. GALLI: Objection; vagueness.

2 THE WITNESS: I don't really understand
3 the question. I mean --

4 MR. GALLI: Do you want to restate the
5 question?

6 THE WITNESS: Yes, do that.

7 MS. BEARD: Okay. So the contracting
8 party is coming and he's dumping coal, and you are
9 cleaning the coal. And then that same party is either
10 having some other party come in and get the coal or is
11 coming and getting the coal themselves; is that
12 correct? The cleaned coal, I'm sorry.

13 To the best of your knowledge?

14 A. Okay. Let me see, I don't know if I am
15 understanding where you are going, but let me try to
16 explain it, again, the way I see it.

17 Q. Okay?

18 A. Okay, the customer, Commonwealth, brings
19 their material to us. We weigh it. We have a mine
20 code set for it. We dump it. We process it.

21 The finished product goes into our finish
22 pile.

23 Q. Okay.

24 A. Trucks come to get it. We weigh it. It's
25 out. Okay.

1 Now, the by-product, also Commonwealth has
2 set that up to take it back to Savage or to take it to
3 Sunnyside.

4 Q. Okay. And has Commonwealth done that?
5 Have they taken the waste product or the by-product
6 back?

7 A. They have.

8 Q. Okay.

9 A. They have taken that back.

10 What they do with it, I don't know. But
11 they have taken it back.

12 Q. Have they taken all of it back?

13 A. No, they have not. They have an
14 agreement -- maybe I shouldn't -- I don't know what
15 they have with Sunnyside. But I do know that they
16 have taken some of the by-product. And I got an
17 e-mail that they are going to start shipping more even
18 starting next week to Sunnyside of the by-product.

19 Q. Okay. So they haven't taken it all back.

20 So how long has it been sitting there?

21 A. Some has been sitting there since April.

22 Q. Since April?

23 A. Yes, that's -- February/April time frame
24 -- I mean, March/April time frame.

25 Q. Okay. And are you aware of the date or

1 the time frame that it's expected to leave the site?

2 A. No.

3 Q. Okay. You are waiting for Sunnyside -- or
4 Commonwealth to set that up?

5 A. Yes.

6 Q. Okay.

7 A. Yes.

8 Q. Does Commonwealth own the refuse or the --

9 A. They do.

10 MR. GALLI: I am going to interpose an
11 objection to the continued use of terms like waste and
12 refuse when the witness characterizes it as
13 by-product.

14 MS. BEARD: I know. I am sorry. I
15 realize that we've all been talking about different
16 terms, and I am trying to click it over in my mind.
17 But I understand that waste is a technical term so is
18 refuse.

19 And you are talking about by-product?

20 A. Yes.

21 Q. Okay. So let me -- so there -- some of
22 Commonwealth by-product has been sitting there since
23 about March or April?

24 A. Yes.

25 Q. Okay. With other parties and contracts

1 that you have, is there another by-product pile that's
2 also been sitting there for quite awhile, more than a
3 month?

4 A. Yes.

5 Q. And whose is that?

6 A. That is Pacificorp's.

7 Q. Okay. So, when did they first send you
8 their coal?

9 A. This was sent prior to me. I don't know
10 exactly the dates on that. Keith Thompson would know
11 that. I don't know. But it was there prior to me
12 coming to work there.

13 Q. Okay. So you -- when did you first run
14 Pacificorp's coal through your process?

15 A. Started processing it in January of this
16 year.

17 Q. Okay. Have they removed all of their
18 cleaned product?

19 A. They have.

20 Q. And they haven't removed all of their
21 by-product?

22 A. They have not.

23 Q. Have they removed some?

24 A. No.

25 MR. GALLI: Ms. Beard, if I may just

1 interject: There may be just a little bit of
2 confusion and talking past each other on -- I'm not
3 objecting, I'm just pointing out an area that you may
4 want to seek clarification on. I think there's an
5 assumption that once by-product is created, that it
6 sits there and is never reprocessed.

7 MS. BEARD: Uh-huh.

8 MR. GALLI: And you may want to seek some
9 clarification on that and have the witness...

10 MS. BEARD: Actually, I did want to ask
11 about that. And maybe this would be a good time to do
12 that.

13 I wanted to ask a little bit more about
14 your cleaning process.

15 A. Okay.

16 Q. So you have a pile from Commonwealth, and
17 you stick -- does the whole pile go through the
18 cleaning process?

19 A. It does.

20 Q. The whole --

21 A. It does.

22 Q. Okay. And you said that you could
23 configure this cleaning -- these air jigs depending
24 on --

25 A. Sizing.

1 Q. -- sizing, okay.

2 Can you configure them depending upon the
3 characteristics of the raw material?

4 A. The process has equipment designed in it
5 to -- as the ash content goes higher -- this whole
6 process is set up on a density-type situation. I
7 mean, rock is heavier than coal.

8 So, automatically, yes, this thing should
9 set up to clean the coal to wherever we set it, to
10 what specs that the customer wants.

11 In other words, if you are telling me --
12 you give me some guidelines, what you would like to
13 see the product to be, that is what my desire is, to
14 set up the equipment to do that.

15 Q. So, when you configure the equipment, do
16 you take into consideration the BTU of the end product
17 that your client wants?

18 A. Sure, that's in with the assets. Yes, it
19 is.

20 Q. Okay. And you can change these air jigs
21 so you can make the cleaned product a higher BTU?

22 A. That's correct.

23 Q. That's really interesting.

24 Okay. Can you also change this -- the air
25 jig so you can get a lower percentage of mercury or

1 ash?

