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State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

OK

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June 3, 2002

Tim Kirschbaum, Environmental Engineer
Consolidation Coal Company
P.O. Box 566
Sesser, Illinois 62884

Re: Conditional Approval of Division Order Amendment, Consolidation Coal Company, Emery Deep Mine, C/015/015-DO02C, Outgoing File

Dear Mr. Kirschbaum:

The above-referenced amendment is conditionally approved with stipulations and recommendations as outlined below. Final approval is contingent upon our receipt of 5 clean copies of the amendment. This letter authorizes you to proceed with construction of 4th East Portals as outlined in the Mining and Reclamation Plan. The following stipulations are attached to this approval:

1. Prior to construction the area shown as saltgrass on the Vegetation Map in Appendix VIII-1 must be flagged and not disturbed until the U.S. Army Corps of Engineers has determined if the area is a jurisdictional wetland.
2. Prior to disturbance of the 4th East Portal site, Consol must relay the information concerning map unit delineation and salvage depths gathered by the consulting soil scientist to the Division.
3. The Permittee must salvage the surface soils (from 0 – 2 inches) during vegetation removal and reapply the vegetation and soil mix as mulch to the surface of the gouged topsoil stockpile, unless other methods are demonstrated to be as effective.

A copy of our Technical Analysis is enclosed.

While we are approving your response to the Division Order, we are not making the determination that the Division Order has been completely satisfied. We are still investigating item 5 of the Division Order, which deals with construction of the Emery County Loop road. The Permit status of this road has not yet been established and we are still gathering information on this road to determine what if any permitting work needs to be done. The information you have provided thus far has been useful but we have little information on Consolidation Coal Company's intended use of the road. Please provide documentation of your intended use of the road. Until the Division has made a "Finding" on the permit status of the road, please consider the Division Order to be in effect.

As you know we are also reviewing your plans for modifying the 4th East Portal. The following are issues and recommended solutions that will be visited during that review:

1. The Permittee must minimize adverse impacts during coal mining and reclamation activities and provide enhancement measures. This could be done by salvaging large slabs of slickrock during blasting and utilizing them either on the surface or in the reconstructed drainage during reclamation.
2. As referenced in the Permittee's submittal letter dated May 17, 2002, DWR recommended fish and macroinvertebrate studies. These studies must be conducted prior to coal removal.
3. The Permittee must stabilize the topsoil pile. This could be done by establishing vegetation and a biological crust. This may require irrigation during the first season after seeding. The normal seeding time for this area is late June through July.

If you have any questions, please call Susan White, (801) 538-5258 or me (801) 538-5285.

Sincerely,

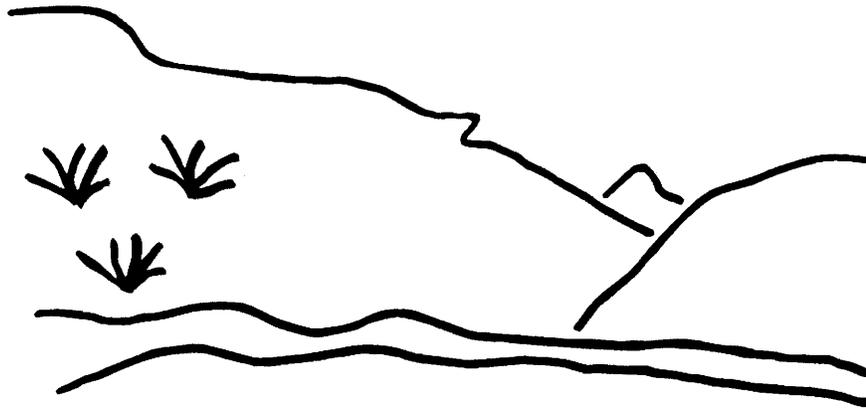


Daron Haddock
Permit Supervisor

an
Enclosure
cc: Price Field Office
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LD Brafta 6-3-02
M. A. Knight 6/3/02

State of Utah



Utah Oil Gas and Mining

Coal Regulatory Program

Emery Deep Mine
Division Order
C/015/015-DO02C
Technical Analysis
May 31, 2002

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INTRODUCTION

TECHNICAL ANALYSIS

INTRODUCTION

The Division approved and the Mining and Reclamation Plan was amended for the 4th East Portals in 1990. The portals were never constructed. A Division Order was issued May 3, 2002 requiring surveys and studies to be updated prior to construction, after the Permittee notified the Division in April of 2002 of their intent to construct the 4th East Portals.

