



STATE OF
COLORADO

Gibson - DNR, Amber <amber.gibson@state.co.us>

Inspection Report, Lorencito Canyon Mine, C-1996-084

1 message

Gibson - DNR, Amber <amber.gibson@state.co.us>

Thu, Oct 31, 2024 at 5:11 PM

To: john terry <jterry316314@gmail.com>, Frank Kirby <fkirby0428@gmail.com>

Cc: jterry@newelkcoal.com, JimB@newelkcoal.com

Good afternoon,

Attached for your records is a copy of the Division's inspection report for the complete inspection conducted at the Lorencito Canyon Mine on October 23, 2024.

Thank you,

Amber M. Gibson
Environmental Protection Specialist I



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

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COLORADO


Division of Reclamation,
Mining and Safety

Department of Natural Resources

PERMIT INFORMATION

Permit Number: C-1996-084 Mine Name: Lorencito Canyon Mine Operator: New Elk Coal Company, LLC Operator Address: Mr. John Terry 12250 Highway 12 Weston, CO 81091	County: Las Animas Operation Type: Surface Permit Status: Permanent Cessation Ownership: Private
	Operator Representative Present: None
Operator Representative Signature: (Field Issuance Only)	

INSPECTION INFORMATION

Inspection Start Date: October 23, 2024 Inspection Start Time: 11:00 Inspection End Date: Inspection End Time:	Inspection Type: Coal Complete Inspection Inspection Reason: Normal I&E Program Weather: Clear
Joint Inspection Agency: None	Joint Inspection Contacts:
Post Inspection Agency: None	Post Inspection Contacts:
Inspector(s): Amber M. Gibson	Inspector's Signature:  Signature Date: October 31, 2024

Inspection Topic Summary

NOTE: Y=Inspected N=Not Inspected R=Comments Noted V=Violation Issued NA=Not Applicable

N - Air Resource Protection	Y - Roads
Y - Availability of Records	Y - Reclamation Success
N - Backfill & Grading	N - Revegetation
N - Excess Spoil and Dev. Waste	N - Subsidence
N - Explosives	Y - Slides and Other Damage
N - Fish & Wildlife	N - Support Facilities On-site
Y - Hydrologic Balance	Y - Signs and Markers
N - Gen. Compliance With Mine Plan	N - Support Facilities Not On-site
N - Other	N - Special Categories Of Mining
Y - Processing Waste	N - Topsoil

COMMENTS

This was a complete inspection of the Lorencito Canyon Mine, Colorado Division of Reclamation, Mining and Safety ("DRMS" or "Division") permit number C-1996-084, operated by New Elk Coal Company, LLC. ("NECC"). Amber Gibson, with the Division, conducted the inspection. During the inspection, I was unaccompanied by an Operator representative for the Permittee -- New Elk Coal Company, LLC (NECC). As of July 18, 2024, the presence of staff onsite and available to represent NECC is unpredictable. The weather was warm, the sky was clear, and the ground was damp. The Lorencito Canyon Mine is currently in permanent cessation.

Maintenance items are in bold text.

On November 30, 2023, the Division sent updated requirements to the Operator (pertaining to the Division's second adequacy review) for the Renewal No. 5 (RN5) application. The RN5 decision date has been extended to December 30, 2024.

OUTSTANDING MAINTANENCE ITEMS

Listed below are maintenance items in previous inspection reports. The corrective action date for items 1-3 has been extended to the corrective action date for item 4. A corrective action date of December 31, 2024 had been set for item 4.

