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DEPARTMENT OF NATURAL RESOURCES

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Division of Oil, Gas and Mining

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Outgoing

C0070045

R

February 17, 2009

Mr. Keith Thompson
Covol Engineered Fuels, LC
10653 S. River Front Parkway, Suite 300
South Jordan, UT 84095

Subject: Wellington Dry-Coal Cleaning Facility Application, COVOL Engineered Fuels, C/007/0045, Task #3075

Dear Mr. Thompson:

As a follow up to my meeting with you and Ms. Gina Rau on January 14, 2009, I am providing this letter to document the points of our discussion. As I stated in the meeting, I believe that it is to our mutual benefit to have your operations approved and regulated under permit by the Coal Regulatory Program of the Division of Oil, Gas and Mining ("the Division"). Recognizing that discussions between your company and the Division have occurred over the past couple of years and that the Division has made certain commitments in order to achieve a proper permit, I feel it is important to COVOL and the Division to clarify our objectives in processing your application for approval.

For your coal processing operations, the principal objectives of a satisfactory reclamation bond and an approved Division permit are:

1. The Division should approve, monitor, inspect, and otherwise regulate your coal processing operations to achieve no offsite impacts either during active operations or during post-mining surface reclamation.
2. The Division acknowledges that prior to submitting the permit application the property was improved and that reclamation is to return the land to the pre-permit industrial site conditions, provided:

A. Upon final reclamation, you as the permittee must clean up all coal product piles or other created stockpiles to a reasonable level and contour or, if left on site, dispose of and reclaim all coal and coal waste in accordance with SMCRA (refuse pile).

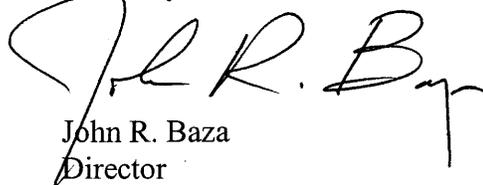


- B. Any currently existing permanent structures (such as concrete pads or permanently constructed buildings) need not be removed for final reclamation, provided that they are consistent with the post-mining land use, and
 - C. No physical hazards (exposed wiring, trip, fall, or trap hazards, etc.) will be left in place.
3. The bond will be calculated based on the fact that all 30 acres were considered disturbed prior to our requiring a permit. It will reflect only the costs associated with meeting objectives 1-2.

Although the principles above are to guide our final permit actions, they are not intended to replace the requirements of the Utah Coal Mining and Reclamation Act and regulations which must govern the COVOL permit operations and reclamation. To these ends, I have attached the results of the most recent technical review prepared by the Division. There are several listed items that must be addressed by you in order for the Division to issue approval of your application. Please submit the requested items and information by March 27, 2009 in order to complete the process of permit approval by the Division. If you have any questions regarding this list, please contact Mr. Steve Christensen at 538-5350 or Ms. Dana Dean at 538-5320.

Thank you for your attendance at our recent meeting and for your attention to this matter.

Sincerely,



John R. Baza
Director

JRB/DD/sqs
Attachment
cc: Steve Christensen
Daron Haddock
Price Field Office
O:\007045.COV\FINAL\WG3075\Defletter.doc

Deficiency List
Task ID #3075
Wellington Dry-Coal Cleaning Facility

Priscilla Burton (PB)
Steve Christensen (SC)
Joe Helfrich (JH)
Pete Hess (PH)
Ingrid Wieser (IW)

- Remove all references to undisturbed acres within the permit area.
- Remove all references to reclamation/revegetation if that is not part of the postmining land use.

PB

- Show Earnest Partners' relation to Headwaters Incorporated (10% ownership) in Figure 1-1
- Provide officers and directorship information for Earnest Partners
- Verify that COVOL Fuels No. 2 is related to Kentucky permit 889-8005 (OSM's information shows it as 889-004).
- Provide identification numbers and MSHA numbers (with date of issuance) for all sites controlled by Covol Engineered Fuels, LC and affiliates: Covol Fuels No 2 LLC, Covol Fuels No 3 LLC, Covol Fuels No 4 LLC, Covol Fuels No 5 LLC, within the last five years.
- Correct Figure 2-1 (two lines seem to have the same elevation).
- Provide a listing of violations received by the Applicant and affiliated companies at all permitted coal mining and reclamation sites in the last three years, or state if there were none.
- Make sure that the surface ownership information listed in Section 1.1.2.6 is consistent with the plat map in Appendix 1-3 (T. 15 S, R. 10 E. Section 14), and that the map is current.
- Seed open topsoil piles as soon as possible with the mix listed in Table 3.1.
- Provide development plats as approved by county zoning, any reclamation obligations for development plan, amount of bond to county (if any) for reclamation, and confirmation that the land as improved will have value as an industrial site based on current and projected land use for the area. Land not part of structures, asphalt, and drives, may be seeded and re-vegetated, or other methods used to control erosion. Areas to be left for industrial use must be cleaned of all coal, coal wastes, trash and toxic materials or reclaimed as required by the Act.

