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State of Utah

DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
Executive Director

Division of Oil, Gas and Mining

JOHN R. BAZA
Division Director

Outgoing
C0070045
#3805
R

May 2, 2011

Gina Rau, Environmental Manager
Headwaters, Incorporated
10653 South River Front Parkway, Suite 300
South Jordan, Utah 84095

Subject: Conditional Approval of Completion of Midterm Review, Task ID #3805, Headwaters, Inc., COVOL Coal Processing Plant, Permit C/007/0045

Dear Ms. Rau:

On December 29th, 2010, Headwaters, Inc. (the Permittee) was informed that the Division of Oil, Gas and Mining (the Division) had commenced a midterm permit review for the COVOL Coal Processing Plant. A field inspection was conducted on February 23rd, 2011. Deficiencies were identified and mailed to you on February 28th, 2011.

We received your response on April 4th, 2011 with additional bonding information received on April 21st, 2011.

Division personnel have reviewed the information you provided. The deficiencies identified in the February 28th, 2011 letter have been addressed adequately except that the bond amount estimated by Permittee (\$202,000) is insufficient: see the attached Technical Memorandum prepared by Mr. Pete Hess of the Division.

As authorized by R645-301-830.100, the Division has determined the required bond amount to be \$206,000. The Division currently holds a \$165,000 cash bond from the Permittee. The Permittee must therefore post an additional \$41,000 cash bond. Please coordinate with Angela Nance at (801)538-5264 to ensure the bond requirements are met.

The above referenced amendment is conditionally approved. Final approval is contingent on the Division's receiving :

- the \$41,000 supplement to the bond, and
- four clean copies of the response to the deficiencies, in its entirety and prepared for incorporation into the Mining and Reclamation Plan.



Page 2
Gina Rau
May 2, 2011

Please submit the additional bond and the clean copies by June 2, 2010 and include any recalculations to Chapter 8, Appendix 8-1.

Once these conditions have been met, the Division will give final approval and a stamped copy of the approved changes will be returned to you for incorporation into your copy of the Mining and Reclamation Plan.

If you have any questions please don't hesitate to call me at 801-538-5262, Steve Christensen at 801-538-5350, or Pete Hess at 435-613-3731.

Sincerely,

A handwritten signature in black ink, appearing to read 'J.D. Smith', written in a cursive style.

James D. Smith
Permit Supervisor

JDS/sqs
Attachment
cc: Price Field Office
Angela Nance, DOGM
O:\007045.COV\WG3805\ConditionalApproval.doc

TECHNICAL MEMORANDUM

Utah Coal Regulatory Program

April 27, 2011

TO: Internal File

THRU: Steve Christensen, Team Lead
Jim Smith, Permit Supervisor

FROM: Peter Hess, En Sci III, Reclamation Cost Estimate Review / Bonding

RE: MIDTERM REVIEW COMPLETION RESPONSE, COVOL Engineered Fuels, LC, Wellington Dry Coal Cleaning Facility, C/007/045, Task ID # 3805

SUMMARY:

The Division initiated a midterm review of the mining and reclamation plan for the COVOL coal processing site on December 29, 2010. This action included a letter to the Permittee notifying the company of the required review and identifying seven items to be evaluated. Item E was an evaluation of the reclamation cost estimate for the site, which includes an update of the unit costs to 2011 numbers. These costs are determined from the R.S. Means Heavy Construction Cost Data manual.

An inspection of the site by the Salt Lake technical staff was conducted on February 23, 2011.

The Permittee did not submit an updated reclamation cost estimate at that time.

On March 1, 2011, the Division notified the Permittee that an update of the reclamation cost estimate was required using unit costs obtained from the 2011 R.S. Means Heavy Construction Cost Data book. At that time, a revised reclamation cost which had been developed by DOGM personnel was sent to the Permittee. Current unit costs and seed cost data from 2009 were used to develop that reclamation cost estimate.

The Permittee, via EarthFax Engineering, responded with a revised / updated reclamation cost estimate using 2011 R.S. Means cost data on April 4, 2011. A copy of the response, which did not include the revised reclamation cost estimate, was received in the PFO on April 14, 2011. The Permittee later provided that information on April 20, 2011.