A response to the Division Order was received on May 17, 2002. The following are issues and recommended solutions that will be revisited during the review of the 4th East Portal amendment and reclamation feasibility:

1. The Permittee must minimize adverse impacts during coal mining and reclamation activities and provide enhancement measures. This could be done by salvaging large slabs of slickrock during blasting and utilizing them either on the surface or in the reconstructed drainage during reclamation.
2. As referenced in the Permittee's submittal letter dated May 17, 2002, the field visit to the mine with DWR recommended fish and macroinvertebrate studies. These studies must be conducted prior to operation.
3. The Permittee must stabilize the topsoil pile. This could be done by establishing vegetation and a biological crust. This may require irrigation during the first season after seeding. The normal seeding time for this area is late June through July.

The response to the Division Order (DO02C) can be approved provided the following stipulations are attached to the approval:

1. Prior to construction the area shown as saltgrass on the Vegetation Map in Appendix VIII-1 must be flagged and not disturbed until the U.S. Army Corps of Engineers has determined if the area is a jurisdictional wetland.
2. Prior to disturbance of the 4th East Portal site, Consol must relay the information concerning map unit delineation and salvage depths gathered by the consulting soil scientist to the Division.
3. The Permittee must salvage the surface soils (from 0 – 2 inches) during vegetation removal and reapply the vegetation and soil mix as mulch to the surface of the gouged topsoil stockpile, unless other methods are demonstrated to be as effective.

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SUMMARY OF PERMIT CONDITIONS

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- R645-301-234.230**, The Permittee must salvage the surface soils (from 0 – 2 inches) during vegetation removal and reapply the vegetation and soil mix as mulch to the surface of the gouged topsoil stockpile, unless other methods are demonstrated to be as effective. 14
- R645-301-731**, Prior to construction the area shown as saltgrass on the Vegetation Map in Appendix VIII-1 must be flagged and not disturbed until the U.S. Army Corps of Engineers has determined if the area is a jurisdictional wetland. 14

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PUBLIC NOTICE AND COMMENT

Regulatory References: 30 CFR 778.21; 30 CFR 773.13; R645-300-120; R645-301-117.200.

Minimum Regulatory Reference

After the application has been determined "administratively complete," an advertisement must be placed in a local newspaper of general circulation in the locality of the proposed surface coal mining and reclamation operation at least once a week for four consecutive weeks. A copy of the advertisement as it will appear in the newspaper will be submitted to the regulatory authority.

At a minimum, the following will be included in the ad:

- (1) The name and business address of the applicant.
- (2) A map or description.
- (3) The location where a copy of the application is available for public inspection.
- (4) The name and address of the Division where written comments, objections, or requests for informal conferences on the application may be submitted.
- (5) If an applicant seeks a permit to mine within 100 feet of the outside right-of-way of a public road or to relocate or close a public road, except where public notice and hearing have previously been provided for this particular part of the road; a concise statement describing the public road, the particular part to relocated or closed, and the approximate timing and duration of the relocation or closing.
- (6) If the application includes a request for an experimental practice, a statement indicating that an experimental practice is requested and identifying the regulatory provisions for which a variance is requested.

The Division will notify in writing local governmental agencies and all Federal or State governmental agencies involved in or with an interest in the permit process.

Documentation of the public notice and comment period required for the Permit should be incorporated as part of the Permit.

Analysis:

The Division approved and the Mining and Reclamation Plan amended for the 4th East Portals in 1990. The portals were never constructed. Now in 2002, it is not clear if in the original approval a public notice was given that the northeast portion of the 22 acre disturbance is within 100 feet of Emery County Road #915.

An affidavit of publication is provided from the Sun Advocate and the Emery County Progress stating that the notice was published for one issue on April 30, 2002. The notice states that written comments or requests for hearings must be made to the Division within 30 days of the last publication. Thirty days is May 30, 2002. The Division received no comments. The public notice also limits the Permittee to constructing only a fence and berm within 100 feet of the outside right-of-way line of the road (Appendix 1-8).

