COLORADO
Department of Public Health & Environment

Colorado Discharge Permit System (CDPS)
Fact Sheet To Permit Number CO0049071
Peabody Sage Creek Mining, LLC, Hayden Gulch Loadout, Routt County

Erin Scott
June 28, 2024

TABLE OF CONTENTS

I. INTRODUCTION

The National Pollutant Discharge Elimination System (NPDES) permit was created by Congress as the implementation tool under the Clean Water Act for the restriction of the quantity, rate, and concentration of pollutants that the point sources may discharge into water. The division, as the delegated authority for development and issuance of NPDES permits for the state of Colorado, is obligated to develop and issue NPDES permits in a manner that meets federal statutory requirements (the Clean Water Act, 33 U.S.C. § 1251 et seq.), state statutory requirements (the Colorado Water Quality Control Act, 25-8-101 et seq.) and state and federal regulations.

Routine review is an integral aspect of the NPDES and the Colorado Discharge Permitting System (CDPS) program. The Clean Water Act incorporates a finite term for NPDES permits in order to allow for routine review of permit terms and conditions; the Colorado Water Quality Control Act similarly recognizes that the periodic renewal of permits is required. Routine review of CDPS permits provides a mechanism for the division and the public to scrutinize the existing conditions of the permit; to upgrade the permit requirements to reflect changing knowledge, law, or advances in science and technology; to ensure that the permit limits are protective of the most recent water quality classifications, standards, and antidegradation designations established by the Water Quality Control Commission; and, if necessary, to protect against human error by the permit writer introduced into previous permits. Routine review often results in the incorporation of new or different permit limitations or approaches.

This fact sheet includes factors explaining the need for the proposed permit requirements, and presents evidence supporting the need for the proposed requirements, including information regarding pollutant potential and available controls, incidents of environmental damage, and permit violations. This fact sheet also includes some background

4300 Cherry Creek Drive S., Denver, CO 80246-1530 P 303-692-2000 www.colorado.gov/cdphe/wqcd

information to provide context for the statutory and regulatory direction as to how permit terms and conditions are established.

II. TYPE OF PERMIT

A. Permit Type: Renewal and conversion from COG850008

B. Discharge To: Surface Water

III. FACILITY INFORMATION

A. SIC Code: 1221 (Coal Surface, including preparation plants)

B. Legal Contact/Permittee: Pat Sollars, General Manager, Colorado Operations
29515 Routt County Road 27, Oak Creek, CO 80467
970-870-2719

C. Facility Location: Hayden Gulch Loadout, CR 53 2 mi S of Hayden, Hayden, CO 81639
Latitude: 4 0.476111, Longitude: - 107.224722

D. Permitted Feature: Outfalls 003A, 004A, and 005A following treatment (where applicable), prior to mixing with the receiving stream. Table III-1 provides detailed information for each outfall.

Table III-1

Outfall	Description	Latitude Longitude	Wastewater Source	ELG Subpart*	Design Flow (MGD)	Receiving Water
003A	Stormwater outfall	40.495556 -107.243333	Stormwater runoff from areas in reclamation	H	NA	Shelton Irrigation Return Ditch, to the Yampa River
004A	Stormwater outfall	40.497778 -107.241944	Stormwater runoff from areas in reclamation	H	NA	Shelton Irrigation Return Ditch, to the Yampa River
005A	Stormwater outfall	40.498333 -107.241389	Stormwater runoff from areas in reclamation	H	NA	Shelton Irrigation Return Ditch, to the Yampa River

* Federal effluent limitations at **40 CFR Part 434**, Coal Mining Point Source Category

The location(s) provided above will serve as the point(s) of compliance for this permit and are appropriate as they are located after all treatment (as applicable), and prior to discharge to the receiving water.

E. Fee Category: Coal Mining - Sedimentation ponds, surface runoff only

F. Major Changes From Last Renewal:

- Permit coverage for the Hayden Gulch Loadout facility is being converted to an individual renewal permit
- Outfalls 001A and 002A: The permittee provided documentation to the division that the Division of Reclamation, Mining and Safety (DRMS) approved the applicable Phase III performance bond release for areas contributing to the discharges from Outfalls 001A and 002A, and submitted a Termination Application for these two outfalls (by email correspondence on 3/12/2024 and 4/5/2024, respectively). Therefore, the division

removed Outfalls 001A and 002A from permit coverage as they receive stormwater runoff from Phase III released areas (see Section X.C of this fact sheet - No remaining discharge).

- Stormwater discharges from Outfalls 003A, 004A, and 005A - Changes to the requirements associated with coverage under the COG85000 general permit are provided below.

  - New outfall designations (Outfalls 003A, 004A, and 005A) were added to the permit for existing stormwater discharges.
  - Changes to the applicable Effluent Limitation Guideline (ELG) subpart were implemented in the permit.
  - Stormwater effluent limitations, and terms and conditions, were incorporated for these stormwater-only outfalls (Outfalls 003A, 004A, and 005A)

IV. RECEIVING STREAM

A. Waterbody Identification

Table IV-1 includes summary information related to the facility discharge. This summary table includes key regulatory starting points used in developing permit effluent terms and conditions such as: receiving stream information; threatened and endangered species; 303(d) listings; and a list of parameters evaluated.

(i) Table IV-1
Receiving Stream Summary

Receiving Stream Information					
Receiving Stream Name		**Segment ID**	**Designation**	**Classification(s)**	
S1. Yampa River		COUCYA02b	Reviewable	Agriculture, Aquatic Life Cold 1, Recreation E, and Water Supply.	
Regulatory Information					
T&E Species	**303(d) (Reg 93)**	**Monitor and Eval (Reg 93)**	**Existing TMDL**	**Temporary Modification(s)**	**Control Regulation**
No	S1. Arsenic (tot); Temperature	No	No	S1. Arsenic (chronic) = hybrid Temperature (MWAT) = current conditions (applies from 7/1-9/30 and 11/1-11/30) Expiration Date of 12/31/2024	Reg. 33
Pollutants Evaluated: Sediment					

The Hayden Gulch Loadout Outfalls 003A, 004A, and 005A discharge stormwater runoff to Shelton Ditch prior to entering the Yampa River (stream segment COUCYA02b). The Shelton Irrigation Return Ditch is an unclassified state water.

Stream segment COUCYA02b means the Upper Colorado River Basin, Yampa River Sub-basin, Stream Segment 2b. This segment is composed of the 'mainstem of the Yampa River from a point immediately above the confluence with Oak Creek to a point immediately below the confluence with Elkhead Creek.' Stream segment COUCYA02b is classified for agriculture, aquatic life cold 1, recreation E, and water supply.

