



Simmons - DNR, Leigh <leigh.simmons@state.co.us>

C1983059, Terror Creek Loadout, RN7, Adequacy Review

Mike Ludlow <Mike.Ludlow@oxbow.com>

Tue, F

To: "Simmons - DNR, Leigh" <leigh.simmons@state.co.us>

Cc: Doug Smith <Doug.Smith@oxbow.com>, Pierre Azzi <Pierre.Azzi@oxbow.com>, Roy Schorsch <Roy.Schorsch@oxbow.com>, Scott Stewart <Scott.Stewart@oxbow.com>, Jason Musick <jason.musick@state.co.us>

Dear Mr. Simmons,

The rules clearly allow for the bond to be adjusted for good cause. I does not specify only bond increases. Adjusting the bond requirements appears to be different than requesting bo I, Phase II and Phase III. It is the Divisions responsibility to review the bond at permit reviews or not less than every two and half years. The regulations clearly state that the bond shall means up or down. This is not a bond release covered in a separate regulation. The regulations also state "or when the cost of future reclamation changes". Further the regulations are procedures for adjusting the bond (a) through (c) below. There is no requirements for Phase I bond release in regrading.

Unfortunately I will not be in Denver next week. I understand that this maybe different than other bond reductions that the Division has processed, but the regulations clearly allow for Adjustments' are not just increases.

Thanks for your help.

Michael W Ludlow

President

Oxbow Mining, LLC

Elk Creek Mine

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- (4) The amount of the performance bond required shall be adjusted for good cause as affected land acreages are increased or decreased or when the cost of future reclamation changes including the cost of abating any violation for which a notice of violation has been issued. The Division shall review the amount of bond required for a permit area and the terms of acceptance of the bond at the time permit reviews are conducted under 2.08.3 or every two and one-half years, whichever is more frequent. The procedures for any adjustment shall include:
- (a) Notification of the permittee of any proposed bond adjustment and provide the permittee with an opportunity for an informal conference on the adjustment;
 - (b) Issuance of a written proposed decision by the Division to adjust the bond amount, publication of notice of the proposed decision in a newspaper of general circulation in the locality of the mining operation once a week for two weeks following issuance of the decision, and notification of the permittee, the surety and any person with a property interest in the collateral who has requested notification;
 - (c) An opportunity for a formal hearing pursuant to Rule 2.07.4(3);

From: Simmons - DNR, Leigh [mailto:leigh.simmons@state.co.us]

Sent: Tuesday, February 19, 2019 4:04 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>; Scott Stewart <Scott.Stewart@OXBOW.COM>; Jason Musick <jason.musick@state.co.us>

Subject: Re: FW: C1983059, Terror Creek Loadout, RN7, Adequacy Review

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Mr Ludlow,

The snip you quoted from the Division's website is consistent with the Act, the Rules, and the Division's policy and practice:

"The amount of required reclamation performance bond is based on the actual costs to reclaim all permitted disturbance at an operation"

2/20/2019

State.co.us Executive Branch Mail - C1983059, Terror Creek Loadout, RN7, Adequacy Review

If the Division were to remove the costs of demolishing a structure from the Reclamation Cost Estimate simply because the work had been completed, it would in effect be releasing a portion bond release without going through the bond release process, and would be in contravention of the Act and the Rules.

The Reclamation Cost Estimate is calculated from information in the approved Permit Application Packet. The approach I have described has been applied at all sites permitted by the Division history. The Division is happy to review any of the line items in the estimate if you think they are in error, but tasks can't simply be removed because the work has been completed.

I understand that you may be in Denver next week for the CMA conference; we could arrange to meet while you're in town if you think it would helpful to talk through this in person.

Leigh Simmons

Environmental Protection Specialist

[Redacted]

P 303.866.3567 x 8121 | C 720.220.1180 | F 303.832.8106

1313 Sherman Street, Room 215, Denver, CO 80203

leigh.simmons@state.co.us | <http://mining.state.co.us/>

On Tue, Feb 19, 2019 at 3:15 PM Mike Ludlow <Mike.Ludlow@oxbow.com> wrote:

Dear Mr. Simmons,

Thank you for the information on bond release. We have not yet asked for Phase I bond release at Terror Creek or Elk Creek. None of the bond release Phases address the removal of structure. If is the case, bond release could be achieved by regrading around and through the existing structures. It is my understanding that it is the Divisions policy to recalculate bonding requirements and adequate bond is in place to cover the actual costs of reclamation. Please base the bonding calculations on the actual estimated costs. Oxbow is willing to work with the Division on actual costs. The Division inspection reports acknowledge the removal of structure at Terror Creek. The bonding calculation should be based on actual cost to reclaim the property. That a reduction cannot be granted other than through the stated rules, but I also believe that the rules are written to address surface mine disturbances and applied to underground that is in place is more than sufficient to cover the actual cost of reclamation. No bond increase is warranted at this time.

Below is a snippet of the Divisions page on bonding. "The amount of required reclamation performance bond is based on the actual costs to reclaim all permitted disturbance at an open-pit mine."

Thank you for your help in this matter.

Best Regards

Michael W Ludlow

President

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

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Responsibilities

Responsibilities

- Permitting
- Bonding
- Inspection
- Enforcement

Rules And Regulations

- Reclamation Act
- Rules and Regulations

Bonding

Reclamation performance bonds are posted for all permitted coal mines and exploration projects. The performance bond ensures that the Division has adequate funds to hire a third party to complete required reclamation of approved disturbance in the event the permittee is unable to do so. The amount of required reclamation performance bond is based on the actual costs to reclaim all permitted disturbance at an operation. The bond remains in place for a minimum of ten years for most mine permits, dependent on the post-mining land use. Liability for an exploration project is released when the required reclamation has been accomplished.

From: Simmons - DNR, Leigh [mailto:leigh.simmons@state.co.us]

Sent: Tuesday, February 19, 2019 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>

Subject: Re: FW: C1983059, Terror Creek Loadout, RN7, Adequacy Review

[external email-use caution]

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 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 rev 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 ISSU 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 u 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 c 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 t 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 Divisio 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 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. 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 c 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 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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On Tue, Feb 19, 2019 at 10:03 AM Mike Ludlow <Mike.Ludlow@oxbow.com> wrote:

Dear Mr. Simmons,

Thank you for the review on the Terror Creek permit. You have attached bonding calculations that I do not agree with. As you know most the coal handling facilities have been rer bonding calculations still include \$134,094 for removal of such facilities. This is in error. Please let me know the proper channels to protest this calculation or how to submit our o this site.

Thank you for your assistance.

Michael W Ludlow

President

Oxbow Mining, LLC

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From: Doug Smith

Sent: Thursday, February 14, 2019 3:49 PM

To: Mike Ludlow <Mike.Ludlow@OXBOW.COM>

Subject: FW: C1983059, Terror Creek Loadout, RN7, Adequacy Review

From: Simmons - DNR, Leigh [<mailto:leigh.simmons@state.co.us>]

Sent: Thursday, February 14, 2019 3:25 PM

To: Doug Smith

Subject: C1983059, Terror Creek Loadout, RN7, Adequacy Review

[external email-use caution]

Attached

Leigh Simmons

Environmental Protection Specialist

[REDACTED]

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