

Permanent Program Finding

Results of Review

Permanent Program Significant Revision Application No. 2 to Permit No. 399

Hillsboro Energy, LLC

Deer Run Mine

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The Illinois Department of Natural Resources, Office of Mines and Minerals, Land Reclamation Division (Department), the Regulatory Authority in Illinois under the Surface Mining Control and Reclamation Act of 1977 (Federal Act), 30 U.S.C. Section 1201 *et seq.*, has reviewed Hillsboro Energy, LLC's for Significant Revision No. 2 to Permit No. 399 in accordance with the Surface Coal Mining Land Conservation and Reclamation Act (State Act), 225 ILCS 720, and the Department's regulations at 62 Ill. Adm. Code 1700-1850.

The applicant has submitted in writing the modifications required by the Department's letter dated August 26, 2019 (Appendix A). These modifications have been reviewed and approved by the Department. Pursuant to 62 Ill. Adm. Code 1773.19, the Department is approving the application as modified. The Department's decision is based upon a review of the record as a whole and is supported and documented by the record. The findings and reasons for the Department's decision are set forth below. The period for administrative review under 62 Ill. Adm. Code 1847.3 commences as of the date of this decision.

I. SUMMARY OF APPLICATION

The application proposes a significant revision to currently approved operations. The revision proposes to revise the previously approved permit by increasing the shadow area for development mining and longwall mining of Panel Nos. 5-17. The application proposes adding 7,731.8 acres to the underground shadow area.

II. SUMMARY OF THE PUBLIC PARTICIPATION PROCESS

The Department finds that the public participation requirements of 62 Ill. Adm. Code 1773.13 and 1773.14 have been met.

The application was filed with the Department on June 10, 2014 and was deemed complete on November 17, 2015. The applicant placed a newspaper advertisement of the proposed operation in The Journal-News, a newspaper of general circulation in the area affected, once a week for four consecutive weeks, beginning on December 21, 2015. The applicant filed two copies of the permit application with the County Clerk of Montgomery County, in accordance with 62 Ill. Adm. Code 1773.13(a)(2), on December 17, 2015. Copies of the application were sent to the following Agencies: Illinois Department of Agriculture (IDOA), and Illinois Environmental Protection Agency (IEPA), and the United States Department of Agriculture, Natural Resources Conservation Service (NRCS), and the United States Fish and Wildlife Service (USFWS) on December 23, 2015, for review and comment. In addition, copies were circulated with the appropriate Offices within the Illinois Department of Natural Resources (Department). Written notification of the application was given to those governmental agencies and entities required to receive notice under 62 Ill. Adm. Code 1773.13(a)(3).

State Agency comments on this application have been received by the Department, with the source and date of comments as follows: IDOA (February 23, 2016); and IEPA (January 25, 2016).

Comments on this application were also received from the USFWS dated February 2, 2016. No comments were received on this application from the NRCS.

The Department received a request for an informal conference and a public hearing. The Department held an informal conference on February 11, 2016, in the Montgomery County Historic Courthouse in Hillsboro, Illinois and a public hearing on March 24, 2016, in the in the Montgomery County Historic Courthouse in Hillsboro, Illinois.

All comments received either in writing or at the informal conference and public hearing have been considered by the Department in reviewing this application. The Department's responses to these comments are set forth in Appendix B.

All comments received on this application have been furnished to the applicant and have been filed for public inspection at the office of the County Clerk of the county in which the application is located.

III. SUMMARY OF THE DEPARTMENT'S FINDINGS

The Department, upon completing its review of the information set forth in the application, the required modifications submitted, and information otherwise available, and made available to the applicant, and after considering the comments of State Agencies, and all other comments received, makes the following findings:

A. Findings Required by 62 Ill. Adm. Code 1773.15

REVIEW OF VIOLATIONS (Sections 1773.15(b) and (e))

Section 1773.15(b)(1): Based on a review of all reasonably available information concerning violation notices and ownership or control links involving the applicant, including information obtained pursuant to Sections 1773.22, 1773.23, 1778.13 and 1778.14, the Department has determined that the applicant or a person who owns or controls the applicant is currently in violation of the State Act, Federal Act or other law or regulation referred to in Section 1773.15(b)(1). Pursuant to this Section, the Department has determined that:

Section 1773.15(b)(1)(A): For the identified current violations, the applicant submitted proof that the current violations have been or are in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violations.

Documentation provided by the applicant to comply with Section 1773.15(b)(1)(A) is attached as Appendix D.

Section 1773.15(b)(1)(B): For the identified current violation, the applicant or a person who owns or controls the applicant has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of the current violation.

Documentation provided by the applicant to comply with Section 1773.15(b)(1)(B) is attached as Appendix E.

Section 1773.15(b)(2): This permit is being conditionally issued on the basis of proof submitted under Section 1773.15(b)(1)(A) that the violation is in the process of being corrected; or pending the outcome of an appeal described in subsection (b)(1)(B), above. The conditional issuance is set forth in Part IV.

Section 1773.15(e): The Department received updated compliance information in the applicant's modification responses received August 25, 2020, and again as requested March 18, 2021. Based on the compliance review required by Section 1773.15(b)(1), a review of the OSM Applicant Violator System for new or outstanding violations, and in light of no new information submitted to the contrary, pursuant to Sections 1778.13(i) and 1778.14(e), the Department reconsidered its decision to approve the application and found that no change in its decision to issue the permit is necessary.

SECTION 1773.15(c)(1) FINDINGS

Section 1773.15(c)(1): The application as modified is accurate and complete and all requirements of the Federal and State Acts and the regulatory program have been met.

SHADOW AREA GROUNDWATER MONITORING EXEMPTION

1784.20(b)(8)(b) – planned subsidence

Section 1784.20(b)(8)(B) – planned subsidence: The applicant has requested an exemption from conducting surveys of drinking, domestic and residential water supplies required at Section 1817.121(a)(2). The Department finds it has been demonstrated that material damage resulting from underground mining is not likely to occur. This demonstration is based on site specific geotechnical information, stability design and historical performance provided in Sections 1784.20(b)(3) and 1784.20(b)(6). An exemption to conduct surveys of drinking, domestic and residential water supplies is hereby granted.

SECTION 1773.15(c)(2) – (c)(13) FINDINGS

Section 1773.15(c)(2); The applicant has demonstrated that reclamation as required by the Federal and State Acts and the regulatory program can be accomplished under the reclamation plan contained in the application, as modified.

Section 1773.15(c)(3)(A): The proposed area is not within an area under study or administrative proceedings under a petition, filed pursuant to Section 1764, to have an area designated as unsuitable for surface coal mining operations.

Since this application is a shadow area revision for underground coal extraction, the requirements of Section 1764 are not applicable.

Section 1773.15(c)(3)(B): The proposed area is not within an area designated as unsuitable for mining pursuant to Sections 1762 and 1764, or subject to the prohibitions or limitations of Section 1761.11.

Since this application is a shadow area revision for underground coal extraction, the requirements of Section 1761 are not applicable.

Section 1773.15(c)(4): This section is applicable to surface mining operations only.

Section 1773.15(c)(5): The Department has assessed the probable cumulative impacts of all anticipated coal mining on the hydrologic balance in the cumulative impact area, in accordance with part 1784 and finds that the operations proposed under the application have been designed to prevent material damage to the hydrologic balance outside the proposed area (see Appendix C).

Section 1773.15(c)(6): This section is not applicable to this shadow area revision.

Section 1773.15(c)(7): No additional fees are required for shadow area extensions. The Department finds that the applicant has paid all reclamation fees from previous and existing operations as required by 30 CFR 870.

Section 1773.15(c)(8): The requirements of this section are not applicable to this application.

Section 1773.15(c)(9): The requirements of this section are not applicable to this application.

Section 1773.15(c)(10): Review of the application has shown that no issues were raised with respect to federally endangered or threatened species as part of this revision. This revision is limited to expansion of the longwall shadow area and no disturbances to any critical habitats, as determined under the Endangered Species Act of 1973 (16 USC 1531 *et seq.*, see Appendix E), are being proposed. The Department hereby reaffirms its finding under Section 1773.15(c)(10) as stated in Department findings for Permit 399 and incorporates that finding by reference herein.

Section 1773.15(c)(11): The requirements of this section are not applicable as there is no proposed remaining operation.

Section 1773.15(c)(12): The effect of the proposed permitting action on properties listed on or eligible for listing on the National Register of Historic Places has been taken into account by the Department. Please see Part IV, Condition M.

Section 1773.15(c)(13): The requirements of this section are not applicable as there is no proposed remaining operation.

B. Findings Required by 62 Ill. Adm. Code 1785 (Applicable Sections)

Section 1785.17(e)(1-5): The requirements of this section are not applicable to this application.

Section 1785.20: The requirements of this section are not applicable to this application.

C. Compliance with 62 Ill. Adm. Code 1773.19

Section 1773.19(a)(1): The Department has based its decision to approve, as modified, the application, based on public participation as provided by Sections 1773.13 and 1773.14, compliance with all applicable provisions of Section 1785, and the processing and complete review of the application.

Section 1773.19(a)(3): The Department is providing written notification of its final permit decision to the following persons and entities:

- A. The applicant, each person who filed comments or objections to the application, and each party to the public hearing and informal conference;
- B. The County Board of the county in which the application is located; and,
- C. The Office of Surface Mining.

All materials supporting these findings are a part of the public record and are hereby incorporated by reference.

IV. PERMIT CONDITIONS

- A. The permittee shall conduct surface coal mining and reclamation operations only on those lands specifically designated as the permit area on the maps submitted with the application and authorized for the term of the permit and that are subject to the performance bond or other equivalent guarantee in effect pursuant to 62 Ill. Adm. Code 1800.
- B. The permittee shall conduct all surface coal mining and reclamation operations as described in the approved application, except to the extent that the Department otherwise directs in the permit.
- C. The permittee shall comply with the terms and conditions of the permit, all applicable performance standards of the Federal and State Acts, and the requirements of the regulatory program.
- D. Without advance notice, delay, or a search warrant, upon presentation of appropriate credentials, the permittee shall allow the authorized representatives of the Department and Secretary of the United States Department of the Interior to:
 - 1. Have the right of entry provided for in 62 Ill. Adm. Code 1840.12; and,

2. Be accompanied by private persons for the purpose of conducting an inspection in accordance with 62 Ill. Adm. Code 1840, when the inspection is in response to an alleged violation reported to the Department by the private person.
- E. The permittee shall take all possible steps to minimize any adverse impacts to the environment or public health and safety resulting from noncompliance with any term or condition of this permit, including, but not limited to:
1. Accelerated or additional monitoring necessary to determine the nature and extent of noncompliance and the results of the noncompliance;
 2. Immediate implementation of measures necessary to comply; and,
 3. Warning, as soon as possible after learning of such noncompliance, any person whose health and safety is in imminent danger due to the noncompliance.
- F. As applicable, the permittee shall comply with 62 Ill. Adm. Code 1700.11(d) for compliance, modification, or abandonment of existing structures.
- G. The permittee shall pay all reclamation fees required by 30 CFR 870 for coal produced under this permit for sale, transfer, or use.
- H. Within thirty (30) days after a cessation order is issued under 62 Ill. Adm. Code 1843.11, for operations conducted under the permit, except where a stay of the cessation order is granted and remains in effect, the permittee shall either submit to the Department the following information, current to the date the cessation order was issued, or notify the Department in writing that there has been no change since the immediately preceding submittal of such information:
1. Any new information needed to correct or update the information previously submitted to the Department by the permittee under 62 Ill. Adm. Code 1778.13(c); or
 2. If not previously submitted, the information required from a permit application by 62 Ill. Adm. Code 1778.13(c).
- I. Species Protection:
1. Issuance of this permit under the Surface Coal Mining Land Conservation and Reclamation Act does not in any way authorize any take of any listed species in violation of the Illinois Endangered Species Protection Act, 520 ILCS 10/1 *et seq.* or the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). If "take" as defined by these Acts is anticipated to result from permitted activities, it is recommended that the permittee apply for an Incidental Take permit from the Illinois Department of Natural Resources, Office of Resource Conservation for

state listed species and to contact Department wildlife staff for federally listed species.

2. Issuance of this permit under the Surface Coal Mining Land Conservation and Reclamation Act does not in any way authorize any take of a bald or golden eagle, including nests or eggs, in violation of the Bald Eagle Protection Act, as amended (16 U.S.C. 668 *et seq.*). If "take" as defined by the Bald Eagle Protection Act is anticipated to result from permitted activities, it is recommended that the permittee should apply for an Incidental Take (non-purposeful take) permit from the U.S. Fish and Wildlife Service. The Department and the U.S. Fish and Wildlife Service shall be notified if a bald or golden eagle nest is observed in the permit area or in the vicinity of the permit area.
- J. If the permit is conditionally issued under 62 Ill. Adm. Code Section 1773.15(b)(2) on the basis of (1) a presumption supported by certification under 62 Ill. Adm. Code Section 1778.14 that the violation is in the process of being corrected; (2) proof submitted under 62 Ill. Adm. Code Section 1773.15(b)(1)(A) that the violation is in the process of being corrected; or (3) pending the outcome of an appeal described in 62 Ill. Adm. Code Section 1773.15(b)(1)(B), issuance is conditioned as follows:
1. If subsequent to permit issuance the applicant is issued a failure-to-abate cessation order, the permit shall be suspended and/or rescinded in accordance with the procedures for 62 Ill. Adm. Code Section 1773.20(c) Improvidently Issued Permits within 30 days of the issuance of the failure-to-abate cessation order.
 2. If subsequent to permit issuance the Department is notified by the agency that has jurisdiction over the violation that the violation is no longer in the process of being corrected to the satisfaction of said agency, the permit shall be suspended and/or rescinded in accordance with the procedures for 62 Ill. Adm. Code Section 1773.20(c) Improvidently Issued Permits within 30 days of such notification.
 3. If subsequent to permit issuance the circuit or district court reviewing the violation either denies a stay applied for in the appeal or affirms the violation, then the applicant shall submit the proof required under 62 Ill. Adm. Code Sections 1773.15(b)(1)(A) within thirty (30) days after the court's decision or the permit shall be suspended and/or rescinded in accordance with the procedures for 62 Ill. Adm. Code Section 1773.20(c) Improvidently Issued Permits within 30 days of such failure to submit required proof.
- K. Pursuant to Section 1778.15, the permittee shall possess all necessary legal rights to enter and conduct surface coal mining and reclamation operations within the permit area until final bond release is obtained.
- L. Pursuant to 62 Ill. Adm. Code 62 Ill. Adm. Code 1817.121(a)(3), the Department requires submittal of finalized agreements with each public road, utility, and rail line authority that

assures public safety during subsidence. General information such as surveillance of effects as they occur, and precautions taken to assure public safety should be described. This information shall be submitted a minimum of 60 days prior to subsidence of any section of road, utility or rail line. If Hillsboro alternatively proposes a unilateral plan to minimize damage to these facilities, the Department will consider such a plan a significant revision pursuant to 62 Ill. Adm. Code 1774.13(b)(2).

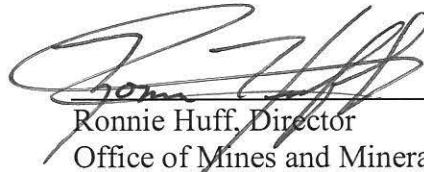
- M. Pursuant to 62 Ill. Adm. Code 1783.12(b), Hillsboro Energy shall provide additional information concerning the 4 identified structures if they are to be demolished and areas identified along the shoreline of Coffee Lake. The information necessary shall be provided and approved per the procedures defined in Operator Memorandum No. 2006-03.

V. CONCLUSIONS

Based upon the information contained in the application, information otherwise available and made available to the applicant, the comments of State Agencies, the foregoing analysis of the probable impact of the proposed operations, all findings and information contained herein and conditions set forth in Part IV, the Department finds that there is a reasonable basis on which to issue a significant revision for the application, as modified.

Enter on behalf of the Illinois Department of Natural Resources, Office of Mines and Minerals, Land Reclamation Division as Regulatory Authority.

Illinois Department of Natural Resources



Ronnie Huff, Director
Office of Mines and Minerals

Dated: April 13, 2021

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APPROVED FOR EXECUTION

Date: 4/12/21

Legal Counsel: 

APPENDIX A

REQUIRED MODIFICATIONS



Illinois Department of Natural Resources

One Natural Resources Way Springfield, Illinois 62702-1271
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JB Pritzker, Governor
Colleen Callahan, Director

August 26, 2019

Mark Cornell
Hillsboro Energy, LLC
12051 9th Avenue
PO Box 457
Hillsboro IL 62049

Via Certified Mail

7017 1000 0001 0938 9392

Re: Modification to Permit No. 399, Revision No. 2
Deer Run Mine

The Department, after reviewing the information contained in the permit revision application and information otherwise available to the applicant, and after considering all comments received, has determined that modification of the above referenced application is necessary. The modifications to the application shall comply with the requirements of 62 Ill. Adm. Code 1777.11. The modifications required by the Department are enclosed here. If the applicant does not desire to modify the permit application as described below, it may, by filing a written statement with the Department, deem the permit application denied, and such denial shall constitute final action.

Pursuant to 62 Ill. Adm. Code 1773.15(a)(1)(B)(i), modifications required by the Department shall be received within one year from the date of this letter. Absent the modifications required by the Department, the application does not demonstrate compliance with the requirements of the Illinois Surface Coal Mining Land Conservation and Reclamation Act, Regulations and Regulatory Program, and the Department will issue a written finding denying the application.

The period for administrative review (62 Ill. Adm. Code 1847.3) shall commence upon:

- receipt by the applicant of a written decision from the Department, approving the application, as modified, or
- if the applicant's modifications are insufficient, or if the applicant fails to submit the required modifications in accordance with 62 Ill Adm. Code 1773.15(a)(1)(B)(i), receipt by the applicant of a written decision from the Department denying the permit application, or receipt by the Department of the applicant's denial statement.

The modifications required by the Department are as follows:

1. Pursuant to 62 Ill. Adm. Code 1783.25(b), 1784.16(a), and 1784.23(c), and as required by Part I.10.B of the application, the Department is requiring the applicant to modify the application by submitting engineering certifications where the modifications result in changes to maps, plans, or cross sections submitted under the original application.
2. Pursuant to 62 Ill. Adm. Code 1777.11(c), and as required by Part I.1 of the application, the Department is requiring the submittal of a verification by a responsible official of the applicant for the information being submitted as a result of this modification letter.
3. Upon review of the applicant's response to Part I.6.A, the Department finds the information provided by the applicant conflicts with information found during review. Pursuant to 62 Ill. Adm. Code 1778.13(c), the applicant must provide all owners and controllers (officers and directors) of the applicant, as defined by 62 Ill. Adm. Code 1773.5, for five (5) years preceding the date of the application. The applicant must provide all owners up to and including the top level of the corporate structure. The applicant must provide all officers and directors for all of its owners.

Specifically, the reviewer finds discrepancies with James Murphy, CEO. The applicant shall include this individual in its ownership and control or provide service end date, if no longer acting as CEO.

4. Upon review of the applicant's response to Part I.6.B, the Department finds the information provided by the applicant conflicts with information found during review. Pursuant to 62 Ill. Adm. Code 1778.13(d), the applicant must provide any surface coal mining operations owned or controlled by the applicant's owners/controllers provided in its response to Part I.6.A. Information required shall include:
 - a. names and addresses, Federal or State permit number and regulatory authority for the permit, and
 - b. ownership/control relations to the applicant including percentage and location of organizational structure.

Specifically, the reviewer finds multiple companies with permits and pending applications where owners/controllers of the applicant are associated with these companies. The applicant shall provide a list of all companies sharing ownership and control, with information outlined in modification requirement 4.A and 4.B.

5. Upon review of the applicant's response to Part I.7. of the application, the Department finds the information provided by the applicant does not take into consideration all permits/applications of the applicant. Pursuant to 62 Ill. Adm. Code 1778.13(d), the applicant must provide any surface coal mining operations owned or controlled by the applicant. Information required shall include:

- a. names and addresses, Federal or State permit number and regulatory authority for the permit, and
- b. ownership/control relations to the applicant including percentage and location of organizational structure.

The applicant shall review the list of permits provided for Hillsboro Energy, LLC and update as necessary.

Additionally, the applicant shall review the modified information as discussed in modification Nos. 2 and 3, and update as needed Part I.8.A. and Part I.8.B.

6. Upon review of the applicant's response to Part I.9 of the application, the Department finds the information provided by the applicant will require modification/update based on the information required under modification Nos. 1 and 2 above. Pursuant to 62 Ill. Adm. Code 1778.14(c), the applicant must provide a listing of all violations for all operations which the applicant owns and controls under the 62 Ill. Adm. Code 1773.5 definition of owned and controlled and owns or controls. This shall include all entities provided in response to Part I.6.A and I.6.B.
7. Upon review of the information provided in response to Part I.10.C, the Department finds the Certificate of Insurance expired in 2014. Pursuant to 62 Ill. Adm. Code 1778.18, the application shall contain a certificate of insurance issued in compliance with Section 1800.60. The applicant shall submit an updated certificate of insurance, as required.
8. Pursuant to 62 Ill. Adm. Code 1783.12, response II.10.A, page II-5, the four (4) structures identified in Attachment II 10.A.2 must have a commitment from the applicant to submit additional information and receive approval from the Department before they are demolished.
9. In response to Part II.10.D of the application concerning archeological sites, the applicant indicated there are no such sites known to exist within the shadow area. In general, archeological surveys have not been required for planned subsidence areas unless shoreline inundation or erosion is anticipated. The proposed area contains fingers of the Coffeen Lake that may be subject to permanent inundation or increased shoreline erosion after subsidence. Therefore, pursuant to 62 Ill. Adm. Code 1783.12, the applicant shall commit to performing an archeological survey well in advance of subsidence for areas anticipated to be permanently inundated or subject to shoreline erosion.
10. On page 5 of Part III, at Part III.2.B.1, the applicant states, "*Locations of the wells can be correlated from this chart to Map 4 – Hydro-Geological Map by using the Key ID numbers.*" Attachment III.2.B.1 does not include "Key ID numbers." Pursuant to 62 Ill. Adm. Code 1784.14(b)(1), the applicant shall provide the referenced material or provide

an explanation for how the data in the Attachment corresponds to the information on the Hydro-Geological Map.