B. Total Maximum Daily Loads and Regulation 93 – Colorado's Section 303(d) List of Impaired Waters and Monitoring and Evaluation List

Stream segment COUCYA02b is on the 303(d) list of water quality impacted streams for total arsenic (water supply) and temperature.

For a receiving water placed on this list, the Restoration and Protection Unit is tasked with developing the Total Maximum Daily Loads (TMDLs) and the Waste Load Allocation (WLAs) to be distributed to the affected facilities. WLAs for the referenced parameters have not yet been established, and the allowable concentration calculated in the following sections may change upon further evaluation by the Division. Note that since the discharge(s) to segment COUCYA02b is from areas in reclamation, there are no numeric effluent limitations associated with the discharges at this time.

C. Pollutants of Concern

Pollutants of concern may be determined by one or more of the following: facility type; effluent characteristics and chemistry; effluent water quality data; receiving water quality; presence of federal effluent limitation guidelines; or other information.

Consistent with the facility conditions (i.e., the 2.3 acres subject to the renewal permit are in reclamation) and the applicable federal ELG (Subpart H), the pollutant addressed in the renewal permit is sediment.

V. FACILITY DESCRIPTION

A. Industry Description

The following description summarizes facility information the permittee provided to the division from sources such as the permit application, application supplement(s) and associated materials, and other correspondence, including documentation from the DRMS.

The Hayden Gulch Loadout (HGLO) is a coal processing and loadout facility, permitted and operated by Hayden Gulch Terminal, LLC (HGT). This facility received, unloaded, processed, stored, and loaded coal for transport (by truck and train).

Coal was handled and shipped from this facility through 1987. The last active use of the facility was temporary coal storage in 1992. Since that time, the loadout facilities were removed and reclaimed, the former rail spur area was converted to a recreational trail for the use of residents and visitors to the town of Hayden under a locally managed "Tracks to Trails" program, and haul roads approved by the DRMS are to remain as a public county road.

The facility has received several bond releases from the DRMS associated with reclamation of these areas, and most recently, received Phase III release for all but 6.8 acres at the facility, of which 2.3 acres were disturbed. The remaining 2.3 disturbed acres were originally associated with a railroad bed leading to the main rail spur and have since been revegetated, i.e., converted into irrigated hay fields. The 2.3 acres have not been bond released by the DRMS (see Figures V-I and –II, below).

In email correspondence to the division (in the public record), the permittee documented that there is no use or storage of any chemicals at the Hayden Gulch Loadout and that no Class B firefighting foam was stored, used, or released at or near this facility.

The two ponds associated with Outfalls 001A and 002A from the previous certification (Truck Loop Pond and the Rail Loop Pond) are approved (DRMS) to remain as permanent structures. The ponds currently received stormwater runoff from Phase III released areas, and the permittee has reported 'No Discharge' from outfalls 001A and 002A since 9/2011 and 6/2011, respectively. The permittee requested that these outfalls be removed from permit coverage in email correspondence on 4/5/2024.

