0014

OK C/007/045 Incoming
CC: Steve C
DFO

Covol Engineered Fuels, LC

Memo

To: Dana Dean

From: Gina Rau

CC:

Date: 9/19/2008

Re: Covol Agreement

Dana,

Enclosed is the signed original agreement between UDOGM and Covol. If you need anything else regarding the agreement, please let me know.

Gina

RECEIVED
SEP 22 2008
DIV. OF OIL, GAS & MINING

AGREEMENT TO CONCLUDE PERMIT AND TO CONTINUE OPERATIONS

WHEREAS, on March 17, 2006, the Division of Oil, Gas & Mining (the "Division") issued a "Determination to Permit Under the Surface Mining Control and Reclamation Act, C/007/0046" (the "Mine Permit Determination") pertaining to operations of Covol Engineered Fuels, LC ("COVOL") at COVOL's facility located in Wellington, Carbon County, Utah;

WHEREAS, on April 3, 2006, COVOL submitted to the Utah Board of Oil, Gas and Mining a Notice of Administrative Appeal to challenge the Mine Permit Determination;

WHEREAS, on October 18, 2006, COVOL and the Division filed a "Stipulation and Joint Motion for Continuance" to attempt an amicable resolution of the matter;

WHEREAS, the Division and COVOL have been cooperating in good faith to finalize the application and terms of a simplified permit given that nature of the operations at COVOL's Wellington facility and existing land uses;

WHEREAS, COVOL has entered into an agreement with Consolidation Coal Company to receive and process certain coal material from the Emery Mine;

WHEREAS, the Parties believe it in their mutual interest to set forth in this Agreement the steps needed to finalize the permitting process.

NOW, THEREFORE, in order to memorialize the process and timeframes needed to finalize the permitting process, it is hereby Agreed as follows:

1. **Schedule for Amending Permit Application.** Within thirty (30) days from the Effective Date, COVOL shall submit to the Division an amended permit application (the "Amended Permit Application") which addresses Groundwater Monitoring and Reclamation consistent with Attachment A hereto, and which addresses the other deficiencies listed in the Division's letter dated July 9, 2008 (the "Deficiency Letter").

2. **Schedule for Reviewing Amended Permit Application.** The Division shall review the Amended Permit Application and provide COVOL any further comments within thirty (30) days from the date of submittal of the Amended Permit Application.

3. **Schedule for Submission of Further Information or Documentation.** In the event that the Division shall request additional information or documentation after its review of the Amended Permit Application pursuant to Paragraph 2, COVOL shall provide the requested information or documentation within thirty (30) days of any such request.

4. **Operations Pending Permit Processing.** COVOL may operate subject to the provisions of the Act provided that COVOL cures the deficiencies identified on the Deficiency Letter within the time frames set forth above. Furthermore, COVOL may receive feedstock from Consol and other permitted facilities, and to process the same using existing equipment.

5. **Dismissal of Appeal.** COVOL and Division shall proceed to complete the requirements for a permit in accordance with the Deficiency Letter and Attachment A. COVOL and the Division shall concurrently with the execution of this agreement file a motion to dismiss without prejudice the pending appeal. Nothing in this Agreement shall prevent COVOL from reinitiating its appeal in the event COVOL believes that the Division breaches this Agreement or otherwise denies COVOL the ability to operate.

6. **Authority to Execute.** The undersigned signatories certify that they are authorized to execute this Agreement and to legally bind the Parties.

This Memorandum of Agreement shall be effective as of 15th day of Sept, 2008.

COVOL ENGINEERED FUELS, LC	DIVISION OF OIL GAS, & MINING
By: [signature]	By: [signature]
Title: VP	Title: Director

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Attachment A

Groundwater Monitoring. COVOL will install one groundwater monitoring well down gradient from the proposed operation site. In order for the Division to determine whether the proposed operation produces impacts to groundwater resources within the permit and adjacent area, groundwater data must be collected. Therefore, COVOL will conduct and submit quarterly groundwater sampling data for a period of one year to obtain baseline information. Quarterly water monitoring will also be required during the first year of reclamation after operations at the plant cease. The Division will work with COVOL to determine which parameters should be monitored, and if a once-yearly operational sample would be practical in light of the probable hydrologic consequences. (This and a brief technical analysis of probable hydrologic impacts to the aquifer will satisfy the deficiency written under **R645-301-724.100 and R645-301-731.210)**

Reclamation Bond. The Division will not require COVOL to bond for the removal of refuse that may be left on-site at the end of operations, or in case of a bond forfeiture. The bond will instead reflect the amount necessary to properly grade, compact and cover such material onsite in a "refuse pile," as described in the R645 Rules. The amount of refuse considered in a "worst case scenario" will be agreed to by both parties and in accordance with COVOL's business plans (i.e. the amount will not be assumed as the maximum the site can hold, rather the maximum COVOL plans to have on-site at any one time.)