- (1) Erosion rills are forming on the north and west banks of Pond 006a. The erosion on the north bank appears to have been addressed at some point, because rebar is placed above the rills. However, it appears that the prior BMPs are no longer functioning adequately. **Pursuant to Rule 4.05.5(1)(c), the Operator shall address the erosion and repair the north bank.** The erosion on the west bank appears to have been caused by runoff from the road located east of Pond 006a. **Pursuant to Rule 4.05.5(1)(c), the Operator shall address the erosion and repair the west bank.**
- (2) The majority of Pond 008's embankment was stable and vegetated, however, the west bank contains some erosion rills and gullies. The erosion appears to have been caused by run-off from the roads above and down to the pond. **Pursuant to Rule 4.05.5(1)(c), the Operator shall repair**

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the erosion and stabilize the west bank of Pond 008. The Operator stated that they will likely install additional rock berms along the western-most road to help prevent run-off from running down the slopes and into the pond. The Operator also stated that they plan to remove the sediment (deposited as a result of the bank erosion) along the west bank of Pond 008.

- (3) The following items pertain to ongoing maintenance issues, cited in previous reports for the area in and around the reclaimed area above Pond 006a:
 - a. The ditch along the road leading to Pond 006a is eroding and nearly full of sediment. The overloaded ditch is contributing to the build-up of sediment in the check dams of ditches D8 and D64. **Pursuant to Rule 4.03.2(4), the ditch along the west side of the road leading to Pond 006a needs to be cleaned out and repaired.**
 - b. The check dams leading to Pond 006a, within ditches D8 and D64, are nearly full of sediment. **Pursuant to Rules 4.05.3(1)(c)-(e) and 4.05.5, the Operator shall clean out the sediment from the check dams to prevent excess sediment from entering the pond.**
- (4) The following items pertain to ongoing erosional issues in the areas shown in Figure 1, that pursuant to Rule 4.14.6 need to be addressed. A Technical Revision will be required to expand on the current Rill and Gully plan in the PAP. **The Operator shall submit the technical revision, obtain approval, repair the erosion, and stabilize the slopes pursuant to the approved plan by December 31, 2024**