Figure V-1: Area in reclamation (not bond released), Hayden Gulch Loadout

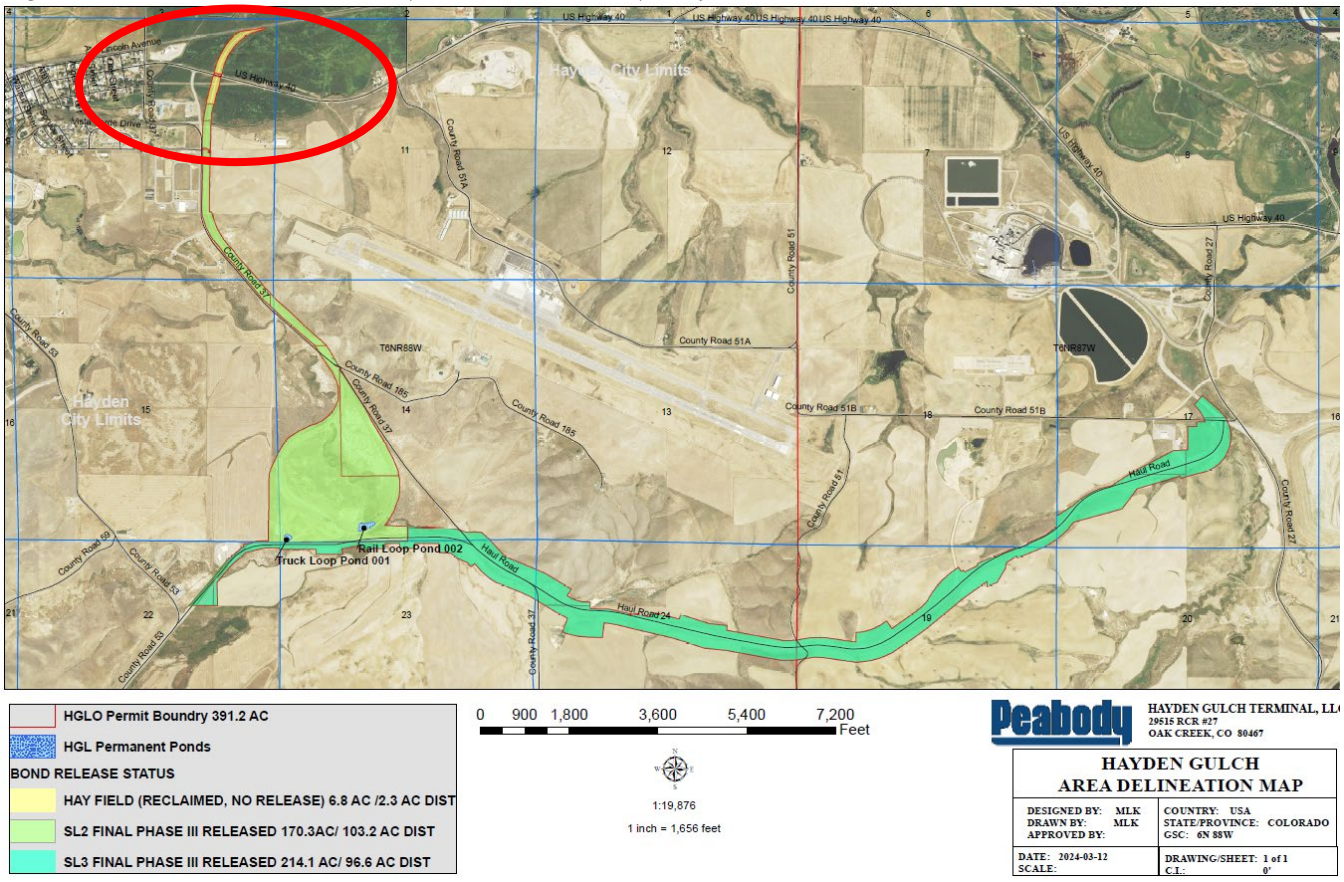
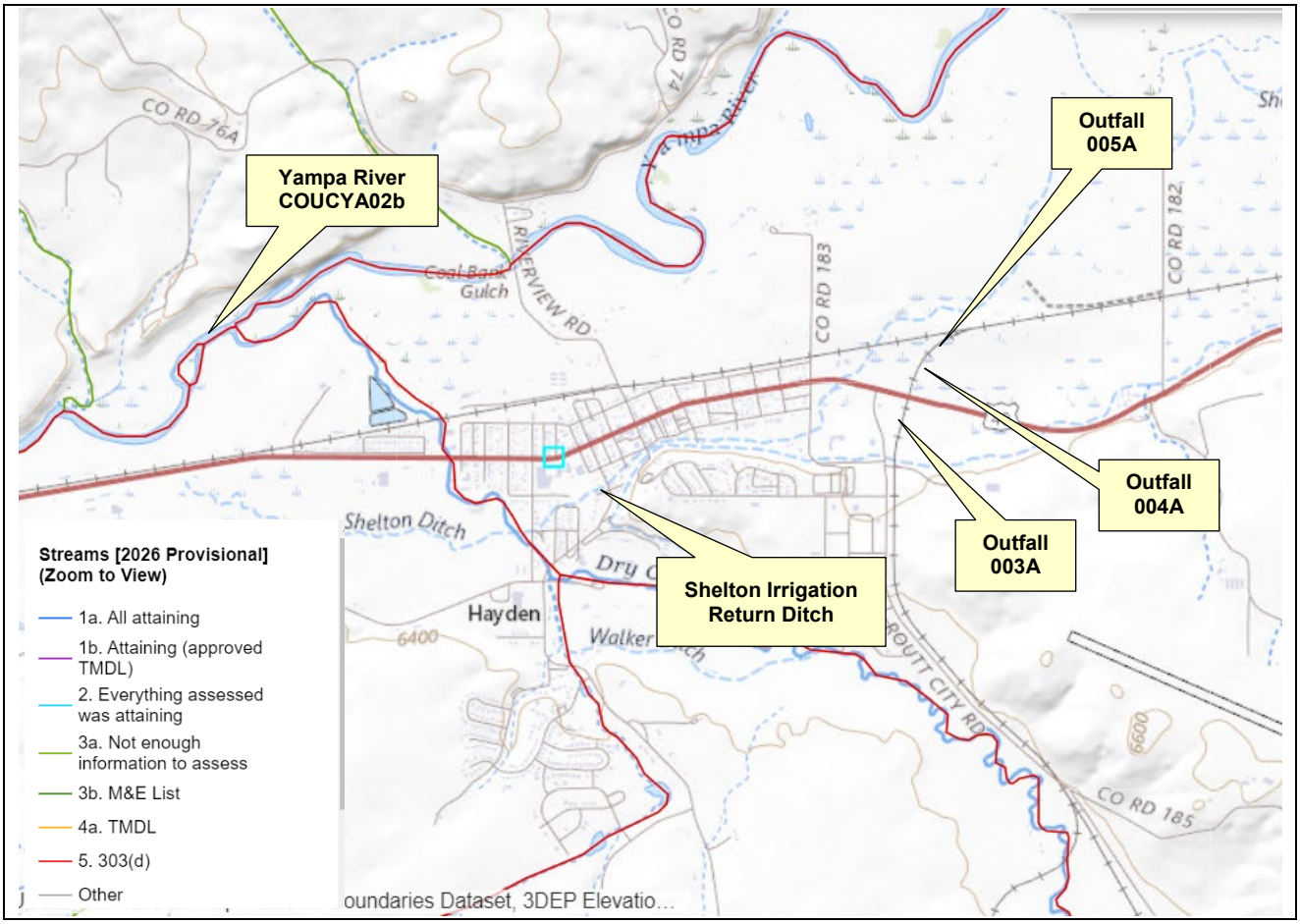


Figure V-2: Enlarged view of area in reclamation (not bond released), Hayden Gulch Loadout

4300 Cherry Creek Drive S., Denver, CO 80246-1530 P 303-692-2000 www.colorado.gov/cdphe/wqcd

B. Facility Map



C. Chemical Usage

The permittee did not specify any chemicals for use in waters that may be discharged. **On this basis, no chemicals are approved under this permit.** Prior to use of any applicable chemical that could significantly change the nature or increase the quantity of pollutants discharged, the permittee must submit a Chemical Evaluation Application for that chemical. Until approved, use of any chemical in waters that may be discharged could result in a discharge of pollutants not authorized under the permit. Also see Part II.A.1. and Part II.L. of the permit.

D. Wastewater Sources and Treatment Description

The following description summarizes facility information the permittee provided to the division from sources such as the permit application, application supplement(s) and associated materials, and other correspondence.

1. Outfall 003A – Stormwater runoff from areas in reclamation, and discharged to the Yampa River. No treatment of this discharge is provided.

2. Outfall 004A – Stormwater runoff from areas in reclamation, and discharged to the Yampa River. No treatment of this discharge is provided.

3. Outfall 005A – Stormwater runoff from areas in reclamation, and discharged to the Yampa River. No treatment of this discharge is provided.

Note that stormwater outfalls are locations where stormwater discharges to a surface water (directly or indirectly), and may be located within or outside of the CDPS permit boundary; stormwater outfalls are located prior to entering the surface water. Alternately, if the discharge is not to a surface water located within or outside of the CDPS permit boundary, the stormwater outfall is where the industrial stormwater leaves the CDPS permit boundary.

The Hayden Gulch Loadout discharge permit authorizes stormwater discharges only, from the specific outfalls identified in Table III-1 above, and does not authorize any other discharges from the facility to surface water.

Pursuant to Regulation 100 (the Water and Wastewater Facility Operator Certification Requirements), this facility may require a certified operator. If the facility has a question on the level of the certified operator it needs, then the facility will need to contact the Facility Operator Certification Program of the Division.

VI. PERFORMANCE HISTORY

A. Monitoring Data

1. Discharge Monitoring Reports – The previous certification for the facility (COG850008) was effective July 1, 2008. Outfalls 001A and 002A discharged during the previous permit term; however, both outfalls were removed from this permitting action due to Phase III DRMS bond release (see Sections III.F and V.A of this fact sheet). For the period July 1, 2008 through December 31, 2023 (62 quarters), outfall 001A discharged a total of 8 monitoring periods, and 002A a total of 4 monitoring periods. The permittee reported 'No Discharge' from outfalls 001A and 002A since 9/2011 and 6/2011, respectively.