11. On page 6 of Part III, at Part III.2.B.3, the applicant states, "The locations of the wells are east of the proposed shadow area and are shown on Map 4 – Hydro-Geological Map." No public water supply wells are depicted on the Hydro-Geological Map. Pursuant to 62 Ill. Adm. Code 1784.14(b)(1)(B) and as required by Part III.2.B.1, the applicant shall clearly depict the location of the referenced public water supply wells that obtain groundwater from the Trivoli sandstone.
12. Part III.2.B.3 requires that the applicant provide a potentiometric map of the water-bearing stratum above the coal seam to be mined and any water-bearing stratum below the coal seam that may be potentially impacted. It does not appear that a potentiometric map was included in the application for the shallow, unconsolidated groundwater nor for the Trivoli sandstone aquifer noted above. Pursuant to 62 Ill. Adm. Code 1784.14(b)(1)(B), the applicant shall provide the required potentiometric maps; where possible, seasonal variations of the potentiometric head shall also be depicted.
13. The applicant provides a cover sheet for Attachment III.2.A.3, entitled, Sulfur Forms Result Sheet. However, no data sheet is included in this attachment. Pursuant to 62 Ill. Adm. Code 1777.11(a), the applicant shall provide the referenced attachment data sheet(s).
14. Discrepancies exist between Attachment II.10.A – Identification of Structures and Attachment III.2.B.1 – Surface Owners Water Well Surveys. Not all wells depicted in Attachment III.2.B.1 are included in Attachment II.10.A. Pursuant to 62 Ill. Adm. Code 1777.11(a), the applicant shall either correct the discrepancies or provide an explanation for the differences in the two Attachments.
15. Attachment III.2.B.1 – Surface Owners Water Well Surveys - identifies approximately 75 wells, including 8 wells that do not have any form of well identification. At least 36 wells are noted as being used for drinking water purposes, but no mention of these wells is included in the narrative portion of the permit application. Pursuant to 62 Ill. Adm. Code 1784.14(b)(1), the applicant shall provide a unique well identification for each well noted in Attachment III.2.B.1 and, as required by Part III.2.B., shall provide a discussion of the water usage within the proposed shadow area.
16. A discrepancy exists in how the well data is presented in Attachment III.2.B.1 – Surface Owners Water Well Surveys. In some cases, a single well ID is provided, but it is then noted that there are multiple wells present for the landowner; conversely, when multiple well ID's are noted, information on well depth/diameter and usage is only provided for one well. Pursuant to 62 Ill. Adm. Code 1777.11(a), the applicant shall correct these discrepancies.

17. Attachment III.2.B.1 also includes an 8x10 map from the Illinois State Geologic Survey (ISGS) and boring logs from approximately 56 private wells. The information on the ISGS map and the boring logs themselves do not appear to correlate to either of the Surface Owners Water Well Surveys tables. Pursuant to 62 Ill. Adm. Code 1777.11(a), the applicant shall provide an explanation for these discrepancies.
18. The following problems are noted on Map 4 – Hydro-Geologic Map:
 - a. The location of approximately 15 oil wells is depicted on this this map. However, no discussion of oil wells is included in the narrative portion of the permit application. At a minimum, the status of each oil well shall be provided and a discussion of the precautions to be taken for the three wells located within the proposed shadow area boundaries shall be provided.
 - b. The only water wells depicted on this map appear to be those for which a boring log was included in Attachment III.2.B.1. None of the wells identified in Attachment III.2.B.1 – Surface Owners Water Well Surveys – identified with alpha characters (e.g., “A” or “ZZ”) are included on this map.
 - c. Only 17 of the 75+ private water wells identified in Attachment III.2.B.1 – Surface Owners Water Well Surveys are depicted on the map.
 - d. None of the streams are named on the map. Where stream names exist, they shall be included on this map.

Therefore, pursuant to 62 Ill. Adm. Code 1783.24, the applicant shall correct these discrepancies.

19. From the information provided in Part III and in the Addendum, the applicant notes that the “*vast majority of the residents obtain their drinking water from rural or municipal water systems...*” However, from the information provide in Attachment III.2.B.1, it appears that slightly less than 50% of the identified wells and approximately 26% of the identified landowner utilize a private well for their primary drinking water source. Additionally, while the majority of the wells appear to be less than 60 feet deep, with most wells reportedly 20-40 feet deep, at least two residents report that their wells are in excess of 150 feet deep.

Therefore, pursuant to 62 Ill. Adm. Code 1784.14(b)(1) and as required by Part III.2.B., the applicant shall review the statements made in the application that indicate the “vast majority” of residents use a public water supply system and revise as necessary. The applicant shall also provide a discussion on the steps that will be taken to ensure the compliance with 62 Ill. Adm. Code 1784.14(e)(3)(D).

20. The applicant failed to provide the information required by 62 Ill. Adm. Code 1777.13(a) and as enumerated by Operator Memorandum 2012-4. All technical data included in a permit application must be clearly documented to include the following items:

- a. Names of persons that collected the technical data;
 - b. Names of persons that analyzed the technical data;
 - c. The dates of the collection of the technical data;
 - d. The dates of the analysis of the technical data;
 - e. A description of the methodology used to collect the technical data; and
 - f. A description of the methodology used to analyze the technical data.
21. In response to Part I(10)(A) of the application concerning right of entry affidavits, the applicant references Attachment I.10.A. The Attachment incorporates the required affidavits for shadow area and planned subsidence but also incorporates an affidavit for surface permitted area. The applicant appears to have inserted language for shadow area in this surface permit area affidavit. Because this application is solely for the addition of shadow area, this affidavit is not necessary. It is unclear if the applicant is claiming the right to conduct surface coal mining and reclamation operations throughout the shadow area. Pursuant to 62 Ill. Adm. Code 1778.15, the applicant shall clarify the incorporation of this affidavit in the administratively complete application and if necessary eliminate it from the modified application.
22. In response to Part I(10)(B) of the application concerning Engineering Certification, the applicant references Attachment I.10.B. The Engineering Certification provided checked the box concerning the Illinois Environmental Protection Agency rules at 35 Ill. Adm. Code 405.104(a). This box is applicable to surface permit area disturbances, not shadow area. Pursuant to 62 Ill. Adm. Code 1783.25(B), the applicant shall provide the current engineering certification form for the modification responses.
23. Part I(12) of the application addresses the prohibitions related to 62 Ill. Adm. Code 1761.11. The Office of Surface Mining Reclamation and Enforcement determined that the prohibitions of this section do not apply to subsidence. See 30 C.F.R. §761.200, which states the following: §761.200 **Interpretative rule related to subsidence due to underground coal mining in areas designated by Act of Congress**. The responses provided under Part I(12) of the application are misleading in that the applicant's responds "no" to several features that are over the proposed shadow area expansion. For clarity in the permit file, the response shall be revised to indicate that the prohibitions 62 Ill. Adm. Code 1761.11 do not apply to subsidence, as determined by the Office of Surface Mining, and therefore the questions are not applicable.
24. In response to Part II(3) of the application concerning adjacent underground mining, Attachment II.3 was provided. The table correlates to the information on Map 3 "Pre-mining Land Use Map". Some confusion could exist by the reference to Map 7 relative to method of mining and dates. Map 7 does not provide the method of mining and excludes one of the mines dates of mining. Table II.3 does however contain the requested information. Pursuant to 62 Ill. Adm. Code 1783.25, this reference to Map 7 shall be corrected.

25. In response to Part II(11) of the application concerning cemeteries, the applicant appears to locate three cemeteries within the area of planned subsidence (Woods, Aydelo and Old Bear). Pursuant to 62 Ill. Adm. Code 1784.20(b)(10), to assure proper handling of the cemeteries concerning any necessary subsidence mitigation within the zone of planned subsidence as discussed in response to Part IV(3)(B)(4)(c), the applicant shall discuss the expected magnitude and extent of subsidence relative to each cemetery.
26. In response to Part IV(1) of the application concerning a general description of the operations, the applicant states that panel No. 6 is approved. Longwall extraction of Panel 6 is slightly outside of the approved area and therefore cannot be executed as projected unless Revision No. 2 is approved. Pursuant to 62 Ill. Adm. Code 1784.20(b)(2), the narrative shall be revised to accurately reflect the limits of the approved plan.
27. In response to Part IV(2)(E)(1) of the application concerning the limits of the proposed shadow area, the applicant discusses revisions to the existing plan based on geology. It discusses the start of a new longwall district. It is the Department's understanding that the Mine Safety and Health Administration has required ventilation changes that may eliminate the mining district ventilation scheme and therefore barriers between mining districts would be eliminated. Pursuant to 62 Ill. Adm. Code 1784.20(b)(2), all narrative and maps shall be revised throughout the proposed application to accurately reflect the resultant changes in mine plan as necessary.
28. In response to Part IV(2)(E)(2) of the application concerning timing of mine development, the applicant references Map 7, U.G. Timing Map. Pursuant to 62 Ill. Adm. Code 1784.20(b)(2), the applicant shall update this map accordingly due to the idling of the mine causing a delay in projected development.
29. In response to Part IV(3)(B)(2) of the application concerning the extent and predictability of planned subsidence, the applicant uses a combination of site-specific survey data collected over the initial mined longwall panels and the Subsidence Deformation System Analysis (SDPS) computer software. Pursuant to 62 Ill. Adm. Code 1784.20(b)(3), the applicant shall provide the following additional support information:
 - a. Provide the background input data and settings used in SDPS to develop the subsidence profiles and post subsidence contours.
 - b. Compare the SDPS generated angle of draw to the proposed 35 degrees.
30. In response to Part IV(3)(B)(4)(b) of the application concerning 20-acre foot bodies of water, the applicant identifies Coffeen Lake. The applicant indicates "*the functionality of the lake will be maintained by reasonably keeping the lake within the confines of its current pre-mining boundaries*". Pursuant to 62 Ill. Adm. Code 1817.121(d), the applicant shall provide a more detailed pre and post subsidence model of the lakeshore line at normal pool. The map shall incorporate surface land control to demonstrate that the lake shoreline remains within current ownership boundaries.

31. The applicant responds to Part IV(3)(B)(4) of the application concerning public roads. It is noted that the prohibitions related to 62 Ill. Adm. Code 1761.11 no longer apply to subsidence. The Office of Surface Mining Reclamation and Enforcement determined that the prohibitions of this section do not apply to subsidence. See 30 C.F.R. §761.200, which states the following: §761.200 **Interpretative rule related to subsidence due to underground coal mining in areas designated by Act of Congress.** Regardless, the Department must assure the safety of the public and therefore requires agreements with the respective road authorities and public utilities prior to subsidence. The applicant has committed to obtaining agreements from all road authorities and public utilities prior to subsidence impacts. Attachment IV.3.B.7 lists all relevant entities and contacts but did not indicate the status of the agreements for each. Pursuant to 62 Ill. Adm. Code 1784.20(b)(10), the applicant shall:
 - a. Update the information to provide the status of all agreements.
 - b. Detail the process for determining if and when a temporary road closure is necessary, and steps taken to reopen the road to the motoring public.
32. In response to Part IV(3)(B)(5)(b) of the application concerning planned subsidence projected impacts to surface drainage, the applicant references Map 8, Post subsidence Contour Map. The applicant discusses certain precipitation events can be simulated to predict probable pooling areas. In review of the Post Subsidence Contour Map, it appears the analysis goes beyond just physical post subsidence depressions where absent mitigation, water would pool. The analysis also provides a 10-year 24-hour precipitation event polygon. This additional analysis should be beneficial to overall drainage analysis and mitigation planning but the presentation on the map adds some confusion with overlapping polygons. Pursuant to 62 Ill. Adm. Code 1784.20(b)(10), the applicant shall expand the narrative to assist in understanding the purpose of incorporating the 10-year 24-hour precipitation event and revise the mapping to provide visual clarity.
33. In response to Part IV(3)(B)(7)(c) of the application concerning determining the degree of damages to surface lands, the applicant discusses stream subsidence. The applicant provided Map 12, Post Subsidence Major Drainage Profiles which provides pre and post subsidence profiles of the stream beds for Bear Creek and 3 tributaries to Bear Creek. Pursuant to 62 Ill. Adm. Code 1784.20(b)(10), the applicant shall provide additional profiles for McDavid Branch and tributaries to McDavid Branch as necessary. Additional narrative to address the potential for subsidence induced stream loss shall be provided.
34. In response to Addendum No. 1 Part 1.B and 1.C of the application, the applicant indicates that due to the minimal potential for adverse impacts to any water supply from the proposed mining operations, the applicant is not proposing to monitor any specific water supplies. The applicant indicates it will be done on a case by case basis and in accordance with any agreements reached with individual residents and owners. Please be advised that the Department is not granting an exemption as described under 62 Ill. Adm. Code

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1784.20(b)(8)(B) and required by Section 1817.121(a)(2)(B) for any drinking domestic or residential water supply over or adjacent to the planned subsidence area unless a pre-subsidence agreement has been reached that directly precludes the need for such data collection. All identified wells, cisterns or springs which serve as a drinking domestic or residential water supply must be surveyed to determine pre-subsidence quality and quantity information prior to subsidence and include seasonal fluctuations as necessary to adequately define the water supply. The applicant shall revise the Addendum No. 1 language accordingly.

35. Part II.A.1.c. of the Addendum No. 1 to the application requests a time table for submitting to the Department the specific minimization method for each structure or facility sufficiently in advance of underground mining development to comply with 62 Ill. Adm. Code 1784.20(b)(8)(A). The applicant's response indicates that *"If a pre-subsidence agreement cannot be agreed upon between the structure owner and applicant prior to 120 days before subsidence is to occur, then the permittee shall submit to the Illinois Department of Natural Resources, Division of Mines and Minerals, a site specific plan of minimization of damage to surface structures."* Pursuant to 62 Ill. Adm. Code 1784.20(b)(8)(B), the response shall be revised to commit to providing the plan to the structure owner as well.
36. Attachment VI.1.C.1 provides a template for the Quarterly Subsidence Report. This template has been updated recently. Pursuant to 62 Ill. Adm. Code 1777.11, the applicant shall provide the most recent template.

If you have any questions, please contact this office at (217) 782-4970, or our Southern office in Benton at (618) 439-9111.

Sincerely,



Nick San Diego, Supervisor
Land Reclamation Division

NSD:JSc

cc: J. Kuhlman
C. Johnson
Montgomery County Clerk

APPENDIX B

CONSIDERATION OF COMMENTS AND OBJECTIONS

62 Ill. Adm. Code 1773.13(b) allows submission of written comments on applications. The following are comments received from the State Agencies, County Board and other members of the public and the Department's response to those comments.

Illinois Department of Agriculture

Comment: The post-mining subsidence map indicates large areas of wet soils after the panel subsides. How does the mine propose to drain these areas? Some of the subsidence areas may require deeper tile lines than normal depth to breach the side wall of the outer unmined pillars to reach the drainageway.

Response: The company is required to restore drainage post subsidence as part of the performance standard requirements at 62 Ill. Adm. Code 1817.121(c)(1). The approved permit addresses the potential installation of new drainage tile and/or repairing or resizing existing drainage tile to achieve compliance with this performance standard. Areas above Panels 1 through 3 have been restored with a combination of surface drainage work and installation of an extensive regional drainage tile system. The flatter topography over the expanded longwall area approved in this revision will most likely require a similar effort to achieve positive drainage. The Department will monitor the permittees efforts in this regard and require appropriate action as necessary to achieve compliance.

Comment: During reclamation, how does the mine plan to stop water in Coffeen Lake from draining out the side channels into the adjacent farm fields that has been subsided?

Response: Please see Appendix A: Item No. 30. The permittee has addressed subsidence of Coffeen Lake in response to this required modification. Detailed post subsidence modeling of the lake at normal pool was provided to demonstrate shoreline changes. A plan for addressing any changes in shoreline that infringed upon private landowners was incorporated.

Illinois Environmental Protection Agency

Comment: The mine-related activities, as proposed, are not required to be permitted in accordance with 35 Ill. Adm. Code: Subtitle D of the Illinois Pollution Control Board Rules and Regulations.

This operation is presently covered under NPDES Permit No. IL00789727. Since no changes are now proposed from that previously permitted, a modified Permit will not be required.

Response: The comment has been forwarded to the applicant.

U.S. Department of the Interior, Fish and Wildlife Service

Comment: The Service has reviewed Revision No. 2 to Permit No. 399 and has no comments given that no surface disturbance is proposed.

Response: This comment has been forwarded to the applicant.

Public Comments

An informal conference regarding the application was held on February 11, 2016 at the Montgomery County Historic Courthouse in Hillsboro, Illinois and a public hearing was held on March 24, 2016 at the Montgomery County Historic Courthouse in Hillsboro, Illinois.

Comment 1: Several commenters expressed concern over the effects mining may have on Coffeen Lake IDNR State Fish and Wildlife Area. These commenters expressed concerns of how subsidence would affect boating and other recreational opportunities, promote new flooding potential along the western side of the lake, affect the McDavid Branch flow into the lake and what lake protections would be enacted.

Response: Please see Appendix A: Item No. 30. The permittee has addressed subsidence of Coffeen Lake in response to this required modification. Detailed post subsidence modeling of the lake at normal pool was provided to demonstrate shoreline changes. A plan for addressing any changes in shoreline that infringed upon private landowners was incorporated. The Department will monitor the impacts, if any, to the lake shoreline and the use of the lake as managed by the IDNR to assure recreational activities are not impacted.

Comment 2: Several commenters expressed concerns regarding Coffeen Lake and its relationship to the power plant. These concerns included whether there would be a contingency plan should damage occur to the lake which would affect the power plant and its safety, the potential for the resulting post mining shoreline to change ownership of portions of the lake and how the expansion and potential ownership changes would affect the Illinois Department of Natural Resources' management of the lake.

Response: Please see Part IV of the UCM-1 application concerning the geologic setting of the lake and Appendix A: Item No. 30. The permittee has addressed subsidence of Coffeen Lake and the potential impacts. The Department concurs that the geologic setting of the lake in terms of glacial drift thicknesses and similar experience with other large lakes in Illinois where longwall mining has occurred indicate no loss of water to the lake will occur. The powerplant is not within the area of planned subsidence. Detailed post subsidence modeling of the lake at normal pool was provided to demonstrate shoreline changes. A plan for addressing any changes in shoreline that infringed upon private landowners was incorporated. The Department will monitor the impacts if any to the lake and the use of the lake as managed by the IDNR to assure recreational activities are not impacted.

Comment 3: Several comments involved the McDavid Branch Creek. Commenters expressed concern that the McDavid Branch Creek was going to be subsided and asked how the resulting subsidence would affect the creek's grade and subsequent flow, how the peaks and valleys of the mining panel subsidence would be leveled out, if the Department is going to review any expected adverse impacts on McDavid Branch Creek and if the Department will analyze any of the existing longwall mining impacts on McDavid Branch? Commenters also asked about when the mine longwall panels end, what happens to the end of the creek when the post-subsidence flow point could be below the subsided portion of the creek? A commenter also asked about the success of creeks that have been longwall mined and reclaimed in reference to flow, water quality and quantity and the survival of biota within and outside the creek.

Response: The impacts and potential courses of mitigation are addressed in the permit. Pre and post subsidence profiles along several streams including McDavid Branch and an Unnamed Tributary to McDavid Branch are presented. The areas of necessary stream excavation to restore flow are also presented both through the longwall gate road areas and at the end of the panels. The first area of McDavid Branch to be subsided occurred recently in 2020 over Panel 4. The main channel of McDavid Branch will also be subsided by Panel 5 and to a much lesser extend by Panel 6. The Department will monitor any subsidence effects and the efforts to properly restore stream flow in McDavid Branch and one un-named tributary to McDavid Branch affected by Panels 6, 7 and 8.

Should the stream mitigation practices necessary to restore flow involve a jurisdictional stream under the US. Army Corp of Engineers (USACE), a permit may be necessary from this agency as well. Several streams and rivers have been subsided by longwall mining in Illinois by several different operations in central and southern Illinois. Varying levels of mitigation practices from minimal to more extensive practices have been implemented on a case-by-case basis. No long-term impacts to stream flow, water quality or quantity has been observed. The Department's approval of shadow area boundaries does not involve permitting of surface coal mining and reclamation operations and, therefore, the Department does

not receive data regarding survival of biota within and outside a subsided creek. Commenters should direct their concerns to the USACE regarding jurisdictional streams and longwall mining mitigation.

Comment 4: Commenters expressed concern over coal dust generated at the mine and indicated an expansion of the mine will prolong a coal dust dispersion problem. Commenters asked if Deer Run Mine will try to control the coal dust problems, what agency governs those issues and how long will it take to get rid of the pollution affecting the south edge of Schram City?

Response: Coal dust generated from the mine is beyond the scope of the Department's regulatory authority. That issue is under the jurisdiction of the Illinois Environmental Protection Agency.

Comment 5: Several comments were received that addressed agricultural restoration after subsidence. These concerns included continued subsidence of farmland with associated ponding and drainage problems, diminished productivity of subsided farmland and how that will negatively affect land owners and county incomes, a lack of success in restoring drainage in previous subsided areas and the fact the expansion is being considered without proof of the drainage restoration program being successful.

Response: The Department disagrees with the commenter concerning lack of success in restoring drainage to previous subsided areas. Longwall mining has occurred under a vast area of farmland over the past 30 plus years in Illinois. The mitigation over these areas has been successful. The recent mitigation work over the first three (3) panels included a combination of surface drainage work and installation of an extensive regional drainage tile system. Should any area prove to not have adequate restoration of drainage, the Department will investigate and require supplemental efforts to correct areas that fall short of drainage restoration.

Comment 6: With the nature of the current coal market why consider giving approval for expanding a mine that has barely finished mining half of the original acreage?

Response: The Department has no regulatory authority to determine if, or when, a permittee proposes to expand its potential mining area.

Comment 7: Commenters indicated the expansion of Deer Run Mine must be justified and balanced against the negative impacts to the community and the land. A commenter asked if progeny will wish to settle there or move on and if property on 9th Avenue is it an asset or a liability to future generations?

Response: The Department ensures that the applicant's proposal meets all the regulatory requirements under its jurisdiction, which are intended to minimize environmental

impacts of the mine. Issues regarding how the land may be settled in the future are beyond the scope of the Department's regulatory jurisdiction.

Comment 8: Were safety and maintenance procedures shortchanged which resulted in a fire event?

Response: Miner safety issues are under the regulatory jurisdiction of state and federal agencies.

Comment 9: Commenters indicated that local roads are going to be destroyed (by subsidence) resulting in limitations of property access and longer trips. Several commenters asked the effects of subsidence on local roads including, how long will Route 185 be closed, the status of repairs to other affected roads and who will pay for those repairs as well as reconstructing the bridge under Route 127 should it have to be lowered. Commenters also asked who was responsible for the repair 9th Avenue and if there were plans on getting it hard surfaced again.

Response: The commenter is referred to Appendix A: Item No. 31 and the applicant's response. The Department requires the permittee to secure agreements with all road authorities prior to subsidence impacts occurring to assure protection of the public during subsidence. The permittee is responsible for the cost of repair pursuant to 62 Ill. Adm. Code 1817.121(c)(2). The decision to temporarily close Route 185 will be made by the road authority. In many situations over the past 30 years, roads have been subsided without closure. In some situations, roads were temporarily closed for public safety concerns and to allow appropriate repair. The decision to close a road resides with the road authority having jurisdiction over that road.

