

TECHNICAL MEMORANDUM

Utah Coal Regulatory Program

#3352
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October 22, 2009

TO: Internal File

THRU: April Abate, Environmental Scientist II / Reclamation Hydro / Team Lead
 Jim Smith, Permit Supervisor / Task Manager *J S 10/26/09*

FROM: Peter Hess, Environmental Scientist III / Bond Assessment / Engineering *PHH/m/s/s*

RE: MIDTERM PERMIT REVIEW, Hiawatha Coal Company, Hiawatha Mine Complex, C/007/011, Task ID # 3352

SUMMARY:

The Permittee submitted under Task ID # 3217, Chapter 8 Update, including Bond Estimate and Road Agreement 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, which was relative to the reclamation bond estimate.

The bond estimate received Division conditional approval under Task ID # 3264 on August 18, 2009.

The Division believes that there are outstanding issues relative to the status of the Middle Fork (access to King 4 and 5) and South Fork roads (access to King 6). The middle fork and south fork access roads were originally constructed pre-SMCRA, and their purpose was to provide access to the upper Canyon for coal transportation purposes. The lands on which they exist are privately owned by A.N.R., Inc.

The current condition of the roads is poor. The asphalted road surfaces are breaking up and native vegetation is reclaiming the road corridor. The roads are not cleared during the winter season.

This memo will identify the Divisions issues.

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.*" The Division would like clarification as to what totally reclaimed versus will be reclaimed means. The "Agreement", which the applicant identifies as Appendix IV-5, between A.N.R., Inc. and Hiawatha Coal Company, Inc., says "all upgrades will be left in place post mining".

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.

The Division understands that the Middle Fork and South Fork Roads are private roads and they will not be reclaimed. The Division conditionally approved the road agreement in the amendment submitted on August 9, 2009, under Task #3364.

Page 4-11, section **R645-301-412 RECLAMATION PLAN**, section **412.100 POST-MINING LAND USE PLAN**, paragraph was updated to reflect the roads remaining in place.

Retention

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 “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. 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 has provided adequate justification to the Division as to why:

- 1) All under road culverts should be retained (**R645-301-542.620**).

The retention of all road drainage diversions is necessary to prevent washout of the South and Middle Fork roads by heavy thunderstorms and / or significant snow melt water runoff.

- 2) Removing or otherwise disposing of road-surfacing materials is not necessary.

The removal of the asphalt from the road surfaces would increase sediment contribution to the adjacent stream channels by increased erosive action in wheel tracks.

- 3) The retention of road surfacing materials is necessary.

The retention of the road surfacing materials is necessary to enhance runoff from the road surface and provide a hard, stable surface for heavy trucks accessing the upper Canyon reaches as part of the approved post-mining land uses.

It appears at this time that A.N.R., Inc. has no intention of removing the asphalt paving material from South and Middle Forks. More material will likely be added in the future to improve the current road conditions. As noted earlier, the present condition of these roads is poor.

4) The surfaced roads are compatible with the post mining land use and revegetation requirements (**R645-301-542.640**).

The South and Middle Fork roads are compatible with the approved post mining land use (wildlife, livestock grazing, timber harvesting and recreation) as these roads will provide reasonably good access most of the way up the Canyons for the heavy trucks, and machinery needed to transport cattle or timber off the mountain.

Findings:

The Task ID # 3264 application meets the requirements of **R645-301-121.200**.

BONDING AND INSURANCE REQUIREMENTS

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

Analysis:

General

As of August 9, 2009, Hiawatha Coal Company had an irrevocable letter of credit issued through the Bank of Utah in the amount of \$2,273,464 and \$167,000 carried by Hiawatha Coal Company in the form of an escrow agreement payable to the Division to cover the remaining reclamation for the Hiawatha Mine Complex. (Total bond amount = \$ 2,440,464).

Information provided on page 8-77, section **R645-301-860 FORMS OF BOND** contains some incorrect information (i.e., the amount of \$ 167,000 an escrow agreement for HCC, and not a U.S. Treasury note). Additionally, the total amount for the bond is outdated and requires correction.

Findings:

The application is deficient with the requirements of **R645-301-860**, Forms of Bond.

RECOMMENDATION:

The Permittee must address the aforementioned deficiency prior to the Division completing the mid-term review process for the Hiawatha Mine Complex.

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