   DMRs were not previously required for outfalls 003A, 004A, and 005A as they are new outfall designations in this permit action for existing stormwater discharges.

B. Compliance With Terms and Conditions of Previous Permit

1. Effluent Limitations – DMR data submitted to the division for outfalls 001A and 002A indicates compliance with the numeric limitations of the previous permit. Note that these outfalls were removed from this permitting action, due to Phase III DRMS bond release (see Sections III.F and V.A of this fact sheet).

   In accordance with 40 CFR Part 122.41(a), any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

2. Other Permit Requirements – The permittee did not meet the following conditions of the permit [response]:

   a. **5/2014**: the 2013 Annual Report was not signed in accordance with Part II.E.2.e of the permit.

      [The permittee resubmitted the corrected annual report to the division May 27, 2014.]

   b. **9/2015**: the division did not receive DMR for monitoring period ending 06/30/2015 for Outfall 001A.

      [The permittee submitted the DMR to the division 9/30/2015.]

   c. **12/2019:** the division did not receive ORC documentation.

      [Noncompliance resolved. Operator holds a Class C industrial operator certification level.]

   The permittee has been in compliance with all other aspects of the previous permit.

VII. DISCUSSION OF EFFLUENT LIMITATIONS

A. Regulatory Basis for Limitations

1. Technology Based Limitations
   a. Federal Effluent Limitation Guidelines – The federal guidelines that apply to this type of facility are found under 40 CFR 434, titled Coal Mining Point Source Category. The federal ELG will typically apply, unless a more stringent limitation, or an alternate limitation, that would be protective of the limits shown below is applied.

      The specific subpart currently applicable to discharges authorized by the renewal permit follows:

      - Subpart H – Western Alkaline Coal Mining, which applies to "…reclamation areas, brushing and grubbing areas, topsoil stockpiling areas, and regraded areas…" (Outfalls 003A, 004A, and 005A). Subpart H is discussed in Section VII of this fact sheet.

   b. Regulation 62: Regulations for Effluent Limitations – These Regulations include effluent limitations that apply to all discharges of wastewater, except stormwater, to state waters. Therefore, these regulations do not apply to the discharge from outfalls 003A, 004A, and 005A.

2. Narrative Water Quality Standards - Section 31.11(1)(a)(iv) of The Basic Standards and Methodologies for Surface Waters (Regulation No. 31) includes the narrative standard that state surface waters shall be free of substances that are harmful to the beneficial uses or toxic to humans, animals, plants, or aquatic life.

   a. Agricultural Use Protection – EC and SAR (electrical conductivity and sodium adsorption ratio) are not pollutants of concern associated with the stormwater discharges from outfalls 003A, 004A, and 005A; therefore, EC and SAR monitoring is not applicable to the stormwater-only discharges authorized by this permit.

   b. Whole Effluent Toxicity - The Water Quality Control Division has established the use of WET testing as a method for identifying and controlling toxic discharges from wastewater treatment facilities. WET testing is being utilized as a means to ensure that there are no discharges of pollutants "in amounts, concentrations or combinations which are harmful to the beneficial uses or toxic to humans, animals, plants, or aquatic life" as required by Section 31.11 (1) of the Basic Standards and Methodologies for Surface Waters. The requirements for WET testing are being implemented in accordance with Division policy, Implementation of the Narrative Standard for Toxicity in Discharge Permits Using Whole Effluent Toxicity (Sept 30, 2010).

      WET testing is not required at this time. The stormwater runoff from this facility is not expected to contain toxic or industrial wastes. The facility does not use any chemical additives. Therefore, the stormwater discharge from the permitted area are not expected to cause aquatic toxicity if the permittee complies with all permit effluent limitations, and other permit terms and conditions.

3. Water Quality Regulations, Policies, and Guidance Documents

   a. Antidegradation - The Basic Standards and Methodologies for Surface Waters (Regulation No. 31, 5 CCR 1002-31) contains antidegradation provisions which provide three separate levels of antidegradation protection (see section 31.8). At a minimum, for all surface waters, the existing classified uses and the level of water quality necessary to protect such uses are to be maintained and protected. Waters that receive only this level of antidegradation protection are called "use-protected." The highest level of water quality protection applies to certain waters that constitute an outstanding state or national resource. These waters are called "outstanding waters." An intermediate level of water quality protection applies to waters that have not been designated outstanding waters or use-protected. These undesignated waters, known as "reviewable waters," are to be maintained and protected at their

existing quality unless it is determined that allowing poorer water quality is necessary to accommodate important economic or social development in the area in which the waters are located.

New or increased water quality impacts from regulated activities (including Colorado Discharge Permits System [CDPS] permits and 401 Certifications) to reviewable waters must undergo an antidegradation review. The initial step in the antidegradation review is the "Significance Determination." New or increased water quality impacts to reviewable waters that are deemed "significant" must complete the antidegradation review including an alternatives analysis and a determination of whether the degradation caused by the regulated activity is necessary to accommodate important economic or social development in the area in which the waters are located.

The ultimate receiving water body (COUPYA02b) is reviewable, and therefore, an antidegradation review was conducted. The division found that there are no new or increased water quality impacts from the discharges associated with this facility, as follows.

New Impacts
As provided by the applicant, the Hayden Gulch Loadout facility began industrial activities (coal processing and loadout) in the 1980s. Therefore, stormwater runoff from the facility was discharging during the time of the established baseline date of September 30, 2000 (see Regulation 31.8(3)(c)(ii)(B)). Because the facility was discharging during this time, it is considered an existing, not new, discharge.

Increased Impacts
At this facility, the areas contributing runoff to the receiving waters have been improved with respect to former conditions/pollutant sources; the current operations at this mine are solely reclamation of the remaining 2.3 acres of the originally permitted 391.20 acres. The permittee documented that the 2.3 acres are currently irrigated hay fields.

