



STATE OF
COLORADO

Musick - DNR, Jason <jason.musick@state.co.us>

Response to WEG Follow up on West Elk Mine Inspection, PR-15 Process Concerns

1 message

Musick - DNR, Jason <jason.musick@state.co.us>

Fri, Jul 6, 2018 at 12:56 PM

To: Jeremy Nichols <jnichols@wildearthguardians.org>, shughes@wildearthguardians.org

Cc: "Stark, Jim" <jim.stark@state.co.us>, Jeff Fugate <Jeff.Fugate@coag.gov>, "Simmons, Leigh" <leigh.simmons@state.co.us>

Good afternoon Jeremy,

Attached is the Division's letter in response to your June 25, 2018 follow up letter regarding the West Elk Mine Site Visit associated with PR-15.

Please let myself or Leigh Simmons know if you have any questions or comments.

Sincerely,
Jason

Jason Musick
Senior Environmental Protection Specialist
Coal Regulatory Program



COLORADO
Division of Reclamation,
Mining and Safety
Department of Natural Resources

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COLORADO

**Division of Reclamation,
Mining and Safety**

Department of Natural Resources

1313 Sherman Street, Room 215
Denver, CO 80203

July 6, 2018

Mr. Jeremy Nichols
Ms. Shannon Hughes
WildEarth Guardians
2590 Walnut Street
Denver, CO 80205

**RE: West Elk Mine, C-1980-007, PR-15
Response to Follow-up on Informal Conference Request and Site Visit on June 21
and 22**

Dear Mr. Nichols and Ms. Hughes:

The Division appreciates your time to engage in the informal conference process with the on the ground site visit of the proposed permit area on June 21st and 22nd. As you know, the Division determined the PR-15 application complete for the purposes of filing on April 5, 2018. As a part of the Division's completeness review, it was determined that the application submitted minimally addressed all requirements associated with the activities proposed. The terms "completeness" and "adequacy" have specific meaning within the Division's internal application review process. It is not unusual, as is the case here, for an application to be found "complete" for the purposes of filing, but not yet adequate. Please understand that a determination of completeness does not mean the application has adequately addressed all associated requirements.

A finding of completeness is a threshold administrative determination, allowing the Division to commence a more thorough technical review (referred to internally as an adequacy review). For example, your June 25, 2018 letter stated that "Mountain Coal has not provided "detailed" information regarding the location of roads and methane drainage wells." However, Mountain Coal Company did provide information regarding the locations of roads and support facilities with the PR-15 submittal. By providing this information, the portion of the application regarding the locations of roads and support facilities was "complete".

In addition, your letter cites the Division's adequacy review of the proposed mine plan. The submittal of a mine plan, even if not-yet adequate, is sufficient to allow the Division to determine an application is complete, allowing the Division to commence the adequacy review process related to the mine-plan. As noted in the Division's adequacy letter, the proposed mine plan is inadequate and more information is required, however, this does not mean that the application was incomplete. It is the Division's thorough adequacy review of the information that



determines if the information adequately addresses the requirements of the Act and Rules. This, in essence, is the difference between an application being complete and an application being adequate or inadequate.

A review by the Division has determined that the private land road associated with the original WEG request for the site visit falls within lands owned by Mountain Coal Company. As such, the Division believes that the West Elk Mine does have right to enter the area associated with the private land road (delineated as “Old Road” on the proposed PR-15 Map). Importantly, and as we discussed during the site visit on June 21-22, the proposed road network and layout of the proposed MVBs delineated on the proposed MVB’s – PR-15 Map are currently being revised to reflect a more adequate mine plan and layout.

With regard to Rule 2.03.6(1), the currently approved permit, C-1980-007, contains a description of the documents upon which the applicant bases his or her legal right to enter. In addition, the proposed PR-15 application bases the right to enter the proposed area on the leases associated with USFS and BLM surface and coal respectively. The small spur road associated with proposed MVB SST1-7, the spur road and MVB’s SST2-9, SST2-8, SST2-7, and the spur road and SST3-8 and SST3-7 are on Mountain Coal Company surface lands, as such, West Elk maintains the right to enter.

As noted in the Division’s June 19, 2018 adequacy review, the Division does identify the application as inadequate at this time. However, this statement does not imply the entire PR-15 application is inadequate, merely portions of the application have been deemed inadequate, requiring additional information be provided to achieve adequacy. However, to be clear, the entire PR-15 application is complete for the purposes of filing based on the Division’s review.

The Division will continue to process the PR-15 application as a complete application for the purposes of filing. The Division’s preliminary adequacy review has been sent to the applicant and Mountain Coal Company has yet to respond. Once a response is submitted, the Division will review those responses for adequacy. This correspondence will continue until all inadequate items have been addressed. The Division’s adequacy review process is iterative by design. During the course of an adequacy review process plans submitted in an original application are modified or revised to address technical concerns raised by the Division. Once all responses have adequately addressed the Act and Rules, the Division will issue a Proposed Decision.

By letter dated June 1, 2018 WEG submitted a request for informal conference. During our conversations on the site visit you indicated a willingness to set this informal conference the last week of July/first week of August. The Division would like to schedule the conference for Wednesday, August 1, 2018. Please let me know if it is the intention of WEG to move forward

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with the informal conference and, if so, confirm the date so that the Division can secure an appropriate meeting room.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jason Musick", with a stylized, cursive script.

Jason Musick
Senior Environmental Protection Specialist