

Rule 2.03.4 – Identification of Interests

1. The Coal Regulations were recently revised in 2020. Included with this revision was Section 2.03.4. Please revise the Permit Application Package (PAP) section 2.03.4 to comply with the revised rules.

RESPONSE: Section 2.03.4 has been updated to comply with the revised rules.

2. On proposed revised page 5 of this section, after subpart (e) please add a section that provides the information required for Rule 2.03.4(4) pertaining to the Lorencito Mine (Permit No. C-1996-084) also held by the New Elk Coal Company, LLC. (NECC).

RESPONSE: Page 5 of section 2.03.4(4) has been revised to include current information for the Lorencito Mine.

3. It appears proposed revised pages 5 through 8 were submitted to address sections 2.03.4(6) and (7). In keeping with the formatting of the remainder of this section of the permit, please add a heading indicating this information pertains to those section of the rule.

RESPONSE: Headings for sections 2.03.4(6) and (7) have been added to revised pages 5 through 8.

4. Proposed Revised Page 5 makes the following statement, “There are no outstanding interests in lands, options, or pending bids on interest held or made by NECC for lands which, are contiguous to the area covered by the permit.” It appears this statement is in response to Section 2.03.4(9). In keeping with the formatting of the remainder of this section of the permit, please add a heading indicating this information pertains to those section of the rule.

RESPONSE: A headings for section 2.03.4(9) has been added to revised page 5.

5. The date, PE#, and signature of the person who prepared the Maps 1, 2, 3, is missing or not provided. Please submit updated maps with this information.

RESPONSE: Maps 1, 2, and 3 have been updated to include the required PE information.

6. Based on Allegiance Coal’s website, Amon Mahon is a Director of New Elk Coal Company, LLC and Chief Operating Officer. Amon Mahon was not included in the list of Officers and Directors. Please clarify this discrepancy. Please add Amon Mahon to the list of Officers and Directors if necessary.

RESPONSE: NECC is going to rearrange Officers and Directors. Amon will be moving to a different project at the beginning of October, if he can remain until October that would be ideal, as long as that does not affect the permit revision.

Rule 2.03.5 – Compliance Information

7. The Coal Regulations were recently revised in 2020. Included with this revision was Section 2.03.5. Please revise the PAP section 2.03.5 to comply with the revised rules.

RESPONSE: Section 2.03.5 has been updated to comply with the revised rules.

8. The currently approved Permit Application Package (PAP) contains pages 5a, 6, 7 and 8. These pages include

the information that pertains to Rule 2.03.5. This information would be deleted if they are replaced by proposed revised pages 5-8 with PR5. Please revise the organization and pagination for proposed revised pages 5-8 so that the information currently included in portions of Page 5a, and all of pages 6, 7, and 8 are maintained in the PAP.

RESPONSE: Pages 5 through 8 of the PAP have been organized and paginated to include current and revised information.

9. DRMS conducted an Applicant/Violator System (AVS) check based on the current information and revised information submitted for section 2.03.4 of the permit. Also, Amon Mahon identified as a Director of New Elk Coal Company, LLC on Allegiance Coal's website was included in this check. Attached are Evaluation Reports from AVS. Violations and cessation orders were found for Larry Cook and Amon Mahon. A bond forfeiture was noted for Amon Mahon. Please address each of these items listed in the Evaluation Reports and supply the information required by Rule 2.03.5(1)(c). Please note in accordance with Rule 2.07.6(1)(b) that the Division shall not issue the permit if any surface coal mining and reclamation operation that is directly owned or controlled by the applicant and has unabated or uncorrected violations; or is indirectly controlled by the applicant or operator and has unabated or uncorrected violations and that control was established or the violations were cited after November 2, 1988.

RESPONSE: See above for item 6. NECC is going to rearrange the officers and directors.

Rule 2.03.6 – Right of Entry Information

10. The legal description of the proposed permit boundary does not appear to be updated with the proposed PR5 expansion. Please provide a new legal description of the permit area.

RESPONSE: The PAP text has been updated to include the new legal description of the permit area.

11. Currently the detailed legal description of the permit boundary is listed on pages 8 and 9 of the PAP. Proposed revised page 12 appears to be the replacement for current page 9. Please insure the organization and pagination of this section is correct taking into account the adequacy items listed above and taking into account for how proposed revised page 12 should be treated.

RESPONSE: These pages of the PAP have been organized and paginated to include the current and revised information for the legal description of the permit area.