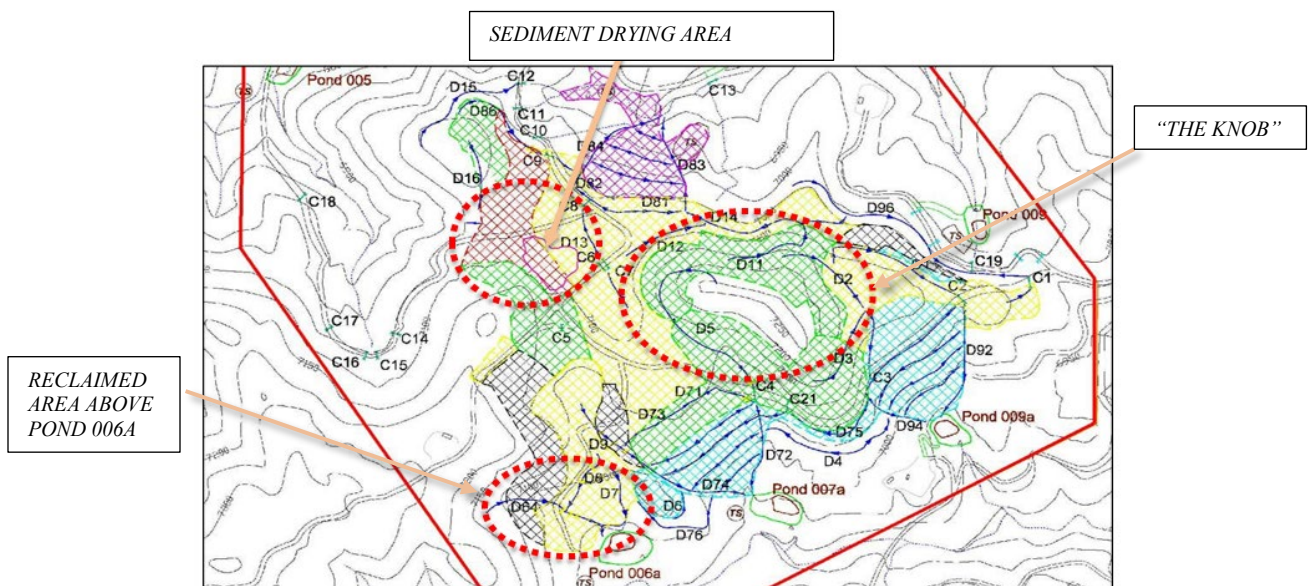


FIGURE 1. AREAS WHERE RILLS, GULLIES AND SPARSE VEGETATION HAS BEEN FOUND TO BE A PERSISTENT PROBLEM AT THE SITE ARE WITHIN THE DOTTED CIRCLE AREAS. BACKGROUND IMAGE IS THE 2020 ANNUAL REPORT MAP.

AVAILABILITY OF RECORDS – Rule 5.02.4(1):

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- The inspector called the number posted on the gate at the New Elk Mine. A representative was able to come and unlock the mine office. The mine records were checked in the mine office. The records check list is available at the end of this report. As of July 18, 2024, personnel presence onsite is often absent and is unpredictable. The Division has noted on the recent complete inspections that the mine records in the office have been incomplete during the last few complete inspections (see Comment section on the records page at the end of this report). **This issue will need to be remedied immediately when there is a new Operator for the site.**
- The Enforcement page at the end of the report describes an outstanding violation issued by the Division as a result of the May 2024 inspection. As of the date of this October 2024 inspection report's issuance, the Operator has not yet provided any abatement documentation. The deadline for the abatement of violation number CV-2024-001 had been extended to the full 90 days allowable by Rule 5.03.2(2)(b) -- to August 28, 2024.
- On August 29, 2024, the Division issued a Cessation Order (CO-2024-001) for the Permittee's failure to abate violation no. CV-2024-001.
- On September 23, 2024 the Division held an Informal Public Hearing where the decision to uphold the Cessation Order was issued on October 10, 2024.
- On September 30, 2024, the Division issued a Show Cause Order. The Operator and any interested parties had until October 30, 2024 to show cause as to why the permit should not be suspended or revoked. As of the date of this October 2024 inspection report, the Division has not received any justification documentation from the Operator or otherwise.

HYDROLOGIC BALANCE - Rule 4.05

Drainage Control 4.05.1, 4.05.2, 4.05.3; Siltation Structures 4.05.5, 4.05.6; Discharge Structures 4.05.7, 4.05.10; Diversions 4.05.4; Effluent Limits 4.05.2; Ground Water Monitoring 4.05.13; Surface Water Monitoring 4.05.13; Drainage – Acid and Toxic Materials 4.05.8; Impoundments 4.05.6, 4.05.9; Stream Buffer Zones 4.05.18:

- Pond 005:
 - The pond contained some water at the time of the inspection (Photo 1) but was not discharging.
 - The pond embankment was stable and vegetated.
 - The primary and emergency spillways appeared clear and functional.
 - The state listed noxious weed, Mullein, was observed by the spillway. **The Operator shall treat and/or remove Mullein in this area.**

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Photo 1: Pond 005

- Ditch D9:
 - The check dams within Ditch D9, leading down to Pond 006a, contain an excess amount of sediment (Photo 2). A gully was also observed cutting down from the road and adding sediment to the third check dam. **The Operator shall remove the excess sediment from the check dams within D9.**



Photo 2: Looking southwest down the check dams within D9.

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- Pond 006a:

- Pond 006a contained water (Photo 3) and was not discharging at the time of the inspection, but appeared to have discharged recently (Photo 4). Sediment has built up within the upper portion of the flume. **The Operator shall clean the flume of sediment and vegetation to ensure it functions properly.**
- The pond embankment still requires maintenance (see Item # 1 in the outstanding maintenance items list on the first page of this report).
- The west bank referenced in Item #1 in the outstanding maintenance items list on the first page of this report, currently has a vegetative cover due to volunteer vegetation (circled area in Photo 5). This area will likely still need to be re-stabilized, but may need to be re-addressed at a later date once the vegetation has cleared for the season.
- The primary and emergency spillways appeared to be clear and functional.



