

cc: to Don Guy &

0005



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August 2, 1979

Mr. Don Crane
Office of Surface Mining
Denver Regional Office
Room 270, Post Office Bldg.
1823 Stout Street
Denver, Colorado 80202

Re: Stipulations on
Swisher #4
Mine Plan Approval

Dear Don:

The Division has completed its review of the stipulations proposed by the Office of Surface Mining for developing Federal Coal Leases SL 064903 and U-33454 by Swisher Coal Company. The review was conducted on the final O.S.M. stipulations which were received in this office on July 10, 1979.

There are several areas where a disagreement with the stipulations exists on the part of the State. Those areas are outlined below and are followed by a reasoning for such disagreement and suggested modifications.

I hope that we can resolve our difference of opinion on these matters and reach a joint recommendation without proceeding under paragraph 12 of the Protocol to the Cooperative Agreement for a review by the Director, Office of Surface Mining.

Standard Stipulations

Number Four

A. Issue - The State's difference of opinion on this stipulation centers on the degree of monitoring equipment that can be required of the operator.

B. Reason - It is the State's opinion that the operator should be required to install only that monitoring equipment for which a need is demonstrated by the Regulatory Authority and not to the degree that any monitoring, subject at the whim of one individual employed by the Regulatory Authority, should be installed.

C. Suggested Modifications -

Line one - Delete the word "any" and replace it with "such".

Line two - Delete the word "required" and replace it with "for which the need is demonstrated".

Line three - Delete the word "required" and replace it with "for which the need is demonstrated".

Line six - Typographical error in the third word.

Line seven - Delete the word "monthly" and insert after the word "reports" the phrase "as required by the monitoring schedules to the Regulatory Authority".

Line eight - Delete the phrase "of monitoring to the Office of Surface Mining".

This concludes issues on the Standard Stipulations.

Special Stipulations

Number Four

A. Issue - The State is at variance here with the concept of the mining of the lower seam being covered by another complete plan.

B. Reason - In a stringent interpretation of the last sentence of this paragraph it could be construed to mean that an entire #4 lower seam mine development plan would need to be filed and approved, thus placing the whole #4 mine in a limbo state of approval.

The State believes that the lower Hiawatha seam development can be handled as an addendum to, or modification of the approved plan.

C. Suggested Modifications -

Last line - Delete the word "plan" and add the phrase "addendum or modification to the approved plan".

Number Six

A. Issue - Activities at the coal preparation plant are not the subject of these stipulations. The stipulation is also repetitive.

B. Reason - The regulation of the coal preparation plant is covered by other regulations and the second paragraph repeats the first.

C. Suggested Modifications -

Line four - Delete the phrase "at the processing plant" and replace it with the words "mine site as shown on exhibit three".

Line six - Delete the entire second paragraph.

Number Nine

A. Issue - The operator's further elaboration on the topsoil protection plan is needed, in the opinion of the State. Some of this plan is shown on exhibit 19. The Order One soil survey is a requirement that given the size of the sedimentation pond and the nature of the surface soils, appears to be regulatory overkill.

B. Reason - A soils map, admittedly general, which depicts the soils present in this area is included in the U.S. Forest Service original Environmental Assessment Report for this mine. There is repetitive language in this stipulation. Also, a soils map is called for in stipulation 10.

C. Suggested Modifications -

Lines one and two - Delete "and prior to conducting any surface coal mining and reclamation operations".

Line eight, nine, & ten - Delete the sentence beginning with "The operator" and ending with "regulatory authority".

Lines thirteen & fourteen - Delete all of line 13 and all of line 14 up to and including the word "received".

Number Eleven

A. Issue - The State is at variance with this stipulation and Swisher's proposal in several areas. First, a 25 year-24 hour event is not as applicable in this area as a 25 year-6 hour storm. Second, a 1"=400' map is included in Applicant's exhibit 19, and third, the construction of diversion structures above the existing highwall should not be required.

B. Reason - This mine is in mountainous terrain and the 25 year-24 hour winter snow storm is not as applicable as the six hour summer rainstorm. The map of 1"=400' scale can be found in the application as approved in exhibit 19.

Most important among the reasons for the State's disagreement with the proposed stipulation is the undue hydrologic and ecologic degradation which would take place if the diversions were located on virgin slopes above the mine highwall. This possibility, plus the possible hazard to workers and existing facilities from falling material lead the Division to prefer diversions to be designed and constructed between the highwall, composed of bedrock, and the surface facility pad.

C. Suggested Modifications -

Subsections "a" and "b" - The State's preferred hydrologic design will be forwarded to O.S.M. within one week for a re-design of these specifications.

Subsection "c" - Delete entirely.