12. It is difficult to verify which documents included in proposed Exhibit 34 is the basis for the applicant's legal right to enter and begin operations. Pursuant to Rule 2.03.6(1), please update Section 2.03.6 of the permit to provide a list of the documents upon which the applicant bases their legal right to enter. This list shall identify those documents by type and date of execution, and identify lands to which they pertain, and an explanation of the legal rights claimed by the applicant in accordance with Rule 2.03.6(1).

RESPONSE: Section 2.03.6 of the PAP has been updated to list the information requested in this comment.

Rule 2.04.3 – General Requirements: Site Description and Land Use information:

13. The current approved permit area for the New Elk Mine is 4,201.90 acres with the approval of TR72, and PR5 seeks to increase the permit area by 2,856 acres for a total permit area of 7,057.9 acres. Please revise the

narrative of proposed revised page 1 of permit section 2.04.3 to reflect this. Also please update Table 5 on page 1 and proposed page 1a to reflect this.

RESPONSE: Revised pages of the PAP have been updated with acreages of the current permit and lands added for PR5.

14. The current approved disturbance area for the New Elk Mine is 227.8 acres with the approval of TR72 and TR74, and PR5 does not seek any additional disturbed acreage. Please revise the narrative of proposed revised page 1 of permit section 2.04.3 to reflect this. Also, please update Table 5 on page 1 and proposed page 1a to reflect this.

RESPONSE: Pages 1 and 1a of section 2.04.3 have been updated to reflect the current disturbed area.

Rule 2.04.4 – Cultural and Historic Resource Information

On August 6th, 2021, DRMS received the enclosed undated letter from History Colorado, from the State Historic Preservation Officer (SHPO). They requested additional information from DRMS regarding PR5 which we have provided to them. Also, the SHPO recommended that a class III cultural resource inventory be completed prior to construction activities to determine the presence of cultural resources in the area of potential effect and to assess the eligibility of any resources for the National Register of Historic Places (NRHP). Rule 2.04.4 requires such an analysis for areas potentially impacted by surface activities or probable subsidence. Given this, DRMS sought clarification on SHPO's recommendation since no new surface disturbance is proposed with PR5 and since subsidence is not anticipated given the proposed mining method. SHPO responded to DRMS with the enclosed correspondence dated August 20, 2021. Upon review of Section 2.05.6 of the PAP and Exhibit 24, the current mine plan and subsidence control plan anticipates multi-seam mining and planned subsidence from retreat mining in certain circumstances. Please see the adequacy review questions under the section for Rule 2.05.6 below. Either provide the results of the class III cultural resource survey and update Section 2.04.4 accordingly, or provide a detailed rationale for not providing this information.

RESPONSE: Section 2.05.6 has been revised to include mining method and extraction of coal. With room and pillar mining and no proposed secondary mining, subsidence will not occur. As a result, NECC requests that a class III cultural resource inventory of the PR5 not be required.

Rule 2.04.5 – General Description of Hydrology and Geology

15. Please revise Map 5 and 6 to depict the revised permit boundary.

RESPONSE: Maps 5 and 6 have been revised to include the permit boundary.

16. Map 7 includes geologic cross sections, however the A-A' cross section does not extend into the proposed PR5 expansion area fully to the northeast. Please update Map 7 to take the expanded permit area and affected area into account.

RESPONSE: Map 7 of the PAP has been updated to include the expanded permit area.

17. Current page 2.04-11e states core holes were drilled in 2020 and 2010 however it does not indicate where in the permit the drill logs for these holes are located. Please revise this section of the permit to indicate where these drill logs can be found in the permit and please provide this information as an exhibit to the permit in accordance with Rule 2.04.6(3)(a)(iii)(A).

RESPONSE: The 2010 drilling logs are found Exhibit 41(confidential) of the PAP. Once the information for the 2021 drilling has been completed and compiled, NECC will send in a revision adding the drill logs to Exhibit 41.

18. PR5 proposes room and pillar mining in the Blue Seam. Please revise permit section 2.04.6(3)(a)(iii)(E) with the thickness and engineering properties of clays or clay shale, if any in the stratum immediately above and below the coal seam to be mined.

RESPONSE: Section 2.04.6(3)(a)(iii)(E) has been revised.