Photo 3: Looking northeast at Pond 006a. The erosion seen on the bank is that which is referred to in Item #1 on the first page of this report.

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Photo 4: Flume was not discharging during the inspection, but appears to have done so recently.



Photo 5: Circled is the area along the west bank of Pond 006a referenced in Item #1 in the ongoing maintenance section on the first page of this report.

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Photo 6: See outstanding maintenance Item #3 in the first pages of this report. (Top) Looking south at the west side of the road leading down to Pond 006a. The red circle corresponds approximately with the red circle in the bottom left image. (Left) Looking north along the access road to Pond 006a. The arrow indicates where erosion has cut across the road and is leading to the check dams within ditch D8. (Right) The arrows indicate where erosion is leading from the reclaimed area above Pond 006a, into the check dams located in ditch D64 and into Pond 006a.

- Pond 007a:
 - The pond contained water at the time of the inspection (Photo 7) and had recently discharged but was not discharging at the time of the inspection (Photo 8).
 - The pond embankment appeared to be stable and vegetated.
 - The primary and emergency spillways appeared clear and functional.
 - Mullein was observed in the field to the south and west of Pond 007a, within the permit boundary (Photos 9-10). **The Operator shall treat/remove Mullein within this area.**

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Number of Complete Inspections this Fiscal Year: 2



Photo 7: Looking northwest across Pond 007a.



Photo 8: Flume at Pond 007a. Pooled water is seen below the flume, indicating it had recently discharged.

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Photo 9: Mullein located west of the flume at Pond 007a.



Photo 10: Area circled contains numerous stalks of Mullein. Fill 007 is seen in the background.

- **Pond 008:**
 - The pond contained water (Photo 11) and was discharging at the time of the inspection (Photo 12).
 - The pond embankment still requires maintenance (see Item #2 in the outstanding maintenance items list on the first page of this report).
 - The primary and emergency spillways appeared clear and functional.

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- Some of the state listed noxious weed, Mullein, observed along the west bank of Pond 008 were treated by the Operator during the June inspection. However, more were observed during the August-October inspections. **The Operator shall treat/remove Mullein within this area.**



Photo 11: Looking south at Pond 008.



Photo 12: Discharging flume at Pond 008.

- Pond 009:
 - Pond 009 contained water (Photo 13), but was not discharging.

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- The pond embankment was stable and vegetated.
- The primary and emergency spillways appeared clear and functional.



Photo 13: Looking southeast at Pond 009.

- Pond 009a:
 - The pond contained water (Photo 14) and was discharging (Photos 15-16).
 - The pond embankment appeared to be stable and vegetated.
 - The primary and emergency spillways appeared clear and functional.

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Photo 14: Looking northeast at Pond 009a.



Photo 15: Looking north at the water discharging from the flume at Pond 009a.

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Number of Complete Inspections this Fiscal Year: 2