Comment 10: Several commenters questioned the affect a mine fire would have on additional subsidence and how long the fire was likely to continue.

Response: The "mine fire" to which the commenter is referring is more appropriately termed "hot spots" that formed due to spontaneous combustion in the caved area of the initial longwall panels. The hot spots caused problems with the ventilation system and required the mine to be evacuated on several occasions as a safety precaution for underground mine employees. Efforts to control the hot spots to eliminate the concerns with mine ventilation and miner safety allowed the mine to reopen, but only after the problem areas were sealed or isolated from the ventilation system. Currently, there are no know issues with spontaneous combustion. The hot spots occurred in the caved area of the longwall panel where full extraction and subsidence had already occurred. Therefore, additional subsidence in those areas is unlikely.

Comment 11: Several commenters questioned the accuracy of the subsidence predictive model generated by the applicant as well as the purpose of the model. In addition, a commenter indicated they thought that predictive model was to be submitted to the

Department for approval and then would be supervised by the Department to insure compliance of that plan, which they were unaware of whether it had been completed. Commenters also asked how well the current modeling is reflecting what is happening in the field and if the Department will require the applicant to change anything about their modeling for this application.

Response: The specific model used in this application is entitled the “Subsidence Deformation Prediction System” (SDPS). This model is one of the most widely used tools for subsidence prediction. The model has a specific module for the Illinois coal basin and considers the geology of the modeled site. The Department provided data sets to help the Virginia Tech University authors of the model calibrate for accuracy. The Department not only evaluates the computer modeling but also considers historical subsidence data collected as a requirement of all new longwall operations. The Department has found that the contours generated with this model mimic actual results well. Minor site-specific variations from the model may occur, but the overall projections provide a good representation of the anticipated drainage problems and assist in the evaluation of the ability to properly mitigate drainage.

Comment 12: A comment was made regarding the downstream course of Bear Creek where it crosses Route 127. As the creek approaches the highway, the subsidence will constrict the creek, increase flooding of the Bear Creek upstream of Route 127 and cause some areas to become permanent marshes.

Response: Bear Creek and tributaries to Bear Creek, as well as McDavid Branch and tributaries to McDavid Branch were evaluated for subsidence impacts. Please see Appendix A: Item No. 33. Map 12, Post Subsidence Major Drainage Profiles provides pre- and post-subsidence profiles along the creek invert and details how far down stream dredging will need to occur to restore proper drainage. The Department will assure that mitigation is accomplished to restore the land to its pre-subsidence capability and not leave permanent marshes where such did not previously exist.

Comment 13: One commenter questioned if safety violations by MSHA were part of the violation history reviewed for this revision and suggested that, given these violations, extra scrutiny should be given to this revision request.

Response: The applicant is statutorily required to submit to the Department for review violations of the Act; any federal regulation promulgated pursuant thereto; a State program; or any federal or state law or regulation pertaining to air or water environmental protection in connection with a surface coal mining operation. It is not within the Department’s regulatory purview to include violations written by MSHA.

Of note, all violations of the Act and promulgated regulations have been considered. Please see Appendix D and Part IV, Condition J.

Comment 14: Concern was expressed over the potential loss of a lot of archeological history.

Response: An agreement between the Department and the Illinois Historic Preservation Agency (IHPA) regarding planned subsidence has been reached. The IHPA has determined that subsidence from longwall mining does not adversely affect archeological resources. The Department has determined that all structures within the shadow area are to be evaluated for historic significance. In addition, all areas that would be submerged as a result of subsidence along an existing shoreline must have a Cultural and Historical evaluation prior to subsidence impacts in these specific areas. Please see Appendix A: Item No. 9 and Part IV, Condition M.

Comment 15: A commenter expressed concern that subsidence rights obtained a century ago did not envision the modern methods of mining.

Response: 62 Ill. Adm. Code 1778.15(c) prohibits the Department from adjudicating title. Hillsboro Energy, LLC has executed an affidavit required by 62 Ill. Adm. Code 1778.15(f) attesting that all necessary mining rights, including the right to subside, have been or will be obtained prior to mining. A landowner would need to pursue legal action against the company should they contend Hillsboro Energy, LLC does not legally possess such rights.

Comment 16: Concern was expressed over wildlife as a result of the smoke and other hazards from a mine on fire.

Response: Any damages to wildlife that fall under the Department's regulatory purview, such as potential impacts to threatened and endangered species, would be assessed during and/or after such an event by the U.S. Fish and Wildlife Service (USFWS) in accordance with the federal Endangered Species Act of 1973, as amended. Applicable mitigation, restitution, and/or avoidance measures that fell under the Department's purview would be administered by the Department in consultation with the USFWS and appropriate IDNR offices.

Comment 17: Several comments were received regarding inspection of the mine. Those questions included who from the Department comes out and overlooks the reclamation of the subsided land, what are their qualifications, how often those inspections are conducted, whether discussions with local farmers were part of those inspections, what other features were included in those inspections, and if Department inspectors ever observed soil erosion? A commenter asked if there is an impartial soil scientist in the Department. A commenter specifically asked if anybody from the Department was at the mine when the heavy rainfall event occurred in December 2015.

Response: The Department conducts routine inspections of the mine site, which typically includes the shadow area on, at least, a monthly basis. Those inspections are

usually conducted by a Land Reclamation Specialist, who may also bring other technical specialists as well. Those individuals inspecting the site have a thorough knowledge of the regulations of the Act and the permit requirements for the given site. Education and training of the staff is specific to the individual's given position. Discussions with local farmers may occur during inspections but isn't statutorily required. Any feature that exists on site which would relate to whether the regulatory requirements are being met would potentially be reviewed during a given inspection, including soil erosion, which the Department has observed. Based on the findings of an inspection, the Department requires that issues be addressed, as necessary, to comply with the regulations.

The Department does have two qualified soil scientists on staff who enforce the regulations under our jurisdiction. The Department did not conduct a site inspection during or immediately after the referenced rainfall event. The mandated monthly inspection of the mine site had been completed prior to that event.

Comment 18: Soil erosion is actively occurring on the subsided areas.

Response: During inspections, the Department has observed that soil erosion has occurred. Based on the findings of such an inspection, the Department requires that issues be addressed as necessary to comply with the regulations. If the Department observes increased erosion occurring and can attribute the cause of erosion to subsidence, the Department will require the company to address the erosion and take steps to assure the land is restored to its pre-mining capability pursuant to 62 Ill. Adm. Code 1817.121(c)(1).

Comment 19: Several commenters were interested in quarterly subsidence reports. Commenters asked how to receive quarterly subsidence reports without using the Freedom of Information Act, and if the Department was getting further details outside of the reports, what was the Department's analysis of the reports.

Response: The Department is required to follow all Freedom of Information Act (FOIA) requirements. Department policy is that all information requested should be handled through the FOIA process. Therefore, a citizen would need to use the FOIA process to obtain any document in the Department's possession. Typically, there are no additional written reports beyond the quarterly reporting.

Comment 20: Subsidence for longwall mining is stated as being predictable and uniform. Is it uniform as they stated?

Response: Based on over 30 years of observations and monitoring in Illinois, longwall mining does result in predictable and uniform changes to topography. Site specific geology could cause an anomaly in the subsidence, but, in general, longwall subsidence can be viewed as consistent over time with similar geologic conditions.

Comment 21: Commenters asked several questions related to bonding requirements for the mine, which included which company, Foresight Energy, LLC; Hillsboro Energy, LLC; or Patton Mining, LLC has the responsibility for the bond and are they self-bonded. Is bond in place to fix affected areas and what is that amount? What factors are used to determine how much the cost will rise from the time the bond is calculated until the time reclamation is predicted to begin and how soon would the applicant be required to increase their bond if so required? What would happen if the company went bankrupt?

Response: Hillsboro Energy, LLC is the entity responsible for reclamation of the Deer Run mine site. Hillsboro Energy, LLC is not self-bonded and currently holds \$23,497,950.00 in bond to reclaim the permitted surface areas. The Department reviews the bond on a 2.5-year basis, at a minimum, and requires additional bond, if necessary. A permittee would have 90 days to post that additional bond.

Hillsboro Energy, LLC recently emerged from Ch. 11 bankruptcy as a reorganized entity in Case No. 20-41308-659 (jointly administered) in the United States Bankruptcy Court, Eastern District of Missouri, Eastern Division, effective June 24, 2020. In this instance, all Department-held bond for the Deer Run Mine was neither impacted by the fact that the company filed for Ch. 11 reorganization, nor as a result of how the proceedings concluded.

Comment 22: Commenters asked when an insignificant change is approved why nobody affected has to be informed and if they could get a copy of all the revisions that are necessary for the permit.

Response: Pursuant to 62 Ill. Adm. Code 1773.13 and 1774.13, public notification is not required for insignificant permit revisions. Copies of insignificant permit revision applications and decision documents are available from the Department through the Freedom of Information Act (FOIA) process.

Comment 23: Are there ever any fines and penalties imposed (for violations of the Department's regulatory program)?

Response: Civil penalties are assessed for violations of the regulatory program pursuant to 62 Ill. Adm. Code Part 1845.

Comment 24: A commenter asked who approves the drilling in the shadow area.

Response: Drilling occurring in the shadow area that is considered an activity that facilitates surface coal mining and reclamation operations would be approved and regulated by the Department. Drilling that does not meet this criteria would be regulated by other agencies or offices and, thus, would be beyond the regulatory purview of the Department.

Comment 25: One commenter provided comments at the informal conference and also provided written comments. The commenter prefaced those comments with the statement that “My primary concern deals with existing structures RDA (Refuse Disposal Area) 1 and RDA 2, and the impact those structures will have on the City’s drinking water supply.” The commenter then went on to ask numerous questions about how the reviews of the RDAs and the EAP (Emergency Action Plan) for those RDAs were conducted and raised concerns about impacts based on other mine sites.

Response: The application for Significant Revision No. 2 to Permit No. 399 deals with the proposed permitting of additional shadow area to be added to Permit No. 399. The capacity, structural integrity, hydrologic protection measures and reclamation of those refuse disposal facilities was addressed during the reviews of Permit Nos. 399 and 424. Those permits have been issued and are not the subject of the Revision No. 2 to Permit 399. The issues discussed by the commenter are under the purview of the Illinois Department of Natural Resources’ Office of Water Resources (OWR) in accordance with the Rivers, Lakes and Streams Act (615 ILCS 5/23a) and the Rules for the Construction and Maintenance of Dams (17 IAC Ch. I, Sec. 3702 .40 b) 4)).

In addition, many of the comments provided pertained to review of the EAP. The EAP is not under the regulatory purview of the Surface Coal Mining Land Conservation and Reclamation Act, 225 ILCS 720, which is the Act under which Revision No. 2 to Permit No. 399 is being reviewed. Comments pertaining to OWR’s permitting process is beyond the scope of the Department’s regulatory authority in this application review.

Comment 26: How can it be possible that such an important document (inundation map) was not reviewed by an IDNR PE?

Response: It is assumed that the commenter is referring to the Post Subsidence Contour Map which shows projected contours after longwall mining is complete and the areas that will require drainage restoration. Several different technical specialists contributed to the review of this permit revision. Although no requirement exists for a reviewer to possess a professional engineering license (P.E.), the subsidence control plan including the Post Subsidence Contour Map was reviewed by a staff member who does possess an Illinois P.E. license.

Comment 27: Several commenters expressed concern that they were worried that this mine is just going to leave people, taxpayers and the Department in the lurch as well as diminishing property values, the counties tax base and negatively impacting the local school bond issue. A commenter asked about the mines effect on property values for future generations and if the landowners were in any way compensated for taxing changes as a result of mining.

Response: These comments fall outside of the regulatory jurisdiction of the Department.

Comment 28: Two-thirds of their quarterly water permits show above permit levels of water pollution. That's from October 2012 through September 2015, two-thirds of those quarterly reports have levels of iron, sulfates, particulate matters, other contaminants going into the public waters in this area that are above the permitted levels of their water permits.

Response: This comment appears to be directly related to the surface water quality at or near the surface facilities permit area. The Illinois EPA regulates the surface water discharges of the permitted facility and sets those water quality standards. It is unclear where the commenter obtained this information and what relief the commenter is seeking.

Comment 29: Numerous comments were received regarding the Department's ownership and control review of the application. A commenter asked the Department to review the ownership and control history given in this application to insure it lists all corporations that have a connection and provides an accurate listing of full ownership and control, specifically Murray Energy Holdings, Co. and Murray Energy Corporation. In addition, another commenter asked if the Department's review dealt with past violations, if the review was a complete listing of the appropriate violations (specifically in regards to the Murray companies listed above), if those violations were corrected entirely, if those violations result in fines, if the Department is issuing the permit without addressing the violations and if the commenter could get the names of the company's owners and controllers. A commenter asked if there is a level of violations that prohibits permit issuance, and if violations are frequent and serious enough to be classed as endangering life and health would that cause the agency to deny a permit or a revision?

Response: The Department has reviewed the ownership and control as outlined in 62 Ill. Adm. Code 1778.13(c) and (d), and violation history as outlined in 62 Ill. Adm. Code 1778.14. The Department's decision was made in accordance with 62 Ill. Adm. Code 1773.15(b). See Appendix D and Part IV, Condition J.

Comment 30: A commenter indicated that, before the longwall came through, homes were torn down as well as most of the barns. That commenter indicated a lot of water wells were at these locations and asked if the wells were they taken care of appropriately.

Response: Any citizen or company responsible for the abandonment of a private water well would need to comply with local or state rules or ordinances regarding the abandonment of these types of wells. The comment is beyond the regulatory purview of the Department.

Comment 31: Comments were received questioning who was going to pay the maintenance costs of the tiling and drainage systems installed to reestablish drainage.

Response: A permittee is required to restore drainage to farm fields. This is accomplished with a combination of surface drainage ways and subsurface tiling. Should it be determined that maintain is required due to poor installation or failure to establish a stable functioning system, the Department will require the company to correct such deficiencies. Once a system is in place, stable and functioning to achieve the performance standards of 62 Ill. Adm. Code 1817.121(c)(1), the permittee is no longer responsible for long term maintenance.

Comment 32: Several comments were received regarding the mine “fire.” Those comments and questions included what is the fire doing, are there any gas monitors for carbon monoxide or methane or other potentially problem gases that IDNR tests, how permits could be granted with the fire still going on, if the fire would expand, if there was bond to cover Schram City and Hillsboro should the fire affect those communities, if the Department required the fire to be put out as part of the permitting process, if the specific location of the fire is pinpointed, and if the fire must be extinguished if they do not decide to return to work?

Response: The mine “fire” to which the commenter is referring is more appropriately termed “hot spots” that formed due to spontaneous combustion in the caved area of the initial longwall panels. The hot spots caused problems with the ventilation system and required the mine to be evacuated on several occasions as a safety precaution for underground mine employees. Efforts to control the hot spots to eliminate the concerns with mine ventilation and miner safety allowed the mine to reopen, but only after the problem areas were sealed or isolated from the ventilation system. The hot spots not under the Land Reclamation Division’s regulatory purview. Other agencies regulate the effects of the event and how it is handled. The Department’s bond covers the reclamation of the surface permitted areas only.

Comment 33: Commenters asked questions about crop loss compensation including, whether there is there any kind of a committee that compensates landowners for crop losses at this time, what happens with the loss of production from the crops and does the Department look at the financial impact to the county when the farm ground is not tillable?

Response: The approved permit addresses crop loss compensation in Part IV(30(B)(7)(b) of the application. Crop loss compensation is applicable to temporary impacts before mitigation of drainage can be accomplished. Hillsboro Energy, LLC is responsible for crop loss payment to the affected landowner. Although the Department does not evaluate any financial impact to the county, all tillable ground should be restored to tillable ground as a result of the requirement to mitigate subsidence impacts to surface lands pursuant to 62 Ill. Adm. Code 1817.121(c)(1).

Comment 34: A commenter asked how long a permit is valid, when and if mining rights expire, and when it would be the mine be considered closed.

Response: Pursuant to 62 Ill. Adm. Code 1773.19, a permit is valid for five (5) years and carries right of successive renewal. The permittee must demonstrate to the Department that it has the legal right of entry to property to conduct surface coal mining and reclamation operations as well as maintain the rights to mine, pursuant to 62 Ill. Adm. Code 1778.15, so long as the mine is in operation. Numerous and varied circumstances would dictate whether a mine is “closed”, which would most often be specific to the mine. If the permit is allowed to expire, the permittee shall cease mining operations to extract coal and begin reclamation of the permit area. Pursuant to 62 Ill. Adm. Code 1773.11(a), a permittee need not renew the permit if no surface coal mining operations will be conducted under the permit and solely reclamation activities remain to be done. Obligations established under a permit continue until completion of surface coal mining and reclamation operations, regardless of whether the authorization to conduct surface coal mining operations has expired or has been terminated, revoked, or suspended.

Comment 35: Several comments were received requesting clarification of permit transfers. Those included if the permit was transferred would ownership and control issues, including violation history, be examined, can permit rights be sold to another company and if so, does it have to be a United States based company?

Response: Ownership and control information and violation history are reviewed during permit transfers for the new company pursuant to 62 Ill. Adm. Code 1774.17. An applicant, as with any application, is required to be licensed to do business in the State of Illinois before the Department can make a decision to approve the application. The regulations do not restrict where a company is based.

Comment 36: What are the criteria used for the Department’s evaluation of the proposed revision and is that based solely on the application and not the statements from the landowners?

Response: The Department reviews permit revision applications pursuant to the requirements of 62 Ill. Adm. Code 1774.13. Among other regulatory citations, Section 1774.13 cross-references the public participation and permit application review provisions of Sections 1773.13 and 1773.15, respectively. The public comments received by the Department within the appropriate time frames (including those from landowners) are considered and evaluated as part of the application review process.

Comment 37: Commenters asked questions regarding reclamation of surface facilities and subsidence effects at the mine. Those comments and questions included whether there is a written contract with the coal company as far as a time frame to reclaim the land, when will reclamation be completed on the original permit acreage, how can a permit be approved on more acreage when they haven't completed the

previously affected areas and what time frame has been set to mine these shadow acres? Further, a commenter asked when does the Department start requiring reclamation to begin, how this time period is determined, if there is a different criteria for the prairie lands and forested areas? A commenter noted reclamation work has slowed since the fire. Finally, a commenter asked if RDA 1 is full, when reclamation would begin, how it would be dewatered and reclaimed and what part the Department would play in regulating that reclamation.

Response: The reclamation plan of the permit and the regulations provide the required time frames for reclamation of the original surface permitted areas. RDA 1 has not reached its design capacity concerning slurry disposal. Once the slurry disposal area is filled, excess water above the surface of the slurry will be removed to allow coarse refuse capping-and grading, and then soil-covered and seeded in accordance with the appropriate regulations and the approved reclamation plan. The Department's regulatory authority and inspection will continue through reclamation and final bond release.

Please see Appendix A: Item No. 28. An updated timing map (Map 7) for the underground mining operations has been provided showing the projections and sequence of longwall panels through 2036. Long-term timing can be affected by coal market and unanticipated shut downs.

Comment 38: A commenter asked why the affected people did not receive a copy of the revision application and when would they be notified of the Department's decision.

Response: Notification of the public is done in accordance with the requirements of 62 Ill. Adm. Code 1773.13. Individuals who signed in at the public hearing and/or informal conference, or who provided written comments, will be notified of the Department's decision once that decision has been finalized.

Comment 39: When will the slurry disposal areas be reclaimed?

Response: Once the slurry disposal area is filled, the slurry will be capped with coarse refuse and then graded, covered, and seeded in accordance with the appropriate regulations and the approved reclamation plan.

Comment 40: A commenter asked why the Department was not protecting the resources of Illinois (water, air, trees, land and wildlife) instead of the coal company.

Response: Among other objectives set forth by the federal and state laws, the regulations found at 62 Ill. Adm. Code 1700-1850 establish performance standards and design requirements that provide for the prompt reclamation of all affected areas to conditions that are capable of supporting the premining land uses or higher or better land use; minimizing, to the extent possible using the best technology currently

available, disturbances and adverse impacts on fish, wildlife, and other related environmental values, and enhancement of such resources where practicable; revegetation which achieves a prompt vegetative cover and recovery of productivity levels compatible with approved land uses; and minimum disturbances to the prevailing hydrologic balance at the mine-site and in associated off-site areas, and to the quality and quantity of water in surface and ground water systems. The Department finds that the proposed mining and reclamation operations are designed to meet these objectives.

Comment 41: A commenter asked if the review included interviews of residents in other mining communities.

Response: The regulations do not authorize the Department to interview residents of other mining communities during review of an application.

Comment 42: A commenter asked if water well users would have to live in fear to drink their water.

Response: A Water User's Survey was provided in the application. This survey indicates that the majority of the drinking water wells located within, or within ½ mile of the proposed shadow area, are shallow and, therefore, any impacts from the underground mining operations would be unlikely. However, in the event of an unforeseen impact, Section 1817.41(j) requires any drinking domestic or residential water supply impacted by subsidence to be promptly replaced. A citizen has the right to file a complaint with the Department and request an inspection to determine what impacts have occurred to their well, pursuant to 62 Ill. Adm. Code 1840.15.

Comment 43: A commenter asked where the coal will be washed and where future impoundments will be located. In addition, that commenter asked for plans to remove the impoundments as required by federal law.

Response: Coal from the proposed shadow area would be washed at the existing preparation plant. The response to Part I(1)(H) of the application indicates the area where future operations could be located. This response references Part I, Page 4 of the approved Permit No. 399; Revision No. 1 – Supplemental Information, Volume I of III. This permit revision was approved on October 18, 2012.

Please note that refuse disposal facility reclamation is not applicable to this revision. The previously approved reclamation plan calls for the refuse disposal facility to be covered, reclaimed, and not retained as an impounding structure under the Land Reclamation Division's regulations. The approved final land use for the covered and reclaimed refuse disposal facility is Herbaceous Wildlife. Thus, pursuant to the regulatory program promulgated under the Surface Coal Mining Land Conservation and Reclamation Act, no coal waste impounding structure will be "retained permanently as part of the post-mining land use." "No permanent

impoundments" are approved "on the completed refuse pile." This issue has been raised numerous times in informal conferences, public hearings, and permit appeals. The Department has addressed these comments by stating that the soil covering and revegetation of these disposal facilities meet the requirements of the regulations. In addition, the issue has been raised to the federal oversight agency, the Office of Surface Mining and Reclamation Enforcement (OSMRE), which concurs with this interpretation.