Activities within 100 feet of a public road require approvals from the authority with jurisdiction over the road. Permit #200230 issued by Emery County allows the Permittee to construct a fence and drainage berm no closer than 33 feet from the center of the road (Appendix

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1-8). Specific requirements to control dust, proper signing, posting for safety, and road repairs are stipulated for construction of the fence and drainage berm. No other activities are to occur within 100 feet of the public road or on the public road.

Based on the fact that the Division received no public comment and a Roadway Encroachment Permit was issued by Emery County the Division finds that the interest of the public will be protected.

Findings:

The information provided in the permit application is considered adequate to meet the minimum Public Notice and Comment requirements of the regulations.

ENVIRONMENTAL RESOURCE INFORMATION

ENVIRONMENTAL RESOURCE INFORMATION

Regulatory Reference: Pub. L 95-87 Sections 507(b), 508(a), and 516(b); 30 CFR 783., et. al.

HISTORIC AND ARCHEOLOGICAL RESOURCE INFORMATION

Regulatory Reference: 30 CFR 783.12; R645-301-411.

Minimum Regulatory Requirements:

Describe and identify the nature of cultural historic and archeological resources listed or eligible for listing on the National Register of Historic Places and known archeological sites within the proposed permit and adjacent areas. The description shall be based on all available information, including, but not limited to, information from the State Historic Preservation Officer and local archeological, historical, and cultural preservation groups.

Identify and evaluate important historic and archeological resources that may be eligible for listing on the National Register of Historic Places, through the collection of additional information, conduct of field investigations, or other appropriate analyses.

Analysis:

In May 2002, Montgomery Archaeological Consultants conducted a cultural resource inventory for the proposed disturbance. The survey consisted of a 100% pedestrian coverage. Kristen Jensen, State History, searched files for previous inventories and records. The survey resulted in the location of 4 isolated chert artifacts. A determination of no historic properties affected was recommended to the State Historic Preservation Officer (SHPO).

The Division received a concurrence of No Historic Properties Affected based on the Montgomery Archaeological Consultants report from SHPO, dated May 24, 2002.

Findings:

The information provided in the permit application is considered adequate to meet the minimum Historic and Archeological Resource Information requirements of the regulations.

FISH AND WILDLIFE RESOURCE INFORMATION

Regulatory Reference: 30 CFR 784.21; R645-301-322.

Minimum Regulatory Reference:

The application shall include fish and wildlife resource information for the permit area and adjacent area. The scope and level of detail for such information shall be determined by the Division in consultation with State and Federal agencies with responsibilities for fish and wildlife and shall be sufficient to design the protection and enhancement plan required under the operation and reclamation plan.

Site-specific resource information necessary to address the respective species or habitats shall be required when the

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permit area or adjacent area is likely to include:

- (1) Listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary under the endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.), or those species or habitats protected by similar State statutes;
- (2) Habitats of unusually high value for fish and wildlife such as important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes, or reproduction and wintering areas; or
- (2) Other species or habitats identified through agency consultation as requiring special protection under State or Federal law.

Analysis:

On February 19, 2002 DWR wildlife biologists and the Division met on site to discuss wildlife issues related to reopening a mine that has been idled for over 15 years (see field visit memo dated February 28, 2002). At that time the mine was investigating several options for developing the coal reserves. The possibility of opening the 4th East Portals was mentioned and the group visited the site. DWR had no real concerns and did not request any additional surveys for this 4th East Portal area.

However, they did request that macroinvertebrate studies be done in Quitchupah Creek, immediately below the confluence with Christiansen Wash. A qualified person should conduct baseline surveys in the spring and fall, on standardized dates. The surveys should be done every year for two years and then every third year after that. Also a fish survey should be done in Quitchupah Creek at the facilities area. Louis Berg, DWR, should be contacted concerning the survey. Ivie Creek contains flannelmouth suckers, bluehead suckers, leatherside chubs, speckled dace, and fathead minnows. The first three of these species are on Utah's sensitive species list. Quitchupah Creek and Christiansen Wash are tributaries to Ivie Creek.

The Division initiated Section 7 consultation with the U.S. Fish and Wildlife Service on May 9, 2002. They responded with a list of endangered (E), threatened (T), and candidate (C) species that may occur in the area of influence. The T & E species are listed below. Each species is evaluated for occurrence in the 4th East Portal project area.

