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# TECHNICAL MEMORANDUM

## Utah Coal Regulatory Program

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#3264  
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May 13, 2009

TO: Internal File

THRU: April Abate, Environmental Scientist II / Reclamation Hydro / Team Lead  
James Smith, Permit Supervisor / Task Manager *JS 4/17/09*

FROM: Peter Hess, Environmental Scientist III / Bond Assessment / Engineering *PHH by SHS*

RE: Chapter 8 Update Including (Proposed) Bond Estimate and Road(s) Agreement, Hiawatha Coal Company, Hiawatha Mine Complex, C/007/011, Task ID # 3264

### SUMMARY:

Task ID # 3217, Chapter 8 Update, including Bond Estimate and Road Agreement was submitted by the Permittee on February 12, 2009. Prior to the completion of the Division's review of that application, a new submittal was made and received by the Division on April 14, 2009. The Division assigned a new Task ID number for tracking purposes of # 3264.

This tech memo will address the proposed revisions to Chapter 2, Soils, Chapter 4, Land Use and Chapter 8, Bonding.

### TECHNICAL ANALYSIS

## RECLAMATION PLAN

### ROAD SYSTEMS AND OTHER TRANSPORTATION FACILITIES

Regulatory Reference: 30 CFR Sec. 701.5, 784.24, 817.150, 817.151; R645-100-200, -301-513, -301-521, -301-527, -301-534, -301-537, -301-732.

#### **Analysis:**

##### **Reclamation**

Page 2-45, paragraph one of the Task ID # 3264 application discusses Reclamation of Roads. "The roads in Middle Fork and North Fork will not be totally

reclaimed but will be left in place to support the post mining land use as discussed in Chapter IV. The South Fork and Middle Fork roads, comprising 11.6 acres, **will be reclaimed as per the road agreement with ANR, located in appendix IV-5.** These two statements contradict each other and only partially agree with the “Agreement”, which the applicant identifies as Appendix IV-5.

Appendix IV-5 “Agreement” is the document existing between Hiawatha Coal Company and A.N.R. Inc. and discusses what Hiawatha Coal Company may and may not do on the privately owned (A.N.R. surface ownership) areas of South Fork and Middle Fork roads.

Stipulation #5 of the “Agreement” states “all upgrades to any portion of any roads used by Hiawatha, the town of Hiawatha, the property owner or his agents...will remain in place post mining. These upgrades may include, but are not limited to road base, asphalt, concrete, and drainage controls”.

Stipulation #6 contains the following; “A.N.R. reserves the right to require Hiawatha Coal to leave, post-mining, any additional portions or all portions of any private road owned by A.N.R. and located within the Hiawatha Mine permit area, as defined by any plan held by the Office of Surface Mining or the Division of Oil, Gas, and Mining, at A.N.R.’s discretion.”

An analysis of Exhibit IV-1, SURFACE OWNERSHIP with Exhibit IV-3, Mine Permit Area (as currently approved in the MRP) indicates that the entire length of the South Fork (left fork), Middle Fork and North Fork (right fork) off of Middle Fork roads lie on surface owned by A.N.R., Inc.

The Agreement was signed by the parties representing A.N.R., Inc. (Mr. L.A. Miller, Officer) and Hiawatha Coal Company (E. Finley, Officer) on January 27, 2009.

Page 4-11, section **R645-301-412 RECLAMATION PLAN**, section **412.100 POST-MINING LAND USE PLAN**, paragraph three contains the following; “...the access roads leading to the mine sites will be reclaimed “as per the road agreement and will be left in place to support these activities.” This text also conflicts with the Appendix IV-5.

Information provided in TABLE VIII-2 (Chapter 8, page 8-5) gives equipment production rates for ripping pavement and backfilling roads. Page 8-7 (also TABLE VIII-2) lists under the column titled “PROJECT”, “haul pavement from Middle Fork to Slurry pond #1”. Thus, it appears that the Permittee intends to reclaim the access road in Middle Fork. If the Permittee intends to at least partially reclaim the Middle Fork road by removing the surfacing material, the Permittee must either bond for transportation and off-site disposal of the asphalt material, or

- a) obtain a permit from the Utah Division of Solid and Hazardous Waste to dispose of the asphalt material within the Hiawatha Mine Complex permit area.