The commenter may refer to the minutes of the Citizens Coal Council "Ask the Director Q and A" February 24, 2015. <https://www.odocs.osmre.gov/>; Illinois, Evaluation Year 2015, Doc 293. See comment/response from those minutes, below:

Question/Comment:

It is my understanding that permanent impoundments of coal waste are prohibited under SMCRA, stating that "Each impounding structure constructed of coal mine waste or intended to impound coal mine waste ...may not be retained permanently as part of the approved post-mining land use" (62 IAC 1817.84(b)). It's worth noting that in Illinois, the IDNR-Office of Water Resources permits coal slurry impoundments as high hazard dams, even after mining has been completed. Is this pattern of permitting impoundments permanently consistent with SMCRA? How would OSMRE evaluate or justify the validity of these actions by the Illinois mining regulatory program?

Response:

Federal and state regulations do not allow coal mine waste impoundments (that are not incised) to remain. The site must be reclaimed to one of the post-mining land uses defined in 1701.5 under "Land Use" other than water.

OSMRE policy since at least 1995 is that once the impounding structure is permanently breached so that water flows freely across the reclaimed refuse and the crest of the dam is reduced to the elevation of the refuse surface. Regulatory Authorities need not view this as an impounding structure under 30 CFR 816.84(b)(1)/817.84(b)(1). In Illinois, the water in most cases is removed via pumps as the cap progresses across the slurry area instead of breaching or cutting a notch in the embankment.

30 CFR 77.216 is the general rule governing water, slurry impoundments and impounding structures regulated by the Mine Safety Health Administration (MSHA). MSHA permits are required as part of the permitting process in order to obtain a SMCRA permit, but MSHA is a separate regulating entity. MSHA will decertify impoundments once the miners leave the facility. Once the impoundment is de-certified, MSHA

inspections and the operator's impoundment examinations cease to be required.

The Illinois Department of Natural Resources, Office of Water Resources does classify the slurry impoundments as a Class I, II or III dam according to degree of threat to life and property in the event of a dam failure. Class I is similar to the Corps classification High Hazard Probability. This classification remains after they are dewatered and bond released by the Illinois Land Reclamation Division, therefore they would no longer fall under the purview of SMCRA. The Illinois Office of Water Resources will consider an impoundment an impoundment until the company can prove that material inside the impoundment is no longer flowable. In order for a company to determine if the material is no longer flowable, the company would have to drill through the cap/final cover and obtain representative samples that prove the material is solid or cannot liquefy and become flowable. This requirement by the Illinois Office of Water Resources falls outside what is required under SMCRA.

We do not see an inherent conflict between these three regulatory provisions as they are in place for different purposes under different laws.

Comment 44: A commenter asked what are the plans to repair damage to Coffeen Lake, if there is a fund for those repairs and if private wells will be damaged?

Response: Anticipated effects to Coffeen Lake have been detailed in the approved permit application, as modified in response to Appendix A: Item No. 30. The only anticipated impact to the lake is a change in shoreline in certain coves or fingers of the lake along the western edge. Details of each anticipated change has been provided. Based on geology and historical longwall mining under other lake bodies in Illinois, loss of water through subsidence is not anticipated. Any need to mitigate damages that are observed will be the responsibility of Hillsboro Energy. The Department will monitor impacts and mitigation to assure compliance with 62 Ill. Adm. Code 1817.121(c)(1).

Concerning potential damage to private wells, please see the response to Comment 42 above.

Comment 45: A commenter asked if mine workers had been compensated for the job loss and what was the status of their lawsuit?

Response: The subject of this comment is beyond the scope of the Department's regulatory authority.

Comment 46: A commenter asked if Deer Run Mine faces bankruptcy, what entity would pay for the damage in the new shadow area and impoundment removal.

Response: See the Department's response to Comment 21 above. Refuse disposal facility reclamation (see the Department's response to Comment 43) would either be accomplished by the permit holder or the State using the bonds that are in place.

Comment 47: A commenter asked if water supplies are destroyed, will the mine furnish water for farms?

Response: Assuming the commenter is referring to groundwater wells, a Water User's Survey was provided in the application. This survey indicates that the majority of the drinking water wells located within, or within ½ mile of the proposed shadow area, are shallow and, therefore, any impacts from the underground mining operations would be unlikely. There has been no documented loss of water supplies derived from wells over the first three panels. In the unlikely event drinking, domestic or residential water supplies are damaged, 62 Ill Am. Code 1784.41(j) requires qualifying water supplies to be replaced.

Comment 48: A commenter asked how the Department would replace 200-year-old trees and prevent contaminating the groundwater.

Response: The proposed underground mining operations should not have a negative effect on the shallow groundwater, which according to the Water User's Survey and the Illinois State Geologic Survey (ISGS) is the only groundwater currently in use. Based on over 30 years of observation in Illinois, tree mortality rarely occurs and is highly unlikely to occur on areas where drainage is mitigated. However, there is no regulatory requirement for the operator to replace trees in the shadow area that may be impacted due to planned subsidence. The Department is not responsible for replacing trees in the shadow area. Subsidence is not included in the definition of surface coal mining activities and is not a bonded or surface permitted activity/operation and, therefore, the performance standards regarding re-establishment of pre-mining vegetation do not apply.

Comment 49: A commenter asked if mining is no longer feasible due to fires could the applicant simply move to a new mining area, and if the landowners within the projected mining area had any recourse to prevent that. That commenter asked if the company was in any way required to adhere to these projections and how could something so uncertain be approved.

Response: The specific area of longwall mining must be contained within the area as defined on the approved permit maps. Longwall panels could be shortened but cannot be expanded beyond the limits defined without a separate permitting action. Absent any future approved permit revision, the company must maintain longwall operations within the area defined as "planned subsidence". Should the timing of operations within the approved area greatly change due to a spontaneous

combustion event in the subsided underground mine works or other changes in mining operations, the Department will require an updated mine projection map.

Comment 50: A commenter asked if there are any impacts expected to the Montgomery County Farm Cemetery or at the old Bear Creek Cemetery. In addition, that commenter indicated there were four structures that were remaining yet to have further inspection and wondered if the Department had any information about either the historic importance of those structures or what yet was remaining to be done.

Response: Concerning the impacts to Old Bear Cemetery, please see Appendix A: Item No. 24 and the applicant's modified responses. Old Bear Cemetery is outside of the area of influence of planned subsidence and therefore no impacts are expected. Montgomery County Farm Cemetery resides in the original shadow area and was addressed as part of the original Permit No. 399. The original approved mine plan would have potentially produced minimal subsidence to the cemetery residing on the edge of the projected planned subsidence limits. Subsequent changes in the mine plan resulting from unforeseen geologic problems caused Panel 4 to be shifted to the south leaving an unmined block adjacent to the Cemetery. Therefore, no subsidence impacts occurred to Montgomery County Farm Cemetery.

Concerning the four (4) structures that were to be further evaluated for potential historic significance, the identified structures are within the Revision No. 2 longwall area but not in the immediate planned subsidence area. Part IV, Condition M has been placed to assure any necessary evaluation is completed prior to demolition.

Comment 51: A commenter asked what procedures are typically used by the mine when a person's home or farm buildings are undermined by longwall mining, how long does this process take, do they have to move out and how successful have these procedures been when people's homes are undermined by a longwall?

Response: Absent a pre-subsidence agreement with a structure owner, the regulations at 62 Ill. Adm. Code 1817.121 require (1) a pre subsidence condition survey to document the structure, and (2) a damage minimization plan to lessen impacts. The damage minimization plan is typically tailored to the structure based on its construction and where it is located within the subsidence profile. Methods, such as trenching around the foundation to eliminate compressive forces, lifting and floating the superstructure to minimize the influence of dynamic strain and flexible couplings for gas lines, can be implemented to control damages. The processes' time length also varies based on the structure and techniques used. In terms of the need for a person to temporarily relocate during the subsidence, it is a choice that should be determined based on the circumstances. The majority of the subsidence movements occurs over a relatively short period of time (days). The residual movements can occur for a couple of months. Whether a person should relocate temporarily during the time of rapid subsidence is a personal choice. People have chosen to remain in

the home during the time of rapid movement while the home is being adjusted and monitored. Others have left for a few days during the rapid movement phase of the subsidence. In general, the procedures used to minimize damage prove to be successful, but repairs are usually also necessary post-subsidence to restore the home to its pre subsidence value.

Comment 52: A commenter asked why is it necessary that the park area near Coffeen Lake be included in this new expansion?

Response: There is no regulatory prohibition to longwall mine beneath a feature such as a park. To the Department's knowledge, the land adjacent to the lake is controlled by Vistra Energy Inc. and is managed by the Department's Office of Land Management. The inclusion of such an area in a longwall plan is a decision by the permittee. As long as the regulatory performance standards can be achieved, a permit can include such areas.

Comment 53: A commenter indicated people noticed horrible odors on March 6 and 7, 2016 in the immediate mine area. That commenter asked if IDNR is aware, or had any reports of that issue, if someone would always be available at the mine to report these issues to and what agencies regulate those types of events.

Response: The Illinois Environmental Protection Agency forwarded information regarding the above-referenced event to the Department on March 15, 2016. The Department's investigation found that a hot spot had occurred in the coal stockpile which had already been extinguished. While the Department has no regulatory authority to mandate personnel be available for reporting such an issue, it is the Department's understanding that the applicant makes reasonable efforts to ensure that the public can contact its staff in case such issues occur. In this case, the issue appears to be the result of a fire in the coal stockpile which falls under IEPA jurisdiction. If the issue would have been related to coal refuse, the Department would have had jurisdiction.

Comment 54: A commenter asked how long can a mine stay in temporary cessation and who would attend to issues if the mine was in temporary cessation?

Response: The regulations governing temporary cessation (62 Ill. Adm. Code 1817.131) do not place a limit on the cessation period. The Department does require a permittee to justify why Note also that the permittee remains responsible for the regulatory requirements during any such cessation period.

Comment 55: A commenter asked it is safe to have animals grazing in and drinking out of the creeks.

Response: The applicant is required to adhere to their NPDES standards for mine discharges from the surface mine facilities area, thereby protecting surface water quality down

stream of those areas. Assuming the commenter is concerned with longwall mining negatively impacting stream quality, please see the response to Comment 64 below. Please note further that this comment is not applicable to the proposed shadow area revision with respect to protection of wildlife regulations and whether these water bodies are safe for animal consumption is beyond the regulatory purview of the Department.

Comment 56: A commenter asked how many mines are presently idled at this time?

Response: At the time of this writing, seven (7) mines are idled under temporary cessation status in the State.

Comment 57: How do coal mines compensate for crop loss?

Response: The applicant has addressed crop loss compensation under Part IV(3)(B)(7)(b) which states, *"Hillsboro Energy, LLC will compensate the landowner for acreage temporarily taken out of production or any crop loss resulting from subsidence, until such time that the land's drainage is restored and the land returned to its pre-mining use. Crop losses will be compensated for based on the average yields the property has provided historically, the land area disturbed, and the price of the crop that was lost.*

Lands taken out of production due to creation of newly designed drainage ways will be minimized wherever practical by working with existing drainage ways. Where this is not practical, for any area taken out of production to facilitate placement of permanent drainage ways, compensation will be made to the landowner at an agreed upon value."

Comment 58: A commenter asked if water replacement would include residential and agricultural water supplies if a stream or spring was destroyed.

Response: 62 Ill. Adm. Code 1817.41(j) requires replacement of a "Drinking, domestic or residential water supply". The definitions found at 62 Ill. Adm. Code 1701. APPENDIX A states: "Drinking, domestic or residential water supply" means water received from a well or spring and any appurtenant delivery system that provides water for direct human consumption or household use. Wells and springs that serve only agricultural, commercial or industrial enterprises are not included except to the extent the water supply is for direct human consumption, human sanitation, or domestic use.

Comment 59: A commenter asked if it wouldn't have been advisable for the other regulatory entities with jurisdiction over the permit to have been part of the hearing, and if the Corps of Engineers would have jurisdiction on this permit?

Response: The Department has no authority to require any other agencies to participate in any public hearing held under the State Act. The United States Army Corps of Engineers' (USACE's) jurisdiction on the permit is a matter between the applicant and the USACE.

Comment 60: A commenter asked what federal law changed to allow mining under cemeteries and what judge was involved with that decision.

Response: The Illinois Permanent Program Rules and Regulations are adopted based on the federal Surface Mining Control and Reclamation Act of 1977 (SMCRA) and its promulgated rules. As it relates to cemeteries, Section 522(e)(5) of SMCRA, subject to valid existing rights, prohibits no surface coal mining operations within 100 feet of a cemetery. This was further clarified in OSMRE's regulations at 30 CFR 761.11(g) to further specify within 100 feet, measured horizontally, of a cemetery. The State of Illinois' equivalent statutory and regulatory provisions are found at 225 ILCS 720/7.01(c) and 62 Ill. Adm. Code 1761.11(g), respectively.

No state or federal laws were changed, but an interpretative rule by OSMRE was published on December 17, 1999 (64 Federal Register 70839) stating that the prohibitions of Section 522(e) did not apply to subsidence due to underground mining. This interpretive rule was upheld by the United States Court of Appeal for the District of Columbia Circuit in Citizens Coal Council, et al v. Gale A. Norton, Secretary of the Interior and National Mining Association, Case No. 02-5136, on June 3, 2003, in an opinion filed by Circuit Judge Sentelle.

Comment 61: A commenter asked if pond discharges were monitored and would individuals or landowners be contacted in case there was a problem?

Response: Monitoring of the sediment basins on Permit Nos. 399 and 424 are conducted in accordance with the operator's NPDES permit. There is no landowner or individual notification requirement for excursions. No such sediment basins are proposed in this application.

Comment 62: A commenter asked if the proposed Stream Protection Rule is approved if that would change any conditions in the permit?

Response: On February 16, 2017, the President signed H.R. J. Res. 38, a joint resolution, under the Congressional Review Act, 5 U.S.C. §§ 801 *et seq.*, which disapproved the Stream Protection Rule.

Comment 63: A commenter asked if there is a state safety equivalent to MSHA?

Response: The Office of Mines and Minerals' Mine Safety and Training Division is charged with the health and safety concerns of the state's coal mines and their employees under the authority of the Illinois Coal Mining Act.

Comment 64: A commenter asked that the environmental resources affected by the proposed activities be revised to include all surface ponds, tributary streams to Bearcat Creek and for information to be provided as to how water quality and quantity are restored post subsidence.

Response: Surface ponds and large streams and their tributaries, including Bear Creek, are identified on maps provided in the approved permit application, as modified. Existing and projected stream profiles are provided to define the potential scope of work to restore flow through the stream channels over the longwall panels and downstream where mitigation may be required to achieve proper drainage correction. Loss of stream to the subsurface is not anticipated based on geology and historic longwall mining under similar stream courses. Subsidence has not been found to have a negative impact on the quality of the water once the stream profiles are restored.

Comment 65: A commenter asked if a map providing the location and extent of subsurface water in the proposed permit areas, including the seasonal differences of head in the local aquifer was missing from the application.

Response: The applicant provided a discussion of the water elevation in the coal seam as part of the response to Part III.2.B.3 and in Attachment III.2.B.3 – Coal Seam Wells Report. Additionally, please see Attachment IV.3.B.4.b. for the Hydrogeological Investigation Report that describes in detail the uppermost aquifer and the potential for the coal seam to act as an aquifer. See also the response to Appendix A; Item No. 12.

Comment 66: A commenter indicated there is no detail on the plans for reclamation to specify which areas will be tiled, which will be ditched, how many drainage structures will be employed and when those actions will be implemented. The commenter indicated the Department gives the operator an open-ended time frame at the expense of landowners.

Response: The Department contends that the permit, as modified, contains enough detail on mitigation of drainage in the narrative and as part of the post subsidence contour mapping provided. The Post-Subsidence Maps (Map 8a, 8b, 8c) indicate existing drainage ways that will be corrected to restore positive drainage. Tile work is best evaluated post-subsidence as a supplement to surface waterways in order to properly correct drainage. The recent mitigation work over the first three (3) panels included a combination of surface drainage work and installation of an extensive regional drainage tile system. Should any area prove to not have adequate restoration of drainage, the Department will investigate and require supplemental efforts to correct areas that fall short of drainage restoration.

Restoration work is sometimes delayed in order to address the overall drainage of multiple panels. Experience has shown that a more regional approach to drainage control over several panels results in a more effect result that reduces the need to return to areas for additional work. However, should a landowner feel that the timing of mitigation is being delayed beyond a reasonable time, they should contact the Department so that the issue can be addressed. Crop loss compensation should continue throughout the process until the work is successfully completed.

APPENDIX C

Hillsboro Energy, LLC, Deer Run Mine

Revision No. 2 to Permit No. 399

Revision No. 1 Permit No. 399

And

Permit No. 424

Assessment and Findings of Probable Cumulative Hydrologic Impacts

The shadow area proposed to be added in Revision No. 2 to Permit No. 399 will have no detectable impact on the hydrologic balance of this previously defined cumulative hydrologic impact area. The assessment and findings of the probable hydrologic impacts was last revised by permit application for Permit No. 424, issued on May 20, 2014 and is hereby incorporated by reference.

APPENDIX D

DOCUMENTATION PROVIDED BY APPLICANT TO COMPLY WITH
62 Ill. Adm. Code 1773.15(b)(1)(A)

PERMIT NUMBER	INSPECTION				MINE STATUS	PHOTOS	BLASTING	
	DATE	TIME	REASON	TYPE			Last 30 Days?	Ins. Req'd?
U010483	08/10/2020	18:08	RI	P	AM	Yes	Yes	Yes

PERMITTEE NAME THE HARRISON COUNTY COAL COMPANY **MSHA #** 4601318
OPERATOR NAME _____ **MR-19 DATE** _____
NPDES # WV0093505 **NPDES EXPR DATE** 02/04/2025 **PERMIT EXPR DATE** 06/01/2023
PERMIT ACRES 1,908.22 **TOTAL DISTBD** 1,483.00 **RECLMD** 100.00 **ANCIL-LARY** 0 **UNRECLMD** 1383
DATES: PH I _____ **PH II** _____ **LAST AUG SEED** _____ **MR-8** _____
LAST INSP DATE 07/29/2020 **TYPE** P **BOND INC** 1 **INC BONDED ACRES** 1,908.82 **CUR IBR#** 97 **CUR REV#** 46
EXPR DATES: INACT _____ **EMER RESP PLAN** 02/24/2016 **INS** 06/01/2021 **BLAST AD** _____
TIME USED (HRS)=> PERMIT REVIEW 1.00 **INSPECT** 1.00 **TRAVEL** 1.50 **REPORT** 6.00

INSPECTION COMMENTS

An anonymous complainant was received on 8/11/2020 at 1645 in regard to a blast that had occurred the day prior on 8/10/2020 at the Harrison County Coal Company 7-North #2 Shaft construction site. An additional complaint was also made on 8/12/2020 at 0914 regarding the same event. The shot in question is part of an approved blasting plan under Revision #46 for permit U010483 and was approved on

ENFORCEMENT STANDARD	EVALUATION	VIO#	ENFORCEMENT STANDARD	EVALUATION	VIO#
0100 Distance Prohibited.....			0200 Exceeding Limits.....		
0300 Signs and Markers.....			0400 Sediment Control.....		
0500 Design Certification.....			0600 Effluent Limits.....		
0700 Surface Water.....			0800 Ground Water.....		
0900 Blasting Procedures.....	NOV Issued	100	1000 Haul Roads.....		
1100 Refuse Impoundments.....			1200 Topsoil Handling.....		
1300 Backfill / Grading.....			1400 Reclamation Schedule.....		
1500 Revegetation Requirements.....			1600 Disposal of Excess Spoil.....		
1700 Highwall Elimination.....			1800 Downslope Spoil Disposal.....		
1900 Postmining Land Use.....			2000 Ceased Mining Temporarily.....		
2100 Acid bearing /Toxic Material.....			2200 Method of Operations.....		
2300 Change of Operator.....			2400 Permit Conditions.....		
2500 Diversions and Drainage Control..			2600 Fugitive Dust Control.....		
2700 Subsidence Plan.....			2800 Insurance Current.....		
2900 Bonding Current.....			3000 Other Conditions.....		

WATER QUALITY TESTS

In-Stream Station	pH	Fe	Mn	Al	NF	Flow	Units	Temp	Units	Sp Cond	Units
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AUTH. COMPANY REPRESENTATIVE Steve Pachol *Steve Pachol* 8-17-2020
DELIVERY METHOD / DATE TIME _____
CERTIFIED MAIL NUMBER _____
ADDRESS 46226 NATIONAL ROAD, SAINT CLAIRSVILLE, OH 43950
WV DEP REP. Troy Warner

PERMIT NUMBER	DATE	INSPECTION			MINE STATUS	PHOTOS	BLASTING	
		TIME	REASON	TYPE			Last 30 Days?	Ins. Req'd?
U010483	08/10/2020	18:08	RI	P	AM	Yes	Yes	Yes

COMMENT (cont.)

7/21/2020.

The purpose of the shot was to acquire fill material to aid in the construction of the shaft site. The area in question is permitted on both sides of Deadfall road with the borrow area on the North side of the road and the shaft construction area directly to the South of the road. According to the company after the shot swelled a portion of the material on the steeper side of the borrow area slid downslope and into the road. The adjacent borrow area in front of the pond did not have any evidence of blasted material cast beyond the permitted area. The company estimates that the blockage of the road occurred for just over an hour while they worked to remove the material. According to the company Wetzel county emergency services was contacted a week prior and given a general idea of the date and time for when the initial blast was planned. They were also alerted to an alternate route (that was maintained for the public, safely through the construction area) that had been constructed in advance and was being utilized, around the section of road in question in the event a blockage of the main road did occur. Local agencies were then notified through emergency services of the planned blast and alternate route. The public would be directed to use this if the road was blocked. The blasting logs indicate that the area was cleared, and roads were blocked prior to the shot as a safety precaution as outlined in the blasting plan.

The blast was setup and executed by the blasting contractor, Wampum Hardware. The Blaster-in-Charge was Denny Fox, WVDEP Blaster-in-Charge certification #1-533-16. According to the blast logs and seismograph data the blast occurred on 8/10/2020 at 18:08 and recorded an air blast of 120 dB; which is within acceptable limits as per 199-1.3.6.c.1 of the Surface Mine Blasting Rule. Peak particle velocities were also well within limits per 199-1-.3.6.i. of the Surface Mine Blasting Rule. Pre-blast notifications were also sent out via certified mail to each resident within one half mile of the blasting site as per 199-1.3.3.a. of the Surface Mine Blasting Rule.

Refer to MR-6 dated 08/10/2020 18:10 for further comments.

