



April 21, 2022

Mark Gray
New Elk Coal
Company, LLC.
12250 State
Highway 12
Weston, Colorado 81091

RE: New Elk Mine, C-1981-012, Technical Revision No. 76 (TR76) Fourth Notice of Incomplete Application

Dear Mr. Gray,

On April 19, 2022 the Colorado Division of Reclamation, Mining and Safety (DRMS or Division) received New Elk Coal Company, LLC's (NECC) resubmittal of TR76, in response to the Division's third notice of the receipt of an incomplete application letter dated March 30, 2022. The Division has reviewed the revised application material and has found the application remains incomplete. The original items cited in the Division's March 30, 2022 letter are listed below, followed by NECC response. Additional clarification and/or questions are then identified. Please address the following items:

Application Form:

1. The application form indicates this 4.91 acre area is private land; however, DRMS was under the impression based on conversations with NECC and previous submittals that the area in question was located on land owned by the State of Colorado and that NECC has an easement for this area. Please confirm and/or revise the application form accordingly.
 - a. **NECC Response:** [The 4.91 acre area is on private land and owned by NECC. We have updated Exhibit 34 – Right of Entry that provides the quitclaim deed.](#)
 - b. **DRSM Response:** It seems NECC derived the 4.91 acre increase in permit and affected area by taking the width of the road (15 feet) and multiplying it by the length of the road (2.7 miles) to calculate this acreage. However, a portion of the proposed haul road length is already within the permit area and affected area boundaries currently approved. So a portion of the 4.91 acre area may overlap already approved permit/affected land. Also, this area may not encompass all of the land associated with the right-of-way of the road outside the current approved permit boundary. Please see item #3 below and define a detailed and accurate increase in permit/affected area. The increase in permit area should include all the area of the proposed road outside of the current permit boundary. This area should include the entire area within the right-of- way, including the roadbed, shoulders, parking, and side areas, approach structures, ditches, surface, and such contiguous appendages as are necessary for the total structure per rule 1.04(111).
 - c. **NECC Response:** [The disturbed and affected areas have been recalculated. The text has been updated to state, "The permit boundary for TR-76 was extended to include the affected area of the railbed. This permit boundary extension represents 11.3 acres and the affected area that was historically disturbed in the railroad bed \(including side slopes, culverts, and access trails\). The disturbed area is the running surface of the new road \(along with berms or other areas of disturbance associated with construction of the road\) that represents 6.4 acres \(Map 1 and Map 15a\)."](#)



Section 2.03.4(6) & (7) – Identification of Interests – Ownership Information

2. Please affirm the information in the Permit Application Package (PAP) that provides the ownership information required by Rule 2.03.4(6) and (7) is accurate for the newly proposed 4.91 acres. Please update Map 01 of the PAP to include the newly proposed permit/affected area and associated surface ownership.
 - a. **NECC Response:** Map 1 has been updated showing the proposed haul road alignment.
 - b. **DRMS Response:** Please revise Map 1 to clearly depict the additional permit boundary based on your response to items #1 and #3. The revised permit boundary should be a polygon feature on the map showing the entire right-of-way of the road outside of the currently approved boundary and not a line feature.
 - c. **NECC Response:** Map 1 has been updated along with including a new Map 15a. Metes and bounds have also been included in the right-of-entry information as part of Exhibit 34.

Section 2.03.6 – Right of Entry and Operation Information

3. Please revise PAP section 2.03.6 of the Permit Application Package (PAP) to include the Right of Entry information required by Rule 2.03.6 for the 4.91 acre area.
 - a. **NECC Response:** Section 2.03.6 has been revised with a brief narrative describing the proposed haul road and reference to Map 11-5. We have also updated Exhibit 34 – Right of Entry with the quitclaim deed for this area.
 - b. **DRMS Response:** Please provide a complete and detailed legal description of the permit boundary to encompass the proposed road in accordance with Rule 2.03.6(1) and Rule 1.04(89). Please update Map 11-5 to depict the proposed permit and affected land boundary to surround the road based on your response to Item #1 above.
 - c. **NECC Response:** Map 1 has been updated along with including a new Map 15a. Metes and bounds have also been included in the right-of-entry information as part of Exhibit 34.

Section 2.04 – Minimum Required Information on Environmental Resources

4. Proposed revised page 15 of section 2.05 indicates the haul road will be constructed on the exiting rail bed and no new disturbance outside of the existing rail bed will be necessary for the construction and operation of the road. In light of this, please submit the minimum requirements for information on environmental resources required by Rule 2.04 for the 4.91 acre area proposed to be affected by the proposed haul road taking into account the land is currently disturbed by the existence of the former rail bed.
 - a. **NECC Response:** As described in the Land Use section of Rule 2.04 of the PAP, the rail bed passes through a small portion of wildlife habitat, rangeland, and industrial and is identified as such. The land use is not proposed to be changed for the operations phase of the Mine and will remain the same for post mining.
 - b. **DRMS Response:** Rule 2.04 requires more information than just land use information and the Division could not locate information in PAP section 2.04 pertaining to the former railroad area. This item remains outstanding. Please submit the minimum applicable requirements for information on environmental resources required by Rule 2.04 for the area proposed to be affected by the proposed haul road taking into account the land is currently disturbed by the existence of the former rail bed.
 - c. **NECC Response:** Applicable sections in Section 2.04 has been updated.