The information contained in Chapters 2, 4, and 8 conflicts in several places with each other and does not agree with the text contained in Appendix IV-5. Therefore, the Permittee's MRP appears to be conflicting with the information in Appendix IV-5.

### **Retention**

The proposed text revisions described above, as well as the "approved" text, conflict not only with each other, but with the "Agreement" which appears to be in place between A.N.R., Inc., and Hiawatha Coal Company.

As the submitted Appendix IV-5 was not agreed to until January 27, 2009, the Division needs to make a finding as to whether or not it will accept the document relative to meeting the reclamation requirements of R645-301-542.600, or release the Permittee from certain reclamation requirements relative to these roads.

Carbon County currently zones the surface of the Mine Permit Area and adjacent surface lands for recreation, forestry, and grazing (as well as mining). The road use agreement (Appendix IV-5) stipulates that all "upgrades (road base, asphalt, concrete, drainage controls) remain in place post-mining".

The Permittee states on Page 4-11 that "access to the roads in the permit area is controlled by a gate at the end of State Highway 122, (at the RR crossing). The traffic on the road is expected to be light during the spring, summer and fall seasons. No traffic is expected during the winter season". Since access is controlled with a gate, all activities in the upper areas within and adjacent to the permit area will be controlled by Hiawatha Coal Company (assuming DOGM approval of the "Agreement"). The roads in Middle Fork and South Fork are not public roads and the liabilities associated with public roads are not applicable.

Page 4-13 states the following; "the roads are necessary to support these uses and will therefore be left in place as per the road agreement with the land owner."

The Permittee needs to provide adequate justification to the Division as to why:

- 1) all under road culverts should be retained (**R645-301-542.620**); and removing or otherwise disposing of road-surfacing materials is not necessary, and
- 2) the retention of road surfacing materials is necessary.
- 3) the surfaced roads are compatible with the post mining land use and revegetation requirements (**R645-301-542.640**).
- 4) if road surfacing material is to be removed, the Permittee must discuss and bond for proper disposal of the asphalt volume.

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**Findings:**

The Task ID # 3264 application is deficient.

In accordance with the requirements of:

**R645-301-121.200.** The permit application will be clear and concise. The information provided in Chapters 2, 4 and 8 is contradictory not only to each other but also to information provided in the proposed "Agreement" contained as Appendix IV-5.

**R645-301-542.600, Roads,**

- 1) The Permittee **must clarify and / or revise** Chapters 2, Chapter 4 and Chapter 8 of the MRP such that they are in agreement with one another as well as with the information provided in the "Agreement" / Appendix IV-5. The Division must know to what extent the reclamation of the South Fork, North Fork and Middle Fork roads will occur.
- 2) The Permittee must provide verification to the Division that the "Agreement" relative to the South, Middle and North Fork roads within the Hiawatha Mine Permit Area between Hiawatha Coal Company and A.N.R., Inc., is a legal, binding document. The "Agreement" must be notarized by a notary not employed by Hiawatha Coal Company, or A.N.R., Inc., or its affiliates.
- 3) A.N.R., Inc., through the Permittee, must provide verification to the Division that Mr. L. A. Miller, Officer A.N.R. Incorporated, is an Attorney-In-Fact for A.N.R., Inc., with authorization to sign legal agreements such as surface and /or road use agreements.
- 4) The Permittee needs to provide adequate justification to the Division as to why
  - a) all under road culverts should be retained (**R645-301-542.620**); and
  - b) removing or otherwise disposing of road-surfacing materials is not necessary, (**R645-301-542.640**), and
  - c) the retention of the asphalted road surface is necessary.
  - d) the surfaced roads are compatible with the post mining land use and revegetation requirements (**R645-301-542.630**).

**BONDING AND INSURANCE REQUIREMENTS**

Regulatory Reference: 30 CFR Sec. 800; R645-301-800, et seq.