Attachment A

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0007

JK

State of Utah
DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
Executive Director

Division of Oil Gas and Mining

JOHN R. BAZA
Division Director

JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

July 9, 2008

Gina Rau, Environmental Manager (801) 984-3770
COVOL Engineered Fuels, LC
10653 South River Front Parkway, Suite 300
South Jordan, Utah 84095

Subject: Wellington Dry-Coal Cleaning Facility, COVOL Engineered Fuels, LC, C/007/0045, Task ID #2899, Outgoing File

Dear Ms. Rau:

The Division has reviewed your application to operate the COVOL Dry-Coal Cleaning Facility. The Division has determined that there are deficiencies that must be addressed before a determination can be made that the requirements of the R645 Coal Mining Rules have been met, and an approval can be granted. Those deficiencies are listed as an attachment to this letter.

Each deficiency identifies its author by that author's initials in parentheses, such that your staff can directly communicate with that individual should any questions arise relative to the preparation of COVOL'S response to that particular deficiency.

A determination as to the presence/absence of an alluvial valley floor will be determined upon a site visit by Division personnel in consultation with COVOL representatives.

Please call Steve Christensen (801) 538-5350 or myself (801) 538-5325 if you have any questions.

Sincerely,

Daron R. Haddok

Daron R. Haddok
Permit Supervisor

an
Attachment
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1594 West North Temple, Suite 1210, PO Box 145801, Salt Lake City, UT 84114-5801
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UTAH DNR OIL, GAS & MINING

Deficiency List

Task ID #2899

Wellington Dry-Coal Cleaning Facility

The members of the review team include the following individuals:

Priscilla Burton (PB)
Steve Christensen (SC)
David Darby (DD)
Joe Helfrich (JH)
Wayne Western (WW)

R645-301-112.320: Include an organizational chart to illustrate the family tree. i.e. How are Headwaters Energy Services Corp and Headwaters, Incorporated related ? (PB)

R645-301-112.230: Provide the name address and telephone number of the person who will pay the abandoned mine fee and/or discuss the status of the abandoned mine fee. (PB)

R645-301-112.400: Please explain why the application lists only one pending associated permitted site in KY under affiliated company COVOL Fuels No. 2 and one pending un-permitted site in KY for affiliated company COVOL Fuels No. 3 (Section 1.1.2.4), yet the OSM database indicates 5 permitted mining operations in AL and IN are operated by COVOL Engineered Fuels, LC. and three permitted sites in KY are operated by affiliated companies. (PB)

R645-301-114.100: Provide a description of the ownership documents (type and date of execution) and identify the specific lands to which the document pertains. (PB)

R645-301-117.100: A copy of the publication or affidavit of publication must be made part of the application within 4 weeks of the last date of the publication. (PB)

R645-301-122: Provide with the application a copy of letter from Mary Ann Wright to W. Layne Ashton, COVOL Engineered Fuels, LC, September 13, 2004 stating initial determination that mining would not be taking place at this site. •Provide with application, a copy of the October 16, 2006 letter from Steve Alder to Craig Galli, which outlines the permitting requirements. •Provide the environmental audit as an appendix to the application. (PB)

R645-301-142: The application must indicate on a map the portion of the operation developed prior to the permit application dated January 15, 2008. (PB)

R645-301-220: The application should include a statement that prior to any future disturbance, a soil survey consisting of one soil sample/2 acres and analysis according to the Division guidelines will be conducted • Photographs of pre-mining resources should be added to the application to supplement the Carbon County soil survey information. • Soil Map must indicate Map Unit 80 Persayo/Chipeta complex and Map Unit 59 Killpack Clay Loam (green line) based on 1988 Carbon County Soil Survey. Soil Map must designate

elevations (the light brown and dark brown lines). (PB)

R645-301-422: Please include in the application correspondence with the Division of Air Quality regarding notification of the onset of production. (PB)

R645-301-231.400: Please include in the application the date of topsoil pile construction and seeding. (PB)

R645-301-242.200: Due to high clays and sodicity, grading work and chiseling when soil is dry must be indicated in the reclamation plan. (PB)

R645-301-242.200: Greasewood, and rabbit brush do not belong in the seed mix for this ridge location, please adjust the seed mix in Table 3-1 accordingly. (PB)

