

STATE OF
COLORADO

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C1983059, Terror Creek Loadout, RN7, Adequacy Review

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Tue, Feb 19, 2019 at 12:23 PM

To: Mike Ludlow <Mike.Ludlow@oxbow.com>

Cc: Doug Smith <Doug.Smith@oxbow.com>, Pierre Azzi <Pierre.Azzi@oxbow.com>, Roy Schorsch <Roy.Schorsch@oxbow.com>

Mr. Ludlow,

I agree that many of the demolition tasks specified in the Reclamation Cost Estimate I sent last week have been completed, however those tasks must remain in the RCE until the site goes through the bond release process.

I recognize that it is counter-intuitive to bond for work that has already been completed, but it is consistent with the rules and the Division's practice at other sites. I recommend that you review Rule 3.03.2 - Procedures for Seeking Release of Performance Bond (I've attached a copy of the applicable pages), and the "GUIDELINE REGARDING SELECTED COAL MINE BOND RELEASE ISSUES", which is available on the Division's website: <https://mining.state.co.us/Programs/Coal/RulesRegs/Pages/Guidelines.aspx>

As is stated on page 3 of the guideline:

When Phase I bond release is requested, the release will apply only to those areas where backfilling and grading are completed. Backfilling and grading are considered completed upon the achievement of final post-mine topography in accordance with the permit, including establishment of the approved permanent drainage system.

A consequence of the bond release rules is that a permittee may invest considerable time, effort and money in the demolition of facilities, but is ineligible for bond release until the parcels of land on which those facilities stood has been graded to the approved post-mining topography, even if the cost of backfilling and grading tasks is relatively small in comparison with that of the demolition tasks. This situation is particularly common at underground mines, where the demolition of the surface facilities makes up a greater proportion of the total RCE than is the case at surface mines. Since the Division updates unit costs annually and revises site specific RCEs every two and a half years, it is not unusual for the required surety at a site to increase even if reclamation work has taken place, if no bond release application has been submitted.

Since the land at the Terror Creek Loadout has been disturbed (in accordance with the approved plan), the only way to reduce the required bond is to go through the bond release process. In order to be eligible for Phase I bond release the land must be backfilled and graded to match the approved post-mining topography. Alternatively, it may be possible to revise the reclamation plan to change the post-mining land use (for example to Commercial/Industrial) in such a way that current topography would be preserved, however the Division would not approve a speculative change - it would need to be supported by documentation showing specifically what the land would be used for, and by whom.

I hope that this helps to clarify the situation for you, please contact me if you have follow-up questions.

Leigh Simmons
Environmental Protection Specialist



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