**Analysis:**

## **General**

The Permittee has submitted a summary of reclamation costs, as well as revised cost estimates for the remaining demolition, earthwork and revegetation work for the tipple area, North Fork Area and South and Middle Fork areas. Also provided are Table VIII-1, Unit Cost Reference (page 4) and Table VIII-2, Equipment Production Estimates, (page 5).

## **Form of Bond**

As of March 31, 2009, Hiawatha Coal Company had an irrevocable letter of credit issued through JP Morgan Chase Bank (\$2,273,464) and a Bank of Utah Treasury Security (\$ 167,000) payable to the Division to cover the remaining reclamation for the Hiawatha Mine Complex. (Total amount = \$ 2,440,464).

The Division informed Hiawatha Coal Company on April 23, 2009 that the JP Morgan Letter of Credit was due to expire on June 15, 2009, and that same must be renewed or replaced at least 30 days before expiration (May 15, 2009). To date (5/13/2009), the letter of credit has not been renewed.

Information provided on page 8-1, section **R645-301-820 REQUIREMENT TO FILE A BOND** contains some incorrect information, which needs to be corrected (i.e., the amount of \$ 167,000 is a posted security issued by the Bank of Utah, and not a U.S. Treasury security).

## **Determination of Bond Amount**

The Division released a Phase I dollar amount for reclamation completed on slurry cells #5 and #4, part of the tipple area, as well as certain small area exemptions on January 13, 2009 (\$ 564,536). The currently approved bond amount for the Hiawatha Mine Complex is \$ 2,440,464.

The \$ 564,536 dollars released as Phase I monies included a reduction in demolition cost at Hiawatha of \$ 122, 196, a reduction in earthwork costs of \$ 309, 216, and a reduction in revegetation costs of \$ 133,124. Reclamation activities included demolition of numerous structures adjacent to the tipple area and removal of the North Fork pipeline. \$ 478,833 remains in Phase I to complete demolition and backfilling and grading (\$ 333,328 remains for demolition).

The Permittee must clarify for the Division to what extent each of the roads above the old Savage truck shop will be reclaimed, and whether the retention of these roads will support the approved post-mining land use for the Mine permit area and its adjacent lands.

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If the Division approves the road use "Agreement" contained in Chapter IV-5, Hiawatha Coal Company will not be required to remove the asphalt pavement, backfill the road, or re-vegetate the 12 acres associated with these access routes.

The Permittee must provide information as to what will be done with the following facility pads in South and Middle Forks, if the access roads are allowed to remain as part of the post-mining land use;

- 1) the truck loading loop and coal storage pad in South Fork
- 2) the King 6 facilities pad
- 3) the truck loading loop, and loading facility above the coal storage pit (gallery belt installation)
- 4) the King 4 and King 5 facilities pad.

The proposed bond calculations submitted as Chapter 8, Task ID # 3264 have been determined as accurately reflecting the costs associated with reclaiming the remaining facilities at the Hiawatha Mine Complex. However, in accordance with the requirements of:

**R645-301-800 et al.** The Permittee must bond for the transportation and proper disposal (in accordance with the requirements of R315-315, Environmental Quality, Solid and Hazardous Waste) of road surfacing material (asphalt) from the Middle Fork road, if that is their intent relative to reclamation.

### **Terms and Conditions for Liability Insurance**

The general liability insurance for the Hiawatha Mine Complex, C/007/011 is renewed every January for the pending year. All requirements mandated within R645-301-890 are met by the annual policy renewal. The complete inspections conducted quarterly verify that this insurance is adequate

### **Findings:**

The application is deficient.

In accordance with the requirements of:

**R645-301-121.200.** The permit application will be clear and concise. The information provided in Chapters 2, 4 and 8 is contradictory not only to each other but also to information provided in the proposed "Agreement" contained as Appendix IV-5.

**R645-301-800 et al.** The Permittee must bond for the transportation and proper disposal (in accordance with the requirements of R315-315, Environmental Quality, Solid and Hazardous Waste) of road surfacing material (asphalt) from the Middle Fork road, if that is their intent relative to reclamation.

A recommendation for approval cannot be given until the Permittee addresses the aforementioned deficiencies.

**RECOMMENDATION**

The Task ID # 3264 application cannot be approved at this time.

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