Therefore, water quality impacts have not increased over historic mining operations at the site (i.e., the pollutant potential is less than when industrial activities were taking place at the facility). As such, there is no determination of significant degradation, and the facility is exempt from further antidegradation review.

b. Antibacksliding – As the receiving water is designated Reviewable or Outstanding, and the Division has performed an antidegradation evaluation, in accordance with the Antidegradation Guidance, the antibacksliding requirements in Regulation 61.10 have been met.

c. Determination of Total Maximum Daily Loads (TMDLs) – Stream segment COUCYA02b (the Yampa River) is currently on the State's 303(d) list for development of TMDLs for total arsenic (water supply) and temperature, respectively. However, the TMDLs have not yet been finalized. The discharges to Dry Creek and the Yampa River are subject to Subpart H of the federal ELG, and no numeric limitations are imposed.

d. Salinity Regulations – The Colorado River Salinity Standards were promulgated prior to the 1987 amendments to the Clean Water Act that specifically addressed stormwater; therefore, total dissolved solids (TDS) is not applicable to stormwater-only discharges.

VIII. DISCUSSION OF NON-NUMERIC EFFLUENT LIMITATIONS, TERMS AND CONDITIONS

This permit contains requirements for stormwater discharges from the facility that are necessary to protect waters of the state.

A. Stormwater Discharge Effluent Limitations (Outfalls 003A, 004A, and 005A)

The permit identifies the required stormwater effluent limitations (water quality-based effluent limitations, federal ELGs, and practice-based effluent limits) applicable to outfalls 003A, 004A, and 005A. The effluent limitations contained in this permit are located in a section separate from the stormwater management plan (SWMP), thereby differentiating effluent limitations from other terms and conditions of the permit.

1. Narrative Water Quality-based Effluent Limitation

This permit section contains the narrative effluent limitation that 'discharges authorized under this permit must be controlled as necessary to meet applicable water quality standards', which relates stormwater discharge quality to water quality standards.

As provided in the permit, the division expects that compliance with the conditions in the permit will control discharges as necessary to meet applicable water quality, but requires the permittee to take corrective action if the permittee becomes aware, or the division determines, that the authorized discharge causes or contributes to an exceedance of applicable water quality standards. For such cases, the division also included a provision in the permit that allows it to modify the permit to add site-specific terms and conditions as necessary to control discharges to meet water quality standards.

2. Federal Effluent Limitation Guideline - Sediment Control Plan (Outfalls 003A, 004A, and 005A)

The federal effluent limitation guideline applicable to referenced outfalls is found under 40 CFR 434, titled Coal Mining, Point Source Category, Alkaline Drainage, Coal Preparation Plants and Coal Preparation Plant Associated Areas and Western Alkaline Coal Mining – Subpart H (40 CFR Part 434.82). This subpart applies to alkaline mine drainage at western coal mining operations from reclamation areas, brushing and grubbing areas, topsoil stockpiling areas, and regraded areas.

As provided by Subpart H, the following effluent limitations apply to mine drainage from applicable areas of western coal mining operations:

a. The operator must submit a site-specific Sediment Control Plan to the permitting authority (DRMS) that is designed to prevent an increase in the average annual sediment yield from pre-mined, undisturbed conditions. The Sediment Control Plan must be approved by the permitting authority (DRMS) and be incorporated into the permit as an effluent limitation. The Sediment Control Plan must identify best management practices (BMPs) and also must describe design specifications, construction specifications, maintenance schedules, criteria for inspection, as well as expected performance and longevity of the best management practices.

b. Using watershed models, the operator must demonstrate that implementation of the Sediment Control Plan will result in average annual sediment yields that will not be greater than the sediment yield levels from pre-mined, undisturbed conditions. The operator must use the same watershed model that was, or will be, used to acquire the Surface Mining Control and Reclamation Act (SMCRA) permit.

c. The operator must design, implement, and maintain BMPs in the manner specified in the Sediment Control Plan.

The permittee is responsible for submitting evidence that the Sediment Control Plan required under Subpart H has been approved by the Colorado DRMS, and is implemented at the facility. A final decision letter that reflects DRMS' approval of the Sediment Control Plan and its associated modeling, is appropriate documentation for demonstrating compliance with this permit requirement. The operator must design, implement, and maintain BMPs in the manner specified in, or to maintain the requirements of, the Sediment Control Plan.

3. Practice-based Effluent Limitations

The division implements Practice-based effluent limits (PBELs) in CDPS permits for stormwater-only discharges to protect the water quality standards of the associated receiving water, which includes the Regulation 31 Narrative Standard. The PBELs in this permit are largely the same as those included in the previous permit.

a. Minimize Exposure – the renewal permit defines the term "minimize" to provide the permittee with a clear expectation for the level of performance of control measures implemented to achieve the practice-based effluent limits that require the permittee to "minimize" pollutants. For such practice-based effluent limits, the term minimize means to "reduce and/or eliminate to the extent achievable using control measures (including best management practices) that are technologically and economically practicable in light of best industry practice."

   Minimizing exposure prevents pollutants from coming into contact with precipitation and can reduce the need for control measures to treat or otherwise reduce pollutants in stormwater runoff. As such, this is one of the most important control options.

b. Good Housekeeping - good housekeeping is an inexpensive way to maintain a clean and orderly facility and keep contaminants out of stormwater discharges. Poor housekeeping can result in more stormwater running off a site than necessary and an increased potential for stormwater contamination. A clean and orderly work area reduces the possibility of accidental spills caused by mishandling of chemicals and equipment. Well-maintained material and chemical storage areas will reduce the possibility of stormwater mixing with pollutants.

c. Maintenance of Control Measures – this PBEL requires that the permittee maintain all control measures used to achieve the effluent limits required by the permit in effective operating condition. Control measures must be maintained, in accordance with good engineering hydrologic and pollution control, to function as intended.

d. Spill Prevention and Response Procedures - The purpose of this effluent limit is not only to prevent spills and leaks but, in the event one does occur, to limit environmental damage via development of spill prevention and response procedures. Based on an assessment of possible spill scenarios, the permittee must specify appropriate material handling procedures, storage requirements, containment or diversion equipment, and spill cleanup procedures that will minimize the potential for spills and, in the event of a spill, ensure proper and timely response. For a spill prevention and response program to be effective, employees should clearly understand the proper procedures and requirements and have the equipment necessary to respond to spills.

e. Erosion and Sediment Controls – There may be exposed areas of industrial sites that, due to land disturbing activities, steep slopes, sandy soils or other factors, are prone to soil erosion. Land disturbing activities typically remove vegetation and other protective ground covers resulting in the exposure of underlying soil/overburden, etc. to wind and rain, which are easily eroded by wind or rain. This erosion process can be controlled or prevented through the use of appropriate control measures.