Subsection "e" - Re-word this paragraph to reflect the location of diversions between the highwall and working pad using the forthcoming Division hydrologic study to re-state required capacities.

Number Eighteen

A. Issue - The disposal of coal processing wastes is regulated by specific regulations and should not be a specified stipulation.

B. Reason - Since the disposal of coal processing wastes is regulated by specific sections of other laws, a stipulation saying same is superfluous.

C. Suggested Modifications -

Delete this stipulation in its entirety.

Number Twenty-one

A. Issue - The restriction of coal haul traffic on the permit area to daylight hours during critical periods of the year to reduce the potential for big game road kills is not acceptable.

B. Reason - This restriction would be severely discriminatory, reduce the productive potential of the mine, and is over protective.

In the State's opinion, the operator has already provided a mitigative measure to this problem by limiting truck speeds to 25 miles per hour. It discriminates in that State and Federal highways that pass through other mine permit areas all are speed limited at 55 m.p.h. through very similar terrain, including big game winter range.

During critical periods for big game wildlife the days are shortest. These are the winter months. To restrict coal haulage at these times would unduly limit the productive capacity of the mine, especially if double shifts are needed.

C. Suggested Modifications -

Line one - Delete the word "restrict" and replace it with the word "inform". Delete the word "traffic" and replace it with the words "drivers hauling".

Line two - Delete the entire line except for the last two words. Insert in place of the deletion the phrase "to exercise caution".

Number Twenty-five

A. Issue - The proposed stipulation requires more of the operator than that called for in the permanent program.

B. Reason - The State has determined that the area does not warrant a study to any more detail than that normally required for a mine plan approval. Specifically, a quantitative survey does not appear to be needed at this time.

C. Suggested Modifications -

Line one - Delete the word "survey" and replace it with the word "study".

Lines four, five and six - Delete all of the remaining portion of the section following the word "submit" in line four. Replace it with "the results of that study of fish and wildlife and their habitats within the proposed mine plan area where surface facilities are located and the portions of the adjacent areas where effects on such resources may reasonably be expected to occur".

Number Twenty-six

A. Issue - The use of chemical dust suppressants should not be required.

B. Reason - Only if it is demonstrated by the operator's review should chemical dust suppressants be used.

C. Suggested Modifications -

Delete the period at the end of this stipulation and add the phrase "if demonstrated to be necessary."

Number Twenty-eight

A. Issue - The State does not support the operator's being forced into a particular performance mode to achieve adequate subsidence monitoring.

B. Reason - The subsidence monitoring program which is described in Applicant exhibit 23, and utilizes conventional survey techniques, achieves the objective of the regulations. The operator should have the option of choosing his level of expenditure for subsidence monitoring. If he deems that the proposed aerial photogrammetric method of monitoring subsidence can be used by him then the State's position is that he can employ its use for this mine.

C. Suggested Modifications -

Delete this stipulation in its entirety.

Number Thirty

A. Issue - A performance bond in the amount of \$221,000 for this size of underground mine seems excessive, based on the State's experience.

B. Reason - Underground mines usually disturb small surface acreage, this mine is no exception. No written itemization of the estimated costs has been received by the State, it therefore is at a disadvantage to evaluate the accuracy of the bond estimate.

C. Suggested Modifications -

Since very little data is available, an experience estimate of the bond by the State was made. An underground coal mine of the size and nature of the Swisher #4 would require approximately \$50,000 in bond for reclamation.

Number Thirty-one

A. Issue - The stipulation as presented is duplicatory, in conflict with State regulatory determinations and has the potential to cause additional hydrologic and ecologic degradation.

B. Reason - The attached Board Order in cause # OSM-004 found that the existing road to the mine was stable and should not have been modified under the interim program. It should be noted in the attached Order that the finding was made conditional upon approval by the Office of Surface Mining.

This stipulation calls for the same information that was called for in stipulation number 16 on backfilling and reclaiming roads. Sedimentation and erosion control on the road is addressed in stipulation 11.

C. Suggested Modifications -

Since the Order requires concurrence by the Office of Surface Mining, this suggested modification is flexible. If O.S.M. agrees with the Findings and Order and agrees that the road should not be re-constructed, delete the stipulation in its entirety.

If O.S.M. does not agree with the Findings and Order then delete the last sentence of this stipulation to reduce the duplication mentioned under paragraph B, above.

This concludes the State's position on the Swisher #4 stipulations. If your staff can incorporate the above suggested modifications into the stipulations the State would have no problem in endorsing a joint recommendation.

Please let me know if I can answer any question on the State's position. If there still are differences I am sure we can resolve them.

Sincerely,



RONALD W. DANIELS
COORDINATOR OF MINED
LAND DEVELOPMENT

RWD/sp

Enc: Order - Cause # OSM-004
Marked up copy of stipulations