PERMIT NUMBER	INSPECTION				MINE STATUS	PHOTOS	BLASTING	
	DATE	TIME	REASON	TYPE			Last 30 Days?	Ins. Req'd?
U010483	08/10/2020	18:10	RI	P	AM	Yes	Yes	Yes

PERMITTEE NAME THE HARRISON COUNTY COAL COMPANY **MSHA #** 4601318
OPERATOR NAME _____ **MR-19 DATE** _____
NPDES # WV0093505 **NPDES EXPR DATE** 02/04/2025 **PERMIT EXPR DATE** 06/01/2023
PERMIT ACRES 1,908.22 **TOTAL DISTBD** 1,483.00 **RECLMD** 100.00 **ANCIL-LARY** 0 **UNRECLMD** 1383
DATES: PH I _____ **PH II** _____ **LAST AUG SEED** _____ **MR-8** _____
LAST INSP DATE 08/10/2020 **TYPE** P **BOND INC** 1 **INC BONDED ACRES** 1,908.82 **CUR IBR#** 97 **CUR REV#** 46
EXPR DATES: INACT _____ **EMER RESP PLAN** 02/24/2016 **INS** 06/01/2021 **BLAST AD** _____
TIME USED (HRS)==> **PERMIT REVIEW** 1.00 **INSPECT** 1.00 **TRAVEL** 1.50 **REPORT** 6.00

INSPECTION COMMENTS

Blasting inspection continued from MR-6 dated 08/10/2020 18:08. On 8/13/2020 WVDEP Inspector Specialist Travis Dill and WVDEP Environmental Inspector Troy Warner arrived on site at 08:45 to investigate the blasting complaint and collect available forensic evidence. Photographs of the area were taken and are attached with this report. No report of fly rock was made to the inspector by the company and

ENFORCEMENT STANDARD	EVALUATION	VIO#	ENFORCEMENT STANDARD	EVALUATION	VIO#
0100 Distance Prohibited.....			0200 Exceeding Limits.....		
0300 Signs and Markers.....			0400 Sediment Control.....		
0500 Design Certification.....			0600 Effluent Limits.....		
0700 Surface Water.....			0800 Ground Water.....		
0900 Blasting Procedures.....	Previously Cited		1000 Haul Roads.....		
1100 Refuse Impoundments.....			1200 Topsoil Handling.....		
1300 Backfill / Grading.....			1400 Reclamation Schedule.....		
1500 Revegetation Requirements.....			1600 Disposal of Excess Spoil.....		
1700 Highwall Elimination.....			1800 Downslope Spoil Disposal.....		
1900 Postmining Land Use.....			2000 Ceased Mining Temporarily.....		
2100 Acid bearing /Toxic Material.....			2200 Method of Operations.....		
2300 Change of Operator.....			2400 Permit Conditions.....		
2500 Diversions and Drainage Control..			2600 Fugitive Dust Control.....		
2700 Subsidence Plan.....			2800 Insurance Current.....		
2900 Bonding Current.....			3000 Other Conditions.....		

WATER QUALITY TESTS

In-Stream Station	pH	Fe	Mn	Al	NF	Flow	Units	Temp	Units	Sp Cond	Units
-------------------	----	----	----	----	----	------	-------	------	-------	---------	-------

AUTH. COMPANY REPRESENTATIVE Steve Pachol *Steve Pachol* 8-17-2020
DELIVERY METHOD / DATE TIME _____
CERTIFIED MAIL NUMBER _____
ADDRESS 46226 NATIONAL ROAD, SAINT CLAIRSVILLE, OH 43950
WV DEP REP. Troy Warner

PERMIT NUMBER	INSPECTION				MINE STATUS	PHOTOS	BLASTING	
	DATE	TIME	REASON	TYPE			Last 30 Days?	Ins. Req'd?
U010483	08/10/2020	18.10	RI	P	AM	Yes	Yes	Yes

COMMENT (cont.)

the first complaint, which served as notification of the event, wasn't made until the following evening. The company worked to remove the road blockage immediately following the shot, and shortly thereafter began transporting the borrow material from the original blast site across the road to the shaft construction area. Upon arrival by DEP inspectors, the resulting muck pile and shot material had already been excavated. Therefore, little forensic evidence was left to examine. However as noted by Inspector Specialist Travis Dill there were no impact marks on the berm of the pond, or strike marks on the power poles or trees in the surrounding area. This corroborates the report from the company of the blasted material simply falling downhill into the road.

The investigation findings are that; as a result of the company adhering to the blasting plan, clearing the area, blocking road access before the shot, notification of emergency services, and establishment of alternate access around the site, and review of all available evidence; there doesn't appear to have been an imminent harm to public safety. Per 22-3-35(a) and 199-1.3.6.d. NOV #100 is being issued as a result of blasted material being cast beyond the bounds of the permit area and onto a public road.

Review of the blast log found the following errors. 1) There were three holes per delay. This needs to be corrected on the blast log (717, 717, and 718ms). However, the maximum weight of explosives allowed was not exceeded. 2) The permit number was omitted from the logs. 3) The nearest protected structure does not list the structure number from the blasting map. 4) The shot number is incorrect. 5) There is no North arrow on the delay pattern sketches. 6) The comments say there was no fly rock or material off the permit. Shot material did swell into the road. 7) There is no indication of which holes used IRemix, or how large the charge column was in those holes. These items need to be corrected.

For any future blasts notify the inspector and citizens in the area at least 24 hours prior to blasting. Any future shots on this permit should be video recorded and made available for inspection as part of the blast record for three months.

ERIS

MR-15 NOTICE OF VIOLATION

PERMIT NUMBER	ORIGINAL INSPECTION		ENF STD DATA			VIOLATION ACTIVITY			INSP ID NUMBER
	DATE	TIME	FORM#	FAC#	ENF STD	DATE	TIME	VIOLATION#	
U010483	08/10/2020	18:08	6 (rev 4/20)		0900	08/10/2020	18:08	100	1075

PERMITTEE NAME THE HARRISON COUNTY COAL COMPANY

OPERATOR NAME _____

MSHA ID# 4601318

NPDES #

WV0093505

OWNER/CONTROLLER _____

If different from above

CONTRACT BLASTING FIRM _____

BLASTER NAME FOX, DENNIS DAVID (1 533 11)
(CERT #)

Whereas an inspection of the above operation by the undersigned Authorized Representative of the Director was completed on the 10th day of August, 2020. The inspection revealed a violation of the provisions of Chapter 22, Article 3 of the Code of West Virginia. You are hereby notified that you are in violation of the provisions listed below.

WV CODE 22, Art. 3, Sect.
35(a)

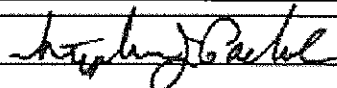
Reg 38-2-
199-1.6.d.

[DOV] Description of Violation:

Permittee caused blasted material to be cast beyond the bounds of the permitted area onto a public road.

[REM] Remedial Measures:

Correct the errors found on the blast log and resubmit to the inspector. Refer to the MR-6 dated 8/10/2020 18:10 for the corrections. The permittee is to provide the inspector with a causation report and prevention plan. The prevention plan will be a modification to the approved blasting plan. Include the steps that will be taken to prevent this type of incident from happening again. Those steps will then be submitted as a permit modification to the blast plan in section T of the permit via the electronic submission system. The causation report shall include the following at a minimum: 1. Name of the person(s) who ordered/designed the drill bench be made and when. 2. Name of the person(s) who physically created the drill bench (equipment operators name) and when. 3. Name of the person(s) who instructed the drillers on

MUST BE CORRECTED BY DATE 08/28/2020 16:30 NOV Issued CO Modified to NOV Resulted in Off-Site ImpactAUTH. COMPANY REPRESENTATIVE Steve Pachol

8-17-2020

DELIVERY METHOD / DATE TIME _____

CERTIFIED MAIL NUMBER _____

ADDRESS 46226 NATIONAL ROAD, SAINT CLAIRSVILLE, OH 43950WV DEP REP. Troy WarnerAustin Caperton08/14/2020

[Secretary, Department of Environmental Protection]

[WV DEP Rep/Date]

Contact Troy Warner at (304) 457-3219 upon completion. Failure to complete the above measures within the above time period may result in a Cessation Order or revocation of the permit and forfeiture of the performance bond.

ERIS

MR-15 NOTICE OF VIOLATION

PERMIT NUMBER	ORIGINAL INSPECTION		ENF STD DATA			VIOLATION ACTIVITY			INSP ID NUMBER
	DATE	TIME	FORM#	FAC#	ENF STD	DATE	TIME	VIOLATION#	
U010483	08/10/2020	18:08	6 (rev 4/20)		0900	08/10/2020	18:08	100	1075

REM (cont.)

on how to drill the pattern for the shot.

4. Name of the person(s) who laid out the drill pattern for the driller to follow.

5. Name of the person(s) who drilled or assisted with drilling the shot's pattern.

6. Name of the person(s) who designed the charges to be used, and the timing of the shot.

7. Name of the person(s) who assisting with the loading and wiring of the shot.

8. Name of the person(s) who secured the blast area from unauthorized entry, and where they were stationed.

9. Name of the person(s) who was in charge of ensuring all roadblocks were in the proper place at the proper time

10. Name of the person(s) who sounded warning of pending shot and from what location

11. Name of the person(s) who fired the shot.

12. Name of person(s) who cleared the shot.

13. Name of certified blaster responsible for shot.

14. Permittee is to describe how the certified blaster was involved in items 1 thru 12 above.

15. Permittee is to describe how any contract blasting personnel were involved in items 1 thru 12 above.

16. Permittee is to describe how any of the permittee's employees were involved in items 1 thru 12 above.

17. Permittee is to describe (to the best of their knowledge) what caused the fly rock.

18. Permittee is to have each and every driller and certified blaster involved with the shot, to review the causation section. The names of each and every driller and certified blaster involved in the shot must be printed below the section along with space for signature and date. Each and every driller and certified blaster involved in the shot must acknowledge their agreement with the causation section by signing below the section in the space provided.

19. If concurrence cannot be reached by all those involved, those persons not agreeing may draft their own report, or a statement of how they disagree with the permittee's report and include it with the permittee's report. Each and every driller and certified blaster who submits their own report/statement must sign and date it. The name or the person(s) submitting it is to be clearly printed as well.

PERMIT NUMBER	INSPECTION				MINE STATUS	PHOTOS	BLASTING	
	DATE	TIME	REASON	TYPE			Last 30 Days?	Ins. Req'd?
U007883	08/07/2020	15:00	IN	P	AM	No	No	No

PERMITTEE NAME THE MARION COUNTY COAL COMPANY **MSHA #** 4601433
OPERATOR NAME _____ **MR-19 DATE** _____
NPDES # WV0040711 **NPDES EXPR DATE** 09/15/2020 **PERMIT EXPR DATE** 04/18/2023
PERMIT ACRES 1,473.93 **TOTAL DISTBD** 896.00 **RECLMD** 84.24 **ANCIL-LARY** 0 **UNRECLMD** 811.76
DATES: PH I _____ **PH II** _____ **LAST AUG SEED** _____ **MR-8** _____
LAST INSP DATE 07/16/2020 **TYPE** P **BOND INC** 2 **INC BONDED ACRES** 1,473.93 **CUR IBR#** 97 **CUR REV#** 41
EXPR DATES: INACT _____ **EMER RESP PLAN** 07/15/2021 **INS** 06/01/2021 **BLAST AD** _____
TIME USED (HRS)=> PERMIT REVIEW 0.25 **INSPECT** 0.50 **TRAVEL** 2.00 **REPORT** 0.50

INSPECTION COMMENTS

Marion County Mine: This inspection is a follow-up to NOV 69. Steve Pachol has provided me with a copy of the approved Purchase Order (PO) to remediate this violation. On this date, the contractor was on-site to construct a roadway to begin repairs. Pachol has verbally given the plan and timeline for the repairs. The plan is to install a pipe the length of the slope and install a stilling basin at the

ENFORCEMENT STANDARD	EVALUATION	VIO#	ENFORCEMENT STANDARD	EVALUATION	VIO#
0100 Distance Prohibited.....			0200 Exceeding Limits.....		
0300 Signs and Markers.....			0400 Sediment Control.....		
0500 Design Certification.....			0600 Effluent Limits.....		
0700 Surface Water.....			0800 Ground Water.....		
0900 Blasting Procedures.....			1000 Haul Roads.....		
1100 Refuse Impoundments.....			1200 Topsoil Handling.....		
1300 Backfill / Grading.....	Comments		1400 Reclamation Schedule.....		
1500 Revegetation Requirements.....			1600 Disposal of Excess Spoil.....		
1700 Highwall Elimination.....			1800 Downslope Spoil Disposal.....		
1900 Postmining Land Use.....			2000 Ceased Mining Temporarily.....		
2100 Acid bearing /Toxic Material.....			2200 Method of Operations.....		
2300 Change of Operator.....			2400 Permit Conditions.....		
2500 Diversions and Drainage Control..			2600 Fugitive Dust Control.....		
2700 Subsidence Plan.....			2800 Insurance Current.....		
2900 Bonding Current.....			3000 Other Conditions.....		

WATER QUALITY TESTS

In-Stream Station	pH	Fe	Mn	Al	NF	Flow	Units	Temp	Units	Sp Cond	Units

AUTH. COMPANY REPRESENTATIVE Steve Pachol *Steve Pachol* 8-14-2020
DELIVERY METHOD / DATE TIME Mail 8/13/2020 12:00:00
CERTIFIED MAIL NUMBER _____
ADDRESS 46226 NATIONAL ROAD, SAINT CLAIRSVILLE, OH 43950
WV DEP REP. Leah M Runion **Leah Runion**
Digitally signed by Leah Runion email=leah.m.runion@wv.gov
 DN: cn=US O= WV Dept. of Environmental Protection, ou= Mining and Reclamation

ERIS

MR-6 MINE INSPECTION REPORT

PERMIT NUMBER	INSPECTION				MINE STATUS	PHOTOS	BLASTING	
	DATE	TIME	REASON	TYPE			Last 30 Days?	Ins. Req'd?
U007883	08/07/2020	15:00	IN	P	AM	No	No	No

COMMENT (cont.)

bottom. Once the pipe is installed, the area will be backfilled/graded and seeded. NOV 69 is being extended with an abatement date of 8/28/2020.

ERIS

MR-16 VIOLATION FOLLOW-UP INSPECTION REPORT

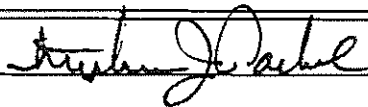
PERMIT NUMBER	ORIGINAL INSPECTION AND VIOLATION DATA						NEW VIOLATION ACTIVITY	
	DATE	TIME	FORM #	FAC #	ENF STD	ORIGINAL VIOL#	DATE	TIME
U007883	07/16/2020	09:00	6 (rev 4/20)		1300	69	08/07/2020	15:00

PERMITTEE NAME THE MARION COUNTY COAL COMPANY

Violation is hereby: Terminated Withdrawn Remains in force as written Show Cause subrnitted
 Extended to 08/28/2020 at 16:00 NOV modified to CO # CO modified to NOV #

Action taken to abate:
Permittee has obtained an approved Purchase Order (PO) to repair the erosion. Steve Pachol has verbally given the plan and timeline for repairs. On this date, the contractor was on-site to construct a roadway to begin repairs.

INSPECTOR'S CIVIL PENALTY ASSESSMENT RECOMMENDATION (check)
 Seriousness: 1 2 3 4 5 6 7 8 9 10 Negligence: 0 1 2 3 4 5 6 7 8
 Good Faith: 0 1 2 3 4 5 6 7 8 Consent Agreement in effect? Yes No
 Comments:

AUTH. COMPANY REPRESENTATIVE Steve Pachol  8-14-2020
 DELIVERY METHOD / DATE TIME Mail 8/13/2020 12:00:00
 CERTIFIED MAIL NUMBER _____
 ADDRESS 46226 NATIONAL ROAD, SAINT CLAIRSVILLE, OH 43950
 WV DEP REP. Leah M Runion

<u>Austin Caperton</u> [Secretary, Department of Environmental Protection]	<u>Leah Runion</u> [WV DEP Representative]	<small>Digitally signed by Leah Runion DN: cn=Leah Runion, email=leah.m.runion@wv.gov, c=US, o=West Virginia Department of Environmental Protection, ou=Mining and Reclamation, serial=2020.04.12.10.00.23-61002</small> Date
---	---	--

Names of individuals at informal Conference:

Results: CO was: Upheld Modified Terminated Withdrawn

Comments:

SUPERVISOR: _____ DATE: _____ TIME: _____
 COMPANY REPRESENTATIVE: _____ DATE: _____



*Star
7/15/2020*

July 15, 2020


Ryan Thomas
Environmental Inspector
WV Department of Environmental Protection
1159 Nick Rahall Greenway
Fayetteville, WV 25840

RE: S-3041-91 NOV 62 – Failure to maintain IFUAR

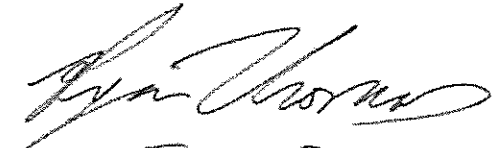
Mr. Thomas,

On behalf of Seminole West Virginia Mining Complex, LLC, Murray Maple Eagle Coal, LLC, and Panther Creek Mining, LLC, I wish to request an extension beyond the current abatement date for abating NOV#62 of the above referenced permit number. Panther Creek Mining, LLC, is in the process of acquiring the above referenced permit. We request an extension of 90 days, in order to give adequate time to review what work has been completed by Murry Maple Eagle, LLC and evaluate Panther Creek's method of abatement going forward with weather conditions permitting. Additionally, this extension will give time for the permits to be transferred from Seminole WV Mining Complex, LLC to Murray Maple Eagle Coal, LLC and then transferred again to Panther Creek Mining, LLC.

Regards,


Kelly L. Duty
Environmental Engineer
Panther Creek Mining, LLC.
Office: 304-380-0415
Cell: 304-881-2236

*I recommend approval
up to 10-14-20.*


7-15-20

ERIS

MR-16 VIOLATION FOLLOW-UP INSPECTION REPORT

PERMIT NUMBER	ORIGINAL INSPECTION AND VIOLATION DATA						NEW VIOLATION ACTIVITY	
	DATE	TIME	FORM #	FAC #	ENF STD	ORIGINAL VIOL#	DATE	TIME
S300795	03/23/2020	12:00	6		0200	45	06/17/2020	15:55


PERMITTEE NAME SEMINOLE WEST VIRGINIA MINING COMPLEX, LLC

Violation is hereby: Terminated Withdrawn Remains in force as written Show Cause submitted
 Extended to 09/21/2020 at 15:19 NOV modified to CO # CO modified to NOV #

Action taken to abate:
Blackhawk Mining has just recently acquired these permits. They are currently assessing the situation to get familiar with the area and to develop a plan. This area needs to be repaired as soon as possible to prevent further damage.

INSPECTOR'S CIVIL PENALTY ASSESSMENT RECOMMENDATION (check)
 Seriousness: 1 2 3 4 5 6 7 8 9 10 Negligence: 0 1 2 3 4 5 6 7 8
 Good Faith: 0 1 2 3 4 5 6 7 8 Consent Agreement in effect? Yes No
 Comments:

AUTH. COMPANY REPRESENTATIVE Kelly Duty
 DELIVERY METHOD / DATE TIME Mail 6/17/2020 15:56:00
 CERTIFIED MAIL NUMBER _____
 ADDRESS 1345 ELK RIDGE ROAD, ELK RIDGE, WV 25161
 WV DEP REP. Ryan L. Thomas

Austin Caperton [Secretary, Department of Environmental Protection]  [WV DEP Representative] 6-17-20 Date

Names of individuals at informal Conference:

Results: CO was: Upheld Modified Terminated Withdrawn

Comments:

SUPERVISOR: _____ DATE: _____ TIME: _____
 COMPANY REPRESENTATIVE: _____ DATE: _____



*Alan
D. Jones
4/17/2020*

June 10, 2020

Ryan Thomas
Environmental Inspector
WV Department of Environmental Protection
1159 Nick Rahall Greenway
Fayetteville, WV 25840

RE: S-3007-95 NOV 45 – Slide occurred at outlet off-site

Mr. Thomas,

On behalf of Seminole West Virginia Mining Complex, LLC, Murray Maple Eagle Coal, LLC, and Panther Creek Mining, LLC, I wish to request an extension beyond the current abatement date for abating NOV#45 of the above referenced permit number. Panther Creek Mining, LLC, is in the process of acquiring the above referenced permit. We request an extension of 60 days, in order to give adequate time to review what work has been completed by Murry Maple Eagle, LLC and evaluate Panther Creek's method of abatement going forward with weather conditions permitting. Additionally, this extension will give time for the permits to be transferred from Seminole WV Mining Complex, LLC to Murray Maple Eagle Coal, LLC and then transferred again to Panther Creek Mining, LLC.

Regards,

A handwritten signature in black ink that reads "Kelly L. Duty".

Kelly L. Duty
Environmental Engineer
Panther Creek Mining, LLC.
Office: 304-380-0415
Cell: 304-881-2236

*I recommend approval
up to 9-21-20.*

A handwritten signature in black ink that reads "Ryan Thomas".

6-17-20

NOTICE OF APPEAL

By filing this Notice of Appeal with the Environmental Hearing Board, you are choosing to initiate a legal proceeding that asks the Board to review an action of the Department of Environmental Protection. Please read the instructions appended to this form in their entirety and follow closely the rules governing filing a Notice of Appeal, located at 25 Pa. Code § 1021.51. Failure to follow Board rules and orders may result in the dismissal of your appeal.

Pages 1 through 3 of the following form and any required attachments must be received by the Environmental Hearing Board within 30 days after your receipt of notice of the action of the Department that you are appealing. You may mail, fax, or hand-deliver your Notice of Appeal to:

**ENVIRONMENTAL HEARING BOARD
Rachel Carson State Office Building – 2nd Floor
400 Market Street, P.O. Box 8457
Harrisburg, PA 17105-8457
Fax: (717) 783-4738**

You may wish to send your appeal to the Environmental Hearing Board by certified mail, return receipt, so that you know your appeal was received within the required time.

Attorneys may electronically file a Notice of Appeal at <http://ehb.courtapps.com/>

(rev'd June 2018)



**NOTICE OF APPEAL FORM
APPEAL INFORMATION**

1. Name, address, telephone number, and email address (if available) of Appellant:

**Eighty Four Mining Company
46226 National Road
Saint Clairsville, OH 43950
740-338-3100**

2. Describe the subject of your appeal:

(a) What action of the Department do you seek review?

(NOTE: If you received written notification of the action, you must attach a copy of the action to this form.)

The Compliance Order contained in Coal Refuse Disposal Inspection Report dated February 5, 2020, attached as Exhibit A. This Compliance Order was later docketed at No. 201007.