   The purpose of this effluent limit is to control or prevent the erosion process and control sediment transport from disturbed or other erodible areas at the facility.

f. Management of Runoff - Managing runoff (diverting, infiltrating, reusing, containing, or treating stormwater runoff) prevents stormwater contact with exposed materials or pollutant sources, and like minimizing exposure, can reduce the need for control measures to treat or otherwise reduce pollutants in stormwater runoff.

g. Salt Storage Piles or Piles Containing Salt - Salt storage piles are prevalent across the country. The permit requires that permittees adequately control salt piles to prevent aquatic effects resulting from stormwater runoff from such piles. The permittee must enclose or cover storage piles of salt, or piles containing salt, used for deicing or other commercial or industrial purposes, including maintenance of paved surfaces, and implement appropriate measures to minimize exposure resulting from adding to or

4300 Cherry Creek Drive S., Denver, CO 80246-1530 P 303-692-2000 www.colorado.gov/cdphe/wqcd

removing materials from the pile. Preventing exposure of piles to stormwater or run-on also eliminates the economic loss from materials being dissolved and washed away.

h. Employee Training - Operators must train all employees who work in areas where industrial materials or activities are exposed to stormwater, or who are responsible for implementing activities necessary to meet the conditions of this permit.

i. Waste, Garbage and Floatable Debris - In addition to other stormwater pollutants, the permittee must minimize the discharge of waste, garbage, and floatable debris, so that these pollutants are not ultimately discharged to receiving waters. Trash and floating debris in waterways have become significant pollutants, especially near areas where a large volume of trash can be generated in a concentrated area. Trash can cause physical impairments in water bodies to aquatic species and birds, is also visual pollution, and detracts from the aesthetic qualities of receiving waters.

j. Dust Generation and Vehicle Tracking of Industrial Materials - In addition to other stormwater pollutants, the permittee must minimize generation of dust and off-site tracking of raw, final, or waste materials.

B. Control Measures (Outfalls 003A, 004A, and 005A)

The division uses the term "**control measure**" instead of "Best Management Practices or BMP" throughout the permit. This term has a broader range of meaning than BMP, as it includes both BMPs and "other methods", and as such, better describes the range of pollutant reduction practices a permittee may implement. The division does not mandate specific control measures, but leaves this decision to the permittee who is familiar with the facility characteristics and pollutant sources.

The permit contains the requirement to retain **installation and implementation specifications** with the Stormwater Management Plan for each control measure used by the permittee to meet the effluent limitations contained in the permit. The division requires this in other CDPS permits and finds that it is necessary to ensure that permittees select, design, install, implement, and maintain control measures that are appropriate for specific pollutant sources. The permit requires that permittees maintain control measures in effective operating condition so that they can function as intended, and correct control measure deficiencies with due diligence.

C. Inspections (Outfalls 003A, 004A, and 005A)

The permit requires two inspections per year (spring/fall seasons) of all drainage areas contributing runoff to the outfalls referred to in this part, and also requires the permittee to conduct corrective action for the two remaining seasons (summer/winter), based on DRMS inspection findings. One inspection must be conducted during a run-off event. Corrective actions are required for triggering conditions. The permittee must submit Discharge Monitoring Reports (DMRs) for facility inspections to the division.

In developing the inspection requirement, the Division compared the SMCRA-required inspections conducted by DRMS to the comprehensive, quarterly inspections required in existing CDPS permits, specifically looking at inspection frequency, scope, findings, and required corrective action(s). The two agency's inspection approaches are not equivalent; however, aspects of both approaches were important in developing an inspection requirement that minimizes potential overlap with DRMS inspection requirements; utilizes the information gained from a DRMS' inspection; decreases the cost and time burden on industry; and is a comprehensive approach to inspections.

The requirement for facility inspections and documented corrective actions is a useful means for permittees to evaluate the effectiveness of implemented control measures, and correct any deficiencies. In recognition that DRMS does conduct inspections for coal mining permittees, the division is requiring two inspections per year (spring/fall) in this permit, and also requires the permittee to conduct corrective action for the two remaining quarters, based on DRMS inspection findings.

This inspection requirement applies to active, inactive and reclaimed coal mine facilities, including mines that are in temporary or permanent cessation, until the DRMS approves the Phase II performance bond release for the area (Phase II bond release). The inspection requirement is a minimum inspection frequency, and more frequent

4300 Cherry Creek Drive S., Denver, CO 80246-1530 P 303-692-2000 www.colorado.gov/cdphe/wqcd

inspections may be appropriate in certain instances, such as for areas of the facility with significant activities and materials exposed to stormwater, areas in close proximity to waterways, water crossings, etc.

D. Corrective Actions (Outfalls 003A, 004A, and 005A)

In this permit section, the division identifies the permittee's responsibilities with respect to resolving specific facility conditions. Conditions fall into two categories: those the permittee must eliminate, and those that require the permittee to review and modify control measures. This section also addresses permittee responsibilities with respect to corrective action reports and deadlines and control measure modification.

E. Stormwater Management Plan (SWMP) (Outfalls 003A, 004A, and 005A)

A SWMP is a site-specific, written document that: identifies potential sources of stormwater pollution at the mine facility; describes stormwater control measures that are used to reduce or eliminate pollutants in stormwater discharges from the mine; and identifies procedures the permittee will use to comply with the stormwater terms and conditions in the renewal permit. The permittee must develop the SWMP to address the specific conditions at the mine facility, and keep it current to reflect changes at the mine.

This permit locates all effluent limitations, including the practice-based effluent limitations in a section separate from the requirement to develop and implement a SWMP. As such, the requirement to prepare a SWMP and the documentation requirements set forth in the SWMP are not effluent limitations themselves, but terms and conditions of the permit, because the permittee is documenting information on how it intends to comply with the effluent limitations of the permit. This difference allows the permittee to modify, at any time and as required by the terms and conditions of the permit, the control measures used to meet these effluent limitations.

The permit allows 90 days from the effective date of the permit to allow the permittee time to develop and implement the SWMP.

F. Annual Report (Outfalls 003A, 004A, and 005A)

An annual report for the proceeding calendar year must be submitted to the division, each year. The permittee is required to report the dates of all inspections conducted, and provide all correct action documentation (including that for inspections) and the status of any outstanding corrective action(s).

IX. ADDITIONAL TERMS AND CONDITIONS

A. Signatory and Certification Requirements

Signatory and certification requirements for reports and submittals are discussed in Part II.K. of the permit.

B. Economic Reasonableness Evaluation

Section 25-8-503(8) of the Colorado Water Quality Control Act required the Division to "determine whether or not any or all of the water quality standard based effluent limitations are reasonably related to the economic, environmental, public health and energy impacts to the public and affected persons, and are in furtherance of the policies set forth in sections 25-8-102 and 25-8-104."