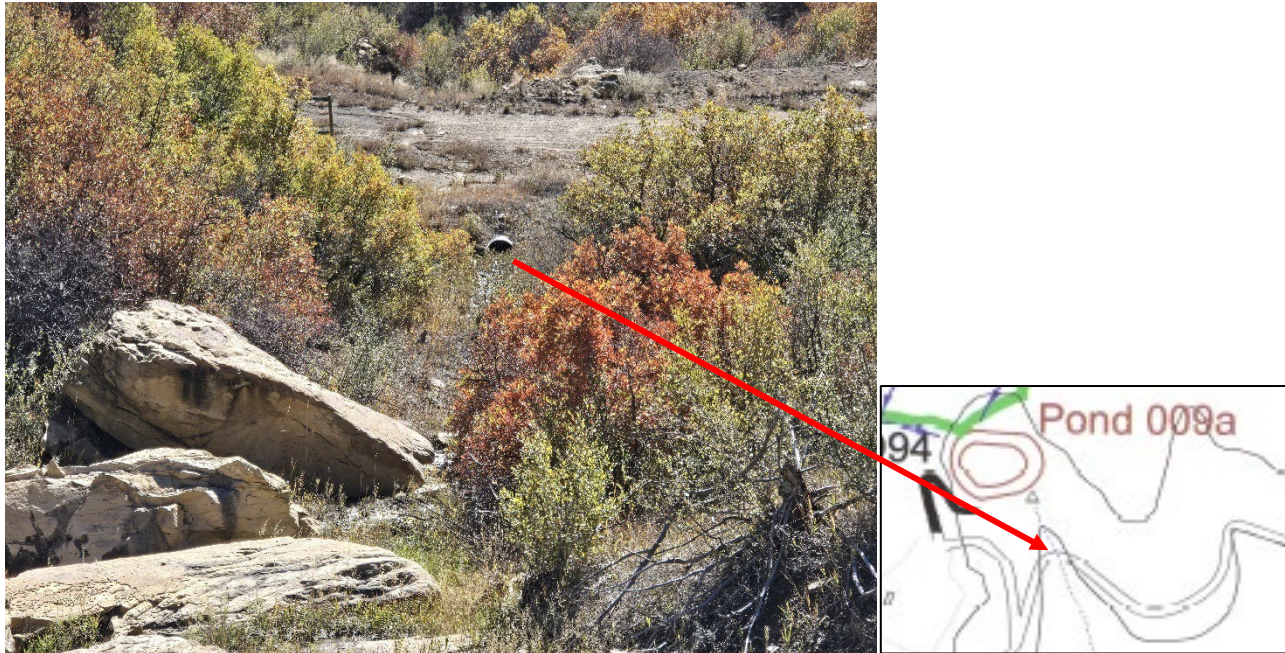


Photo 16: The discharge from the flume at Pond 009a was observed going downhill and into the culvert under the road, as depicted in the Permittee's Map 2.05.3-7 (see excerpt from the map above).

PROCESSING WASTE/COAL MINE WASTE PILES – Rule 4.10 and 4.11

Drainage Control; Surface Stabilization; Placement:

- The Reclaimed Area above and to the west of Pond 006a was observed (Photo 17). This area still requires maintenance (See Items 3 and 4 in the Ongoing Maintenance Items section on the first page of this report).



Photo 17: Reclaimed area to the west of Pond 006a. Run-off from reclaimed slopes is carrying sediment into and across the

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road and depositing the sediment into the check dams.

- Fill 7 was well vegetated and appeared stable (Photo 18).



Photo 18: Looking southwest at Fill 7.

- Fill 8 was well vegetated and appeared stable (Photo 19).



Photo 19: Looking southeast at Fill 8.

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- Fill 9 was well vegetated and appeared stable.

ROADS – Rule 4.03

Construction 4.03.1(3)/4.03.2(3), Drainage 4.03.1(4)/4.03.2(4), Surfacing and Maintenance 4.03.1(5) and (6)/4.03.2(5) and (6), Reclamation 4.03.1(7)/4.03.2(7):

- See ongoing maintenance Item #2 and #3. The road along Pond 006A is washed out in the area between the reclaimed area and Pond 006A, and needs to be repaired (Photo 6 above). The road leading down into Pond 008 has some ruts that will require repairs. The ruts* and divots in the road to Pond 008 make vehicle access to the pond difficult and not advisable (Photo 20). **These are planned to be addressed at the time the west bank is stabilized.*



Photo 20: Looking north, down the access road to Pond 008.

RECLAMATION SUCCESS - Rule 4.15, Rule 3:

- The area above where NECC stores pond and ditch cleanings consists of a steep slope. This slope was observed during the inspection (Photo 21). Erosion rills and gullies were observed but the vegetation on this slope appears better established this year than in years previously observed by DRMS. NECC is encouraged to continue to monitor this area and conduct maintenance as needed.

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Photo 21: Sediment drying area and seeded slope.