2 A. The --

3 MR. GALLI: Objection; foundation.

4 MR. ALDER: Well, we are not going to get
5 into the specifics of every kind of objection. I
6 mean, this is a deposition, and we are --

7 MR. GALLI: That was not a speaking
8 objection. We don't know how his testimony will be
9 used. In fact, we are preserving our rights to file a
10 dispositive motion. I object on foundation based on
11 an assumption that there's a presence of mercury.

12 MS. BEARD: Okay.

13 MR. GALLI: So I'm perfectly within my
14 right to offer that objection.

15 MS. BEARD: I only said mercury because in
16 the contracts you have lists of BTU, mercury, sulfur,
17 ash; and so my assumption is that there is mercury.
18 But maybe there's not mercury in the coal.

19 Is there mercury in the coal?

20 A. To tell you the truth, I don't know. I
21 don't know where the mercury is at.

22 Q. Okay.

23 A. I guess that's the best way for me to
24 answer because I don't know.

25 Q. Okay. But if there were mercury in the

1 raw product, could you configure these air jigs to
2 make the end product contain lesser or greater mercury
3 depending on what your customer wants?

4 A. Okay. Let me see if I understand the
5 question: You are asking me: Can I set the machine
6 up to reduce mercury?

7 Q. Uh-huh.

8 A. No.

9 Q. Okay.

10 A. What my goals are is to set the machine up
11 to reduce the ash. And so I don't know what contents
12 or levels of mercury is in that.

13 Q. Okay.

14 A. So what the deal is on my standpoint is
15 the density of the rock and the coal, basically.

16 So that's how we control the -- to reduce
17 or lower the ash.

18 Q. Okay. So it's really more about the
19 weight and the density of the coal, and that's how you
20 sort of configure --

21 A. That's correct.

22 Sorry.

23 Q. Okay. Okay. I'm sorry, I just --

24 A. Sure.

25 Q. -- don't really understand this very well,

1 so I'm trying to get a grasp.

2 Another question I had was: In your
3 contracts and also on here, it has a blending hopper.

4 If you clean all this pile here, why do
5 you blend the coal?

6 A. Okay, that's set it up for customized
7 coal.

8 Q. Okay.

9 A. If a customer has a low ash product, okay,
10 then his by-product is a higher ash product.

11 Typically, Utah coal is a 12 percent ash
12 product spec. So, if a customer has an eight percent
13 product that we have produced for them and they've got
14 an 18 percent by-product, okay, we could blend that to
15 get it into that spec range. So that's what that is
16 set up for.

17 Q. So you could take some of this --

18 A. That's correct.

19 Q. -- the cleaned coal, and if it's, you
20 know, ridiculously low and, you know, the client
21 doesn't need it that low, then you can bring some of
22 this by-product back in, blend some of that in to
23 bring it up to the specifications?

24 A. That's correct, yes.

25 Q. Okay. Is your air jig -- can you actually

1 bring the ash content to zero?

2 A. I wish I could tell you yes, but, no, we
3 can't.

4 Q. Okay. Another thing I wanted to know is:
5 Is it more expensive to make the ash content of the
6 coal lower or does it matter? When you reconfigure
7 this air jig, does it really affect the cost?

8 A. No.

9 Q. Okay.

10 A. No, it doesn't.

11 Q. Okay. When you decide -- when you are
12 bringing this coal in and you are putting it through
13 the air jig, how do you decide how to configure the
14 air jig? Do you decide that based upon the content or
15 the characteristics of the coal before it goes in?

16 A. We try to do that, yes. We try to have
17 the sizing to where we know about what the sizing of
18 the material is as to what we can set the jigs up to
19 affect that, yes.

20 Q. Okay. You set -- and back to the point
21 that Craig made -- Mr. Galli made: The by-product
22 pile, do you ever send it back through the process?

23 A. We have.

24 Q. You have?

25 A. We have.

1 Q. And can you tell me about that? Have you
2 done it more than once?

3 A. I have.

4 Q. And can you tell me why you do that and...

5 A. Okay. The reasoning for that is, one, is
6 additional testing; two, and foremost, is if we can
7 recover some more -- some usable product, coal
8 products, cleaner products out of that; so we have
9 done that, yes.

10 Q. Okay. And then the cleaned product then
11 gets put back into the same pile?

12 A. Well, it's a separate pile. It's
13 segregated. We would never put it back -- a rerun
14 product back onto the customer's pile unless they
15 directed us to do that.

16 Q. Even if it met the same specifications?

17 A. If it met the same specifications. But,
18 again, if the customer directed us to do that, we are
19 having to rerun it through the whole system again to
20 do that.

21 Q. Okay. So, if you rerun it through the
22 system and you can separate some product from the
23 by-product and you put this extra product in a
24 separate pile, what happens to that?

25 A. It would be sold as usable product.

1 Q. To?

2 A. Just different customers, you know. There
3 are customers -- the product -- what I guess I'm
4 trying to say is that the product could be used and
5 sold, yes.

6 Q. You said you've done this before?

7 A. We have.

8 Q. And so do you have a pile somewhere of
9 product that's been re-cleaned then on site right now?

10 A. I do.

11 Q. And is -- is it under contract to be sold?

12 A. Not at this point.

13 Q. So it doesn't belong to the contracting or
14 the customer that it originally came from?

15 A. Let me answer that the best way I know: I
16 know bits and pieces of the contracts, how things are
17 set --

18 Q. Uh-huh?

19 A. -- we have the option -- and Keith
20 Thompson would be the better to relay that to. But we
21 actually have the option to try to sell that reusable
22 product.

