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Outgoing
C0070011
3264
&

June 1, 2009

Elliot Finley, Resident Agent
Hiawatha Coal Company
P.O. Box 1240
Huntington, Utah 84528

Subject: Chapter 8 Update – Bond Estimate and Road Agreement with ANR, Hiawatha Mine, C/007/0011, Task ID #3264

Dear Mr. Finley:

The Division has reviewed the resubmitted Chapter 8 update application to the MRP that includes revised bond calculations and a road agreement between Hiawatha Coal Company (HCC) and the surface owners, A.N.R. Incorporated (Task ID #3264). The application was previously submitted on February 12, 2009 under Task ID # 3217.

The Division has determined that there are some deficiencies that must be addressed before a determination can be made that the requirements of the R645 Coal Mining Rules have been met, and an approval can be granted. Those deficiencies are listed as an attachment to this letter.

Each deficiency identifies its author by that author's initials in parentheses, such that your staff can directly communicate with that individual should any questions arise relative to the preparation of Hiawatha Coal Company's response to that particular deficiency.

The plans as submitted are denied. Please resubmit the entire application.

Sincerely,

James D. Smith
Permit Supervisor

JDS/AAA/sqs
cc: Price Field Office
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Deficiency List

Task No. #3264

Task Name: Chapter 8 Update – Bond Estimate and Road Agreement with ANR

The following individuals conducted the review:

Peter Hess (PC)
April Abate (AA)

The technical analysis included provides a justification for the deficiencies outlined below.

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. **(PH)** Please refer to the technical analysis attached for specific references to sections of the MRP that need to be corrected in order to address the contradictions. **(AA)**

R645-301-542.600. The road agreement as submitted was drafted on January 27, 2009 between HCC and A.N.R. Incorporated. The agreement states “HCC will be allowed access to other portions of the property served by Middle Fork Road and all other private roads on the property”. The agreement should specifically address which roads will be utilized by HCC and especially to what extent these roads will be reclaimed, if at all. Once this information is determined, the Division can make a finding to restrict or release the Permittee from certain reclamation requirements relative to these roads. **(AA)**

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.

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.

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 also with the "Agreement" which appears to be in place between A.N.R., Inc., and Hiawatha Coal Company.

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.* "

Assuming that the roads are not to be reclaimed, 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
- 2) removing or otherwise disposing of road-surfacing materials is not necessary, and
- 3) the retention of road surfacing materials is necessary.
- 4) the surfaced roads are compatible with the post mining land use and revegetation requirements (R645-301-542.640).