Rule 2.04.7 – Hydrology Description

19. The legend of Map 8 does not appear to be reflective of the various lines and symbols used on the map. For example the revised PR5 permit boundary appears to be a thick green line not an orange-yellow dashed line as the legend indicates. Also there is a red dashed line that appears to delineate the pre-PR5 boundary. Please revise the map so it features are accurately portrayed in the legend.

RESPONSE: The legend and information of Map 8 have been to be consistent with each other.

20. Please update Section 2.04.7, Map 8, and Map 20 to depict and provide updated information required by Rule 2.04.7(1)(a)(iv) and (4)(a).

RESPONSE: Section 2.04.7 and Maps 8 and 20 have been updated to include the required information.

21. Currently page 2.04-19 indicates dewatering of the Allen and Apache coal seams for mining is not expected to lower water levels in alluvial wells but may impact bedrock wells. Is dewatering necessary for mining in the Blue Seam? If so, what impact will it have on alluvial wells? What impact will it have on the bedrock wells? Please revise page 2.04-19 to include this information.

RESPONSE: Page 2.04-19 has been revised.

22. imilar to the item above, page 2.04-23 and 24 indicate dewatering of the Allen and Apache coal seams for mining is not expected to lower water levels in alluvial wells. Please discuss the possible impacts of mining in the Blue Seam.

RESPONSE: Page 2.04-24 has been revised.

23. Please update the NPDES information on Page 2.04-25.

RESPONSE: Page 2.04-25 has been updated with NPDES information.

24. Please update Table 10C and page 2.04-25b, 25c, and 25d with current information.

RESPONSE: No update necessary for these pages.

25. Please update permit Section 2.04.7(3) to address mining in the Blue Seam.

RESPONSE: Section 2.04.7(3) has been updated to include mining in the Blue Seam.

Rule 2.05.2 – Operation Plan – Estimated Area for Life of Operation

26. Please revised permit section 2.05.2(1) to include the anticipated annual and total production of coal, by tonnage.

RESPONSE: Permit section 2.05.2(1) has been updated to include anticipated annual and total production of coal by tonnage.

27. The current approved permit area for the New Elk Mine is 4,201.90 acres with the approval of TR72, and PR5 seeks to increase the permit area by 2,856 acres for a total permit area of 7,057.9 acres. Please update the first paragraph of proposed revised page 3 with the correct permit boundary acreage.

RESPONSE: Revised page 3 of section 2.05.2 has been updated with the correct permit boundary acreage.

28. Please update Figure 2 to account for the PR5 proposal.

RESPONSE: Figure 2 has been updated to include the PR5 area.

Rule 2.05.3 – Operation Plan – Permit Area

29. Much of section 2.04 discusses multi-seam mining in various seems, primarily the Allen, Apache, Maxwell and Blue Seam. For this permit term and for PR5, it appears mining is only projected to occur in the Blue Seam. Please update Section 2.05.2 to clarify this.

RESPONSE: Section 2.05.2 has been updated for clarification.

30. Please update the second paragraph of revised page 3 regarding the phases or resuming operations at the site. As operations have resumed, please update this narrative to discuss the current operation and any additional work that needs to occur to mine in the Blue Seam.

RESPONSE: Page 3 has been revised for active operations.

31. Revised page 3 indicates that no secondary mining is planned in any area where protection from subsidence of surface structures and the Purgatoire River is required. The cover letter submitted with PR5 indicates that no secondary extraction is planned. Please revise Section 2.05.3 of the mining plan to clearly indicate that no secondary extraction is planned.

RESPONSE: Revised page3 of section 2.05.3 has been updated to indicate that no secondary extraction is planned.

32. Current page 4 of the PAP of section 2.05.3(1) indicates the mine is not currently active. As production at the site has now been initiated please revise page 4 of this section accordingly.

RESPONSE: Page 4 of the PAP of section 2.05.3(1) has been updated to show the mine is currently active.

33. Current page 5 and 6 of the PAP describe the handling of development waste. According to the last quarterly inspection report for the refuse and waste piles at the site, refuse placement in Development Waste Disposal Area #2 has been completed. Please update this narrative about the handling of development waste as necessary.

RESPONSE:

Right now DWDA #2 is still active and is not completed. The plan for any new developmental waste would be to haul the material to the Refuse Disposal Area (RDA). Although no significant developmental waste is expected at this time.

