DEQ Montana Department of Environmental Quality

BOARD OF ENVIRONMENTAL REVIEW
APRIL 11, 2025

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DEQ Montana Department of Environmental Quality

BOARD OF ENVIRONMENTAL REVIEW
MEETING MINUTES

DECEMBER 20, 2024

Call to Order

Chair Simpson called the meeting to order at 9:00 a.m.

Attendance

Board Members Present
Chair Dave Simpson; Vice Chair Stacy Aguirre; Board Members Julia Altemus, Amanda Knuteson, Jennifer Rankosky, Jon Reiten, and Joe Smith.

Roll was called and a quorum was present.

Board Attorney Present
Terisa Oomens

DEQ Personnel Present

Board Secretary: Sandy Moisey Scherer
Board Liaison: Deputy Director James Fehr
DEQ Communications: Mae Vader
DEQ Legal: Catherine Armstrong, Sarah Christopherson, Sam King, Jeremiah Langston, Kurt Moser, Abby Sherwood, and Kaitlin Whitfield
DEQ Air, Energy and Mining: Whitney Bausch, Eric Dahlgren, Ruby Hopkins, Carly Russell, Anne Spezia, Bailey Tasker, Madeline VerWey
DEQ Enforcement: Chad Anderson, Jackson Brooks, Anna Pieri

Other Parties Present
Laurie Crutcher, Crutcher Court Reporting
Elena Hagen – Montana DOJ Agency Legal Services Bureau
Mark Stermitz – Crowley Fleck
Graham Coppes – Ferguson & Coppes PLLC
Todd Briggs - Westmoreland
David Smith – MT Contractors Association
Frank Tabish – LHC MT
Jim Coefield
Alan Ringlien – A.M. Welles
Cale Fisher – Riverside Contracting
Rosalyn DiLillo Knock, Lindsay Thane – Schwabe
Ken Murphy –TMC-Belgrade
Larry Frankel
Lauren Cook
Val Lucas

I. ADMINISTRATIVE MATERIALS

A. **Review and Approve Minutes**

A.1. **The Board will vote on adopting the August 23, 2024, Meeting Minutes.**

Board member Smith moved to APPROVE the August 23, 2024, meeting minutes. Board member Rankosky SECONDED. The motion PASSED unanimously.

There was no board discussion or public comment.

A.2. **Review and Approve the Proposed Board Meeting Schedule for 2025.**

Board member Rankosky moved to APPROVE the Proposed Board Meeting Schedule for 2025. Board member Knuteson SECONDED. The motion PASSED unanimously.

II. BRIEFING ITEMS

a. Chair Simpson and Board Counsel Oomens offered clarification regarding cases.

The Board did not have any additional questions.

III. ACTION ITEMS

a. In the Matter of: Formal Appeal Challenging the Department of Environmental Quality's ("DEQ") Approval of Riverside Contracting's Opencut Mining Permit #3415 for the Marvin Rehbein Site near Arlee in Lake County, Montana, BER 2023-02 OC.

Chair Simpson gave a brief summary of the case. The Board will hear oral argument from the parties.

Sam King and Kaitlin Whitfield of DEQ, Mark Stermitz of Crowley Fleck, and Graham Coppes of Ferguson and Coppes presented oral argument before the Board. The Board members asked questions of the attorneys. Discussion ensued.

Vice Chair Aguirre moved to ADOPT the Proposed Findings of Fact and Conclusions of Law, and modify to include DEQ's clarifications. The motion died for lack of a second. Discussion ensued.

Vice Chair Aguirre motioned to ADOPT the Findings of Fact and Conclusions of Law. Board member Altemus SECONDED. Discussion ensued.

Board Chair Aguirre motioned to ACCEPT for incorporation into the FOFCOL the exceptions filed by the Department of Environmental Quality. Board member Rankosky SECONDED.

The motion passed unanimously.

Chair Simpson asked for a vote to ADOPT the Findings of Fact and Conclusions of Law as proposed with the exceptions filed by the Department of Environmental Quality. The motion passed 6-1, with Board member Knuteson dissenting.

IV. GENERAL PUBLIC COMMENT

No public comment was given.

V. BOARD CHAIR UPDATE

a. FY24 legal expenses memorandum and summary

The Board discussed there were three bills before the Legislature regarding the Board of Environmental Review. Board Counsel Oomens reminded Board members that the legislative bills could stop before getting to a hearing. She also reminded the Board that they need to be careful about whether they are acting on the Board's behalf or sharing their personal opinions on the matter. If something is said on the Board's behalf, it needs to be approved by the Board and discussed previously. If a Board member would like to appear in a personal capacity and express their own personal opinions, they have a right to do so, but should make sure it is clear that they are expressing their personal opinion.

