

WRITTEN FINDINGS FOR PERMIT RENEWAL

Company: Spring Creek Coal LLC

Current Permit Number: C1979012

Date Application Received: August 8, 2018

Renewal Due Date: April 11, 2019

A.R.M. 17.24.416

- (1) Was proper form submitted? Yes No
- (a) Is form complete and correct? Yes No
- (b) Is a copy of the newspaper notice provided? Yes No
and proof of publication provided? Yes No
- (c) Is evidence provided that insurance is adequate? Yes No
- (2) (a) Was an informal conference requested? Yes No

If yes, provide narrative demonstrating compliance with ARM 17.24.403.

On April 5, 2019, Northern Plains Resources Council (NPRC), in association with Powder River Basin Resource Council, Western Organization of Resource Councils, and Sierra Club, submitted comments on the proposed permit renewal for Spring Creek Coal's Permit C1979012 Renewal RN8 Application. An informal conference was requested with this correspondence. NPRC, on behalf of the informal conference requestors, withdrew the request for informal conference on April 11, 2019. The following are provided as response to the primary concerns and objections raised in the public comments:

The financial viability of Cloud Peak Energy and its subsidiary, Spring Creek Coal LLC, is outside the scope of this renewal. In accordance with ARM 17.24.416(4)(d)(i), DEQ cannot deny a permit renewal unless the applicant has not provided evidence that the required performance bond will continue in full force and effect. The Spring Creek Mine is fully bonded for reclamation, and has provided the required evidence of such. Speculation as to the potential future insolvency of Cloud Peak is not grounds for denying the permit renewal.

Even if Cloud Peak Energy were currently in bankruptcy, DEQ would run the risk of violating federal law if it were to delay a decision on the RN8 renewal application solely because Cloud Peak Energy is in bankruptcy. Pursuant to section 525 of the Bankruptcy Code, all governmental units and other regulatory authorities are prohibited and enjoined from: (a) denying, revoking, suspending, or refusing to renew any license, permit, charter, franchise, or other similar grant to the Debtors; (b) placing conditions upon such a grant to the Debtors; or (c) discriminating against the Debtors with respect to such a grant, solely because the Debtors are debtors under the Bankruptcy Code, may have been insolvent before the commencement of these chapter 11 cases, or are insolvent during the pendency of these chapter 11 cases.

MSUMRA provides for successor operators to assume all permit obligations. § 82-4-238, MCA; ARM 17.24.418. In order to be permitted to operate, a successor operator must comply with the requirements of MSUMRA, which includes bonding requirements. § 82-4-223, MCA. MSUMRA further provides for contract operators to conducting mining provided that they have satisfied all qualifications and the existing permittee maintains permit coverage. ARM 17.24.427.

ARM 17.24.416 (2) continued



D-000212

(b) Are there areas excepted from the standards of 82-4-227(3)(b) Yes No

If yes, provide narrative explanation.

[Click here to enter text.](#)

(c) Is adequate bond provided? Yes No

(3) What is the permit term of the new permit? 5- Years

This permit term shall not exceed 5 years.

(4) Is permit renewal being denied? Yes No

(a) If yes, provide department findings for one or more of the following:

- (i) The terms and conditions of the existing permit are not being satisfactorily met;
- (ii) The present strip or underground mining operations are not in compliance with the environmental protection standards of the Act or subchapters 5 through 9;
- (iii) The requested renewal substantially jeopardizes the operator's continuing responsibility to comply with the Act, the rules adopted pursuant thereto, and the reclamation plan on existing permit areas;
- (iv) the operator has not provided evidence that a) any performance bond required to be in effect for the operations will continue in full force and effect for the proposed period of renewal, as well as any additional bond the department might require; and b) adequate liability insurance will be provided;
- (v) any additional revised or updated information required by the department has not been provided by the applicant;
- (vi) the applicant has not agreed to comply with all applicable laws and rules in effect at the time of renewal;
- (vii) the renewal is prohibited by the denial provisions of 82-4-227, 82-4-234, and 82-4-251; or
- (i) the operation has been in a state of temporary cessation for six or more years.

(b)(c)(d) If permit renewal is denied, all documentation must be provided showing reason(s) for denial.

Decision documents have been sent to:

- 1) the applicant
- 2) objectors
- 3) commentors

Are there new stipulations to be attached to the renewal? Yes No

A check of OSM's Applicant Violator System (AVS) was completed on March 25, 2019; no problems were identified that would preclude issuance of the permit.



Reviewer's Signature

FC: 620.406 (RN8)