Common Name		Habitat	Potential Occurance
Barneby Reed-mustard	E	Occurs on the Chinle Formation,	No Chinle Formation in project area.
Jones Cycladenia	T	Gypsiferous saline soils on the Chinle, Cutler, and Summerville Formations.	Formations not in project area.
Last Chance Townsendia	T	Salt desert shrub and PJ on clay or clay silt soils of Arapien and Mancos Shale.	Potential to occur. 100% pedestrian survey of area in May 2002, not found in project area.

ENVIRONMENTAL RESOURCE INFORMATION

Maguire Daisy	T	Occurs on sands from Wingate, Chinle, and Navajo Sandstone Formations.	Formations not in project area
San Rafael Cactus	E	Occurs in PJ limestone gravels.	Potential to occur. A 100% pedestrian survey of area in May 2002, not found in project area.
Winkler Cactus	T	Salt desert shrub communities.	Potential to occur. A 100% pedestrian survey of area in May 2002 and not found in project area.
Wright Fishhook Cactus	E	Salt desert shrub to Juniper on the Mancos Shale.	Potential to occur. A 100% pedestrian survey of area in May 2002 and not found in project area.
Bonytail Chub	E	Endangered fish of the Colorado River.	Water depletions may affect but less than 100 acre-feet and no mitigation required.
Colorado Pikeminnow	E	Endangered fish of the Colorado River.	Water depletions may affect, but use is less than 100 acre-feet, no mitigation required.
Humpback Chub	E	Endangered fish of the Colorado River.	Water depletions may affect but use is less than 100 acre-feet, no mitigation required.
Razorback Sucker	E	Endangered fish of the Colorado River.	Water depletions may affect but use is less than 100 acre-feet, no mitigation required.
Bald Eagle	T	Nests in tall trees such as Cottonwoods.	No Cottonwoods or tall trees in 4 th East portal area.
Mexican Spotted Owl	T	Nests in areas with >40% slope.	Project and project area <5% slopes.
Western Yellow-billed Cuckoo	C	Occurs in riparian areas at least 30 feet wide.	No riparian zones within 4 th E. Portal area.
Black-footed Ferret	E	Historically within range.	Prairie dog towns within .5 miles of project area. Considered extirpated from Emery County.

A recommendation that the 4th East Portal project will not affect any listed species or their critical habitat will be made to the USFWS. This finding is based on the T and E surveys conducted by Mt. Nebo Scientific in May 2002 (Appendix VIII-1).

Active and abandoned Prairie dog towns are found within the permit area (Plate 10-1) and Burrowing Owls were reported in 1983. Mt. Nebo Scientific conducted surveys for Burrowing Owls at the two prairie dog towns within .5 miles of the project area and at and

additional two within a mile of the 4th East Portals. No owls were observed during the survey.

Findings:

The information provided in the permit application is considered adequate to meet the Fish and Wildlife Resource requirements for development of the 4th East Portals. However, prior to beginning mining the recommended wildlife studies should be conducted.

SOILS RESOURCE INFORMATION

Regulatory Reference: 30 CFR 783.21; 30 CFR 817.22; 30 CFR 817.200(c); 30 CFR 823; R645-301-220; R645-301-411.

Minimum Regulatory Requirements:

Provide adequate soil survey information on those portions of the permit area to be affected by surface operations or facilities consisting of a map delineating different soils, soil identification, soil description, and present and potential productivity of existing soils.

Where selected overburden materials are proposed as a supplement or substitute for topsoil, provide results of the analysis, trials and tests required. Results of physical and chemical analyses of overburden and topsoil must be provided to demonstrate that the resulting soil medium is equal to or more suitable for sustaining revegetation than the available topsoil, provided that trials and tests are certified by an approved laboratory. These data may be obtained from any one or a combination of the following sources: U.S. Department of Agriculture Soil Conservation Service published data based on established soil series; U.S. Department of Agriculture Soil Conservation Service Technical Guides; State agricultural agency, university, Tennessee Valley Authority, Bureau of Land Management or U.S. Department of Agriculture Forest Service published data based on soil series properties and behavior; or, results of physical and chemical analyses, field site trials, or greenhouse tests of the topsoil and overburden materials (soil series) from the permit area. If the permittee demonstrates through soil survey or other data that the topsoil and unconsolidated material are insufficient and substitute materials will be used, only the substitute materials must be analyzed.