Note this provision does not require an economic reasonableness evaluation for technology-based limits, monitoring requirements, special studies, recordkeeping requirements or other permit terms and conditions that are not water quality standard based effluent limitations.

The Colorado Discharge Permit System Regulations, Regulation No. 61, further define this requirement under 61.11 and state: "Where economic, environmental, public health and energy impacts to the public and affected persons have been considered in the classifications and standards setting process, permits written to meet the standards may be presumed to have taken into consideration economic factors unless:

1. A new permit is issued where the discharge was not in existence at the time of the classification and standards rulemaking, or

2. In the case of a continuing discharge, additional information or factors have emerged that were not anticipated or considered at the time of the classification and standards rulemaking."

The evaluation for this permit shows that the Water Quality Control Commission, during their proceedings to adopt the Classifications and Numeric Standards for Upper Colorado River Basin and North Platte River (Planning Region 12), considered economic, environmental, public health and energy impacts to the public and affected persons in the classifications and standards setting process. Specifically, when adopting new standards for pollutants, the WQCC considers the factors listed at Regulation 31.7(2), including;

a) The need for standards which regulate specified pollutants;
b) Such information as may be available to the WQCC as to the degree to which any particular type of pollutant is subject to treatment; the availability, practicality, and technical and economic feasibility of treatment techniques; the impact of treatment requirements upon water quantity; and the extent to which the discharge to be controlled is significant;
c) The continuous, intermittent, or seasonal nature of the pollutant to be controlled;
d) The existing extent of pollution or the maximum extent of pollution to be tolerated as a goal;
e) Whether the pollutant arises from natural sources;
f) Beneficial uses of water; and
g) Such information as may be available to the WQCC regarding the risk associated with the pollutants including its persistence, degradability, the usual or potential presence of the affected organism in any waters, the importance of the affected organisms, and the nature and extent of the effect of the pollutant on such organisms.

In accordance with Regulation 31.7(2), the WQCC adopts numeric criteria to protect classified uses, and to address treatability limitations or other situations where attaining standards would not be "reasonably related to the economic, environmental, public health and energy impact to the public and affected persons." In cases where attaining the standard is not necessary to protect the use, the WQCC can adopt a use change or a site-specific standard supported by a Use Attainability Analysis (UAA) (i.e., an assessment of the factors affecting the attainment of aquatic life uses or other beneficial uses, which may include physical, chemical, biological, and economic factors).

Furthermore, this is not a new discharger and no new information has been presented regarding the classifications and standards. Therefore, the water quality standard-based effluent limitations of this permit are determined to be reasonably related to the economic, environmental, public health and energy impacts to the public and affected persons and are in furtherance of the policies set forth in Sections 25-8-102 and 104. If any party disagrees with this finding, pursuant to 61.11(b)(ii) of the Colorado Discharge Permit System Regulations, that party should submit all pertinent information to the Division during the public notice period.

C. Opportunities for Administrative Adjudication

1. Opportunity for Administrative Adjudication

Once the final permit is issued, the applicant or any other person affected or aggrieved by the Division's final determination may request an adjudicatory hearing within thirty (30) calendar days of the date of issuance, under 5 CCR 1002-61 (Colorado Discharge Permit System Regulations), Regulation 61.7. Any request must comply with the Water Quality Control Act, 24-4-101, C.R.S., et seq. and the Water Quality Control Commission's regulations, including Regulation 61.7 and 5 CCR 1002-21 (Procedural Rules), Regulation 21.4(B). Failure to contest any term and condition of the permit in this request for an adjudicatory hearing constitutes consent to the condition by the permittee.

2. Opportunity to Request a Stay of Terms and Conditions of Final Permit

If an applicant for a renewal permit files a request for an administrative hearing in accordance with section 24-4-105, C.R.S., the applicant may also request that the Division stay the contested terms and conditions of the renewal permit. This request must be made within thirty (30) days of issuance of the final permit.

X. CLARIFICATIONS INCLUDING TERMINATION OF PERMIT COVERAGE WHEN DISCHARGE REMAINS

A. Roads

Stormwater runoff from access/haul roads that: 1) are used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; 2) is by itself, or mixes with, stormwater contaminated by contact with overburden, raw material, intermediate products, finished products, byproducts or waste products; or, 3) are constructed out of materials such as overburden or byproducts, is subject to the stormwater provisions identified in the permit, and the applicable federal ELG, unless it commingles with process water from the mine prior to discharge (see discussion on Commingled discharges below).

Stormwater runoff from road construction may require the addition of an authorized outfall(s) for the discharge to the existing individual permit, or may require separate permit coverage. Please contact the division prior to such land disturbing activities.

B. Commingled discharges

The division considers stormwater runoff (from industrial or construction activities) that combines with process water/mine dewatering, to be process water. Such discharges are subject to the process water provisions in the permit, and the stormwater provisions do not apply.

Stormwater runoff from construction activities at the facility may require the addition of an authorized outfall(s) for the discharge to the existing individual permit, or may require separate permit coverage. Please contact the division prior to land disturbing activities.

C. Termination of permit coverage

1. Discharge remains

Consistent with the Water Quality Permits Policy 1 (WQP-1, Permit Inactivation Policy Where A Discharge Remains), a permit can be inactivated, or outfalls removed from the permit, when a discharge remains only if the following conditions are met:

a. The permittee can demonstrate that, without treatment (including settling ponds), the water quality standards/ beneficial uses of the receiving stream are not violated by the continuing discharge; and

b. All activity at the site has ceased; and

c. The Division has visited the site and concurs with the inactivation.

WQP-1 requires the permittee to supply one year of water quality data, collected at least monthly and prior to any treatment, for each outfall. Consistent with WQP-1, the parameters analyzed are those that will enable the Division to determine that the continuing discharge will not exceed the water quality standards for the receiving water body. The permittee must conduct all monitoring consistent with the permit.

2. No remaining discharge

For areas of the coal facility that are subject to solely to 40 CFR 434, Subpart H, a permit can be inactivated, or outfalls removed from the permit, when the permittee provides documentation to the Division with a Notice of Termination request that DRMS approved the applicable Phase II performance bond release. The division's practice for discharges of stormwater from areas solely subject to Subpart H (i.e., no other flows contribute to

the discharge), is to consider the Phase II performance bond release commensurate with the 'bond release' criteria identified in the federal ELG.

XI. REFERENCES

A. Colorado Department of Public Health and Environment, Water Quality Control Division Files, for Permit Number COG85008 and CO0049071.

B. Basic Standards and Methodologies for Surface Water, Regulation No. 31, Colorado Department of Public Health and Environment, Water Quality Control Commission.