23 Q. Uh-huh. To anybody?

24 A. That's correct. To my knowledge. Now,
25 that's my knowledge. But Keith Thompson, again, would

1 be the best person to ask that question.

2 Q. Okay.

3 So --

4 MR. GALLI: Just to be clear:

5 To sell as clean coal product?

6 THE WITNESS: That's correct, yes.

7 MS. BEARD: Sale as --

8 A. A clean coal product.

9 Q. And what would be -- what could you use
10 that in?

11 A. You mean where would it -- the end use
12 would be?

13 Q. Yes.

14 A. Power plants, cement plants. It's just
15 the same as a regular carbon product.

16 Q. Could you take this pile and actually burn
17 it in a power plant without blending it with anything?

18 A. Sure.

19 Q. So it's that clean?

20 A. Yes.

21 Q. Okay. So you take one of these by-product
22 piles, you put it through the system and you get
23 another two piles, one clean coal product, another
24 by-product.

25 A. That's correct.

1 Q. Does this by-product pile then get placed
2 in a different pile as well?

3 A. Yes.

4 Q. Okay.

5 A. It gets stored at a different location,
6 correct.

7 Q. And what happens to that pile?

8 A. That could actually be reprocessed
9 again --

10 Q. Okay.

11 A. -- to try to reclaim some more carbon out
12 of it, that's correct.

13 Q. Okay.

14 A. Also we are looking to -- for markets for
15 that type of material.

16 Q. Okay. But currently it belongs to you, to
17 Covol?

18 A. Again, you are going to have to -- Keith
19 Thompson. I can't answer that. I don't really know.

20 Q. But, as far as you know, no customer has
21 come in to claim that double by-product if I can call
22 it that?

23 A. No.

24 Q. Okay. How many tons of this double
25 by-product do you have on site?

1 A. Estimated guess, 3 -- 3,000; 3 to 4,000
2 ton.

3 Q. Okay. I'm going to ask you a few
4 questions about the characteristics of the products,
5 both the raw, the by-product and the clean product:

6 So do you test the product before -- when
7 your customer comes in and dumps it here, do you test
8 the coal at that point for the characteristics of it,
9 the BTU, if it has ash, mercury, those type of things?

10 A. On the feed process -- on the feed coal,
11 if the customer requests that we test the material
12 prior to running it, we do.

13 Q. Uh-huh?

14 A. Okay.

15 We have done testing as far as gradation
16 size and stuff prior to that.

17 Q. Gradation size just to see --

18 A. See the sizing of the coal to try to
19 determine how to set the jigs up to process it.

20 Q. Okay.

21 A. We also have an auto sampler on the feed
22 conveyor which collects samples off that. They assume
23 standards each time we process; feed and finish to
24 that coal.

25 Q. And the feed sampler?

1 A. Is on C3 conveyor.

2 Q. I am sorry.

3 A. This conveyor right here (Indicating).

4 Q. Okay. Okay.

5 A. You have auto sampler on C7, also, the
6 finished product.

7 Q. Okay. So there's a sample taken right
8 before it's screened, and then a sample taken of the
9 cleaned product right before it is put into its piles?

10 A. That's correct.

11 Q. Do you also sample the by-product before
12 it's put into its piles?

13 A. We do.

14 Q. Uh-huh. And can you tell me -- let's take
15 the latest sample that you took of one of these
16 by-products piles. What were the characteristics if
17 you can remember?

18 A. 40 percent -- 40 percent ash, around 6 or
19 7 percent moisture, BTU is probably in the 9 to 10,000
20 range, sulfur, I don't -- it's probably a .5, .6.
21 That's a pretty good guess I would say.

22 MR. ALDER: That's pretty good.

23 MS. BEARD: Yes, that's pretty good.

24 Okay. So do you -- in these by-product
25 piles, do you keep track of, you know, the

1 characteristics of it? You have it probably on some
2 document --

3 A. Yes.

4 Q. -- somewhere?

5 A. Yes, we do.

6 Q. Can I get a copy of that, the various
7 tests references you have of the waste -- of the
8 by-product piles?

9 MR. GALLI: Why don't we talk about that
10 after so we know exactly what you are looking for?

11 MS. BEARD: Okay.

12 Can you tell me, on average, how many
13 pounds of by-product results from one ton of raw coal?

14 A. It depends. It depends on the initial
15 feed. But an average of some of the material we've
16 run was on -- a hundred ton would be eight to ten ton.

17 Q. Of by-product?

18 A. By-product, correct.

19 Q. So --

20 A. That's a cleaner product.

21 Q. So about eight percent?

22 A. Yes.

23 Q. Okay.

24 MS. BEARD: Can I take just a small break?

25 MR. GALLI: Absolutely, yes.

1 (Recess.)

2 MS. BEARD: Okay. Before I move on -- and
3 I don't have very many more questions, but I wanted to
4 ask you a few follow-up questions. And the first one
5 would be to mark the exhibit, if you would, and would
6 you mark the C3, C5, C7 belts on the exhibits?

7 A. So you want me to mark the belt scales
8 on --

9 Q. Yes, because we've referred to these by
10 number, and it would be helpful if they were marked on
11 the exhibit.

12 A. (Marking).

13 Q. We were just talking about the
14 characteristics of the by-products, and you -- I asked
15 you: What was the latest characterizes, the latest
16 pile that you cleaned from -- or of the by-product.
17 And I want to ask you: What characteristics do you
18 test for?