SC

- Provide surface and groundwater baseline data in tabular form and a map of all sampling locations

- Provide a discussion as to how the information/data obtained from the Savage Coal Terminal and “nearby wells” is representative of the ground water resources located at the site. The discussion should address groundwater flow direction within the permit and adjacent area.
- Provide the data and/or observations that were utilized in determining the nature and characteristics of Miller Creek. The application characterizes Miller Creek as a “perennial stream”.
- Provide the data and/or observations that were utilized in determining the nature/characteristics of the tributary to Miller Creek located approximately 400 feet west of the southwest sediment pond (See Figure 7-2). This may be done by discussing/presenting information on the size of the watershed, stream morphology, presence/lack of riparian vegetation etc.
- Modify page 7-13 of the application to state that COVOL will sample all coal and coal waste on-site after an inactive period of 30 days. The sampling should be conducted according to Tables 7 and 8 of the Division’s Guidelines For The Analysis of Topsoil Overburden.
- Provide a map showing the location of the newly installed groundwater monitoring well, the planned sampling parameters, and the planned monitoring frequency. (As outlined in Attachment A of the Sept. 15, 2008 agreement entered into by the Permittee and the Division the Permittee will work in consultation with the Division to establish the aforementioned criteria.)
- Provide a reasonable justification for not conducting surface water monitoring within the permit and adjacent area.

JH/IW

- Include a description of the plant communities found adjacent to the project area and provide a map delineating the vegetative communities including the riparian area found adjacent to the project site.
- Include a map delineating the habitats for high value wildlife species and conduct an approved wildlife survey of the permit site and adjacent area for burrowing owls and big game species. (An approved survey protocol can be found at the US Fish and Wildlife Department.)
- Include a summary of Threatened and Endangered Species found in the study areas in the “Findings and Recommendations” section of the biological survey in Appendix 3-1
- Modify Appendix 3-1 to include the habitat requirements and locations of *all* threatened or endangered species found in Carbon County. (Southwestern Willow flycatcher, the Uinta Basin hookless Cactus, or the Clay phacelia.)
- Include the following maps for the permit site (and the adjacent areas where applicable):
 - Cultural resources: area covered by the literature search, and any cultural resources found.
 - Monitoring and sampling locations
 - Vegetation reference area

- Public parks and cultural or historic resources located within the permit and adjacent areas.
- Facilities to be left at reclamation
- Reclamation surface and subsurface manmade features
- Surface ownership
- Include a statement of acknowledgement that the water consumption from Miller Creek is pending approval by the U.S. Department of Fish and Wildlife even though it is below the 100 acre-ft limit.
- Omit the contradiction: “No wetland or riparian habitat exists in the permit or adjacent areas...the closest riparian habitat is located along Miller Creek approximately .4 miles south of the permit area.”
- Provide site specific information that describes the type of industrial use the property will be used for at the completion of mining activities
- Provide a copy of the Wellington city Agreement for reclamation of the site
- Commit to provide the following information at the end of mining:
 - The entity responsible for the post mining land use,
 - A written request from the entity identifying their needs for the property, and a right of entry agreement between Covol and the industrial site user if other than Covol; or a clear and concise methodology for the reclamation of that portion of the disturbed area

PH

- Describe how the coal and coal mine waste that could possibly be left (if operations were ceased due to unforeseen circumstances and the Division were to require bond forfeiture) would have to be handled/disposed of in reclamation (refuse pile, hauled to another permitted facility, etc), and include costs for that scenario in the bond. For example, if COVOL’s plan is to remove all coal and coal waste material from the site, the bond must cover the cost of hauling to an appropriate refuse facility. If a refuse pile is more practical in this scenario, the application must include plans for constructing the refuse pile, and the bond must include those associated costs instead. COVOL and the Division need to agree on the amount of refuse considered as a “worst case scenario” based on COVOL’s operating plans.
- Demonstrate that the fill areas and their associated bin / reclaim tunnels will support the approved post-mining land use and complement the drainage pattern of the surrounding terrain.
- Describe how unauthorized access by animals or humans to subsurface bins and reclaim tunnels will be prevented during periods when no industrial activity is occurring.
- If the sedimentation ponds are to be left in place as part of the post-mining industrial use, show that they meet the permanent impoundment requirements of the R645-Coal Mining Rules (R645-301-733.220 thru R645-301-733.226), include the plan to access the ponds for inspection and maintenance post-reclamation.

From: Suzanne Steab
To: grau@headwaters.com
CC: Dana Dean; Daron Haddock; John Baza
Date: 2/18/2009 3:52 PM
Subject: Wellington Dry-Coal Cleaning Facility Application
Attachments: COVOL.pdf

Hello Gina,

The original attached letter is in the mail.

Thanks