- A previously disturbed area north of Fill 7 and north of the road, referred to as “The Knob”, exhibits erosion on the south and west facing slopes (Photo 22). There is also a small catchment at the base of the slope that was holding water at the time of the inspection. NECC is required to provide a plan to stabilize this area through a revision following the approval of RN5 (see ongoing maintenance item number 4).



Photo 22: “The Knob” with rills that have formed on the less vegetated areas on the south and west facing slopes.

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- An area designated as a vegetation test plot has been infested with Mullein (Photo 23). **The Operator shall treat and/or remove the Mullein within this area.**



Photo 23: Mullein growing in the test plot area southwest of “The Knob”.

SIGNS AND MARKERS – Rule 4.02:

- Mine signs were posted at road entrances and at the entrance to permit boundary in compliance with Rule 4.02 (Photo 24).

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Photo 24: Mine sign located at the permit boundary, south of Pond 009.

DOCUMENTS RECEIVED

OTHER (SPECIFY)

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ENFORCEMENT ACTIONS/COMPLIANCE**Infraction Number:** CO2024001

Inspection Date: May 22, 2024

Date Issued: August 29, 2024

Primary Topic: Availability Of Records

Secondary Topic:

Tertiary Topic:

Description: On May 30, 2024, the Division issued the following violation:

“During the records review, conducted as part of a complete inspection of the Lorencito Canyon Mine (permit number C-1996-084), operated by New Elk Coal Company, LLC. (“NECC” or “Operator”) in May 2024, the Division found that the certificate certifying NECC has a public liability insurance policy for the operation had expired as of April 2024. At the time of the inspection, NECC’s representative was unsure if the insurance policy had been renewed, and by the time of the inspection report issuance, proof of insurance had not been provided to the Division. Also, NECC did not have or provide satisfactory evidence they had satisfied applicable State or Federal self-insurance requirements.

This is a violation for failure to maintain a certificate certifying that NECC has a public liability insurance policy in full force and effect during the term of the permit or any renewal, including the term of all reclamation operations; or, in lieu of a certificate for public liability insurance policy, satisfactory evidence NECC has satisfied applicable State or Federal self-insurance requirements pursuant to C.R.S 34-33-110(5) and Rule 2.03.9.”

NECC had extended the abatement deadline to the full 90 days allowed by Rule 5.03.2(2)(b). The final abatement deadline, set for August 28, 2024, has passed. The Division finds that NECC has failed to abate the violation, and therefore has issued this cessation order in accordance with Rule 5.03.2(3).

Abatement #: 1

Abatement Due Date: 9/28/2024

Abatement Due Extended Date:

Abatement Date:

Abatement Description: New Elk Coal Company, LLC. shall submit to the Division for inclusion in the permit application, a certificate certifying that the applicant has a public liability insurance policy in force for the surface coal mining and reclamation operation. Or, in lieu of a certificate for public liability insurance policy, satisfactory evidence that NECC has satisfied applicable State or Federal self-insurance requirements in accordance with Rule 2.03.9.

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Infraction Number: CV2024001

Inspection Date: May 22, 2024

Date Issued: May 30, 2024

Primary Topic: Availability Of Records

Secondary Topic: Availability Of Records

Tertiary Topic:

Description: During the records review, conducted as part of a complete inspection of the Lorencito Canyon Mine (permit number C-1996-084), operated by New Elk Coal Company, LLC. ("NECC" or "Operator") in May 2024, the Division found that the certificate certifying NECC has a public liability insurance policy for the operation had expired as of April 2024. At the time of the inspection, NECC's representative was unsure if the insurance policy had been renewed, and by the time of the inspection report issuance, proof of insurance had not been provided to the Division. Also, NECC did not have or provide satisfactory evidence they had satisfied applicable State or Federal self-insurance requirements.