19 A. In my day-to-day samples, is that what you
20 are talking about?

21 Q. Yes.

22 A. What we test for is moisture --

23 Q. Uh-huh?

24 A. -- ash, sulfur, BTU, mercury.

25 Q. Okay. I'm wondering, pyrite, that's -- is

1 that taken into consideration or is that the same as
2 sulfur or --

3 A. I can't answer that. I don't know.

4 Q. Okay.

5 A. Again, like I said, Keith, he's got all
6 that data that you need for that stuff. But I don't
7 know the answer to that.

8 Q. Okay. And you just said your day-to-day
9 testing, do you have other tests besides the
10 day-to-day testing?

11 A. No.

12 Q. Okay.

13 A. No, it is just our everyday sampling
14 basically from our auto samplers.

15 Q. And the auto samplers, they are the same
16 samplers that sample the by-product, the clean product
17 and the pre-cleaned product?

18 A. No.

19 Q. Oh.

20 A. C3 and C7 has auto samplers on them --

21 Q. Uh-huh.

22 A. -- C6 is a hand sample, basically, a grab
23 sample.

24 Q. And C6 is the by-product?

25 A. By-product.

1 Q. Would you mark C6 on there as well?

2 A. (Marking).

3 Q. And it's a hand sample. So maybe you can
4 explain the difference between --

5 A. Okay. When I hand sample, it's the stop
6 belt sample, basically.

7 Q. Okay.

8 A. The belt is stopped, the person pulls a
9 sample off the belt at a designated time to try -- to
10 stay within the collected.

11 Q. Okay?

12 A. And it's collected and turned in with the
13 other samples daily.

14 Q. Okay. And they stop them -- what do you
15 mean to stay within the collected?

16 A. ASTM standards, you have a certain amount
17 of tons that you process, you've got to have certain
18 amount of increments of samples collected to stay
19 within those standards.

20 Q. So every 20 minutes or whatever the
21 increments are, something like that?

22 A. Yes.

23 Q. It's time increments?

24 A. Yes.

25 Q. Okay.

1 So the ASTM testing, it tests those
2 characteristics that you just named, the ash, mercury,
3 sulfur, that type of stuff, that's what the collected
4 require?

5 A. No. Collected -- what we sample, that's
6 what we are asking for, the lab to pull those samples
7 for us.

8 ASTM Standards is keeping us within the
9 amount of increments that we need to pull for the
10 samples, to collect per ton, basically.

11 In other words, if you are running a
12 hundred tons, you need to collect X amount of samples
13 for that time.

14 Q. That's what ASTM --

15 A. That's part of it, yes.

16 Q. It doesn't require certain
17 characteristics?

18 A. Not to my knowledge.

19 Q. Okay.

20 And not to beleaguer the by-product issue,
21 but I want you to tell me again: So there's two
22 different types of by-products: There's the
23 by-product that is -- that the customer comes in and
24 retrieves, or will retrieve, eventually, right?

25 A. (No Audible Response.)

1 Q. And there's a double by-product that the
2 customer -- Covol can sell the by-product, this double
3 by-product?

4 A. Okay. Again, I guess -- I better tell you
5 to talk to Keith about that.

6 Q. Uh-huh.

7 A. I guess that's probably the best way to do
8 that because I don't know for sure. I don't want to
9 say something that I don't know for sure about that.

10 Q. Okay.

11 A. Talk to Keith about that.

12 Q. But you are not aware of Covol or -- you
13 are not a part of Covol seeking buyers for either the
14 by-product or the double by-product?

15 A. Yes. Yes, I am -- I do try to help market
16 it, yes.

17 Q. But market what?

18 A. The by-product. Either by-product.

19 Q. Okay. So you do market the by-product
20 that comes from the first run-through?

21 A. That's correct.

22 Q. Okay. And who do you mark it to? What
23 does that mean, market?

24 A. Okay. Let me clarify that: When I say
25 market, I say help market. I haven't marketed any of

1 it.

2 Q. Okay.

3 A. Commonwealth, that they have, they have
4 removed some of the by-product.

5 Q. Okay. So how have you helped? Have you
6 helped Covol or have you helped Commonwealth?

7 A. Either/or. That's my job, is try to help
8 us or the customer to market their product.

9 Q. Okay. And by helping, what do you do to
10 help them market?

11 A. Contact -- contacts, people asking for the
12 quality, that type of thing.

13 Q. So you help -- have you helped
14 Commonwealth, then, market their by-product?

15 A. Yes, I would say I have.

16 Q. And what exactly did you do when you did
17 that?

18 A. Commonwealth has contacted Sunnyside
19 Co-Gen, the gentleman that's the Mine Manager -- or
20 the Plant Manager has come out to look at the product,
21 and stuff like that. And that's how I've helped, yes.

22 Q. Okay.

23 (Discussion off the Record.)

24 MS. BEARD: Can you explain to me -- so
25 this by-product, let's say some of it has returned to

1 the customer, some of it. Do you know -- you said
2 some of the by-product is returned to Sunnyside,
3 correct?

4 A. Correct.

5 Q. Do you know what Sunnyside does with the
6 by-product?

7 MR. GALLI: May I suggest to you that you
8 explain what a co-gen facility is?

9 THE WITNESS: Answer your first question:
10 I do know -- I have been told what they are doing with
11 it. I haven't seen it done. They are burning it in
12 their power plant.

13 Q. Okay.

14 A. Sunnyside Co-Gen is a high ash end user.
15 They typically 3,000 to 6,000 BTU material. So that
16 -- and that aspect, that's what Sunnyside is doing,
17 they are actually running it through their plant.