R645-301-728 and -731.300: The Permittee must clarify whether acid- or toxic-forming materials are to be present at the site. If acid- or toxic-forming materials are present, the Permittee should address how they will be handled. The Permittee should discuss (if applicable) the potential for acid- or toxic-forming materials to produce hydrologic impacts. In addition, the Permittee should provide some discussion as to how it will be determined whether acid- or toxic-forming materials are brought to the site. (SC)

Page 7-8 of the application states, "No acid- or toxic-forming materials are present at the COVOL Dry-Coal Cleaning Facility". The first paragraph of page 7-11 indicates, "No acid or toxic materials are disposed of at the site." The fifth paragraph of page 7-11 states, "Acid- and toxic-forming materials are not permanently stored at the COVOL Dry-Coal Cleaning Facility. In the event that acid- or toxic-forming materials are brought to the facility, they will be handled appropriately." (SC)

R645-301-724: The Permittee should amend their water right information. According to the application on page 7-3, "The only water right field in the vicinity of the facility is for stock watering on Miller Creek." The water right (#91-3294) is depicted on Figure 7-2, *Surface Water Rights and Permitted Facility Discharge Locations*. However, according to the Utah Division of Water Rights (Dwri) Database, water right #91-3295 is located from a point at N 660 ft. W 660 Ft. from the SE corner of Section 14, T15S, R10E. Water right #91-3295 is a point-to-point diversion for the purpose of stock watering. Water rights #91-3294 and #91-3295 were located in the database utilizing the Dwri's Point of Diversion (POD) query. By utilizing a township, range, section search of the Dwri's Place of Use (POU) query, the database produced 69 entries located within T15S, R10E, and Section 14. The Permittee should amend water quality references within the text of the application to reflect additional water rights within the adjacent area as well as amend Figure 7-2. (SC)

R645-301-724.100: The application should provide the data that was utilized in determining the nature and characteristics of the groundwater system in the permit and adjacent area. On page 7-2 of the application, references are made to "logs of nearby wells" as well as groundwater monitoring data obtained from the Savage Coal Terminal. On page 7-4 of

the application the Permittee states, "Based on the findings from groundwater monitoring wells drilled for the nearby Savage coal Terminal, shallow groundwater is saline, contains high levels of dissolved solids, and is generally poorly suited for drinking or irrigation". The referenced data should be provided with the application. (SC)

In addition, the application should provide a discussion as to how the information obtained from the Savage Coal Terminal and "nearby wells" is applicable to the proposed activity. The discussion should address groundwater flow direction within the permit and adjacent area. (SC)

R645-301-724.200: The application should provide the data that was utilized in determining the nature and characteristics of Miller Creek. The application characterizes Miller Creek as "a small perennial stream". The Permittee should provide the data or justification for that determination. In addition, the Permittee should address the nature/characteristics of what appears to be a tributary to Miller Creek located approximately 400 feet west of the southwest sediment pond (See Figure 7-2). (SC)

R645-301-725: The application does not meet the Baseline Cumulative Impact Area Information requirements of R645-301-725. The Permittee must provide the data utilized in characterizing the nature of the ground and surface water systems within the permit and adjacent area. The data is necessary in order for the Division to accurately assess the probably cumulative hydrologic impacts of the proposed operation. (SC)

R645-301-724.100 and R645-301-731.210: The Permittee must provide a justification for not conducting groundwater monitoring within the permit and adjacent area. On page 7-11, the Permittee indicates that "no groundwater monitoring" is to be conducted at the site. The Division must determine whether the proposed operation produces impacts to groundwater resources within the permit and adjacent area. With the absence of groundwater data within the application and with no groundwater monitoring proposed by the Permittee, the Division is unable to make that determination.

It should be noted that the Division might waive groundwater monitoring for the purpose of obtaining baseline information if the Permittee can demonstrate that data obtained from adjacent areas is comparable to conditions found at the site. (SC)

R645-301-724.200 and R645-301-731.220: The Permittee must provide a justification for not conducting surface water monitoring within the permit and adjacent area. On page 7-11, the Permittee indicates, "No streams exist within the permit or adjacent areas. Therefore, only storm water will be monitored." However, Figure 7-2, Surface Water Rights and Permitted Facility Discharge Locations", depicts a tributary to Miller Creek approximately 400 feet from the southwest sediment pond. The application identifies Miller Creek as a small perennial stream (See Page 7-5). (SC)

The Division must determine whether the proposed operation produces impacts to surface water resources within the permit and adjacent area. With the absence of surface water data within the application and with no surface water monitoring proposed by the Permittee, the