



## COLORADO

Division of Reclamation,  
Mining and Safety

Department of Natural Resources

1313 Sherman Street, Room 215  
Denver, CO 80203

June 11, 2020

Mr. Louis Head  
New Elk Coal Company, LLC.  
12250 Highway 12  
Weston, Co 81091

**RE: New Elk Mine; C-1981-012; Proposed Bond Adjustment; Informal Conference Notice. Order to Revise Permit**

Dear Mr. Head,

The Colorado Division of Reclamation, Mining and Safety (DRMS or Division) is proposing a bond adjustment/surety increase for the New Elk Coal Mine. During a review of the permit, in accordance with Rule 2.08.3, the Division found a deficiency in the permit file and the current Financial Warranty in regards to the cover material for the Refuse Disposal Area (RDA). Rule 2.05.3(8) requires a permit application to explain the storage, transportation and disposal and associated design of disposal areas for coal processing waste. This plan includes a requirement that coal processing waste banks be designed to comply with Rule 4.10. Rule 4.10.4(5) requires coal processing waste to be covered with four feet of the best available non-toxic and non-combustible material. In section 2.05 page 35 of the New Elk Mine's Permit Application Package (PAP), it states "RDA soils inventory results estimated 6 to 12 inches of topsoil could be removed from the area.... **The 0.75 feet of topsoil will be placed on 3.25 feet of non-toxic growth medium acquired from below the topsoil.**" This statement is in contradiction to several statements found in section 2.04 pages 36-42. Section 2.04 discusses a soil survey that was conducted in the spring of 1984 where it was discovered that salvageable material from the RDA does not appear below 24 inches and furthers states "Salvage from the RDA is limited by steep slopes, high percentage of coarse fragments and rock outcrops; therefore at this time WFC estimates that between **6 to 12 inches is recoverable.**" In addition to the statements in section 2.04, pages 38-40 of section 2.05 discuss an already identified 12,624 loose cubic yard shortage for the 9 inches of topsoil that is to be placed above the 3.25 feet of cover material. Salvageable topsoil and cover material from the RDA area was limited and was therefore not salvaged and stored onsite for reclamation as was proposed in the PAP.

At this time, the Division believes the permit file for New Elk Coal Mine does not properly address where the 3.25 feet of cover material will come from for the RDA and that the Division does not hold enough bond to reclaim the RDA in accordance with the approved plan and regulatory performance standard of Rule 4.10. The current bond amount is based on an incorrect assumption that cover material is available onsite. However, the Division finds based upon the information found in the permit and site observation, that there is not enough material on site to fulfill the cover requirements outlined in the permit and in accordance with Rule 4.10.4(5). In the unlikely event of bond forfeiture, cover material would need to be imported into the site until another viable solution is approved.

The Division did a bond calculation that included the tasks to first, import the cover material from offsite and second, to spread the material over the RDA. The total cost came to **\$5,019,749.00** (To ensure accuracy of the bond calculation, the Division subtracted the current direct and in-direct cost associated with hauling and spreading cover material on the RDA from the new calculation  $\$5,318,372.00 - \$332,659.00 = \$5,019,749.00$ ). The current required surety held by the Division is \$4,166,596.08. The proposed increase would change the amount to **\$9,186,345.08**. The DRMS cost estimate is enclosed for your review.



The Division recognizes that New Elk Coal Company is currently working towards selling the New Elk Mine. Due to the large increase in the bond, the Division will not approve a Succession of Operator until the current deficiency with the RDA is corrected.

In accordance with Rule 3.02.2(4)(a), the Division is required to notify the permittee of any proposed bond adjustment and provide the permittee with an opportunity for an informal conference on the adjustment. This letter serves as the required notification. If New Elk Coal Company, LLC. would like to participate in an informal conference the Division asks that a written request be submitted by **July 13, 2020**. If no request for an informal conference has been submitted by this date, the Division will assume that New Elk Coal Company, LLC. declines to participate in an informal conference and the Division will issue a proposed decision to adjust the bond amount accordingly. In accordance with Rule 2.08.3(3) and (5), New Elk Coal Company, LLC. is hereby ordered to revise their permit application to address this deficiency to provide a viable plan for the acquisition and placement of the required cover material for the RDA. This revision must be submitted within 90 days of the date of this letter.

If you have any questions feel free to contact me at (303) 866-3567, extension 8126.

Sincerely,

A handwritten signature in blue ink, appearing to read "Daniel Cunningham".

Daniel Cunningham  
Environmental Protection Specialist

Certified Return Receipt No.:

Enclosure:      Bond Calculation, February 21, 2020