18 Q. Okay. So Sunnyside could potentially be
19 used --

20 A. Every bit of it.

21 Q. -- every bit of your by-product --

22 A. That's correct.

23 Q. -- in their co-gen?

24 MR. GALLI: Unfortunately, we have some
25 terminology that's confusing.

1 MS. BEARD: Yes, I've --

2 MR. GALLI: By-product is used on these
3 diagrams. They call this a by-product, but, in fact,
4 it's sold as a product as well. So just to help
5 clarify the record, which I think you've done now,
6 there is some confusion about terminology.

7 MS. BEARD: Yes. And I really -- like --
8 I really did, I wrote down by-product when you started
9 using it. That's the word that he's using. I'm
10 definitely --

11 MR. GALLI: Although some by-product is
12 product, so it's confusing.

13 MS. BEARD: Okay. We'll just refer to it
14 as by-product even though I understand that some of it
15 is being sold as a product.

16 MR. GALLI: Okay.

17 MS. BEARD: Okay. So besides selling it
18 to Sunnyside, what else could it be used for?

19 A. We have -- we are hoping that some of the
20 contractors, road builders, fill, whatever can be used
21 in that type of fill as far as using as fill products,
22 stuff like that.

23 Q. Okay.

24 A. As long as it meets their specifications.

25 Q. Have you contacted any of those people

1 that could use it in that way?

2 A. I have.

3 Q. And can they use it?

4 A. In the right situation, yes.

5 Q. What type of situation?

6 A. Well, I don't know. I mean, they are
7 telling me in the right situation they could use it.
8 I don't know what that is.

9 Q. So you have told them we have this, and
10 presumably they may call you and say: Oh, this is a
11 situation that we need that?

12 A. They have actually come and look at it, so
13 we have had people come look at it.

14 Q. But nobody has come in to buy it for that
15 purpose?

16 A. Not at this time, no.

17 Q. Okay.

18 Okay. I want to move on -- beyond the
19 site plan, and I want to ask you a little bit more
20 about the environmental permits and other permits that
21 Covol has.

22 Do you know about that -- those things?

23 A. The air quality, yes. Water storm permit,
24 yes.

25 Q. Okay. Do you know if there are other

1 environmental permits that Covol has?

2 A. Not to my knowledge.

3 Q. Okay. So there's the Air Quality and the
4 Storm Runoff Permit?

5 A. Yes.

6 Q. And do you have a NSHA Permit?

7 A. Yes.

8 Q. For the Air Quality Permit, did you help
9 prepare baseline data and other types of things like
10 that for that permit?

11 A. I did not.

12 Q. Do you know the kind of baseline data that
13 was gathered for that permit?

14 A. I don't.

15 Q. Do you know what the permit allows Covol
16 to do or what it permits you to do?

17 A. I do. After our construction is complete,
18 I know what the specs call for that on that, yes.

19 Q. Okay. So you have to ensure that the --
20 whatever particulate matter, whatever the Air Quality
21 Permit calls for, whatever is being released into the
22 air from your facility doesn't violate that permit?

23 A. That's correct.

24 Q. Okay. And what area does the permit
25 cover?

1 A. To my knowledge, it covers the whole --
2 the 30 acres that we have fenced in.

3 Q. Okay. When you stack the raw product, the
4 clean product and the by-product and they are in their
5 piles and they are -- presumably they are dry?

6 A. Yes.

7 Q. These piles are dry, so they are not wet.
8 When the wind comes up, does it ever pick
9 up the fines and take them -- you know, blows them
10 around in the air?

11 A. I'm sure it has, yes.

12 Q. Does the Air Quality Permit deal with
13 that?

14 A. It does.

15 Q. I understand that the facility is located
16 near Miller Creek, is that correct?

17 A. That's correct.

18 Q. Which is a tributary to the Price River?

19 A. Yes. It's in that area somewhere. I
20 don't know exactly, but it's there.

21 Q. Were you involved in gathering baseline
22 data for that permit, Storm Runoff Permit?

23 A. I was not.

24 Q. Okay. Are you aware of whether or not
25 elements found in Covol's -- on Covol's site whether

1 it's -- mercury that might be found in the coal or
2 sulfur, are you aware of whether it ever leaches into
3 the ground?

4 A. I'm not aware of that, no.

5 Q. Okay. Are you aware of what type of
6 measures have been taken to protect against those
7 types of compounds getting into the water system?

8 A. Sure, I am.

9 Q. And what can you tell me about those?

10 A. We have control ditches. We have runoff
11 ponds. Everything is contained on the site.

12 Q. As required by the permit?

13 A. That's correct.

14 Q. Okay. Have you seen wildlife near by?

15 A. Yes.

16 Q. Have you -- do you know whether there's
17 anything on your facility that might be harmful to
18 wildlife?

19 A. No.

20 Q. Do you have a permit or do the permits
21 that you have in any way discuss wildlife issues?

22 A. I haven't read that if it does.

23 Q. Okay. And are you aware of any protective
24 measures that Covol might have taken to protect
25 against harm to wildlife?

1 A. No, I'm not.

2 Q. Are you aware of whether -- when you were
3 building the facility, whether Covol saved the
4 topsoil?

5 A. Yes.

6 Q. And where is that located? Maybe you can
7 show me on this site plan to bring it back out.

8 A. I'll draw on this one here. This map
9 doesn't show down in here, but there is a pile here, a
10 pile here.

11 Q. Okay.

12 A. And this is not in the exact location, but
13 it's in the vicinity.

14 Q. Okay. Now, I understand that Covol sent
15 the Mayor of Wellington a letter of assurance. And it
16 is in the exhibit packet, probably the last -- no, not
17 the last one, the second thing, the second document,
18 called the Letter of Assurance to Mayor Karl
19 Housekeeper.