Updated Section 2.05.3(3) – Operations Plan and Road Design

5. NECC revised permit section 2.05.3(3)(c) of the PAP to include a brief narrative describing the proposed haul road. Please submit the plans and drawings for the proposed haul road in accordance with Rule 2.05.3(3)(c)(vii). These plans and drawing must be designed and certified by a qualified, registered professional engineering and they must meet the design criteria of Rule 4.03.1.
 - a. **NECC Response:** Section 2.05.3(3)(c) has been revised with a brief narrative describing the proposed haul road and reference to Map 11-5. We have also updated Exhibit 34 – Right of Entry with the quitclaim deed for this area. Map 11-Sheet 1 provides typical cross sections for access roads and haul roads. This map was certified by a qualified, registered professional engineer on May 9, 2014.
 - b. **DRMS Response:** In accordance with Rule 4.03.1(3)(a) and (b), please provide a plan and profile map for the proposed haul road. This should be similar to Map 11-4 which was provided for the RDA haul road.
 - c. **NECC Response:** NECC has prepared Maps 11-6, 11-7, and 11-8 showing the plan and profile of the haul road.

Section 2.05.4 - Reclamation Plan

6. Please provide documentation the Owner of Record of the 4.91 acre area approves the permanent retention of the road after mining operations cease, this documentation needs to be included as an exhibit in the PAP. Otherwise, please update the reclamation plan to account for the entire length of the new haul road in accordance with Rule 2.05.4.
 - a. **Resolved**

Section 2.05.5 Post Mining Land Use

7. Please update Map 15.
 - a. **NECC Response:** We have created a new map (Map 11-5) which shows the overall haul road disturbance as indicated in the legend.
 - b. **DRMS Response:** Map 11-5 does not have the same purpose as Map 15. Per Rule 2.05.5(2)(c), this item remains outstanding.
 - c. **NECC Response:** We have added a new Map (15a) showing post mining land use which is added to the legend as “industrial”. The haul road will be a permanent structure.

Section 2.05.6 – Mitigation of the Impacts of Mining Operations

8. Please update section 2.05.6 of the PAP as necessary to account for the proposed use and reclamation of the proposed haul road.
 - a. **NECC Response:** We believe your reference to Section 2.05.6 of the PAP should actually be Section 2.05.5 which has been updated on revised page 2.05.5-69 to discuss the proposed operation and reclamation of the haul road and is a part of this submittal.
 - b. **DRMS Response:** NECC’s assumption was incorrect. Please update section 2.05.6 of the PAP as necessary to account for the proposed upgrade and operation of the proposed haul road. Specifically, NECC should address subsection (2) Fish and Wildlife Plan, and subsection (4) Protection of Public Parks and Historic Places of Rule 2.05.6.

- c. **NECC Response:** Appropriate sections of Section 2.05.6 have been revised based on comments above. The cultural resource survey for the railroad corridor has been added to Exhibit 5 and the MOU with Colorado Parks and Wildlife has been added as a new Exhibit 46 to include mitigation measures for operation of the haul road.

Maps

- 9. The maps submitted with the revised material do not clearly delineate the 4.91 acre permit/affected area expansion. Please update the maps as necessary to clearly show the new proposed permit boundary and affected area boundary.
 - a. **NECC Response:** We have created a new map (Map 11-5) which shows the overall haul road disturbance as indicated in the legend.
 - b. **DRMS Response:** Based on your response to the items above, please revise the maps accordingly. Also, the maps submitted were not signed or dated. In accordance with Rule 2.10.3(2) Maps, plans, and cross sections included in the permit application which are required by 2.10 shall be prepared by or under the direction of, and certified by, a qualified registered professional engineer or professional geologist, with assistance from experts in related fields such as land surveying and landscape architecture and shall be updated by the permittee as required by the Division.
 - c. **NECC Response:** Maps have been signed and certified by a registered professional engineer.
- 10. Please update the other Map 11 series maps to account for the new haul road permit/affected land area.
 - a. **NECC Response:** We have created a new map (Map 11-5) which shows the overall haul road disturbance as indicated in the legend.
 - b. **DRMS Response:** Responses to the items above should address this issue.
 - c. **NECC Response:** See response to items above.

In accordance with Rule 2.07.3(1), you have the opportunity to amend, review, or otherwise make your application complete. DRMS is happy to discuss this further with NECC should you have any questions. Please feel free to reach out to me at Jared.Ebert@state.co.us or at (303) 866-3567 ext. 8120.

Sincerely,



Jared Ebert
Senior Environmental Protection Specialist

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