



STATE OF
COLORADO

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

New Elk Inspection Report, December 2024 (Complete)

1 message

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

Thu, Dec 26, 2024 at 2:29 PM

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

Good afternoon,

Attached for your records is a copy of the Division's inspection report for the complete inspection conducted for the New Elk Mine (C-1981-012) on December 17-18, 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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InspRpt_NewElk_C1981012_Cmplt_Dec2024.pdf
9632K



PERMIT INFORMATION

Permit Number: C-1981-012 Mine Name: New Elk Mine Operator: New Elk Coal Company, LLC Operator Address: Mr. John Terry 12250 Highway 12 Weston, CO 81091	County: Las Animas Operation Type: Underground Permit Status: Active Ownership: Private
	Operator Representative Present: None
Operator Representative Signature: (Field Issuance Only) 	

INSPECTION INFORMATION

Inspection Start Date: December 17, 2024 Inspection Start Time: 12:35 Inspection End Date: December 18, 2024 Inspection End Time: 15:25	Inspection Type: Coal Complete Inspection Inspection Reason: Normal I&E Program Weather: Cloudy
Joint Inspection Agency: None	Joint Inspection Contacts:
Post Inspection Agency: None	Post Inspection Contacts:
Inspector(s): Amber M. Gibson	Inspector's Signature:  Signature Date: December 26, 2024

Inspection Topic Summary

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

N - Air Resource Protection

Y - Availability of Records

N - Backfill & Grading

Y - Excess Spoil and Dev. Waste

N - Explosives

N - Fish & Wildlife

Y - Hydrologic Balance

Y - Gen. Compliance With Mine Plan

N - Other

Y - Processing Waste

N - Roads

Y - Reclamation Success

Y - Revegetation

N - Subsidence

Y - Slides and Other Damage

N - Support Facilities On-site

Y - Signs and Markers

Y - Support Facilities Not On-site

N - Special Categories Of Mining

Y - Topsoil

COMMENTS

This was a complete inspection of the New Elk Mine, Colorado Division of Reclamation, Mining and Safety (“DRMS” or “Division”) permit number C-1981-012, 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 cool, the sky was partly cloudy, and the ground was mostly dry. The entrance to the mine was locked, and there was no personell on-site. The Operator has provided the Division with the lock combination, thus I was able to access the site.

Maintenance items are listed below in bold text.

The Division sent an adequacy review to the Operator for their Renewal No. 8 (RN8) application on October 30, 2023. The RN8 decision date is set for December 30, 2024.

AVAILABILITY OF RECORDS – Rule 5.02.4(1):

- 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. 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 June 2024 inspection. As of the date of this December 2024 inspection report’s issuance, the Operator has not yet provided any abatement documentation. The deadline for the abatement of violation

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number CV-2024-002 had been extended to the full 90 days allowable by Rule 5.03.2(2)(b) -- to September 18, 2024.

- On September 19, 2024, the Division issued a Cessation Order (CO-2024-002) for the Permittee's failure to abate violation no. CV-2024-002.
- On October 14, 2024 the Division held an Informal Public Hearing where the decision to uphold the Cessation Order was issued on October 14, 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 December 2024 inspection report, the Division has not received any justification documentation from the Operator or otherwise.

EXCESS SPOIL and DEVELOPMENT WASTE – Rule 4.09

Placement; Drainage Control; Surface Stabilization:

- The sediment basin at the east end of DWDA #2 held water at the time of the inspection (Photo 1). The berm around the basin appeared to be stable. The check dams along the north side of the sediment basin have filled with sediment (Photo 2). **The Operator shall clean the check dams of sediment and ensure that the sediment control structures are functioning appropriately.**
- Culvert C13 was free of obstructions. However, the vegetation in-front of C13 should be cleared before next spring.
- No signs of erosion were observed along the slopes of DWDA #1. The slopes appear to be well vegetated and stable (Photo 3).

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:

- Containment area #1 was dry (Photo 4). No signs of erosion were observed.
- Containment area #2 was dry (Photo 5). No signs of erosion were observed.
- Containment area #3 was dry (Photo 6) No signs of erosion were observed.
- Containment area #4 was dry (Photo 7). No signs of erosion were observed.
- Containment area #5 contained some frozen water and was below capacity (Photo 8).
- Stream buffer zone signs were observed throughout the site.
- Pond 001A held some frozen water at the time of the inspection and was not discharging (Photo 9). No tears were observed in the lining at the time of the inspection (Photo 10).
- Pond 004A contained a small amount of water located within the southeast corner (Photo 11). The inspector walked along the south and east banks. No signs of seepage or stability concerns were observed during the inspection.
- Many treated mullein weeds were observed along the bank of Pond 004, as well as a few new stalks and florets. **The Operator shall treat the new Mullein stalks and florets to help prevent spreading.**