20 Do you have any knowledge of this letter?
21 Have you seen this before?

22 A. No, other than today, no.

23 Q. Okay. So are you aware of any measures or
24 actions taken for post-operational cleanup?

25 A. I'm not.

1 Q. Okay.

2 Now, you said you were involved in the
3 Covol Technologies Synfuel Plant?

4 A. Yes.

5 Q. Do you -- I understand that might shut
6 down soon. I'm wondering if Covol Engineered Fuels is
7 planning on or do you know whether they are capable of
8 doing similar type of thing, making a synfuel product
9 for a tax benefit?

10 MR. GALLI: Objection; vagueness.

11 MS. BEARD: Here in this plan, in this
12 site plan, I haven't heard you say anything about any
13 type of structure that would allow you to administer
14 some sort of additive, chemical additive or something
15 other than that, to make your product into a synfuel
16 product. Is there anything on the site?

17 A. There's not.

18 Q. Okay. And are you aware of any plans to
19 build such structures?

20 A. I'm not.

21 Q. Okay.

22 (Discussion off the Record.)

23 MS. BEARD: Coming back to the Air Quality
24 Permit: What measures do you take to protect air
25 quality?

1 A. What measures I take?

2 Q. Or Covol?

3 A. We have an emissions terminology that's in
4 those things, and we have applied water sprays, things
5 to that effect; we have a water truck to keep the
6 fugitive dust down, and stuff; and some of the things
7 that are still being -- is -- it's in construction.

8 MR. GALLI: Counsel, are you also asking
9 the witness to talk about the emissions controls
10 technologies like the bag houses?

11 MS. BEARD: Yes, sure.

12 A. Yes, we do. We have bag houses in place.

13 Q. Where are the bag houses?

14 A. If you see on Exhibit 2, it says three
15 complete bag houses --

16 Q. Uh-huh?

17 A. -- with fans and stacks.

18 Q. Okay. So on top of the air jigs?

19 A. Is tied in with the air jigs, that is
20 correct.

21 Q. Okay. And the fugitive dust and the water
22 spraying, is that on the coal piles and the by-product
23 piles?

24 A. It could be, yes.

25 Q. Okay. As well as on the ground as well?

1 A. That's correct.

2 Q. Are there coal fines and coal dust on the
3 ground?

4 A. Yes, there is -- it's a coal facility, so
5 it is.

6 Q. Is it a thick -- was it placed there or is
7 it just kind of --

8 A. No, placed. Placed material, yes.

9 Q. Okay.

10 Now, I want to ask you about specific
11 contracts. How many contracts are you aware of?

12 A. Two contracts I know of is PacifiCorp and
13 Commonwealth. That's the only contracts that I know
14 of. I don't know all the details to that. Again,
15 Keith Thompson will have to answer your questions on
16 that.

17 Q. Are you -- so are those the only parties
18 that you are aware -- or customers that you are aware
19 of that drop coal off, pick them up?

20 A. Oh, no.

21 Q. No?

22 A. No.

23 Q. So tell me about the other customers that
24 are doing that.

25 A. The other customer that we have is Utah

1 America now, but it was Andalex, so that's the Andalex
2 Group.

3 Q. And Andalex or the Utah American, the coal
4 mine?

5 A. That's correct.

6 (Discussion off the Record.)

7 MS. BEARD: Which coal mine?

8 A. It is now called Crandall Canyon and West
9 Ridge.

10 Q. West Ridge, okay.

11 Is that the only coal mine under the
12 Andalex relationship?

13 A. Yes -- no, they have other coal mines, but
14 that's all I know.

15 Q. Okay.

16 So besides the Andalex and besides
17 Commonwealth and Pacificorp, are there anybody else?

18 A. No.

19 Q. Okay. And the Pacificorp contract and the
20 Commonwealth contract, have you read the contracts?

21 A. I haven't.

22 Q. Okay. And are they still continuing to
23 bring you coal to process or has either one of those
24 stopped?

25 A. PacifiCorp stopped, yes.

1 Q. Do you know whether that's the end of the
2 contract or whether it's going to resume?

3 A. Again, Keith would have to answer that.

4 Q. Although PacifiCorp has stopped bringing
5 you coal, PacifiCorp still has all of their by-product
6 on your site, is that correct?

7 MR. GALLI: Objection; vagueness.

8 MS. BEARD: So PacifiCorp has brought you
9 how many tons of coal since you began processing?

10 A. Okay. PacifiCorp brought the coal prior
11 to me there.

12 Q. Okay.

13 A. There was 27,000, something like that.

14 Q. Have they brought any coal since then?

15 A. They have not.

16 Q. Okay. So it was just that initial term.
17 And PacifiCorp, have they picked up all of
18 their cleaned coal product?