C. CLASSIFICATIONS AND NUMERIC STANDARDS FOR UPPER COLORADO RIVER BASIN AND NORTH PLATTE RIVER (PLANNING REGION 12), Regulation No. 33, Colorado Department of Public Health and Environment, Water Quality Control Commission.

D. Colorado Discharge Permit System Regulations, Regulation No. 61, Colorado Department of Public Health and Environment, Water Quality Control Commission.

E. Regulations for Effluent Limitations, Regulation No. 62, Colorado Department of Public Health and Environment, Water Quality Control Commission.

F. Colorado River Salinity Standards, Regulation No. 39, Colorado Department of Public Health and Environment, Water Quality Control Commission

G. Colorado's Section 303(d) List of Impaired Waters and Monitoring and Evaluation List, Regulation No 93, Colorado Department of Public Health and Environment, Water Quality Control Commission.

H. Antidegradation Significance Determination for New or Increased Water Quality Impacts, Procedural Guidance, Colorado Department of Public Health and Environment, Water Quality Control Division, effective December 2001.

I. Memorandum Re: First Update to (Antidegradation) Guidance Version 1.0, Colorado Department of Public Health and Environment, Water Quality Control Division, effective April 23, 2002.

J. Determination of the Requirement to Include Water Quality Standards-Based Limits in CDPS Permits Based on Reasonable Potential Procedural Guidance, Policy Number CW-1, Colorado Department of Public Health and Environment, Water Quality Control Division, effective November 18, 2013.

K. Implementing Narrative Standards in Discharge Permits for the Protection of Irrigated Crops, Water Quality Control Division Policy WQP-24, March 10, 2008.

L. Implementing Narrative Standard for Toxicity in Discharge Permits Using Whole Effluent Toxicity (WET) Testing. Colorado Department of Public Health and Environment, Water Quality Control Division Policy Permits-1, September 30, 2010.

M. Water and Wastewater Facility Operators Certification Requirements, Regulation No. 100, Colorado Department of Public Health and Environment, Water Quality Control Division.

N. Code of Federal Regulations (40 CFR Part 434, Coal Mining Point Source Category), Office of the Federal Register, Government Printing Office.

XII. PUBLIC NOTICE COMMENTS

The public notice period was from 5/9/2024 to 6/6/2024. Comments were received from Peabody Sage Creek Mining, LLC. The comments and division responses are provided below.

Comment 1. Permit I.A

The reclaimed Hayden Gulch Loadout facility has been converted from a general permit (COG850008) to an individual permit (CO0049071) despite only 2.3 acres of reclaimed lands remaining on the permit. This area was associated with a railroad bed leading to the main rail spur that has been revegetated and converted and blended back into the surrounding irrigated hay fields to meet the post mine land use requirements of Colorado Division of Reclamation, Mining, and Safety (DMRS) Permit No. C-92-081. The area was seeded in 2021 and will be eligible for Phase II Bond Release in 2025. These lands are fully encompassed by the approximately 120-acre hay field and the reclaimed area is indistinguishable from the rest of these lands.

The Division has required three stormwater outfalls (003A, 004A, 005A) be established on these lands even though they are considered small area exemptions (SAEs), as defined by the Colorado Mined Land Reclamation Board for Coal Mining (2CCR 407-2). Small area exemptions are granted by the DRMS when the operator demonstrates "that sedimentation ponds and other treatment facilities are not necessary for the drainage to meet the effluent limitations of 4.05.2 and applicable State and Federal water quality requirements for downstream receiving waters." (2 CCR 407-2 Section 4.05.2). The areas reporting to these stormwater outfalls are controlled by Best Management Practices and managed in accordance with the requirements of Section 4.05.2. For decades the Division has recognized DRMS's authority over these areas at mine sites per C.R.S. § 25-8-202(7) which expressly provides "implementing agencies" like DRMS jurisdiction over certain water quality matters. As is described in C.R.S. § 25-8-202(7)(b), while the Division is "solely responsible for the issuance and enforcement of permits authorizing point source discharges to surface waters of the state affected by such discharges," neither the Commission nor Division "shall require permits for, or otherwise regulate, other activities subject to the jurisdiction of the implementing agencies."

We request that CDPHE recognize DRMS's jurisdiction over SAE lands and remove outfalls 003A, 004A, and 005A from Permit No C0049071. This would result in the termination of permit CO0049071. However, this area will continue to be regulated under DRMS Permit C-92-081.

Division Response 1: The division disagrees. The comment provides statements that are not relevant to the division's permitting of stormwater discharges from this facility, or are incorrect.

First, there is no minimum acreage criteria with respect to permitting discharges from coal mining operations, therefore, the reference to 'only 2.3 acres' of remaining disturbed area is moot. The division acknowledges the reclamation activities the permittee has conducted in this area (i.e., revegetation), and has incorporated the reclamation status into this permitting action by the application of 40 CFR, Part 434, Subpart H. As provided by the permittee, the remaining 2.3 acres have not been bond released by the Colorado Division of Reclamation, Mining, and Safety (DRMS), and therefore permit coverage remains applicable. The division can evaluate permit termination when this area has achieved Phase II bond release (see Section X.C of the fact sheet for additional information). At that time, the permittee may submit a CDPS Termination Application documenting this condition for division review.

Second, the designation by the DRMS of the area contributing stormwater to outfalls 003A, 004A, and 005A as a Small Area Exemption (SAE) is relevant for DRMS treatment requirements and is not relevant to the division's discharge permitting decisions.

Lastly, the DRMS is a separate regulatory entity that is not authorized to regulate water quality permitting for discharges to state surface waters. The DRMS and the division have distinct permitting responsibilities; DRMS's regulations are distinct from those under the CWA and the Water Quality Control Act. As pointed out in the comment, it is the division's "sole responsibility" to permit point source surface water discharges in Colorado. § 25-8-202(7)(b)(I), C.R.S. Discharges from outfalls 003A, 004A, and 005A are point source discharges to state surface waters over which DRMS has no permitting jurisdiction. This was recently confirmed in the *Mountain Coal Company, LLC V. Water Quality*

Control Division and Center for Biological Diversity, Wild Earth Guardians, High Country Conservation Advocates, and Sierra Club case by an Administrative Law Judge in 2021, upheld by the WQCD Executive Director in 2022, and again upheld by the District Court of Gunnison County in 2024 (CASE NUMBER: 2022CV30061).

No changes were made to the permit documents.

Comment 2. Fact Sheet, III.F, V.D

See above

Division Response 2: Please see Response to Comment 1.

FOR DIVISION USE ONLY	
G3A	DMRs: Regular Submission Frequency