(b) Which Department official took the action?

Matthew Somogyi, Monitoring & Compliance Inspector, Bureau of District Mining Operations.

(c) What is the location of the operation or activity which is the subject of the Department's action (municipality, county)?

Somerset Township, Washington County.

(d) How, and on what date, did you receive notice of the Department's action?

February 6, 2020 by electronic mail.

3. Describe your objections to the Department's action in separate, numbered paragraphs.

(NOTE: The objections may be factual or legal and must be specific. If you fail to state an objection here, you may be barred from raising it later in your appeal. Attach additional sheets, if necessary.)

See Exhibit B.

4. Specify any related appeal(s) now pending before the Board. If you are aware of any such appeal(s) provide that information.



This Notice of Appeal concerns a Compliance Order based on an alleged failure to comply with Special Conditions 43, including but not limited to Special Conditions 43(c), 43(e), and 45 of CRDA Permit 63743702, and mandating compliance with Special Conditions 43(c) and (e)-(g) at a minimum of the same Permit. Eighty Four appealed the issuance of Permit 63743702 on August 9, 2019, which remains pending at EHB Docket No. 2019-099-L. Simultaneously with this Notice of Appeal, Eighty Four is filing an appeal regarding the January 21, 2020 Compliance Order that relates to both the Compliance Order that is the subject of this Appeal, and the subject of the appeal pending at EHB Docket No. 2019-099-L.



**NOTICE OF APPEAL FORM
PROOF OF SERVICE**

In addition to filing this form with the Environmental Hearing Board, the Appellant *must* certify, by indicating below, how the Notice of Appeal was served on the Department under numbers (2) and (3) below, and where applicable, upon other interested parties indicated by numbers (4) and (5). Failure to do so may result in dismissal of your appeal. Please check the box indicating the method by which you served the following:

- (1) Environmental Hearing Board
2nd Floor Rachel Carson State Office Bldg.
400 Market St., P.O. Box 8457
Harrisburg, PA 17105-8457
- via* first class mail, postage paid
 overnight delivery
 personal delivery
 electronic filing
- (2) Department of Environmental Protection
Office of Chief Counsel
Attn: Administrative Officer
16th Floor Rachel Carson State Office Bldg
400 Market Street, P.O. Box 8464
Harrisburg, PA 17105-8464
- via* first class mail, postage paid
 overnight delivery
 personal delivery
 electronic filing
- (3) The officer of the Department
who took the action being appealed
- via* first class mail, postage paid
 overnight delivery
 personal delivery
 electronic filing

Note to Attorneys who **electronically** file a Notice of Appeal: A copy is automatically served on the Department's Office of Chief Counsel. There is no need for you to independently serve the Department.

Additionally, if your appeal is from the Department of Environmental Protection's issuance of a permit, license, approval, or certification to another person, you *must* serve the following, as applicable:

- (4) The entity to whom the permit, license
approval, or certification was issued.
- via* first class mail, postage paid
 overnight delivery
 personal delivery

(5) Where applicable, any of the following:

- Any affected municipality, its municipal authority, and the proponent of the decision, where applicable, in appeals involving a decision under Sections 5 or 7 of the Sewage Facilities Act, 35 P.S. §§ 750.5, 750.7;
- The mining company in appeals involving a claim of subsidence damage or water loss under the Bituminous Mine Subsidence and Land Conservation Act, 52 P.S. § 1406.1 et seq.;
- The well operator in appeals involving a claim of pollution or diminution of a water supply under Section 3218 of the Oil and Gas Act, 58 Pa.C.S. § 3218;
- The owner or operator of a storage tank in appeals involving a claim of an affected water supply under Section 1303 of the Storage Tank and Spill Prevention Act, 35 P.S. § 6021.1303.



**NOTICE OF APPEAL FORM
SIGNATURE PAGE**

By filing this Notice of Appeal with the Environmental Hearing Board, I hereby certify that the information submitted is true and correct to the best of my information and belief. Additionally, I certify that a copy of this Notice of Appeal was served upon each of the individuals indicated on Page 2 of this form on the following date: February 24, 2020.

/s/ Kevin K. Douglass
Signature of Appellant or Appellant's Counsel

Date: February 24, 2020

If you have authorized counsel to represent you, please supply the following information (*Corporations must be represented by counsel*):

Kevin K. Douglass
Sean M. McGovern
Alexandra G. Farone
Attorney Name (Type or Print)

Babst, Calland, Clements and Zomnir, P.C.

Two Gateway Center, 6th Floor

Pittsburg, PA 15222
Address

Telephone No.: 412-394-5400

Email: kdouglass@babstcalland.com
smcgovern@babstcalland.com
afarone@babstcalland.com

TDD users please contact the Pennsylvania Relay Service at 1-800-654-5984. If you require an accommodation or this information in an alternative form, please contact the Secretary to the Board at 717-787-3483.

Please see the attached Filing Instructions for additional information and requirements regarding the filing of this form.

FILING INSTRUCTIONS

Please read and follow these instructions in their entirety. If you fail to follow the requirements outlined below (including submitting a copy of the action you are appealing and serving process to other parties), the Board may dismiss your appeal.

By filing this Notice of Appeal with the Environmental Hearing Board, you are choosing to initiate *legal proceedings*, which ask the Board to review an action of the Department of Environmental Protection. The proceedings will require you to file documents, participate in discovery, and may ultimately require you to participate in a hearing before the Board. In addition to the Board, the proceedings will also involve interaction with, including you being required to send copies of your filings to, the Department of Environmental Protection and possibly other parties, such as those who have received a permit from the Department.

How to File a Notice of Appeal

Your Notice of Appeal, along with any required documents and information, shall be filed either by facsimile or by mail, hand or other delivery service at the following address:

Secretary to the Board
Environmental Hearing Board
Rachel Carson State Office Building – 2nd Floor
400 Market Street – P.O. Box 8457
Harrisburg, PA 17105-8457
Fax: (717) 783-4738

Attorneys also have the option to file a Notice of Appeal electronically at <http://ehb.courtapps.com/> A Notice of Appeal filed by *mail, hand, or other delivery service* that is received after the close of the business day at 4:30 PM Eastern Time shall be deemed to be filed on the following business day. A Notice of Appeal filed by *facsimile* shall be deemed filed on the day it is received by the Board. A notice of appeal filed by facsimile should be followed up with a hard copy. A Notice of Appeal filed *electronically* before midnight EST will be considered to be filed on that date.

Filling out the Notice of Appeal Form—Appeal Information

1. When filing a new appeal, provide your name (and that of the business which you represent, if applicable), address, telephone number, and an email address.
2. (a) You must specify on the Notice of Appeal form the action of the Department that you seek to have the Board review, for example, the permit, determination, or other act.
(b) If you have received written notification of an action of the Department, you must attach a copy of the action to the Notice of Appeal (for example, the letter, order, or permit that you are appealing).
(c) You should also identify the Department official that took the action and the location (the municipality and county) of the operation or activity that is the subject of the action.
(d) Additionally, you must describe when and how you were notified of the Department's action.

3. When describing your objections to the Department's action, you must do so in separate, numbered paragraphs for each objection. The objections must be specific, and may be factual or legal.

Rather than use the space on the Notice of Appeal form, you may type your objections on separate paper if you require more space. Note that if you fail to state an objection to the action in your Notice of Appeal, you may be barred from raising that objection later.

4. Finally, you must specify on the Notice of Appeal form any related appeal already pending before the Board of which you are aware.

Filing out the Notice of Appeal Form—Proof of Service

You must provide proof of service of the Notice of Appeal to the agency taking the action (typically the Department of Environmental Protection), as well as certain other individuals that may be affected by the appeal.

This means that, in addition to filing the Notice of Appeal with the Board, a copy of the Notice of Appeal must be delivered to each the following:

- (1) The Department of Environmental Protection Office of Chief Counsel at:

Department of Environmental Protection
Office of Chief Counsel
Attention: Administrative Officer
16th Floor, Rachel Carson State Office Building
400 Market Street, P.O. Box 8464
Harrisburg, PA 17105-8464

- (2) The officer of the Department of Environmental Protection (or other agency) that took the action being challenged. If you do not know the correct address for the agency office involved in the appeal, you should contact that agency directly, or you may contact the Secretary to the Environmental Hearing Board to obtain the appropriate address.
- (3) If you are appealing an action by the Department that involves someone else (for example, if you want to appeal a permit issued to another person or business), you must also send that person or business a copy of your Notice of Appeal. This is required by the Environmental Hearing Board's rules at 25 Pa. Code § 1021.51(g)-(h). Please see the Proof of Service page of the Notice of Appeal form for more details.

Note: For Attorneys who file an appeal electronically, only the party listed in (3) above must be served (if applicable). Electronically filed Notices of Appeal are automatically served on the Department's Office of Chief Counsel. There is no need to independently serve the Department.

Additional Information on Appeals Involving a Penalty Assessment

In the case of a penalty assessment, many environmental statutes require the amount of the penalty or a bond in that amount to be submitted within the 30-day period required for the filing of the appeal.



Where the statute requires that prepayment be made to the Board, the appellant shall submit to the Board with the Notice of Appeal a check in the amount of the penalty, or an appropriate bond securing payment of the penalty as required by statute. A check shall be made payable to the *Commonwealth of Pennsylvania*; a bond shall be in favor of the Board, and these shall be sent to the following address:

Environmental Hearing Board
Rachel Carson State Office Building – 2nd Floor
400 Market Street – P.O. Box 8457
Harrisburg, PA 17105-8457

Where the statute requires that prepayment be made to the Department of Environmental Protection, the appellant shall submit the prepayment to the Department at the following address in accordance with the Department’s instructions:

Department of Environmental Protection
Office of Chief Counsel
Attention: Administrative Officer
16th Floor, Rachel Carson State Office Building
400 Market Street, P.O. Box 8464
Harrisburg, PA 17105-8464

If the appellant claims an inability to prepay, that claim must be submitted within the 30-day period by a verified statement either with the Notice of Appeal or in a supplementary document.

Pro Bono Information

Individuals filing an appeal on their own behalf before the Environmental Hearing Board do not need a lawyer. However, important legal rights may be at stake, and proceedings before the Environmental Hearing Board are legal and technical in nature. Therefore, it is strongly recommended that you seek legal counsel. If you cannot afford a lawyer, you may qualify for free legal representation. If your household income is less than 200% of the federal poverty level, then, within fifteen calendar days of filing the Notice of Appeal, you may submit a written request for pro bono representation to the Pro Bono Committee of the Pennsylvania Bar Association’s Environmental & Energy Law Section at the following address:

Thomas M. Duncan, Esq.
PBA Environmental & Energy Law Section
Chair, Pro Bono Committee
c/o Manko, Gold, Katcher & Fox, LLP
401 City Avenue, Suite 901
Bala Cynwyd, PA 19004
Phone: 484-430-2358
Fax: 484-430-5711
tduncan@mankogold.com

Please also mail a copy of your request to the Environmental Hearing Board. Even if you are deemed financially eligible, a pro bono referral is not guaranteed and is instead based on the current availability of volunteers. In addition, you may contact your local or county bar association for more information.

Effective October 6, 2016, small corporations owned by no more than three (3) individuals are also eligible for a pro bono referral if each of the owners’ household income is less than 300% of the federal poverty level.

NOTICE OF APPEAL

By filing this Notice of Appeal with the Environmental Hearing Board, you are choosing to initiate a legal proceeding that asks the Board to review an action of the Department of Environmental Protection. Please read the instructions appended to this form in their entirety and follow closely the rules governing filing a Notice of Appeal, located at 25 Pa. Code § 1021.51. Failure to follow Board rules and orders may result in the dismissal of your appeal.

Pages 1 through 3 of the following form and any required attachments must be received by the Environmental Hearing Board within 30 days after your receipt of notice of the action of the Department that you are appealing. You may mail, fax, or hand-deliver your Notice of Appeal to:

**ENVIRONMENTAL HEARING BOARD
Rachel Carson State Office Building – 2nd Floor
400 Market Street, P.O. Box 8457
Harrisburg, PA 17105-8457
Fax: (717) 783-4738**

You may wish to send your appeal to the Environmental Hearing Board by certified mail, return receipt, so that you know your appeal was received within the required time.

Attorneys may electronically file a Notice of Appeal at <http://ehb.courtapps.com/>

(rev'd June 2018)

NOTICE OF APPEAL FORM
APPEAL INFORMATION

1. Name, address, telephone number, and email address (if available) of Appellant:

Eighty Four Mining Company
46226 National Road
Saint Clairsville, OH 43950
740-338-3100

2. Describe the subject of your appeal:

(a) What action of the Department do you seek review?

(NOTE: If you received written notification of the action, you must attach a copy of the action to this form.)

Compliance Order No. 191043A contained in the Coal Refuse Disposal Inspection Report dated February 5, 2020, attached as Exhibit A.

(b) Which Department official took the action?

Matthew Somogyi, Monitoring & Compliance Inspector, Bureau of District Mining Operations.

(c) What is the location of the operation or activity which is the subject of the Department's action (municipality, county)?

Somerset Township, Washington County.

(d) How, and on what date, did you receive notice of the Department's action?

February 6, 2020, by electronic mail.

3. Describe your objections to the Department's action in separate, numbered paragraphs.

(NOTE: The objections may be factual or legal and must be specific. If you fail to state an objection here, you may be barred from raising it later in your appeal. Attach additional sheets, if necessary.)

See Exhibit B.

4. Specify any related appeal(s) now pending before the Board. If you are aware of any such appeal(s) provide that information.

N/A

**NOTICE OF APPEAL FORM
PROOF OF SERVICE**

In addition to filing this form with the Environmental Hearing Board, the Appellant *must* certify, by indicating below, how the Notice of Appeal was served on the Department under numbers (2) and (3) below, and where applicable, upon other interested parties indicated by numbers (4) and (5). Failure to do so may result in dismissal of your appeal. Please check the box indicating the method by which you served the following:

- | | | |
|--|------------|---|
| (1) Environmental Hearing Board
2 nd Floor Rachel Carson State Office Bldg.
400 Market St., P.O. Box 8457
Harrisburg, PA 17105-8457 | <i>via</i> | <input type="checkbox"/> first class mail, postage paid
<input type="checkbox"/> overnight delivery
<input type="checkbox"/> personal delivery
<input checked="" type="checkbox"/> electronic filing |
| (2) Department of Environmental Protection
Office of Chief Counsel
Attn: Administrative Officer
16 th Floor Rachel Carson State Office Bldg
400 Market Street, P.O. Box 8464
Harrisburg, PA 17105-8464 | <i>via</i> | <input type="checkbox"/> first class mail, postage paid
<input type="checkbox"/> overnight delivery
<input type="checkbox"/> personal delivery
<input checked="" type="checkbox"/> electronic filing |
| (3) The officer of the Department
who took the action being appealed | <i>via</i> | <input type="checkbox"/> first class mail, postage paid
<input type="checkbox"/> overnight delivery
<input type="checkbox"/> personal delivery
<input checked="" type="checkbox"/> electronic filing |

Note to Attorneys who **electronically** file a Notice of Appeal: A copy is automatically served on the Department's Office of Chief Counsel. There is no need for you to independently serve the Department.

Additionally, if your appeal is from the Department of Environmental Protection's issuance of a permit, license, approval, or certification to another person, you *must* serve the following, as applicable:

- | | | |
|---|------------|--|
| (4) The entity to whom the permit, license approval, or certification was issued. | <i>via</i> | <input type="checkbox"/> first class mail, postage paid
<input type="checkbox"/> overnight delivery
<input type="checkbox"/> personal delivery |
|---|------------|--|

(5) Where applicable, any of the following:

- Any affected municipality, its municipal authority, and the proponent of the decision, where applicable, in appeals involving a decision under Sections 5 or 7 of the Sewage Facilities Act, 35 P.S. §§ 750.5, 750.7;
- The mining company in appeals involving a claim of subsidence damage or water loss under the Bituminous Mine Subsidence and Land Conservation Act, 52 P.S. § 1406.1 et seq.;
- The well operator in appeals involving a claim of pollution or diminution of a water supply under Section 3218 of the Oil and Gas Act, 58 Pa.C.S. § 3218;
- The owner or operator of a storage tank in appeals involving a claim of an affected water supply under Section 1303 of the Storage Tank and Spill Prevention Act, 35 P.S. § 6021.1303.

NOTICE OF APPEAL FORM
SIGNATURE PAGE

By filing this Notice of Appeal with the Environmental Hearing Board, I hereby certify that the information submitted is true and correct to the best of my information and belief. Additionally, I certify that a copy of this Notice of Appeal was served upon each of the individuals indicated on Page 2 of this form on the following date: March 9, 2020.

/s/ Kevin K. Douglass
Signature of Appellant or Appellant's Counsel

Date: March 9, 2020

If you have authorized counsel to represent you, please supply the following information (*Corporations must be represented by counsel*):

Kevin K. Douglass
Sean M. McGovern
Alexandra G. Farone
Attorney Name (Type or Print)

Babst, Calland, Clements and Zomnir, P.C.

Two Gateway Center, 6th Floor

Pittsburgh, PA 15222
Address

Telephone No.: 412-394-5400

Email: kdouglass@babstcalland.com
smcgovern@babstcalland.com
afarone@babstcalland.com

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Office of Chief Counsel
Attention: Administrative Officer
16th Floor, Rachel Carson State Office Building
400 Market Street, P.O. Box 8464
Harrisburg, PA 17105-8464

- (2) The officer of the Department of Environmental Protection (or other agency) that took the action being challenged. If you do not know the correct address for the agency office involved in the appeal, you should contact that agency directly, or you may contact the Secretary to the Environmental Hearing Board to obtain the appropriate address.
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Harrisburg, PA 17105-8457

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Office of Chief Counsel
Attention: Administrative Officer
16th Floor, Rachel Carson State Office Building
400 Market Street, P.O. Box 8464
Harrisburg, PA 17105-8464

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Pro Bono Information

Individuals filing an appeal on their own behalf before the Environmental Hearing Board do not need a lawyer. However, important legal rights may be at stake, and proceedings before the Environmental Hearing Board are legal and technical in nature. Therefore, it is strongly recommended that you seek legal counsel. If you cannot afford a lawyer, you may qualify for free legal representation. If your household income is less than 200% of the federal poverty level, then, within fifteen calendar days of filing the Notice of Appeal, you may submit a written request for pro bono representation to the Pro Bono Committee of the Pennsylvania Bar Association's Environmental & Energy Law Section at the following address:

Thomas M. Duncan, Esq.
PBA Environmental & Energy Law Section
Chair, Pro Bono Committee
c/o Manko, Gold, Katcher & Fox, LLP
401 City Avenue, Suite 901
Bala Cynwyd, PA 19004
Phone: 484-430-2358
Fax: 484-430-5711
tduncan@mankogold.com

Please also mail a copy of your request to the Environmental Hearing Board. Even if you are deemed financially eligible, a pro bono referral is not guaranteed and is instead based on the current availability of volunteers. In addition, you may contact your local or county bar association for more information.

Effective October 6, 2016, small corporations owned by no more than three (3) individuals are also eligible for a pro bono referral if each of the owners' household income is less than 300% of the federal poverty level.

ERIS

MR-16 VIOLATION FOLLOW-UP INSPECTION REPORT

PERMIT NUMBER	ORIGINAL INSPECTION AND VIOLATION DATA						NEW VIOLATION ACTIVITY	
	DATE	TIME	FORM #	FAC #	ENF STD	ORIGINAL VIOL#	DATE	TIME
S602089	01/14/2020	13:35	6		2400	66	07/15/2020	16:55

PERMITTEE NAME SEMINOLE WEST VIRGINIA MINING COMPLEX, LLC

Violation is hereby: Terminated Withdrawn Remains in force as written Show Cause submitted
 Extended to 10/14/2020 at 13:39 NOV modified to CO # CO modified to NOV #

Action taken to abate:

Extension request received. Panther Creek Mining has just recently acquired this permit. They are currently assessing this violation to develop a plan for work to continue on the remedial measures.

INSPECTOR'S CIVIL PENALTY ASSESSMENT RECOMMENDATION (check)

Seriousness: 1 2 3 4 5 6 7 8 9 10 Negligence: 0 1 2 3 4 5 6 7 8

Good Faith: 0 1 2 3 4 5 6 7 8 Consent Agreement in effect? Yes No

Comments:

AUTH. COMPANY REPRESENTATIVE Kelly Duty


DELIVERY METHOD / DATE TIME Mail 7/15/2020 16:55:00

CERTIFIED MAIL NUMBER

ADDRESS 1345 ELK RIDGE ROAD, ELK RIDGE, WV 25161

WV DEP REP. Ryan L. Thomas

Austin Caperton
 [Secretary, Department of Environmental Protection]

 7-15-20
 [WV DEP Representative] Date

Names of individuals at informal Conference:

Results: CO was: Upheld Modified Terminated Withdrawn

Comments:

SUPERVISOR: _____ DATE: _____ TIME: _____

COMPANY REPRESENTATIVE: _____ DATE: _____



*Steve
Amun
7/15/20*

July 15, 2020

Ryan Thomas
Environmental Inspector
WV Department of Environmental Protection
1159 Nick Rahall Greenway
Fayetteville, WV 25840

RE: S-6020-89 NOV 66 – Refuse Pile Construction

Mr. Thomas,

On behalf of Seminole West Virginia Mining Complex, LLC, Murray Maple Eagle Coal, LLC, and Panther Creek Mining, LLC, I wish to request an extension beyond the current abatement date for abating NOV#66 of the above referenced permit number. Panther Creek Mining, LLC, is in the process of acquiring the above referenced permit. We request an extension of 90 days, in order to give adequate time to review what work has been completed by Murry Maple Eagle, LLC and evaluate Panther Creek's method of abatement going forward with weather conditions permitting. Additionally, this extension will give time for the permits to be transferred from Seminole WV Mining Complex, LLC to Murray Maple Eagle Coal, LLC and then transferred again to Panther Creek Mining, LLC.

Regards,

A handwritten signature in black ink, appearing to read "Kelly L. Duty", is written over the typed name.

Kelly L. Duty
Environmental Engineer
Panther Creek Mining, LLC.
Office: 304-380-0415
Cell: 304-881-2236

*I recommend approval
up to 10-14-20.*

A handwritten signature in black ink, appearing to read "Ryan Thomas", is written below the recommendation text.

7-15-20

James Plumley

From: Nicholas S. Johnson [REDACTED]
Sent: Monday, August 03, 2020 2:31 PM
To: James Plumley
Cc: Sallie E. Gilbert
Subject: FW: Sugar Camp Remedial Measures

CAUTION: This email originated from outside of Foresight Energy. Do not click links or open attachments unless you recognize the sender and know the content is safe.