34. Proposed revised page 10 indicates the Golden Eagle Fan site's location is depicted on Map 3 and the surface disturbance boundary is indicated on Figure 2c. The Division could not locate this feature on the proposed revised Map 3 and the disturbance boundary is not depicted on Figure 2c. Please revise Map 3 and Figure 2c accordingly.

RESPONSE: Map 3 and Map 11B added have been updated with information regarding the Golden Eagle Fan site.

35. Proposed revised page 10 indicates the Golden Eagle fan site will be returned for use for mine ventilation. Since the fan site has been sealed, the disturbance area reclaimed and partially released, please provide the information required by Rule 2.05.3(3) for this facility, and provide a reclamation cost estimate for the closure of the fan site in accordance with Rule 2.05.4(2)(b).

RESPONSE: Plans for the Golden Eagle Fan site have been included on revised page 10. No disturbance at this site is proposed for this permit term.

Rule 2.05.4 – Reclamation Plan

36. The Division recently conducted the required Midterm Review (MT8) for the New Elk Mine. Part of the review consisted of a review of the performance bond liability. The Division estimated the reclamation liability at the site to be \$5,206,046.00. The current required surety for the New Elk Mine is \$4,605,014.08, and the Division currently holds \$4,647,856.08 of bond in the form of corporate sureties. The estimated liability at the site based on the MT8 review is \$601,031.92 more than the current required surety, and is \$558,189.92 more than the current bond held for the site. The Division requests that NECC review the reclamation cost estimate that was attached to midterm review document. Please inform the Division if you concur with the liability estimate.

RESPONSE:

Response: We will review and bond this as part of MT8 and not PR5.

37. Once the cost estimate is finalized, please revised Exhibit 28 with the cost estimate. However, if you do not concur with the Division's estimate please provide a detailed estimate of the cost of reclamation of the proposed operations required to be covered by a performance bond with supporting calculation for the estimate for Exhibit 28. If the latter option is chosen, please provide this estimate as a revision to Exhibit 28.

RESPONSE:

Response: We will review and bond this as part of MT8 and not PR5.

Rule 2.05.6 – Mitigation of Mining Operations

(1) Air Pollution Control Plan

38. Please review Exhibit 23 and submit an updated copy of the emissions permit if applicable from the Colorado Air Quality Control Commission.

RESPONSE:

Response: Attached are the air permits we currently have that will replace old permits in Exhibit 23.

(3) Protection of hydrologic balance

39. Section 2.05.6(3) of the permit focuses on the protection of the hydrologic balance as it relates to mining in the Apache and Allen Seam. Please revise this section of the permit to account for the revised PR5 mining plan for mining in the Blue Seam.

RESPONSE: Section 2.05.6(3) has been updated.

(4) Protection of parks and historic places

40. As discussed above, the SHPO has recommended a class III cultural resource inventory be conducted for the proposed affected area associated with mining in the Blue Seam resulting from subsidence, vibration, and potential surface facilities needed to support mining. The Division acknowledges that no such surface facilities

are proposed with PR5 but would note that if additional surface facilities are needed to support mining in the future, appropriate revisions to the permit will be required. Based on the results of the class III cultural resource survey, please provide an update to section 2.05.6(4) of the permit if necessary. If NECC believes the survey is unnecessary, please provide a detailed justification for this.

RESPONSE: Section 2.05.6 has been revised to include mining method and extraction of coal. With room and pillar mining and no proposed secondary mining, subsidence will not occur. As a result, NECC requests that a class III cultural resource inventory of the PR5 not be required.

(6) Subsidence Survey, Subsidence Monitoring, and Subsidence Control

The current approved mining plan proposes retreat mining; however, the PR5 cover letter indicates that no secondary mining (retreat mining) will occur. Please clarify and specifically commit to the mining method chosen. Please revise Section 2.05.6(6) of the permit to account for the revised mining plan proposed with PR5. This section must be revised and address all of the requirements of Rule 2.05.6(6) and must comply with the performance standards of Rule 4.20. Please update the Map 20 series, Map 11, Map 12, Exhibit 8, Exhibit 24, Exhibit 42, Table 19, and any other applicable information in the PAP as necessary. The cover letter for PR5 indicates subsidence is not expected since no secondary mining will occur, please provide a demonstration this assumption is correct specific for the Blue Seam.

RESPONSE: Section 2.05.6(6) has been revised to indicate that mining in the Blue Seam will include only room and pillar mining with no secondary recovery. As a result, no subsidence will occur. The referenced sections of the PAP have been revised accordingly.