

December 1, 2008

TO: Internal File

THRU: Jim Smith, Permit Supervisor, Task Manager
Daron Haddock, Coal Program Manager
April Abate, Environmental Scientist I / Reclamation HydrologistFROM: Peter Hess, Environmental Scientist III *RHH*

RE: Pond 5A at Hiawatha Mine Complex / Phased Bond Release

As you are aware, Hiawatha Coal Company has recently applied for a Phase I bond release within the old U.S. Fuel Company permit boundary for various areas which comprise a total acreage of 106.5 acres. This includes 40.39 acres of pond 5. The remainder of pond 5, which constitutes sediment control for parts of the town and the railroad right-of-way, constitute 15.51 acres.

At this time, the Permittee is not applying for bond release (Phase I) for the 15.51 acres. This area has not been backfilled, graded or topsoiled and revegetated.

During the unofficial bond release inspection, the Permittee expressed a possibility of using the pond 5A impoundment area as a storm water treatment pond for the Town of Hiawatha. Sister companies of Hiawatha Coal Company are re-developing the old town for residential use.

Although the Division has not received any permit amendment application to convert the pond 5A impoundment to a municipal use, it is my opinion that the Division should be firmly against allowing that conversion to occur based upon the following reasons;

- a. R645-301-553.100 and 553.120 require that the Division oversee the reclamation of all depressions (impoundments) associated with coal mining and reclamation activities.
- b. The Division does not agree with releasing an impounding structure constructed of coal waste when the impounded volume would hold a water volume above the gradient of the surrounding area.
- c. The Permittee has not provided documentation of any communication with the Utah Division of Water Quality or the Division of Water

Rights / State Engineers Office which is relative to usage of the pond 5A area as a storm water treatment facility. The design / construction of the 5A impounding embankment must be approved by the State Engineer prior to transfer of that facility to Hiawatha town.

The Pond 5 area is still on record with MSHA as a pond meeting the requirements of 30 CFR 77.216. In order for the Division to consider a change in the planned usage of this pond (i.e., slurry containment to a municipal storm water treatment and runoff control), the Permittee must obtain documented concurrence from MSHA that the proposed change has met all requirements for approval / transfer of this area to the Town of Hiawatha.

Similarly, The Permittee must provide copies of the correspondence to the Utah Division of Water Quality and the Utah Division of Water Rights / State Engineers Office which provides confirmation that the use of the 5A impoundment volume as a storm water treatment facility is acceptable. The design of the 5A impoundment must also receive clearance from the State Engineer stating that the design is adequate.

The Permittee would have to provide the Division with adequate transfer of ownership documents of the 5A impoundment to the Town of Hiawatha.

If the Permittee cannot provide the necessary approvals from MSHA, DWQ and DWRi, in accordance with the requirements of:

R645-301-553.100, the Permittee must complete the reclamation of the pond 5 area by backfilling and grading the pond 5A area as shown on the plan view depicted on EXHIBIT V-13 and cross sections 14+00, 16+00 and 18+00 shown on EXHIBIT V-13D.

Appendix V-16, Slurry Pond Abandonment Plan, page V-16-2 discusses the procedures to be implemented to control the runoff from the 5A cell when the east embankment is breached. This is the MSHA approved abandonment plan for the pond 5 area.

Upon completion of the backfilling, grading, and topsoiling activities, the Permittee may reapply for a Phase I bond release for the pond 5A acreage.

One final thought needs to be documented. Before reclamation on pond 5A can be initiated, a sediment control plan / storm water treatment facility for the Town of Hiawatha must be permitted and approved by the appropriate State agencies.