This memo will address the adequacy of the Permittee's revised reclamation cost estimate.

TECHNICAL ANALYSIS:

RECLAMATION PLAN

BONDING AND INSURANCE REQUIREMENTS

Regulatory Reference: 30 CFR Sec. 800; R645-301-800, et seq.

Analysis:

General

The first review of the reclamation cost estimate was conducted in 2009; at that time, the Permittee posted a \$ 165,000 cash bond with the Division in order to have the State of Utah permit issued.

Form of Bond

The Division holds a collateral bond in the form of cash. The amount of bond currently in place is \$ 165,000.00.

Determination of Bond Amount

The Permittee submitted an updated reclamation cost estimate which was received in the PFO on April 25, 2011. The total amount of the re-calculated direct costs for the COVOL site is \$129,246.00. This estimate was prepared by the Permittee's consultant, EarthFax Engineering.

The Division has three comments concerning the re-calculated estimate, and why the estimate cannot be utilized;

- I. The Permittee proposes to dispose of 1,320 CY of debris on site, at a cost of \$ 9.15 per CY (R.S. Means # 0241 16 17 4200). This can not be allowed because;
 - a. There are no cutbanks at the site which could be utilized to bury this volume to a sufficient depth, such that re-surfacing of this debris would not occur, and
 - b. Both the east and west sediment ponds are to be retained as sediment controls for the post mining / industrial land use. Therefore, no debris can be buried in the sediment ponds for reclamation purposes.

- 2) If the Permittee insists in disposing of debris (concrete) on site, a map must be submitted showing where this disposal will occur within the permit area. Section 7.2.2.5 Surface Topography page 7-5 in the MRP states that "the site is relatively flat". Based on an analysis of Plate 5-1, the surface elevation at the north end of the property is 28 feet higher than the elevation of the south permit boundary (east perimeter length approximately 1560 feet). The property slopes 1.8 % toward the south.
- II. The Permittee's reclamation cost estimate uses a Location Factor of 85.3 % for the Price, Utah area (as stated in the R.S. Means catalog) directly reducing the listed unit costs by 14.3 %. The Division cannot allow the use of Location Factors in determining reclamation cost estimates.
- III. The salvage value of the structures can not be used to pay for the steel demolition.
- IV. The Permittee's reclamation cost estimate did not add an additional 25 % for follow up re-seeding of the acreage should that be determined to be necessary. The additional 25 % adds another \$ 3,853 to the reclamation cost estimate.

For these reasons, the Division can not utilize the Permittees proposed reclamation cost estimate of \$ 198,522 (un-escalated total of direct and indirect costs).

Using the Permittee's unit costs, as provided from the 2011 R. S. Means Heavy Construction Cost Data catalog, the Division calculated an updated reclamation cost estimate. (See R645-301-812.300). A copy of this new estimate will be provided to the Permittee to complete the permitting process of Task ID # 3805 / 2010 Midterm Permit Review.

The new reclamation cost estimate amounts to \$ 202,067.00. Escalation for 2011 has been determined to be .4 %. The cost estimated to 2015 (the date of the next midterm permit review) is determined to be (rounded to the nearest \$ 1,000) \$ 206,000.00.

The amount of cash surety posted by the Permittee in 2009 is \$ 165,000.

In accordance with R645-301-812.700, the Permittee must post an additional \$ 41,000 of cash bond to complete the requirements of the 2010 Midterm Permit Review.

Terms and Conditions for Liability Insurance

The Permittee's current general liability insurance coverage remains in effect through October 1, 2011. The insurers affording coverage are the Illinois Union Fire

Insurance Company and the Liberty Mutual Fire Insurance Company. Coverage amounts for each occurrence and general aggregate categories are \$ 2,000,000 and \$ 4,000,000 respectively (adequate in accordance with R645-301-890.100).

Findings:

The current cash surety amount of \$ 165,000 is **not adequate** to ensure the reclamation of the COVOL site through 2015.

In accordance with the requirement of R645-301-812.700, the Permittee must post an additional \$ 41,000 of cash bond to complete the requirements of the 2010 Midterm Permit Review / Task ID # 3805.

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