From: Bonin, Kevin <KBonin@atg.state.il.us>
Sent: Monday, August 03, 2020 2:10 PM
To: Nicholas S. Johnson
Subject: Sugar Camp Remedial Measures

CAUTION: External Email

Good Afternoon Nick,

We are still working on formulating a draft settlement document to propose to you and Sugar Camp. We would appreciate some documentation that would help us better assess the measures that Sugar Camp noted had been taken during our last teleconference call. Could you provide dates and documentation for the items listed below?

1. Date that "Foresight – Standard Specifications for Water Line Construction" guidance document was issued;
2. Date that a check valve was installed at the point of connection of the Viking 12-inch pipeline;
3. Date of disconnection of the Viking Bleeder Shaft 1 pipeline;
4. Documentation associated with the developed routine inspection protocol for process wastewater pipelines;
5. Documentation associated with the engineering study of the pipelines commissioned by Sugar Camp;
6. Documentation associated with the developed internal procedure for notifying IEPA of releases from the process wastewater pipelines; and
7. Documentation associated with the installation of pressure sensors and programming of PLC system.

Any information you can share on these items would be greatly appreciated.

Thank you.

Kevin Bonin



*Steve
Gunn
7/15/20*

July 15, 2020

Ryan Thomas
Environmental Inspector
WV Department of Environmental Protection
1159 Nick Rahall Greenway
Fayetteville, WV 25840

RE: S-3007-95 NOV 41 -- Failure to Certify New Ditch Before Initiating Mining Activities

Mr. Thomas,

On behalf of Seminole West Virginia Mining Complex, LLC, Murray Maple Eagle Coal, LLC, and Panther Creek Mining, LLC, I wish to request an extension beyond the current abatement date for abating NOV#41 of the above referenced permit number. Panther Creek Mining, LLC, is in the process of acquiring the above referenced permit. We request an extension of 90 days, in order to give adequate time to review what work has been completed by Murry Maple Eagle, LLC and evaluate Panther Creek's method of abatement going forward with weather conditions permitting. Additionally, this extension will give time for the permits to be transferred from Seminole WV Mining Complex, LLC to Murray Maple Eagle Coal, LLC and then transferred again to Panther Creek Mining, LLC.

Regards,

A large, stylized handwritten signature in black ink, appearing to read "Kelly Duty".

Kelly L. Duty
Environmental Engineer
Panther Creek Mining, LLC.
Office: 304-380-0415
Cell: 304-881-2236

*I recommend approval
up to 10-14-20.
Ryan Thomas
7-15-20*



Handwritten note: Start June 25/20

June 25, 2020

Ryan Thomas
Environmental Inspector
WV Department of Environmental Protection
1159 Nick Rahall Greenway
Fayetteville, WV 25840

RE: U-0570-00 NOV 21 – Failure to maintain the approved primary/haul road

Mr. Thomas,

On behalf of Seminole West Virginia Mining Complex, LLC, Murray Maple Eagle Coal, LLC, and Panther Creek Mining, LLC, I wish to request an extension beyond the current abatement date for abating NOV#21 of the above referenced permit number. Panther Creek Mining, LLC, is in the process of acquiring the above referenced permit. We request an extension of 90 days, in order to give adequate time to review what work has been completed by Murry Maple Eagle, LLC and evaluate Panther Creek's method of abatement going forward with weather conditions permitting. Additionally, this extension will give time for the permits to be transferred from Seminole WV Mining Complex, LLC to Murray Maple Eagle Coal, LLC and then transferred again to Panther Creek Mining, LLC.

Regards,

A large, stylized handwritten signature in black ink, appearing to read "Kelly Duty".

Kelly L. Duty
Environmental Engineer
Panther Creek Mining, LLC.
Office: 304-380-0415
Cell: 304-881-2236

Handwritten note: I recommend approval up to 9-23-20.
Handwritten signature: Ryan Thomas
Date: 6-29-20



*At Home
Jimmy
4/29/20*

June 25, 2020

Ryan Thomas
Environmental Inspector
WV Department of Environmental Protection
1159 Nick Rahall Greenway
Fayetteville, WV 25840

RE: U-0570-00 NOV 20 – Failure to clean out Pond 1A & Pond 1

Mr. Thomas,

On behalf of Seminole West Virginia Mining Complex, LLC, Murray Maple Eagle Coal, LLC, and Panther Creek Mining, LLC, I wish to request an extension beyond the current abatement date for abating NOV#20 of the above referenced permit number. Panther Creek Mining, LLC, is in the process of acquiring the above referenced permit. We request an extension of 90 days, in order to give adequate time to review what work has been completed by Murry Maple Eagle, LLC and evaluate Panther Creek's method of abatement going forward with weather conditions permitting. Additionally, this extension will give time for the permits to be transferred from Seminole WV Mining Complex, LLC to Murray Maple Eagle Coal, LLC and then transferred again to Panther Creek Mining, LLC.

Regards,

A handwritten signature in black ink, appearing to read "Kelly L. Duty".

Kelly L. Duty
Environmental Engineer
Panther Creek Mining, LLC.
Office: 304-380-0415
Cell: 304-881-2236

*I recommend approval
up to 9-23-20.
Ryan Thomas
6-29-20*



*Steve
Dunn
7/15/20*

July 15, 2020

Ryan Thomas
Environmental Inspector
WV Department of Environmental Protection
1159 Nick Rahall Greenway
Fayetteville, WV 25840

RE: O-0047-85 NOV 20 – Cleaning Ditches, Replacing Damaged Culverts

Mr. Thomas,

On behalf of Seminole West Virginia Mining Complex, LLC, Murray Maple Eagle Coal, LLC, and Panther Creek Mining, LLC, I wish to request an extension beyond the current abatement date for abating NOV#20 of the above referenced permit number. Panther Creek Mining, LLC, is in the process of acquiring the above referenced permit. We request an extension of 90 days, in order to give adequate time to review what work has been completed by Murry Maple Eagle, LLC and evaluate Panther Creek's method of abatement going forward with weather conditions permitting. Additionally, this extension will give time for the permits to be transferred from Seminole WV Mining Complex, LLC to Murray Maple Eagle Coal, LLC and then transferred again to Panther Creek Mining, LLC.

Regards,

A large, stylized handwritten signature in black ink, appearing to read "Kelly L. Duty".

Kelly L. Duty
Environmental Engineer
Panther Creek Mining, LLC.
Office: 304-380-0415
Cell: 304-881-2236

*I recommend approval
up to 10-14-20.
Ryan Thomas
7-15-20*



*How
June
6/29/2020*

June 25, 2020

Ryan Thomas
Environmental Inspector
WV Department of Environmental Protection
1159 Nick Rahall Greenway
Fayetteville, WV 25840

RE: O-0047-85 NOV 18 – Failure to Protect off-site areas from mining operations

Mr. Thomas,

On behalf of Seminole West Virginia Mining Complex, LLC, Murray Maple Eagle Coal, LLC, and Panther Creek Mining, LLC, I wish to request an extension beyond the current abatement date for abating NOV#18 of the above referenced permit number. Panther Creek Mining, LLC, is in the process of acquiring the above referenced permit. We request an extension of 90 days, in order to give adequate time to review what work has been completed by Murry Maple Eagle, LLC and evaluate Panther Creek's method of abatement going forward with weather conditions permitting. Additionally, this extension will give time for the permits to be transferred from Seminole WV Mining Complex, LLC to Murray Maple Eagle Coal, LLC and then transferred again to Panther Creek Mining, LLC.

Regards,

A large, stylized handwritten signature in black ink, appearing to read "Kelly Duty".

Kelly L. Duty
Environmental Engineer
Panther Creek Mining, LLC.
Office: 304-380-0415
Cell: 304-881-2236

*I recommend
approval up to 9-23-20
Ryan Thomas
6-29-20*



*Alan
Dumy
6/29/2020*

June 25, 2020

Ryan Thomas
Environmental Inspector
WV Department of Environmental Protection
1159 Nick Rahall Greenway
Fayetteville, WV 25840

RE: O-0048-85 NOV 15 – Failure to clean out Pond #1

Mr. Thomas,

On behalf of Seminole West Virginia Mining Complex, LLC, Murray Maple Eagle Coal, LLC, and Panther Creek Mining, LLC, I wish to request an extension beyond the current abatement date for abating NOV#15 of the above referenced permit number. Panther Creek Mining, LLC, is in the process of acquiring the above referenced permit. We request an extension of 90 days, in order to give adequate time to review what work has been completed by Murry Maple Eagle, LLC and evaluate Panther Creek's method of abatement going forward with weather conditions permitting. Additionally, this extension will give time for the permits to be transferred from Seminole WV Mining Complex, LLC to Murray Maple Eagle Coal, LLC and then transferred again to Panther Creek Mining, LLC.

Regards,

A large, stylized handwritten signature in black ink that reads "Kelly Duty".

Kelly L. Duty
Environmental Engineer
Panther Creek Mining, LLC.
Office: 304-380-0415
Cell: 304-881-2236

*I recommend approval
up to 9-23-20.
Ryan Thomas
6-29-20.*



*Alvin
Duty
7/15/20*

July 15, 2020

Ryan Thomas
Environmental Inspector
WV Department of Environmental Protection
1159 Nick Rahall Greenway
Fayetteville, WV 25840

RE: H-0667-00 NOV 13 -- Maintaining Haulage Way

Mr. Thomas,

On behalf of Seminole West Virginia Mining Complex, LLC, Murray Maple Eagle Coal, LLC, and Panther Creek Mining, LLC, I wish to request an extension beyond the current abatement date for abating NOV#13 of the above referenced permit number. Panther Creek Mining, LLC, is in the process of acquiring the above referenced permit. We request an extension of 90 days, in order to give adequate time to review what work has been completed by Murry Maple Eagle, LLC and evaluate Panther Creek's method of abatement going forward with weather conditions permitting. Additionally, this extension will give time for the permits to be transferred from Seminole WV Mining Complex, LLC to Murray Maple Eagle Coal, LLC and then transferred again to Panther Creek Mining, LLC.

Regards,

A handwritten signature in black ink, appearing to read "Kelly Duty", is written over the typed name and title.

Kelly L. Duty
Environmental Engineer
Panther Creek Mining, LLC.
Office: 304-380-0415
Cell: 304-881-2236

*I recommend approval
up to 10-14-20.*

A handwritten signature in black ink, appearing to read "Ryan Thomas", is written below the recommendation text.

7-15-20



Alan
6/29/2020

June 25, 2020

Ryan Thomas
Environmental Inspector
WV Department of Environmental Protection
1159 Nick Rahall Greenway
Fayetteville, WV 25840

RE: S-3007-95 NOV 38 -- Revision for Top Soil Substitute

Mr. Thomas,

On behalf of Seminole West Virginia Mining Complex, LLC, Murray Maple Eagle Coal, LLC, and Panther Creek Mining, LLC, I wish to request an extension beyond the current abatement date for abating NOV#38 of the above referenced permit number. Panther Creek Mining, LLC, is in the process of acquiring the above referenced permit. We request an extension of 90 days, in order to give adequate time to review what work has been completed by Murry Maple Eagle, LLC and evaluate Panther Creek's method of abatement going forward with weather conditions permitting. Additionally, this extension will give time for the permits to be transferred from Seminole WV Mining Complex, LLC to Murray Maple Eagle Coal, LLC and then transferred again to Panther Creek Mining, LLC.

Regards,

A handwritten signature in black ink that reads "Kelly L. Duty".

Kelly L. Duty
Environmental Engineer
Panther Creek Mining, LLC.
Office: 304-380-0415
Cell: 304-881-2236

I recommend approval
up to 9-23-20.
Ryan Thomas
6-29-20



*Albre
D. Jones
06/29/2020*

June 25, 2020

Ryan Thomas
Environmental Inspector
WV Department of Environmental Protection
1159 Nick Rahall Greenway
Fayetteville, WV 25840

RE: U-3016-07 NOV 6 – Failure to maintain the approved drainage system

Mr. Thomas,

On behalf of Seminole West Virginia Mining Complex, LLC, Murray Maple Eagle Coal, LLC, and Panther Creek Mining, LLC, I wish to request an extension beyond the current abatement date for abating NOV#6 of the above referenced permit number. Panther Creek Mining, LLC, is in the process of acquiring the above referenced permit. We request an extension of 90 days, in order to give adequate time to review what work has been completed by Murray Maple Eagle, LLC and evaluate Panther Creek's method of abatement going forward with weather conditions permitting. Additionally, this extension will give time for the permits to be transferred from Seminole WV Mining Complex, LLC to Murray Maple Eagle Coal, LLC and then transferred again to Panther Creek Mining, LLC.

Regards,

A handwritten signature in black ink, appearing to read "Kelly L. Duty", with a long horizontal line extending from the end of the signature towards the right.

Kelly L. Duty
Environmental Engineer
Panther Creek Mining, LLC.
Office: 304-380-0415
Cell: 304-881-2236

*I recommend approval
up to 8-23-20.
Ryan Thomas
6-29-20*

James Plumley

From: Nagel, Jon [REDACTED]
Sent: Tuesday, August 25, 2020 12:48 PM
To: James Plumley; Betcher, Kim
Subject: FW: NOV Follow-ups
Attachments: SKM_458e20082513500.pdf

From: Thomas, Ryan L <Ryan.L.Thomas@wv.gov>
Sent: Tuesday, August 25, 2020 1:46 PM
To: Nagel, Jon
Subject: NOV Follow-ups

CAUTION: This email originated from outside of Murray Energy. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Jon,

See attachment for the most recent follow-ups. All of these violations are in show cause. They are all still open violations with work needing to be done. With the progress being made daily, a couple of these outstanding violations are near abatement.

From: 12797@wv.gov <12797@wv.gov>
Sent: Tuesday, August 25, 2020 1:51 PM
To: Thomas, Ryan L <Ryan.L.Thomas@wv.gov>
Subject: Message from KM_458e

ERIS

MR-16 VIOLATION FOLLOW-UP INSPECTION REPORT

PERMIT NUMBER	ORIGINAL INSPECTION AND VIOLATION DATA						NEW VIOLATION ACTIVITY	
	DATE	TIME	FORM #	FAC #	ENF STD	ORIGINAL VIOL#	DATE	TIME
S300795	03/19/2019	12:00	6		0400	40	05/15/2019	00:00

PERMITTEE NAME SEMINOLE WEST VIRGINIA MINING COMPLEX, LLC

Violation is hereby: Terminated Withdrawn Remains in force as written Show Cause submitted
 Extended to _____ at _____ NOV modified to CO # _____ CO modified to NOV # _____

Action taken to abate:

Show Cause Order #1540 issued/mms

INSPECTOR'S CIVIL PENALTY ASSESSMENT RECOMMENDATION (check)

Seriousness: 1 2 3 4 5 6 7 8 9 10 Negligence: 0 1 2 3 4 5 6 7 8

Good Faith: 0 1 2 3 4 5 6 7 8

Consent Agreement in effect? Yes No

Comments:

AUTH. COMPANY REPRESENTATIVE _____

DELIVERY METHOD / DATE TIME _____

CERTIFIED MAIL NUMBER _____

ADDRESS 46226 NATIONAL ROAD, ST. CLAIRSVILLE, OH 43950

WV DEP REP. Ryan L. Thomas

Austin Caperton

[Secretary, Department of Environmental Protection]

[WV DEP Representative]

Date

Names of individuals at informal Conference:

Results: CO was: Upheld Modified Terminated Withdrawn

Comments:

SUPERVISOR: _____ DATE: _____ TIME: _____

COMPANY REPRESENTATIVE: _____ DATE: _____

ERIS

MR-16 VIOLATION FOLLOW-UP INSPECTION REPORT

PERMIT NUMBER	ORIGINAL INSPECTION AND VIOLATION DATA						NEW VIOLATION ACTIVITY	
	DATE	TIME	FORM #	FAC #	ENF STD	ORIGINAL VIOL#	DATE	TIME
S300795	03/26/2019	15:30	6		0400	42	05/15/2019	00:00

PERMITTEE NAME SEMINOLE WEST VIRGINIA MINING COMPLEX, LLC

Violation is hereby: Terminated Withdrawn Remains in force as written Show Cause submitted
 Extended to _____ at _____ NOV modified to CO # _____ CO modified to NOV # _____

Action taken to abate:
30 Day SC Order #1540 issued/mms

INSPECTOR'S CIVIL PENALTY ASSESSMENT RECOMMENDATION (check)

Seriousness: 1 2 3 4 5 6 7 8 9 10 Negligence: 0 1 2 3 4 5 6 7 8
 Good Faith: 0 1 2 3 4 5 6 7 8 Consent Agreement in effect? Yes No
 Comments:

AUTH. COMPANY REPRESENTATIVE _____
 DELIVERY METHOD / DATE TIME _____
 CERTIFIED MAIL NUMBER _____
 ADDRESS 46226 NATIONAL ROAD, ST. CLAIRSVILLE, OH 43950
 WV DEP REP. Ryan L. Thomas

Austin Caperton
 [Secretary, Department of Environmental Protection] [WV DEP Representative] Date

Names of individuals at informal Conference:

Results: CO was: Upheld Modified Terminated Withdrawn

Comments:

SUPERVISOR: _____ DATE: _____ TIME: _____
 COMPANY REPRESENTATIVE: _____ DATE: _____

ERIS

MR-16 VIOLATION FOLLOW-UP INSPECTION REPORT

PERMIT NUMBER	ORIGINAL INSPECTION AND VIOLATION DATA						NEW VIOLATION ACTIVITY	
	DATE	TIME	FORM #	FAC #	ENF STD	ORIGINAL VIOL#	DATE	TIME
S300795	12/20/2018	15:00	6		0400	34	06/20/2019	12:22

PERMITTEE NAME SEMINOLE WEST VIRGINIA MINING COMPLEX, LLC

Violation is hereby: Terminated Withdrawn Remains in force as written Show Cause submitted

Extended to _____ at _____ NOV modified to CO # _____ CO modified to NOV # _____

Action taken to abate:

Show Cause order issued on 5-15-19. Company is continuing to work on remedial measures.

INSPECTOR'S CIVIL PENALTY ASSESSMENT RECOMMENDATION (check)

Seriousness: 1 2 3 4 5 6 7 8 9 10 Negligence: 0 1 2 3 4 5 6 7 8

Good Faith: 0 1 2 3 4 5 6 7 8 Consent Agreement in effect? Yes No

Comments:

AUTH. COMPANY REPRESENTATIVE Hodge Hunter

DELIVERY METHOD / DATE TIME Mail 6/20/2019 12:22:00

CERTIFIED MAIL NUMBER

ADDRESS 46226 NATIONAL ROAD, ST. CLAIRSVILLE, OH 43950

WV DEP REP. Ryan L. Thomas

Austin Caperton

[Secretary, Department of Environmental Protection]

[WV DEP Representative]

Date

Names of individuals at informal Conference:

Results: CO was: Upheld Modified Terminated Withdrawn

Comments:

SUPERVISOR: _____ DATE: _____ TIME: _____

COMPANY REPRESENTATIVE: _____ DATE: _____

ERIS

MR-16 VIOLATION FOLLOW-UP INSPECTION REPORT

PERMIT NUMBER	ORIGINAL INSPECTION AND VIOLATION DATA						NEW VIOLATION ACTIVITY	
	DATE	TIME	FORM #	FAC #	ENF STD	ORIGINAL VIOL#	DATE	TIME
S602089	03/26/2019	13:00	6		0400	62	05/15/2019	00:00

PERMITTEE NAME SEMINOLE WEST VIRGINIA MINING COMPLEX, LLC

Violation is hereby: Terminated Withdrawn Remains in force as written Show Cause submitted

Extended to _____ at _____ NOV modified to CO # _____ CO modified to NOV # _____

Action taken to abate:

Show Cause order #1539 issued/mms

INSPECTOR'S CIVIL PENALTY ASSESSMENT RECOMMENDATION (check)

Seriousness: 1 2 3 4 5 6 7 8 9 10 Negligence: 0 1 2 3 4 5 6 7 8

Good Faith: 0 1 2 3 4 5 6 7 8

Consent Agreement in effect? Yes No

Comments:

AUTH. COMPANY REPRESENTATIVE _____

DELIVERY METHOD / DATE TIME _____

CERTIFIED MAIL NUMBER _____

ADDRESS 46226 NATIONAL ROAD, ST. CLAIRSVILLE, OH 43950

WV DEP REP. Ryan L. Thomas

Austin Caperton

[Secretary, Department of Environmental Protection]

[WV DEP Representative]

Date

Names of individuals at informal Conference:

Results: CO was: Upheld Modified Terminated Withdrawn

Comments:

SUPERVISOR: _____ DATE: _____ TIME: _____

COMPANY REPRESENTATIVE: _____ DATE: _____

ERIS

MR-16 VIOLATION FOLLOW-UP INSPECTION REPORT

PERMIT NUMBER	ORIGINAL INSPECTION AND VIOLATION DATA						NEW VIOLATION ACTIVITY	
	DATE	TIME	FORM #	FAC #	ENF STD	ORIGINAL VIOL#	DATE	TIME
S304191	10/09/2018	10:08	6		2400	56	04/24/2019	00:00

PERMITTEE NAME SEMINOLE WEST VIRGINIA MINING COMPLEX, LLC

Violation is hereby: Terminated Withdrawn Remains in force as written Show Cause submitted

Extended to _____ at _____ NOV modified to CO # _____ CO modified to NOV # _____

Action taken to abate:
Show Cause Order issued 4-24-19; SC #1532/mms

INSPECTOR'S CIVIL PENALTY ASSESSMENT RECOMMENDATION (check)

Seriousness: 1 2 3 4 5 6 7 8 9 10 Negligence: 0 1 2 3 4 5 6 7 8

Good Faith: 0 1 2 3 4 5 6 7 8 Consent Agreement in effect? Yes No

Comments:

AUTH. COMPANY REPRESENTATIVE _____

DELIVERY METHOD / DATE TIME _____

CERTIFIED MAIL NUMBER _____

ADDRESS 46226 NATIONAL ROAD, ST. CLAIRSVILLE, OH 43950

WV DEP REP. Ryan L. Thomas

Austin Caperton _____
 [Secretary, Department of Environmental Protection] [WV DEP Representative] Date

Names of individuals at informal Conference: _____

Results: CO was: Upheld Modified Terminated Withdrawn

Comments: _____

SUPERVISOR: _____ DATE: _____ TIME: _____

COMPANY REPRESENTATIVE: _____ DATE: _____

ERIS

MR-16 VIOLATION FOLLOW-UP INSPECTION REPORT

PERMIT NUMBER	ORIGINAL INSPECTION AND VIOLATION DATA						NEW VIOLATION ACTIVITY	
	DATE	TIME	FORM #	FAC #	ENF STD	ORIGINAL VIOL#	DATE	TIME
S304191	02/27/2019	10:00	6		0400	57	04/17/2019	00:00