Analysis:

The proposed disturbed area is 22.55 acres. The proposed affected area is 15.05 acres. The difference between the two areas reflects the Permittee's willingness to change the disturbed area boundary to avoid disturbance to the Ferron soils associated with the wetland area.

Included with the May 17, 2002 response to the Division Order was a summary of soils resource information in the permit entitled "Soil Resources Report at the 4th East Portal," compiled by James Nyenhuis, Certified Professional Soil Scientist. The summary report includes the most recent NRCS map unit descriptions (Appendix C), typical soil profile descriptions (Appendix A) and salvage depth recommendations for the map units within the proposed disturbed area (Table 1).

An Order 1 Soils Map of the 4th East Portal was created using the James P. Walsh & Associates 1981 Soil Survey in the MRP. Five map units were distinguished:

- Castle Valley extremely stony very fine sandy loam, 0 – 20% slopes, eroded;
- Ferron silt loam, heavy variant, 0 – 3% slopes;

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- Killpack silty clay loam, 0 – 3% slopes;
- Persay-Chipeta complex, 1 – 20% slopes; and
- Rock Land.

Only three of these map units (Castle Valley, Persayo-Chipeta complex and Rock Land) are in the affected area (see Table 1 and Soils Map).

Castle Valley, Ferron and Persayo soils were sampled within the permit area and laboratory results are located in Appendix B. Information on Chipeta soils in Appendix B comes from the Carbon-Emery Area soil survey.

The Soil Resources Report at the 4th East Portal relies upon information gathered from locations adjacent to the 4th East Portal site for Persayo, Chipeta, and Killpack soils. The study indicates that a site visit will be conducted prior to soil salvage operations and salvage depths will be re-evaluated and based upon field verification of soils. Areas of varying salvage depth will be staked. Field verification of the site by a soil scientist may also provide a delineation between the Chipeta and Persayo soils on the Order 1 Map. Prior to disturbance of the 4th East Portal site, Consol must relay the information gathered by the consulting soil scientist to the Division.

Findings:

The information provided is adequate for the purposes of the regulations, with the following stipulation, in accordance with the requirements of:

R645-301-211, Prior to disturbance of the 4th East Portal site, Consol must relay the information concerning map unit delineation and salvage depths gathered by the consulting soil scientist to the Division.

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OPERATION PLAN

OPERATION PLAN

TOPSOIL AND SUBSOIL

Regulatory Reference: 30 CFR 817.22; R645-301-230.

Minimum Regulatory Requirements:

Topsoil removal and storage

All topsoil shall be removed as a separate layer from the area to be disturbed, and segregated. Where the topsoil is of insufficient quantity or of poor quality for sustaining vegetation, the selected overburden materials approved by the Division for use as a substitute or supplement to topsoil shall be removed as a separate layer from the area to be disturbed, and segregated. If topsoil is less than 6 inches thick, the operator may remove the topsoil and the unconsolidated materials immediately below the topsoil and treat the mixture as topsoil.

The Division may choose not to require the removal of topsoil for minor disturbances which occur at the site of small structures, such as power poles, signs, or fence lines; or, will not destroy the existing vegetation and will not cause erosion.

All materials shall be removed after the vegetative cover that would interfere with its salvage is cleared from the area to be disturbed, but before any drilling, blasting, mining, or other surface disturbance takes place.

Selected overburden materials may be substituted for, or used as a supplement to, topsoil if the operator demonstrates to the Division that the resulting soil medium is equal to, or more suitable for sustaining vegetation than, the existing topsoil, and the resulting soil medium is the best available in the permit area to support revegetation.

Materials removed shall be segregated and stockpiled when it is impractical to redistribute such materials promptly on regraded areas. Stockpiled materials shall: be selectively placed on a stable site within the permit area; be protected from contaminants and unnecessary compaction that would interfere with revegetation; be protected from wind and water erosion through prompt establishment and maintenance of an effective, quick growing vegetative cover or through other measures approved by the Division; and, not be moved until required for redistribution unless approved by the Division.

Where long-term surface disturbances will result from facilities such as support facilities and preparation plants and where stockpiling of materials would be detrimental to the quality or quantity of those materials, the Division may approve the temporary distribution of the soil materials so removed to an approved site within the permit area to enhance the current use of that site until needed for later reclamation, provided that: such action will not permanently diminish the capability of the topsoil of the host site; and, the material will be retained in a condition more suitable for redistribution than if stockpiled.