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- Pond 006A contained some frozen water at the time of the inspection (Photo 12). The banks of the pond appeared to be stable.
- Pond 007A contained some frozen water at the time of the inspection. The water level was up to the lower portions of the primary spillway (Photo 13), but the pond was not discharging. The emergency spillway was free of obstructions and the embankment appeared to be stable.
- The silt fences along the road leading to Pond 007A, within the S.A.E., are full of tumbleweeds and are damaged (Photo 14). **The Operator shall clear the silt fences of vegetation/debris and repair and/or replace the fences.**
- Pond 08 contained some frozen water at the time of the inspection and was below its capacity (Photo 15). The spillways appeared clear, and the banks were stable. Pond 08 was not discharging.
- The S.A.Es along the southern portion of the permit, along Ditch D18, appeared stable. However, **the silt fence on the eastern border of the S.A.E. on the top of the hill still needs to be repaired** (Photo 16).
- The water pump/valve cover structure near the water tanks on the south side of the permit has been damaged (Photo 17). **The Operator shall repair, replace, or remove this structure.**
- The check dams located along the north side of the Soil Storage Area have filled with sediment in some areas, and the sides of the check dams have begun to erode (Photo 18). **The Operator shall clean the check dams and stabilize the erosion.**
- During the September 2023 inspection, it was noted that the embankment slope on the northwest side of the Soil Storage Area was eroding and sluffing into the ditch that discharges to ditch D6. NECC was instructed to repair and stabilize the area. The ditch embankment separating the affected land drainage from the adjacent clear water ditch (D7) is very thin in areas. Failure of this embankment may overwhelm the ditch and cause sediment to discharge into the clean water ditch D7 that discharges to the river. During the October 2023 inspection, the Operator stated that they had hydro-mulched the northwest side of the Soil Storage Area in an attempt to stabilize the slope. They also stated that they are unable to safely get equipment in the area to mechanically stabilize the slope and berm separating the treated water run-off from the clean water ditch. NECC had been monitoring this area. As of this December 2024 inspection, it appears that the hydro-mulching and seeding of the bench has failed, as no vegetation appears to have been established (Photo 19). **The Operator shall determine how to re-stabilize this bench and do so as soon as possible.**
- The berm separating the train yard from the Purgatoire River appears to be stable.
- The berm alongside the road leading to Pond 007A and to the portal appear to be functioning appropriately and are well maintained.
- The berm and concrete box separating the clean water collected from ditch D26 that flows down the flume, from the surrounding run-off generated on site, appears to be well maintained and is functioning appropriately (Photo 20).

GENERAL MINE PLAN COMPLIANCE:

- Drill pad NE-02-20 was observed. The pad is reclaimed and revegetated. The drill hole was marked with a marker.

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PROCESSING WASTE/COAL MINE WASTE PILES – Rule 4.10 and 4.11Drainage Control; Surface Stabilization; Placement:

- The mine was idle at the time of the inspection. Therefore, the wash plant was not processing coal at the time of the inspection. The RDA appears to exhibit positive drainage at this time.
- The northernmost bench, before the leveled area at the top of the RDA, has a small ditch that runs east-west toward the drainages on either side of the RDA. The west side of the bench has a check dam to help slow runoff into the area that leads to culvert C81. The check dam appears functional at the end of the ditch, but erosion has cut around on the slope next to the check dam in some areas, leading to increased sedimentation in the basin leading to C81 (Photo 21). **The Operator shall implement additional erosion control structures along the west slope of the RDA to help reduce erosion on the slope, and stabilize the eroded slopes.**
- The unnamed ditch east of D55, running along the west side of the RDA contains a few check dams to control run off and reduce erosion along the RDA. The southernmost check dam is damaged and is no longer functioning appropriately (Photo 22). It appears that water has undercut the check dam and has allowed for excess sediment to accumulate at the end of the ditch. **The Operator shall repair the check dam in the unnamed ditch leading to C81.**
- There is a culvert (C81) at the end of ditch D55 and the unnamed ditch that allows runoff to flow under the road and out to the ditch leading to Pond 08. The inlet side of C81 (located on the north side) appears to be clear of obstructions at this time (Photo 23). **However, the Operator shall remove some of the sediment that has accumulated in the basin to the north of C81 to help minimize the sediment load deposited into Pond 08.**
- The outlet side of C81 (located on the south side) has been partially filled with sediment (Photo 24). **The Operator shall clean sediment out of C81 and from the area around the culvert.**
- The reclaimed slopes on the RDA appear to be well vegetated and stable (Photo 25). No signs of erosion on the reclaimed slopes were observed during the inspection.