19 A. Yes.

20 Q. Have they picked up any of their
21 by-product?

22 A. No.

23 Q. But it's their by-product. Do they own
24 the by-product?

25 A. Yes.

1 Q. Okay. And you, Covol, are you working out
2 details as to when they are going to pick it up?

3 A. Okay. That is tied in with the
4 contract --

5 Q. Uh-huh?

6 A. -- again, and Keith will answer -- can
7 answer that better than I. I don't want to speculate
8 on nothing.

9 Q. Have you talked to anybody at Covol?

10 A. I have not, no.

11 Q. Have you helped PacifiCorp market the
12 by-product in any way?

13 A. I have not.

14 Q. Okay. So, although you have done that for
15 Commonwealth, it hasn't been an issue, the PacifiCorp
16 by-product?

17 A. That's correct.

18 Q. The Commonwealth, are you aware of whether
19 they are still bringing you coal to clean?

20 A. At this point, no.

21 Q. So that has completely stopped at this
22 point?

23 A. At this point, yes.

24 Q. And when did they start -- when did they
25 first bring their first bit of coal over?

1 A. I believe it was in March of this year.

2 Q. Uh-huh?

3 A. I'm not really sure, but I believe it was
4 in March of this year.

5 Q. And when did it stop?

6 A. About two weeks ago, two to three weeks
7 ago.

8 Q. But you don't know why it stopped?

9 A. Well, yes, I do.

10 Q. Oh, you do?

11 A. The quality, the quality of the higher ash
12 product coming in.

13 Q. So you -- Covol stopped the contract?

14 A. No, we did not.

15 Q. Oh?

16 A. They stopped it because of the quality
17 right now.

18 Q. The quality of?

19 A. The raw feed.

20 Q. The raw feed.

21 So they couldn't meet the specifications
22 required by Covol, so they stopped bringing over the
23 coal?

24 A. Not to my knowledge. My knowledge of the
25 reason they stopped it is because the product got so

1 high in ash that they wanted to regroup, basically,
2 see what they needed to do.

3 Q. And it's the product -- the pre-cleaned
4 product that you are talking about?

5 A. That's correct, the feed.

6 Q. Okay. But -- okay. The Andalex -- I
7 should call them the Utah American -- are they still
8 bringing coal?

9 A. Not at this time, no.

10 Q. When did that begin?

11 A. May or June time frame.

12 Q. And when did it end?

13 A. Last -- first of this month if I'm not
14 mistaken, first of October.

15 Q. First of October?

16 A. Yes.

17 Q. Do you know why?

18 A. Yes.

19 Q. Why?

20 A. Because of their buyout. They have to get
21 things in line with Utah America, basically.

22 Q. Okay. So it's more of an internal issue?

23 A. To my knowledge, yes.

24 Q. Okay.

25 MS. BEARD: Okay. I think that that is --

1 well, let me ask you just one other:

2 Have you read the final -- or the
3 preliminary determination that was issued by the
4 Division asserting jurisdiction over Covol?

5 A. I just saw that today, yes.

6 Q. Oh. Maybe we can mark that as Exhibit 4,
7 I guess.

8 (Deposition Exhibit No. 3 & 4 marked).

9 MS. BEARD: Okay. Have you read the
10 preliminary determination before today?

11 A. I just saw it today. I haven't read all
12 the way through it, no.

13 Q. When Covol was constructing -- you've been
14 with Covol since they have been constructing their
15 facility, is that correct?

16 A. That's correct.

17 Q. Were you involved in -- or did you know
18 about the financing -- financial situation of the
19 company while it was being built?

20 A. I did not.

21 Q. So you don't know -- maybe you do, maybe
22 you had some understanding that the Division would or
23 would not regulate Covol when you started operations
24 -- or when you started building?

25 A. What I was -- the understanding was that

1 the Division wasn't going to.

2 Q. And who did you talk to about that?

3 A. With Keith.

4 Q. And what did he tell you?

5 A. From the best I can remember where he had
6 talked to Mary Ann Wright, and didn't think it would
7 fall under the Division's jurisdiction.

8 Q. Okay. Did he ever tell you that it was
9 still being decided or --

10 A. No. I mean -- first knowledge of that is
11 December meeting.

12 Q. Okay. Are you familiar with the financial
13 situation of Covol?

14 A. Of my particular plant?

15 MR. GALLI: Objection; vagueness.

16 MS. BEARD: Of your particular plant? Do
17 you keep track of the books or do you keep the books
18 or are you in control of the books, the financial
19 books?

20 A. I do not.

21 Q. Okay. Are you aware of the financial -- I
22 mean, are you aware of how much it cost to run the air
23 jigs?

24 MR. THOMPSON: I'm not sure -- I think
25 that's competitive information. I don't know if we

1 are able to make an objection or how do you want to
2 address that?

3 MR. GALLI: Counsel, could you explain
4 your specific question? I'm not sure I'm following
5 you.

6 MS. BEARD: Okay. I want to know how much
7 it costs -- well, you don't have to tell me specific
8 numbers, but I want to know, basically, if you are
9 making a profit, if you are making a profit from when
10 this guy right here dumps his coal, brings it through
11 here, dumps it here, now you have by-product and clean
12 product and if you are making a profit, what's the
13 profit; notwithstanding the fact that you've put in a
14 bunch of money to build the facility so maybe
15 currently you are not in the blue but --

16 MR. ALDER: Black is the word.

17 MR. GALLI: Counsel, may I just clarify?
18 Your question is simply: Is Covol's facility making a
19 profit now?

20 MS. BEARD: No. My question is:

21 You are presumably paid by the customer to
22 clean the coal, is that correct?

23 A. That's correct.

24 Q. And let's say they pay you a hundred
25 dollars and you run the coal through the air jigs and

1 it's dumped out here and the by-product is dumped here
2 and the clean coal is dumped here, they come and pick
3 it up, have you made money on that process?

4 MR. GALLI: Do you know the answer to
5 that?

6 THE WITNESS: I do -- well, I don't. I
7 don't know all the stuff entailed in that.

8 MS. BEARD: Can you give me what you do
9 know? What do you know about that?

10 A. I don't know --

11 MR. GALLI: If you know, answer the
12 question.

13 THE WITNESS: I can tell you what my cost
14 is to run a ton through there.

15 MR. THOMPSON: And that's what I am --

16 MR. GALLI: Let's pause there for a
17 minute.

18 We can mark this exhibit -- I am sorry,
19 this deposition transcript as Confidential Business
20 Information. We don't have a confidentiality
21 agreement with the Division.

