



STATE OF
COLORADO

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

FW: NOV Response

Norris, Weston <Wnorris@archrsc.com>

Wed, Dec 2, 2020 at 3:04 PM

To: "ginny.brannon@state.co.us" <ginny.brannon@state.co.us>

Cc: "jim.stark@state.co.us" <jim.stark@state.co.us>, "Musick - DNR, Jason" <jason.musick@state.co.us>, "leigh.simmons@state.co.us" <leigh.simmons@state.co.us>

Dear Ms. Brannon,

Attached is a response the recent NOV written to Mountain Coal Company.

Please let me know if you have any questions.

Thank you,

Weston Norris

General Manager

West Elk Mine

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Response to NOV CV-2020-001.pdf

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Weston J. Norris
General Manager
wnorris@archrsc.com
Phone: 970.929.2333

December 2, 2020

Mountain Coal Company, LLC
A subsidiary of Arch Resources, Inc.
West Elk Mine
5174 Highway 133
Somerset, CO 81434

VIA ELECTRONIC MAIL

Ms. Ginny Brannon
Director
Colorado Division of Reclamation,
Mining and Safety
1313 Sherman St., Rm. 215
Denver, CO 80203

Re: Mountain Coal Company, LLC, West Elk Mine, Permit No. C-1980-007;
NOV No. CV-2020-001

Dear Ms. Brannon:

Mountain Coal Company, LLC ("Mountain Coal") received the above-referenced Notice of Violation ("NOV") by certified mail on November 19, 2020. The NOV was related to a mine roof collapse and subsequent subsidence event that occurred on October 13, 2020 during development of the western-most main entry to the west of future longwall coal panel LWSS3. In accordance with Section 5.043(1) of the Rules and Regulations of the Colorado Mined Land Reclamation Board, Mountain Coal respectfully provides additional information relevant to the alleged NOV.

The NOV references "Exhibit 60E - Subsidence Evaluation for the Southern Panels, Apache Rocks West, & Sunset Trail Mining Areas" and "Exhibit 55B - Stream Channel Parameters and Changes due to Mining-Induced Subsidence." The NOV (p.4.) alleges:

"The actual depth of cover at the location where subsidence occurred under South Prong Creek was an order of magnitude less than the minimum depth of cover contemplated by the authors of the approved subsidence evaluation study in Exhibit 60E. As the subsidence predictions made in Exhibit 60E were not valid for the actual mining conditions, the predictions of hydrologic impacts made in Exhibit 55B were also not valid."

Based on this finding, the NOV alleges violations of Permit Section 2.05.06(6), Regulations Sections 2.05.06(3), 2.05.06(6), 4.05.1(4)(c), 4.20, and Act Sections 111(1)(m) and 121(2)(a)(I).

Mountain Coal notes that Exhibits 60E and 55B were expressly focused on and limited to the probability and extent of subsidence associated with longwall mining of planned longwall panels. The NOV (p.3.) states:

"The authors assume that the typical overburden depth will range from 400' to 2100', with a minimum depth of 375'."

Exhibit 60E actually states that, "Overburden above the centers of the projected E-seam longwall panels ranges from 400 to 2,100 feet." There were no errors in these Exhibits,

because they were not intended to encompass the mains development where the unforeseen roof collapse and subsidence anomaly occurred. There was no planned or anticipated subsidence (or associated effects on the hydrologic balance) in the mains development area, because of the nature and extent of such development mining and progressive construction of roof support infrastructure. Subsidence in the course of mains development has never previously occurred at West Elk Mine and is extremely rare for underground coal mines. Mountain Coal's actions in mains development were consistent with the permit terms and industry standards.

In addition, there was no material disruption of the hydrologic balance. Flows from the stream into the mine occurred for approximately eight hours, and were promptly restored in accordance with Mountain Coal's current subsidence mitigation measures in Section 2.05.6(6) (f) (p. 2.05-170 – 2.05-173) and have continued unabated. As such, there is no evidence of "material damage or diminution to reasonable foreseeable uses of . . . structures or renewable resource lands" within the meaning of Regulations Section 2.05.06(6). In particular, there has been no material disruption of surface flows or to an aquifer or recharge to an aquifer within the meaning of Regulations Section 2.05.06(e)(ii)(b), as can be confirmed with the local lead Water Commissioner.

The Regulations envision that despite the good faith and best efforts of the Permittee, a subsidence survey may prove inaccurate or incomplete. Regulations Section 2.05.06(d)(i). In that scenario, the Division will request a subsidence control plan or updated subsidence control plan, which the Division has done. Throughout Mountain Coal's Permit document, including Section 2.05.6(3) where it states, "The surface effects of mining on the hydrologic balance in the SOD area are *anticipated* to be minimal. Section 2.05.6(6) in this document describes at length the *anticipated* impacts . . .", Mountain Coal has provided in good faith its best efforts to provide substantial subsidence information along with impacts, prevention measures and mitigation measures, including adjudicated water augmentation and replacement plans. Even before the NOV was issued, Mountain Coal had initiated site-specific land surveys and reviews of all current subsidence data and is committed to submit appropriate updates. That process of supplementing Mountain Coal's database demonstrates that undertaking the effort does not require a finding of a violation.

Mountain Coal is also fully committed to addressing the new mains development subsidence vulnerability, particularly under perennial streams, revealed on October 13, 2020. As such, Mountain Coal will submit an updated subsidence evaluation to also address mains development on or before the December 30, 2020 deadline.

For the reasons stated above, Mountain Coal does not believe it has violated the Permit, the Regulations, or the Act, and respectfully requests that the NOV be vacated. Thank you for your consideration, and Mountain Coal is prepared to further discuss any of the information provided in this response or the NOV generally.

Sincerely,



Weston Norris

cc: Jim Stark - CDRMS
Jason Musick - CDRMS
Leigh Simmons – CDRMS
Kathleen Welt - MCC