RECLAMATION SUCCESS – Rule 4.15, Rule 3:

- During the Division's June 2024 inspection, it was noted that a lot more vegetation had established since the Division observed the area in November 2023, however there were still a few bare spots. During the September 2024 inspection, the vegetation cover seemed to be recovering. As of this December 2024 inspection, the vegetation seems to have stabilized (Photo 26), but the Operator may want to assess the area to determine species diversity. **The Operator is advised to monitor this area and consider re-seeding if necessary.**

SLIDES and DAMAGE - Rule 4.12:

- The berm separating the yard from the Purgatoire River appears to be stable.
- The Portable Explosives and Chemical Storage area was overall stable. However, the Division observed an empty tank in the ditch to the east of the storage area (Photo 27). **The Operator shall remove the tank from the ditch.**

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SIGNS AND MARKERS – Rule 4.02:

- Mine signs were observed at the main entrance to the New Elk mine site, around the permit boundary, and at the Golden Eagle ventilation shaft area.
- The mine sign is no longer posted at the Jansen Loadout (Photo 28). Therefore, **the Operators shall post a new sign at the Jansen Loadout to comply with the requirements of Rule 4.02.**

OFFSITE SUPPORT FACILITIES – Rule 4.04, 4.28:

- The facilities at the Jansen Loadout were observed. All equipment on-site appears to be stable at the time of the inspection (Photos 29). A subcontractor for the current tenant was onsite during the inspection and stated that they were working on the conveyor belt system. The Division noted that since the last time the Jansen Loadout was inspected (September 2024), the majority of the mullein observed along the conveyor belt system has been mowed down by the current tenant (Photo 30).
- Much of the coal in the yard area near the entrance has been removed/covered with what looks like soil and/or gravel (Photo 31). On the east side, near the office trailer, the yard still has a coal base (Photo 32).
- **Once an Operator for the New Elk permits is restored, they will need to clarify to the Division through a revision, the operational status of the Jansen Loadout in regard to the mining operation.**

TOPSOIL – Rule 4.06

Removal 4.06.2; Substitute Materials 4.06.4(4); Storage and Protection 4.06.3; Redistribution 4.06.4:

- Topsoil piles were observed throughout the site. Each pile was out of the way of on-going mining operations, had a sign to identify the stockpiles as topsoil, and had been stabilized with vegetative cover (except for the newest one located in the Stockpile Storage Area north-west of Topsoil Stockpile #1).
- **The new topsoil pile shall be seeded with the approved seed mix and stabilized as soon as possible.**

DOCUMENTS RECEIVED**OTHER (SPECIFY)**

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ENFORCEMENT ACTIONS/COMPLIANCE**Infraction Number:** CO2024002

Inspection Date: June 12, 2024

Date Issued: September 19, 2024

Primary Topic:

Secondary Topic:

Tertiary Topic:

Description: On June 20, 2024, the Division issued the following violation:

“During the records review, conducted as part of a complete inspection of the New Elk Mine (permit number C-1981-012) operated by New Elk Coal Company, LLC. (“NECC” or “Operator”) in June 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 September 18, 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: CV2024002

Inspection Date: June 12, 2024

Date Issued: June 20, 2024

Primary Topic: Availability Of Records

Secondary Topic:

Tertiary Topic:

Description: During the records review, conducted as part of a complete inspection of the New Elk Mine (permit number C-1981-012), operated by New Elk Coal Company, LLC. ("NECC" or "Operator") in June 2024, the Division found that the certificate certifying NECC has a public liability insurance policy for the operation had expired as of April 2024. 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: 9/18/2024

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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PHOTOGRAPHS



Photo 1: Sediment containment basin, SE corner of DWDA #2.



Photo 2: Check dam full of sediment on NE side of DWDA #2 pile.

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Photo 3: Looking north at south side of DWDA #2 from subsoil storage area.



Photo 4: Containment Area no. 1.

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Photo 5: Containment Area no. 2.



Photo 6: Containment Area no. 3.

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Photo 7: Containment Area no. 4.



Photo 8: Containment Area no. 5.

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Photo 9: Looking northeast at Pond 001a.



Photo 10: Looking northwest at Pond 001a.

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Photo 11: Looking east at Pond 004a.



Photo 12: Looking west at Pond 006a.

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Photo 13: Looking west at Pond 007a.



Photo 14: Looking east at the silt fences on the north and south sides of the road leading to Pond 007a, within the S.A.E.