22 MS. BEARD: Uh-huh.

23 MR. GALLI: We can certainly enter into
24 one. I was certainly not aware that we were going to
25 get into that issue here.

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MS. BEARD: Okay.

MR. GALLI: But I don't object to asking the witness questions. But I would put Counsel on notice that the witness has already said that Mr. Thompson --

MS. BEARD: Uh-huh.

MR. GALLI: -- is far more familiar with the details of that questioning. So my -- I can't tell you how to run the deposition, but my strong preference would be: Let's enter into a confidentiality agreement relating to the confidential business information protections in Doggins Regulations (Phonetic) and in Utah law, and then we can get into that with Mr. Thompson to the extent you wish to; is that okay?

MR. ALDER: Yes, I think that's probably a better way to take it.

Can we go off the record?

(Discussion off the Record.)

(Signature waived.)

(Deposition adjourned at 3:07)

1 REPORTER'S CERTIFICATE

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State of UTAH)
County of SALT LAKE)

I, CARLTON WAY, Certified Shorthand Reporter, Registered Professional Reporter, and Notary Public for the State of Utah, do hereby certify:

THAT the foregoing deposition was taken by me in shorthand and reduced to writing to the best of my ability.

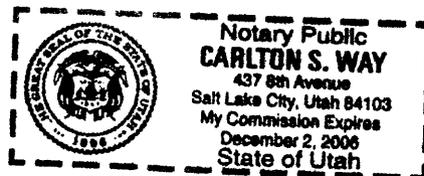
THAT the foregoing pages contain a true and correct transcription of my said shorthand notes to the best of my ability.

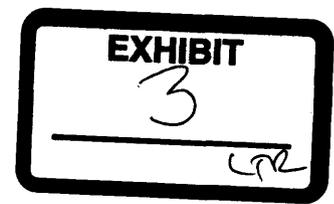
IN WITNESS WHEREOF, I have subscribed my name and affixed my seal this 22nd day of October, 2006.



CARLTON WAY, CSR/RPR

My commission expires
December 6, 2006





HEADWATERS
INCORPORATED

Adding Value to Energy™

Hand Delivered

July 6, 2005

Mayor Karl Houskeeper
City Counsel
City of Wellington, Utah

RE: Letter of Assurance

Dear Mayor Houskeeper and Council Members:

This Letter of Assurance is provided in connection with the proposed activities of our subsidiary, Covol Engineered Fuels, LC ("Covol"), at 1865 W. Ridge Road, Wellington, Utah 84542.

As you know, Covol owns 30 acres at the above location and intends to construct and operate a coal-cleaning facility. More specifically, Covol will contract to have coal shipped to the facility where it will be processed and returned to the coal owners or other buyers.

The coal-cleaning process will generate residual material suitable for beneficial uses such as structural fill. Covol intends to use some of this material for its own purposes with the remaining residual material either returned to the original coal owners or sold to third parties.

Headwaters Incorporated supports Covol's desire to be a long-term resident of Wellington and a positive contributor to the local economy. As such, Headwaters hereby provides you with assurance that it will lend its financial support and cause Covol to manage the coal and residual material located at the facility in accordance with applicable laws. Further, upon termination of its operations, Headwaters will ensure that Covol will remove all coal and residual material located on the property (excluding material used for improvements).

Sincerely,

HEADWATERS INCORPORATED



Steven G. Stewart
Chief Financial Officer

Cc: Keith Thompson,
General Manager, Covol Engineered Fuels LC

10653 S. River Front Parkway
Suite 300
South Jordan, UT 84095
P: 801.984.9400
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State of Utah

Department of
Natural Resources

ROBERT L. MORGAN
Executive Director

Division of
Oil, Gas & Mining

LOWELL P. BRAXTON
Division Director

OLENE S. WALKER
Governor

GAYLE F. McKEACHNIE
Lieutenant Governor



September 13, 2004

W. Layne Ashton, Corporate Manager
Covol Engineered Fuels, LC
10653 South Riverfront Parkway, Suite 300
South Jordan, Utah 84095

Re: Preliminary Finding, of Proposed Coal Beneficiating Air Processing Facility
in Carbon County – Covol Engineered Fuels, LC

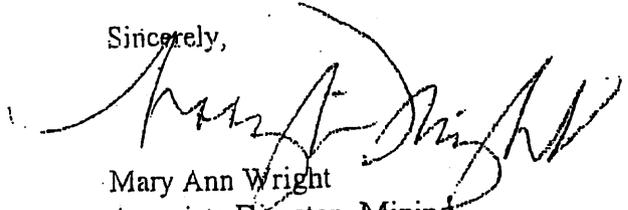
Dear Mr. Ashton:

Enclosed please find a memo outlining the Division's preliminary finding Concerning Covol's proposed operation in Carbon County, dated August 5, 2004. In order to finalize the finding, we request further information about the 'tolling fee' agreement with Pacificorp. Covol agreed to provide this information in our meeting of July 13, 2004.

Subject to a determination regarding the above noted information, and also subject to the result of an on site Division inspection, the initial determination is that mining activities will not be taking place at this site. Therefore, it does not appear at this time that this project will be subject to regulation under the Utah Coal Mining Act.

Please supply the needed information, and/or contact me if you have further questions at (801) 538-5306 or maryannwright@utah.gov.

Sincerely,


Mary Ann Wright
Associate Director, Mining

an
Enclosure
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