PERMITTEE NAME SEMINOLE WEST VIRGINIA MINING COMPLEX, LLC

Violation is hereby: Terminated Withdrawn Remains in force as written Show Cause submitted

Extended to _____ at _____ NOV modified to CO # _____ CO modified to NOV # _____

Action taken to abate:

Show Cause Order issued 4-17-19: SC #1528/mms

INSPECTOR'S CIVIL PENALTY ASSESSMENT RECOMMENDATION (check)

Seriousness: 1 2 3 4 5 6 7 8 9 10 Negligence: 0 1 2 3 4 5 6 7 8

Good Faith: 0 1 2 3 4 5 6 7 8 Consent Agreement in effect? Yes No

Comments:

AUTH. COMPANY REPRESENTATIVE _____

DELIVERY METHOD / DATE TIME _____

CERTIFIED MAIL NUMBER _____

ADDRESS 46226 NATIONAL ROAD, ST. CLAIRSVILLE, OH 43950

WV DEP REP. Ryan L. Thomas

Austin Caperton

[Secretary, Department of Environmental Protection]

[WV DEP Representative]

Date

Names of individuals at informal Conference:

Results: CO was: Upheld Modified Terminated Withdrawn

Comments:

SUPERVISOR: _____ DATE: _____ TIME: _____

COMPANY REPRESENTATIVE: _____ DATE: _____

ERIS

MR-16 VIOLATION FOLLOW-UP INSPECTION REPORT

PERMIT NUMBER	ORIGINAL INSPECTION AND VIOLATION DATA						NEW VIOLATION ACTIVITY	
	DATE	TIME	FORM #	FAC #	ENF STD	ORIGINAL VIOL#	DATE	TIME
S304191	03/07/2019	09:30	6		0400	58	04/17/2019	00:00

PERMITTEE NAME SEMINOLE WEST VIRGINIA MINING COMPLEX, LLC

Violation is hereby: Terminated Withdrawn Remains in force as written Show Cause submitted

Extended to _____ at _____ NOV modified to CO # _____ CO modified to NOV # _____

Action taken to abate:
Show cause order issued 4-17-19: SC #1528/mms

INSPECTOR'S CIVIL PENALTY ASSESSMENT RECOMMENDATION (check)

Seriousness: 1 2 3 4 5 6 7 8 9 10 Negligence: 0 1 2 3 4 5 6 7 8

Good Faith: 0 1 2 3 4 5 6 7 8 Consent Agreement in effect? Yes No

Comments:

AUTH. COMPANY REPRESENTATIVE _____

DELIVERY METHOD / DATE TIME _____

CERTIFIED MAIL NUMBER _____

ADDRESS 46226 NATIONAL ROAD, ST. CLAIRSVILLE, OH 43950

WV DEP REP. Ryan L. Thomas

Austin Caperton _____

[Secretary, Department of Environmental Protection] [WV DEP Representative] Date

Names of individuals at informal Conference:

Results: CO was: Upheld Modified Terminated Withdrawn

Comments:

SUPERVISOR: _____ DATE: _____ TIME: _____

COMPANY REPRESENTATIVE: _____ DATE: _____

ERIS

MR-16 VIOLATION FOLLOW-UP INSPECTION REPORT

PERMIT NUMBER	ORIGINAL INSPECTION AND VIOLATION DATA						NEW VIOLATION ACTIVITY	
	DATE	TIME	FORM #	FAC #	ENF STD	ORIGINAL VIOL#	DATE	TIME
S304191	03/12/2019	18:34	6		0400	59	04/17/2019	00:00

PERMITTEE NAME SEMINOLE WEST VIRGINIA MINING COMPLEX, LLC

Violation is hereby: Terminated Withdrawn Remains in force as written Show Cause submitted

Extended to _____ at _____ NOV modified to CO # _____ CO modified to NOV # _____

Action taken to abate:
Show Cause order issued 4-17-19: SC #1528/mms

INSPECTOR'S CIVIL PENALTY ASSESSMENT RECOMMENDATION (check)

Seriousness: 1 2 3 4 5 6 7 8 9 10 Negligence: 0 1 2 3 4 5 6 7 8

Good Faith: 0 1 2 3 4 5 6 7 8 Consent Agreement in effect? Yes No

Comments:

AUTH. COMPANY REPRESENTATIVE _____

DELIVERY METHOD / DATE TIME _____

CERTIFIED MAIL NUMBER _____

ADDRESS 46226 NATIONAL ROAD, ST. CLAIRSVILLE, OH 43950

WV DEP REP. Ryan L. Thomas

Austin Caperton
 [Secretary, Department of Environmental Protection] [WV DEP Representative] Date

Names of individuals at informal Conference:

Results: CO was: Upheld Modified Terminated Withdrawn

Comments:

SUPERVISOR: _____ DATE: _____ TIME: _____

COMPANY REPRESENTATIVE: _____ DATE: _____

ERIS

MR-16 VIOLATION FOLLOW-UP INSPECTION REPORT

PERMIT NUMBER	ORIGINAL INSPECTION AND VIOLATION DATA						NEW VIOLATION ACTIVITY	
	DATE	TIME	FORM #	FAC #	ENF STD	ORIGINAL VIOL#	DATE	TIME
S304387	02/12/2019	11:00	6		1000	50	04/17/2019	00:00

PERMITTEE NAME SEMINOLE WEST VIRGINIA MINING COMPLEX, LLC

Violation is hereby: Terminated Withdrawn Remains in force as written Show Cause submitted
 Extended to _____ at _____ NOV modified to CO # _____ CO modified to NOV # _____

Action taken to abate:

Show Cause Order issued 4-17-19: SC #1529/mms

INSPECTOR'S CIVIL PENALTY ASSESSMENT RECOMMENDATION (check)

Seriousness: 1 2 3 4 5 6 7 8 9 10 Negligence: 0 1 2 3 4 5 6 7 8

Good Faith: 0 1 2 3 4 5 6 7 8 Consent Agreement in effect? Yes No

Comments:

AUTH. COMPANY REPRESENTATIVE _____

DELIVERY METHOD / DATE TIME _____

CERTIFIED MAIL NUMBER _____

ADDRESS 46226 NATIONAL ROAD, ST. CLAIRSVILLE, OH 43950

WV DEP REP. Ryan L. Thomas

Austin Caperton

[Secretary, Department of Environmental Protection]

[WV DEP Representative]

Date

Names of individuals at informal Conference:

Results: CO was: Upheld Modified Terminated Withdrawn

Comments:

SUPERVISOR: _____ DATE: _____ TIME: _____

COMPANY REPRESENTATIVE: _____ DATE: _____

ERIS

MR-16 VIOLATION FOLLOW-UP INSPECTION REPORT

PERMIT NUMBER	ORIGINAL INSPECTION AND VIOLATION DATA						NEW VIOLATION ACTIVITY	
	DATE	TIME	FORM #	FAC #	ENF STD	ORIGINAL VIOL#	DATE	TIME
S304387	02/12/2019	12:00	6		1000	51	04/17/2019	00:00

PERMITTEE NAME SEMINOLE WEST VIRGINIA MINING COMPLEX, LLC

Violation is hereby: Terminated Withdrawn Remains in force as written Show Cause submitted
 Extended to _____ at _____ NOV modified to CO # _____ CO modified to NOV # _____

Action taken to abate:

Show Cause Order issued 4-17-19; SC #1529/mms

INSPECTOR'S CIVIL PENALTY ASSESSMENT RECOMMENDATION (check)

Seriousness: 1 2 3 4 5 6 7 8 9 10 Negligence: 0 1 2 3 4 5 6 7 8
 Good Faith: 0 1 2 3 4 5 6 7 8 Consent Agreement in effect? Yes No

Comments:

AUTH. COMPANY REPRESENTATIVE _____

DELIVERY METHOD / DATE TIME _____

CERTIFIED MAIL NUMBER _____

ADDRESS 46226 NATIONAL ROAD, ST. CLAIRSVILLE, OH 43950

WV DEP REP. Ryan L. Thomas

Austin Caperton _____
 [Secretary, Department of Environmental Protection] [WV DEP Representative] Date

Names of individuals at informal Conference: _____

Results: CO was: Upheld Modified Terminated Withdrawn

Comments: _____

SUPERVISOR: _____ DATE: _____ TIME: _____

COMPANY REPRESENTATIVE: _____ DATE: _____

James Plumley

From: Kent Desrocher [REDACTED]
Sent: Monday, August 24, 2020 3:36 PM
To: James Plumley; Betcher, Kim; Kelly L. Duty
Subject: RE: Status of Various NOV's associated with Maple Eagle

CAUTION: This email originated from outside of Foresight Energy. Do not click links or open attachments unless you recognize the sender and know the content is safe.

This was a meeting with John Flesher at Kanawha City on June 11 to discuss priorities in regards to issues on the ground while permit were being transferred.

11

1:30pm Maple Env Issues Mtg with Flesher and Ed; Kanawha City DEP

This was a meeting on July 24 with inspector, inspector supervisor, and bond release specialist to discuss how best to deal with certain NOV's.

23

24

9:00am Review with DEP on Maple Permits; Maple Admin Office ; Mark A. Morris

Several of the NOV's require permit actions to facilitate abatement; those permit actions cannot take place until the permits are transferred.

Kent

From: Kent Desrocher
Sent: Monday, August 24, 2020 2:28 PM
To: Betcher, Kim; Kelly L. Duty
Cc: James Plumley
Subject: RE: Status of Various NOV's associated with Maple Eagle

CAUTION: This email originated from outside of Foresight Energy. Do not click links or open attachments unless you recognize the sender and know the content is safe.

James (not used to saying that),

All of the NOV's noted below are in Show Cause. As I think you are aware the permits recently transferred to Murray Maple and are now in the process of transferring to Panther Creek Mining. We don't expect to fully resolve the Show Cause issues until the permit transfer to Panther Creek is complete. This will likely be done via a reclamation agreement; there have been general discussions with the local WVDEP folks about this, but nothing is formal. We are diligently working to reclaim the VF (NOV 56) and have hopes of completing that by year end. I am not sure how this information helps you in what you are trying to accomplish in your permit actions. If you have any thoughts on this feel free to give me a call.

Kent

From: Betcher, Kim
Sent: Friday, August 21, 2020 3:48 PM
To: Kelly L. Duty
Cc: Kent Desrocher
Subject: Status of Various NOV's associated with Maple Eagle
Importance: High

Kelly,
 Hoping you can help me out. We have various permit applications pending in IL and as part of the review process we have to provide an updated list of all NOV's. Since the Maple Eagle permits have not transferred to Blackhawk, our officers are still tied to the Maple Eagle permits.

Would you please provide me with any information regarding the status of the following (i.e. abated, extended, in settlement, etc..) If you have approvals for extensions or anything in writing from WVDEP, that would be a big help.

Sycamore North	S-3007-95	NOV #42	3/26/2019	Extended	Permitted failed to maintain the approved drainage system, in that S.D. A-11 is full of sediment and other debris
Sycamore South	S-6020-89	NOV #62	3/26/2019	Extended	Failed to maintain the approved haulage way
Sycamore North	S-3007-95	NOV #40	3/19/2019	Extended	Failure to clean out Pond 1
Sycamore South Extension	S-3041-91	NOV #59	3/12/2019	Extended	Failed to maintain the approved drainage system
Sycamore South Extension	S-3041-91	NOV #58	3/7/2019	Extended	Failed to maintain the approved drainage system
Sycamore South Extension	S-3041-91	NOV #57	2/27/2019	Extended	Failure to clean out pond LB 9
Chilton Contour/Hlrd	S-3043-87	NOV #51	2/12/2019	Extended	Failed to maintain infrequently used access road "IFUAR"
Chilton Contour/Hlrd	S-3043-87	NOV #50	2/12/2019	Extended	Failed to maintain the approved haulage way
Sycamore South Extension	S-3041-91	NOV #56	1/14/2019	Issued	Failure to follow permit conditions with reclamation plan for Laurel Branch valley fill
Sycamore North	S-3007-95	NOV #34	12/20/2018	Issued	Failure to maintain the approved drainage system

Please feel free to give me a call if you'd like to discuss.

Best Regards,
Kim

James Plumley

From: Kent Desrocher [REDACTED]
Sent: Monday, August 24, 2020 3:40 PM
To: James Plumley; Betcher, Kim; Kelly L. Duty
Subject: RE: Status of Various NOV's associated with Maple Eagle

CAUTION: This email originated from outside of Foresight Energy. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Here is the text of an email I sent following the June 11 Flesher meeting.

Mark/Kelly,

Ed and I met with John Flesher yesterday regarding Maple outstanding NOV's. In a nutshell, Flesher said we should focus on those NOV's involving offsite disturbance and drainage issues. We indicated our primary focus was finishing the Laurel VF. I have reformatted your NOV spreadsheet a bit, to make it more suitable for a Consent Order or Reclamation Agreement, if we get that far. I think Ed's intent is to have a meeting at Maple in the near future including you, Big E, and someone from New River to go through the list and try to put together a better priority (vs what I have on the attachment), maybe some timing, and to get started on any permitting actions.

*Kent R. DesRocher
Vice President, Technical Services - WV
Blackhawk Mining, LLC*

Incidentally, we are targeting completion of grading of the Laurel VF by mid-November, but that is a bit optimistic.

Blackhawk offers \$750,000 in stalking horse bid for Murray Energy met coal mine



Author **Taylor Kuykendall**

Theme **Energy**

Blackhawk Mining LLC subsidiary Panther Creek Mining LLC is offering \$750,000 in cash consideration as a stalking horse bid for the Maple Eagle mining complex, a metallurgical coal operation owned by a Murray Energy Corp. subsidiary, according to a bankruptcy court filing of the company's purchase agreement.

In exchange, Blackhawk would be assuming \$30 million in liabilities associated with the mine through a sale supervised by the U.S. Bankruptcy Court for the Southern District of Ohio. The complex includes the Maple Eagle No. 1 underground mine, the Sycamore surface mine, a preparation plant and other related assets.

The mine was originally opened in 2007 by Walter Energy Inc. The company sold the mine in a bankruptcy auction to Mission Coal Company LLC. Mission sold the mine to Murray Energy Corp. affiliate Murray Metallurgical Coal Holdings in a later bankruptcy auction after it too was forced to restructure.

Murray Met's parent company, Murray Energy Corp., and several of its related subsidiaries filed for bankruptcy restructuring in late 2019, but management said they initially did not anticipate the company's newly purchased metallurgical coal assets would require restructuring. The metallurgical coal focused subsidiary filed for a restructuring on Feb. 12.

The Maple Eagle surface and underground continuous mining complex are located in Mingo, W.Va., and mines from what is known as the Eagle coal seam. The mine is currently idle, but Murray Energy executives wrote in a bankruptcy declaration that the mine produces an average of approximately 435,000 tons of coal per year with access to a total of approximately 18 million tons of recoverable coal in reserves.

In an October 2019 note to investors noting Maple Eagle's idling, Seaport Global Securities LLC analyst Mark Levin estimated that the Maple Eagle mine costs were "probably in the fourth quartile" among its peers. Levin said the mine was a "marginal high-vol asset" and noted a lot of high-vol supply was coming into the market across the world.

"We think the market is moving toward an oversupply of high-vol products," Levin wrote in the October 2019 note.

Murray Met proposed a bid deadline of March 20 for companies seeking to outbid Blackhawk's offer. If necessary, an auction will be held March 24 with a hearing approving the sale to a successful bidder proposed by March 26.

Prior to filing for a Chapter 11 bankruptcy restructuring, Murray Met said they engaged in a marketing process for the complex, resulting in Blackhawk's offer being made in mid-January. Murray Met cited an "urgent need" for liquidity in earlier bankruptcy court filings.

APPENDIX E

THREATENED AND ENDANGERED SPECIES Endangered Species Act of 1973, 16 USC 1531, et seq. 62 Ill. Adm. Code 1773.15(c)(10)

The Department submitted the permit application for Significant Revision No. 2 to Permit No. 399 to the U.S. Fish and Wildlife Service (USFWS) for consultation regarding potential effects of the proposed longwall shadow area expansion on federally listed threatened and endangered species. Additionally, pursuant to 17 Ill. Adm. Code 1075 the Department consulted the Illinois Office Realty and Capital Planning/Division of Ecosystems and Environment online EcoCAT (Ecological Compliance Assessment Tool) system regarding state listed species known to occur within the proposed expansion boundary and adjacent area.

The USFWS indicated in an email to the Department dated February 2, 2016 that they had no comments. No critical habitat or known occurrences for any listed species were identified through the EcoCAT consultation process, a termination letter was received on October 24, 2017 and a follow up consultation was terminated on July 22, 2019. Based on these consultations, Department review of the application, and use of the most current species data available, the Department finds that the operation as approved will not affect the continued existence of listed threatened or endangered species or result in destruction or adverse modification of their critical habitats, as determined under the Endangered Species Act of 1973 (16 USC 1531 *et seq.*).

APPENDIX F

Hillsboro Energy, LLC, Deer Run Mine
Revision No. 2 to Permit 399
Assessment and Findings of Probable Subsidence Impacts

Hillsboro Energy, LLC (Hillsboro Energy) has proposed to add additional planned subsidence area and modify panel geometry from that approved under Permit No. 399. The Department has determined that the subsidence control plan as modified is capable of meeting the performance standards of the Department's Permanent Program rules.

Hillsboro Energy has committed to securing all necessary rights, including the right to subside, through execution of an affidavit required by 62 Ill. Adm. Code 1778.15(f).

Regardless of subsidence rights, surface ownership or the existence of any private contractual agreements, Hillsboro Energy must correct material damage resulting from subsidence caused to surface lands, to the extent technologically and economically feasible, by restoring the land to a condition capable of maintaining the value and reasonably foreseeable uses which it was capable of supporting before subsidence. Hillsboro Energy's subsidence control plan, as modified, contains a description of measures to be taken in order to comply with 62 Ill. Adm. Code 1817.121(c)(1).

Pursuant to 62 Ill. Adm. Code 1784.20(b)(8)(B), Hillsboro Energy has provided an acceptable procedure to determine the condition of structures and facilities and the quantity and quality of drinking domestic and residential water supplies in accordance with Section 1817.121(a)(2). Hillsboro Energy has committed to conduct condition surveys a minimum of 120 days in advance of projected subsidence impacts unless a shorter time frame is approved by the Department. The Department finds that Hillsboro Energy's plan meets the intent of this regulatory requirement.

Occupied dwellings, structures and facilities exist within the projected area of planned subsidence. In accordance with the procedures of 62 Ill. Adm. Code 1784.20(b)(8)(A) and 1817.121(a)(3), damage minimization efforts must be taken on all structures and facilities within the projected area of planned subsidence unless a written waiver is obtained or the cost of minimization exceeds the cost of repairs. Hillsboro Energy has committed to providing the appropriate documentation of waivers, cost analysis or minimization plans for each structure a minimum of 120 days in advance of anticipated impacts. The Department finds that Hillsboro Energy's damage minimization plan meets the intent of this regulatory requirement.

Hillsboro Energy must correct material damage resulting from subsidence caused to any uncontrolled structures or facilities by repairing the damage or compensating the owner of such structures or facilities in the full amount of the diminution in value resulting from subsidence. Hillsboro Energy's subsidence control plan, as modified, contains a description of measures to be taken in order to comply with 62 Ill. Adm. Code 1817.121(c)(2).

Public roads, utilities, and a rail line exist over the planned subsidence mining areas. Based on potential public safety issues, and the lack of any detailed plan to minimize damage to protect the public, Hillsboro Energy must obtain agreements from the authority with jurisdiction over the roads, utilities, and rail line, and prior to any impacts occurring. The Department has conditioned the permit to obtain these agreements to assure precautions are in place to protect the public during and after subsidence impacts. (Please see Part IV, Condition L)

Pursuant to 62 Ill. Adm. Code 1783.12, Hillsboro Energy provided a description of the cultural, archeological and historic resources listed or eligible for listing on the National Register of Historic Places and any known archeological features within the proposed planned subsidence area. Pursuant to 62 Ill. Adm. Code 1783.12(b), the Department identified 4 structures as needing additional documentation if Hillsboro Energy elects to demolish the structures in the future. Concerning archeological resources, the Department finds that the only areas requiring additional information lie along the shoreline of Coffeen Lake. The permit as modified commits to conducting additional archeological investigations in these areas prior to subsidence that will cause inundation or shoreline erosion. (Please see Part IV, Condition M)

Pursuant to 62 Ill Adm. Code 1817.41(j), Hillsboro Energy must promptly replace any drinking, domestic or residential water supply that is contaminated or interrupted. Hillsboro Energy has provided a plan for conducting surveys of drinking, domestic and residential water supplies required under 62 Ill. Adm. Code 1817.121(a)(2) wherever necessary. Therefore, all wells for which no specific agreement exists concerning post subsidence resolution of water supply issues, shall be monitored to acquire adequate seasonal data sufficiently in advance of any potential impacts.

62 Ill. Adm. Code 1817.121(d) prohibits mining activities under or adjacent to certain features unless the subsidence control plan demonstrates that subsidence will not cause material damage to, or reduce the reasonably foreseeable uses of, such features and facilities. The applicant is proposing underground mining that will result in planned subsidence beneath Coffeen Lake. Based on the definition of “material damage” provided in 62 Ill. Adm. Code 1701, Appendix A, the proposed underground mining activities, are not likely to cause any functional impairment or any significant change in the condition, appearance, or utility of the impoundment from its pre-subsidence condition. Hillsboro Energy has provided sufficient information to demonstrate that the subsidence will not alter the lakes ability to hold water. Modeling provided in the application as modified detail the projected changes to the shoreline resulting from subsidence. Commitments are made to acquire adjacent property for the lake owner or panel geometry will be modified to avoid subsiding any area that cannot be obtained. The Department finds that Hillsboro Energy’s subsidence control plan meets the intent of the regulatory requirements.

The Department will review the performance of Hillsboro Energy's subsidence control plan in the field concerning prompt and effective mitigation. The Department will monitor Hillsboro Energy's performance in meeting land mitigation requirements, replacement of protected water supplies, and structure mitigation requirements. Quarterly reports detailing the mitigation accomplished and outlining future mitigation planning to assure compliance with 62 Ill. Adm. Code 1817.121 as

required in the original Permit No. 399 shall continue for areas approved in this Revision No. 2 to 399.

The Department finds that Hillsboro Energy's subsidence control plan, as modified, is in accordance with 62 Ill. Adm. Code 1784.20.

SUBSIDENCE BIBLIOGRAPHY:

Trent, Bauer, DuMontelle: "Bibliography of Subsidence Related Literature" 1988, IMSRP-V 190 pages, Illinois State Geological Survey.

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