



STATE OF
COLORADO

Ebert - DNR, Jared <jared.ebert@state.co.us>

New Elk Mine, C-1981-012, TR76, 5th notice of Incomplete Application

Ebert - DNR, Jared <jared.ebert@state.co.us>

Fri, Jun 17, 2022 at 8:59 AM

To: Nick Mason <nmason@newelkcoal.com>

Cc: Connor Drinkard - DNR <connor.drinkard@state.co.us>, "Cowan, Eric" <Eric.Cowan@arcadis.com>, "Koblitz, Jerry" <Jerry.Koblitz@arcadis.com>, bstormes@newelkcoal.com

Bcc: "Stark, Jim" <jim.stark@state.co.us>

Nick,

Please see the attached notice of incomplete application. As this TR is a required corrective action to an outstanding violation at the mine site, the Division may be forced to take additional enforcement action should these issues not get addressed in a timely manner. The outstanding completeness items should be easily addressed.

Also, please respond to future review letters using NECC letterhead, the response letter provided on June 10, 2022 is on DRMS letterhead with my signature on it which is not appropriate.

Please provide a response through the epermitting system as a modification to TR76, and not a submittal of a new application. Here is a screenshot of what button you should press:

DRMS ePermitting Hyperlinks

Please note that, for security reasons, after clicking on any of the links below, you will be required to sign in again. Please also be aware that using the obsolete Internet Explorer browser will result in errors in the forms. Forms are optimized for the Chrome, Edge, Firefox, and Safari browsers.

Reporting Forms

Minerals Permits / Notices of Intent

Annual Report Form - Minerals Permits

Annual Report Form - Prospecting Site (NOI)

All Permit Types

Production Report - All Permit Types

Non-Permitting Forms

Coal Permits

Non-Permit Document Upload - Coal Permits

Permitting / Application Forms

Coal Permits / Coal Exploration

New Revision Form - Coal Permits

Modify Existing Revision Form - Coal Permits

Minerals Permits

New Revision Form - Mineral Permits

Modify Existing Revision Form - Mineral Permits

Administrative Forms

User Request Form

Change of Contact Form

User Forms

Password Change Form

DRMS Hyperlinks

DRMS Home Page

DRMS ePermitting Knowledge Base FAQ

DRMS WebLink

response to
completeness or
adequacy concerns

Please let me know if you have any questions or concerns,

Jared

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Jared Ebert

Senior Environmental Protection Specialist

***I am working remotely, please feel free to call my cell at (720) 413-6466**



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

P 303.866.3567 ext. 8120 | F 303.832.8106 |

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TR76_CompletenessReview5_17June2022.pdf
154K



June 17, 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)
Fifth Notice of Incomplete Application**

Dear Mr. Gray,

On June 10, 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 fourth notice of the receipt of an incomplete application letter dated April 21, 2022. The Division requests NECC provide written responses to future reviews on NECC letterhead. The response letter provided on June 10, 2022 appears to have been drafted on DRMS letterhead and included my signature which is not appropriate.

The Division has reviewed the revised application material and has found the application remains incomplete. The original items cited in the Division's April 21, 2022 letter are listed below, followed by NECC response. If an item has been addressed it has been deleted for simplicity. 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)."
- d. **DRMS Response:** The revised application indicates a change in affected and disturbed area of 4.9 acres for the haul road. However, in response to this item NECC indicated the disturbed area represents 6.4 acres of road. Based on further communication with NECC, it appears NECC is proposing an increase of 6.4 acres of affected and disturbed land. Please confirm this and revise the application form if necessary. Please submit an modification to your existing TR76 application through the Division's e-permitting system.

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.
 - d. **DRMS Response:** According to proposed revised page 2.04-8, a cultural resource survey was conducted and is included in Exhibit 7. This survey was not included with NECC response. Please provide the results of this survey.

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.
 - d. **DRMS Response:** As indicated above, the Division did not receive the cultural resource survey. Please submit this survey and clearly specify how it should be incorporated into the PAP.

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

EC: Nick Mason, NECC, nmason@newelkcoal.com
Connor Drinkard, DRMS Connor.Drinkard@state.co.us
Jerry Koblitz, arcadis Jerry.Koblitz@arcadis.com
Eric Cowan, arcadis Eric.Cowan@arcadis.com
Bill Stormes, NECC bstormes@newelkcoal.com