Chair Simpson discussed FY24 expenses with the Board. Board member Altemus asked if the Board could have a comparison for the last couple of years, as it would be helpful going forward. This would help to know if the Board has made improvements or is trending in the wrong direction. Chair Simpson asked if the Board Secretary would put together this information. The Board Secretary said she would look at the files and confer with Deputy Director Fehr, Board Liaison.

b. General Board business, procedural matters, and questions from Board Members.

The Board discussed the meeting packet and deadlines. Also, Board members appreciated having case information disseminated ahead of time, so they have time for review.

VI. ADJOURNMENT

Board member Altemus MOVED to adjourn the Board Meeting; Board member Rankosky SECONDED. The motion PASSED unanimously. The meeting was adjourned at 11:37 A.M.

Board of Environmental Review December 20, 2024, minutes approved:

_____
DAVID SIMPSON
CHAIR
BOARD OF ENVIRONMENTAL REVIEW

_____
DATE

Electronically Filed with the
Montana Board of Environmental Review
3/21/25 at 10:05 AM
By: *Sandy Moisey Scherer*
Docket No: BER 2019-06 WQ

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ATTORNEYS FOR ALPINE

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

IN THE MATTER OF: THE NOTICE OF APPEAL AND REQUEST FOR HEARING BY ALPINE PACIFIC UTILITIES REGARDING ISSUANCE OF MGWPCS PERMIT NO. MTX000164	CAUSE NO. BER 2019-06 WQ **JOINT STATUS REPORT**

On December 19, 2024, Appellant Alpine Pacific Utilities, LLC ("Alpine") and the Montana Department of Environmental Quality ("DEQ") entered a Second Stipulation and Request for Retention of Board Jurisdiction ("Second Stipulation") to revise and update the Stipulation and Request for Retention of Board Jurisdiction dated September 14, 2020 ("First Stipulation"). Alpine and DEQ are referred to collectively herein as "the Parties." The Second Stipulation updates the deadlines for:

1. Alpine's submission of a complete application for renewal and major modification of MTX000164 including sufficient data and analyses of site-specific aquifer

characteristics for DEQ to review the proposal and determine the level of protection required to maintain uses and avoid degradation of the receiving ground water and downgradient surface water at existing Outfall 001 and proposed Outfall 002;

2. Alpine's submission of any supplemental information requested by DEQ to assist in evaluating site specific ground water data and analyses and accurately estimate hydraulic conductivity of the aquifer, develop mixing zones, and develop permit effluent limitations and conditions that will protect existing uses and the quality of the aquifer in the location of existing Outfall 001 and proposed Outfall 002;

3. DEQ's tentative decision to renew and modify MGWPCS Permit No. MTX000164 in accordance with Administrative Rules of Montana ("ARM") 17.30.1024(3) and (4);

4. DEQ's public notice of its tentative decision to renew and modify MGWPCS Permit No. MTX000164 in accordance with ARM 17.30.1024(5) and ARM 17.30.1040;

5. DEQ's initiation of a public comment period on its tentative decision to renew and modify MGWPCS Permit No. MTX000164 in accordance with ARM 17.30.1024(6), which may be extended for good cause or to accommodate a public hearing in accordance with ARM 17.30.1024(6) and (7); and

6. DEQ's response to public comments and final determination to renew and modify MGWPCS Permit No. MTX000164 in accordance with ARM 17.30.1024(8) through (10).

The Parties are currently negotiating a First Amendment to the Second Stipulation to renew and modify the Permit in a manner that maintains the permitted discharge at Outfall 001 at 52,000 gallons per day (gpd) and permits new outfall (002), within the Glacier Park

International Airport ("GPIA") property, for up to 100,000 gpd. Pursuant to Paragraph 24 of the Second Stipulation, Alpine and DEQ file this Joint Status Report. The following lists the Parties accomplishments since filing the last joint status report dated December 4, 2024:

A. The Parties continue to work on issues related to Alpine's application for a renewal and major modification of Montana Groundwater Pollution Control System ("MGWPCS") Permit No. MTX000164 ("the Permit"). The Parties agree the most expeditious path to achieving renewal and major modification of the Permit is to maintain the permitted discharge at Outfall 001 at 52,000 gallons per day (gpd) and permit new outfall (002) to discharge up to 100,000 gpd.