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Photo 15: Pond 08.



Photo 16: Silt fence along the east side of the S.A.E on the southside of the permit, east of the water tanks.

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Photo 17: The damaged water pump/valve cover structure atop the S.A.E on the southside of the permit.



Photo 18: Looking southwest at the check dams along the northside of the subsoil storage area that have begun to fill with sediment.

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Photo 19: The arrows point to the diversion berm between the clean water and the affected water ditches.



Photo 20: Flume and surrounding concrete and earthen berm structures separating the clean water in D26 from the affected water in D24E.

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Photo 21: Looking southeast at the check dam located on the western-most side of the raw coal bench on the RDA.



Photo 22: Looking southeast from within the unnamed ditch at the damaged check dam. The arrow points to a hole where water and sediment has run through.

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Photo 23: Arrow points to the inlet side of C81.



Photo 24: Arrow points to the outlet side of C81.

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Photo 25: Looking east across the reclaimed benches on the RDA.



Photo 26: Looking west across the Golden Eagle ventilation shaft area.

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Photo 27: Looking northeast at the empty storage tank within the ditch, east of the chemical storage area.



Photo 28: Mine sign has been replaced with a no-trespassing-sign at the Jansen Loadout entrance gate.

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Photo 29: Looking east across the Jansen Loadout area from County Road 18.3, atop the dam, east of Trinidad Lake.



Photo 30: Looking west along the conveyor belt area within the Jansen loadout where a lot of the vegetation has been mowed since the last inspection.

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Photo 31: Looking east at the yard area that has been covered with soil/dirt.



Photo 32: Looking west from near the office trailers at the coal remaining within the yard area at the Jansen Loadout.

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AVAILABILITY OF RECORDS**PERMIT RECORDS**

DRMS Permit	<u>X, expires Feb. 2024</u>
Permit Application w/Revisions	<u>X</u>
Findings Document	<u>X, RN7, Nov 2019</u>
Insurance Certificate	<u>X, April 2024</u>
Bond Document	<u>X, 2020</u>
Phased Bond Release Documents/Findings	<u>X, SL-2</u>
Air Emission Permits	<u>X, 2021 (4)</u>
County Special Use Permits	<u>Exempt</u>
UG Mining Landowner Notification	<u>Feb 2012</u>
Subsidence Monitoring Reports	<u>n/a</u>
Subsidence Monitoring Data	<u>n/a</u>
Rill & Gully Survey	<u>X, 2023 ARR</u>
Vegetation Monitoring Data	<u>n/a</u>
Specific Variance Approvals	<u>n/a</u>
Annual Reclamation Reports	<u>X, 2023</u>
Midterm Review Documents	<u>X – MT8</u>
DRMS/OSM Inspection Reports/Enforcement Actions (3 Years)	<u>X, through May 2024</u>
Transfers/Succession of Operator	<u>X, 2021</u>
Temporary Cessation Notification	<u>n/a</u>
Reclamation Cost Estimate	<u>X, MT-8, 2021</u>

CERTIFICATIONS

Pond Certifications	<u>001, 004, 005, 006, 007, 008</u>
Annual Certifications for Impoundments	<u>X, December 2023</u>
Fill Certifications for Excess Spoil or Underground Development Waste	
• Quarterly Inspections	<u>X, March 2024</u>
• Compaction Testing	<u>X, March 2023</u>
• Final Certification	<u>n/a</u>
Coal Processing Waste Banks	<u>X, March 2024 (stamped)</u>
Haul Road Certifications	<u>X, 2014</u>
Access Road Certifications	<u>X</u>

HYDROLOGIC RECORDS

NPDES Permit	<u>X, On extension (2019 letter)</u>
NPDES Records	<u>X, May 2024</u>
Stormwater Management Plan	<u>X</u>
SPCC Plan	<u>X</u>
MSHA Pond Inspections	<u>X, Pond 8, August 19, 2024</u> <u>n/a</u>
State Engineer's Pond Inspection	
Quarterly Pond Inspections	<u>X, March 26, 2024</u>
Annual Hydrology Reports	<u>X, 2022</u>
• Ground Water Monitoring	<u>X, 2022</u>
• Surface Water Monitoring	<u>X, 2022</u>
• Spring & Seep Monitoring	<u>n/a</u>
• Mine Water Discharge Monitoring	<u>n/a</u>
• Mine Inflow Study	<u>n/a</u>
• Water Consumption Records	<u>X</u>
Well Permits	<u>X</u>

BLASTING RECORDS

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

ADDITIONAL RECORDS (specify)

COMMENTS: Items in red text indicate problems in the on-site records.

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