This is a violation for failure to maintain a certificate certifying that NECC has a public liability insurance policy in full force and effect during the term of the permit or any renewal, including the term of all reclamation operations; or, in lieu of a certificate for public liability insurance policy, satisfactory evidence NECC has satisfied applicable State or Federal self-insurance requirements pursuant to C.R.S 34-33-110(5) and Rule 2.03.9.

Abatement #: 1

Abatement Due Date: 7/1/2024

Abatement Due Extended Date: 8/28/2024

Abatement Date:

Abatement Description: New Elk Coal Company, LLC. shall submit to the Division for inclusion in the permit application, a certificate certifying that the applicant has a public liability insurance policy in force for the surface coal mining and reclamation operation. Or, in lieu of a certificate for public liability insurance policy, satisfactory evidence that NECC has satisfied applicable State or Federal self-insurance requirements in accordance with Rule 2.03.9.

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AVAILABILITY OF RECORDS**PERMIT RECORDS**

DRMS Permit	X, expires November 2022
Permit Application w/Revisions	X
Findings Document	X, April 2020
Insurance Certificate	X, April 2024
Bond Document	X, 2020
Phased Bond Release Documents/Findings	X, SL-2 2008

Air Emission Permits	X, doc showing permits were terminated
County Special Use Permits	Exempt
UG Mining Landowner Notification	n/a
Subsidence Monitoring Reports	n/a
Subsidence Monitoring Data	n/a
Rill & Gully Survey	X, 2022 ARR submitted 2023
Vegetation Monitoring Data	n/a
Specific Variance Approvals	n/a
Annual Reclamation Reports	X, submitted 2023

Midterm Review Documents	MT-4
DRMS/OSM Inspection Reports/Enforcement Actions (3 Years)	Only through May 2024
Transfers/Succession of Operator	X, 2021
Temporary Cessation Notification	n/a
Reclamation Cost Estimate	X, MT-4 2016 and RN-4 2017

CERTIFICATIONS

Pond Certifications	006A, 007A, 008, 009, 009A, 005
Annual Certifications for Impoundments	X, December 2023
Fill Certifications for Excess Spoil or Underground Development Waste	X, Dec 2023
• Quarterly Inspections	X, Dec 2023
• Compaction Testing	n/a
• Final Certification	n/a
Coal Processing Waste Banks	n/a
Haul Road Certifications	n/a
Access Road Certifications	n/a

HYDROLOGIC RECORDS

NPDES Permit	n/a
NPDES Records	n/a
Stormwater Management Plan	X
SPCC Plan	n/a
MSHA Pond Inspections	n/a

State Engineer's Pond Inspection Quarterly Pond Inspections

Only through Q1 March 2024

Annual Hydrology Reports	n/a
• Ground Water Monitoring	n/a
• Surface Water Monitoring	n/a
• Spring & Seep Monitoring	n/a
• Mine Water Discharge Monitoring	n/a
• Mine Inflow Study	n/a
• Water Consumption Records	n/a

Well Permits

Terminated via TR-16 in 2009

X, #201451-201476, excluding 201452

BLASTING RECORDS

Blasting Publication	n/a
Blasting Records (3 years)	n/a
ATFE Explosives Permit	n/a
Blasting Variances	n/a
Pre-Blast Surveys	n/a

ADDITIONAL RECORDS (specify)

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COMMENTS: Items in **red text** indicate problems in the on-site records. The insurance document on-file in the mine office expired in April 2024. The Operator did not have a copy of an updated insurance policy at the time of the inspection. This has been **cited as a Violation above**. The Pond Certification for Pond 005 is not in the record, and the **Operator is required** to provide a copy to the Division. The Rill & Gully Survey, Annual Reclamation Report, DRMS/OSM Inspection Reports, Quarterly Fill Certification for Excess Soil inspections, and the State Engineer Inspection Reports are up-to-date and on-file in the Laserfiche database, but have not been updated in the physical binders in the New Elk mine office at the time of this report's issuance. The **Operator shall** confirm with the Division that these files have been added to the binders in the mine office.

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