The Division may require that the B horizon, C horizon, or other underlying strata, or portions thereof, be removed and segregated, stockpiled, and redistributed as subsoil in accordance with the above requirements if it finds that such subsoil layers are necessary to comply with the revegetation.

Analysis:

Removal and Storage

Castle Valley or Hideout Soil Series covers 3.76 acres of the proposed affected area. The recommended salvage depth for this Series is 12 inches.

The Persayo-Chipeta Complex covers 6.04 acres of the proposed affected area. The recommended salvage depth for this Complex is 18 inches within the Persayo soil and 6 inches within the Chipeta Soil.

The weighted average soil stripping depth reported in Table 1.1 of the Soil Resources Report at the 4th East Portal is 6.4 inches. This average reflects the high percentage of Chipeta soil in the proposed Affected Area.

The Permittee anticipates salvage of 12,952 cubic yards of soil.

The Division recommends that the surface layer of soil is removed with the vegetation and set aside for application to the surface of the topsoil pile after gouging. The surface layer of soil is valuable for it contains seeds, microorganisms, organic matter, elevated levels of nitrogen and phosphorus.

The Division also recommends that the topsoil pile is roughened according to the outline provided in the Practical Guide to Reclamation (DOGMA, 2000), available at <http://dogm.nr.state.ut.us>.

Based upon the results of the test plots at the Emery Mine (see 1991 Annual Report), where it was established that "the most important consideration for revegetation success appears to be moisture availability," the Division recommends that the topsoil pile is irrigated during the first summer season. Jayne Belnap also makes this recommendation in her paper entitled "Cryptobiotic Soil Crusts: Basis for Arid Land Restoration (Utah)," Restoration and Management Notes 12:1 Summer 1994.

Findings:

The information provided is adequate for the purposes of the regulations, with the following stipulation, in accordance with the requirements of:

R645-301-731, Prior to construction the area shown as saltgrass on the Vegetation Map in Appendix VIII-1 must be flagged and not disturbed until the U.S. Army Corps of Engineers has determined if the area is a jurisdictional wetland.

R645-301-234.230, The Permittee must salvage the surface soils (from 0 – 2 inches) during vegetation removal and reapply the vegetation and soil mix as mulch to the surface of the gouged topsoil stockpile, unless other methods are demonstrated to be as effective.

USE OF EXPLOSIVES

Regulatory Reference: 30 CFR 817.61, 817.62, 817.64, 817.66, 817.67, 817.68; R645-301-524.

Minimum Regulatory Requirements:

General Requirements

OPERATION PLAN

These requirements apply to surface blasting activities incident to underground coal mining, including, but not limited to, initial rounds of slopes and shafts. Each operator shall comply with all applicable State and Federal laws and regulations in the use of explosives.

All surface blasting operations incident to underground mining shall be conducted under the direction of a certified blaster. Certificates of blaster certification shall be carried by blasters or shall be on file at the permit area during blasting operations. A blaster and at least one other person shall be present at the firing of a blast. Any blaster who is responsible for conducting blasting operations at a blasting site shall be familiar with the site-specific performance standards and give direction and on-the-job training to persons who are not certified and who are assigned to the blasting crew or assist in the use of explosives.

An anticipated blast design shall be submitted if blasting operations will be conducted within 1,000 feet of any building used as a dwelling, public building, school, church or community or institutional building or 500 feet of active or abandoned underground mines. The blast design may be presented as part of a permit application or at a time, before the blast, approved by the Division. The blast design shall contain sketches of the drill patterns, delay periods, and decking and shall indicate the type and amount of explosives to be used, critical dimensions, and the location and general description of structures to be protected, as well as a discussion of design factors to be used, which protect the public and meet the applicable airblast, flyrock, and ground-vibration standards. The blast design shall be prepared and signed by a certified blaster. The Division may require changes to the design submitted.

Analysis:

General

The area to be blasted includes slickrock drainage. The Division recommends that the Permittee remove the slickrock in large slabs so that they can be reapplied to the surface during final reclamation.

Findings:

The information provided in the permit is considered adequate to Use of Explosives requirements for development of the 4th East Portals. However the Permittee could enhance reclamation by salvaging large slabs of slickrock during blasting and utilizing them either on the surface or in the reconstructed drainage.

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