B. The Parties are negotiating the First Amendment to the Second Stipulation to expedite processing and issuance of MGWPCS Permit No. MTX000164. Under the First Amendment to the Second Stipulation, Alpine will modify its application for renewal and major modification of MGWPCS Permit No. MTX000164 to maintain the daily flow limit of 52,000 gpd at existing Outfall 001 and to seek a daily flow limit of 100,000 gpd at proposed Outfall 002.

C. The Parties will work together to ensure Alpine's modified application for renewal and major modification of MTX000164 is complete and provides sufficient information to support the daily flow of 52,000 gpd at Outfall 001 and daily flow of 100,000 gpd at proposed Outfall 002. As DEQ develops the Permit, the Parties agree to cooperate in their effort to determine site specific aquifer characteristics

and to conduct nondegradation analyses for Outfalls 001 and 002. The Parties further agree best available site-specific ground water data and analyses is necessary to accurately estimate hydraulic conductivity, to develop a mixing zone, and to develop permit effluent limitations and conditions at each permitted outfall.

D. Pursuant to ARM 17.30.1024, within 120 days after DEQ determines it has sufficient information, including any requested supplemental or explanatory information, it will make a tentative determination with respect to issuance of the renewal and modification of MTX000164.

E. The Parties agree the effective portions of the 2019 permit are administratively extended pending Alpine's renewal and modification of the Permit.

F. The Parties agree the effluent limits, monitoring requirements, conditions and other requirements, including the 52,000 gpd flow set forth in the April 4, 2007 MGWPCS for Outfall 001 (as modified in 2009 and 2017) remain effective and enforceable throughout this Appeal.

G. The Parties will submit, for the BER's consideration, a First Amendment to the Second Stipulation that provides deadlines for renewal of MGWPCS Permit No. MTX000164.

H. The next joint status report is due in three months, on June 20, 2025.

Dated this 21st day of March, 2025.

Montana Department of Environmental Quality

By: */s/ Kirsten H. Bowers*
Kirsten H. Bowers
Attorney for DEQ

By: */s/ Rick C. Tappan*
Alpine Pacific Utilities, LLC.

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of March, 2025, I caused to be served a true and correct copy of the foregoing document to all parties or their counsel of record as set forth below:

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/s/ Catherine Armstrong
Catherine Armstrong, Paralegal
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Electronically Filed with the
Montana Board of Environmental Review
3/21/25 at 10:32 AM
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Docket No: BER 2019-06 WQ

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ATTORNEY FOR ALPINE
PACIFIC UTILITIES

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

IN THE MATTER OF: THE NOTICE OF APPEAL AND REQUEST FOR HEARING BY ALPINE PACIFIC UTILITIES REGARDING ISSUANCE OF MPDES PERMIT NO. MTX000164	CAUSE NO. BER 2019-06 WQ **FIRST AMENDMENT OF THE SECOND STIPULATION AND REQUEST FOR RETENTION OF BOARD JURISDICTION**

COME NOW Appellant Alpine Pacific Utilities, LLC ("Alpine") and the Montana Department of Environmental Quality ("DEQ"), collectively ("Parties"), and hereby amend the Second Stipulation and Request for Retention of Board Jurisdiction dated December 19, 2024 ("Second Stipulation") including deadlines for renewal of Montana Groundwater Pollution Control System (MGWPCS) Permit No. MTX000164. Except as modified, superseded, or amended by this First Amendment of the Second Stipulation and Request for Retention of Board Jurisdiction ("Second Stipulation"), the Second Stipulation remains in effect.

Under the terms of this First Amendment of the Second Stipulation the Parties agree to amend the Second Stipulation as follows:

1) Recognizing a forthcoming notice of deficiency (NOD) from DEQ would require additional ambient water quality data and analyses to support increasing the daily flow limit at Outfall 001 from 52,000 gallons per day (gpd) to 100,000 gpd as requested in Alpine's application for renewal and modification of MGWPCS Permit No. MTX000164, Alpine hereby agrees to modify its application for renewal and major modification of MTX000164 to maintain the daily flow limit of 52,000 gpd at existing Outfall 001 and to seek a daily flow limit of 100,000 gpd at proposed Outfall 002; and

2) the Parties agree to stay any deadline to send an NOD to Alpine pending DEQ's renewal and modification of MTX000164 in accordance with this First Amendment of the Second Stipulation and to update the deadlines for:

(a) Alpine's submission of any supplemental information requested by DEQ to assist the agency in evaluating site specific ground water data, accurately estimating hydraulic conductivity of the aquifer, developing mixing zones, performing a nonsignificance evaluation and nondegradation review pursuant to ARM 17.30.715 and § 75-5-303, MCA, developing permit effluent limitations and conditions that will protect existing uses and the quality of the aquifer in the location of existing Outfall 001 and proposed Outfall 002;

(b) DEQ's tentative decision to renew and modify MGWPCS Permit No. MTX000164 in accordance with ARM 17.30.1024(3) and (4);

(c) DEQ's public notice of its tentative decision to renew and modify MGWPCS Permit No. MTX000164 in accordance with this First Amendment of the Second Stipulation, ARM 17.30.1024(5), and ARM 17.30.1040;

(d) DEQ's initiation of a public comment period on its tentative decision to renew and modify MGWPCS Permit No. MTX000164 in accordance with this First Amendment of the Second Stipulation and ARM 17.30.1024(6), subject to any extension of the public comment period for good cause or to accommodate a public hearing in accordance with ARM 17.30.1024(6) and (7); and

(e) DEQ's response to public comments and issuance of a final determination to renew and modify MGWPCS Permit No. MTX000164 in accordance with this First Amendment of the Second Stipulation, and ARM 17.30.1024(8) through (10).

AMENDED SECOND STIPULATION

3. DEQ received Alpine's updated application for renewal and major modification of MTX000164 on November 16, 2024. By entering this First Amendment to the Second Stipulation, Alpine hereby modifies its application for renewal and major modification of MTX000164 to maintain the daily flow limit of

52,000 gallons per day (gpd) at existing Outfall 001 and to seek a daily flow limit of 100,000 gpd at proposed Outfall 002.

4. By entering this First Amendment to the Second Stipulation, DEQ herby determines Alpine's modified application for renewal and major modification of MTX000164 is complete and provides sufficient information to support the daily flow of 52,000 gpd at Outfall 001 and daily flow of 100,000 gpd at proposed Outfall 002.

5. Notwithstanding DEQ's determination that the modified application for renewal and major modification of MTX000164 is complete and DEQ's acknowledgement that Alpine has provided sufficient information to assist DEQ's development of a tentative decision to renew and modify MGWPCS Permit No. MTX000164 in accordance with this First Amendment to the Second Stipulation, the Parties agree to continue to cooperate by sharing any information necessary to develop the renewal and major modification of MGWPCS Permit No. MTX000164 .

6. Within 120 days of the Parties' execution of this First Amendment of the Second Stipulation, DEQ will make a tentative determination to renew and modify MTX000164 in accordance with the Montana Water Quality Act (MWQA), Title 75, chapter 5, MCA and administrative rules adopted to implement the MWQA at ARM Title 17, chapter 30. DEQ's tentative permit decision will

result in preparation of a draft MGWPCS permit, a fact sheet (briefly setting forth the factual and legal bases of the draft permit), and an environmental assessment (EA).

7. Should Alpine fail to timely provide information requested by DEQ pursuant to Paragraph 5, the 120-day timeframe in Paragraph 6 for DEQ to make a tentative determination to renew and modify MTX000164 may be suspended until DEQ receives the requested information.

8. Within 30 days of making its tentative permit decision, DEQ will give public notice of the tentative determination to renew and modify MTX000164 including draft permit, supporting fact sheet, and EA. DEQ will make the draft permit, fact sheet, and EA available for public comment for at least 30 days after the date of public notice and, if a public hearing is held, will provide no less than 30 days' notice prior to the hearing.

9. DEQ will consider and respond to substantive public comments and make a final determination to renew and modify MGWPCS Permit No. MTX000164 within 30 days after termination of the public comment period if a public hearing is not held. If a public hearing is held on the tentative determination, the department will make its final determination to renew and modify MTX000164 within 60 days following the hearing. All public comments

will be retained by the department and considered in the final determination in accordance with ARM 17.30.1024(8) through (10).

10. Upon making its final permit decision, DEQ will issue Alpine a renewal and modification of MGWPCS Permit No. MTX000164.

11. Within 30 days of DEQ's issuance of the final permit decision, Alpine will move to dismiss this Appeal with prejudice.

12. In accordance with § 75-5-403, MCA and ARM 17.30.1024(10) Alpine may request a new contested case hearing before the BER to appeal DEQ's final permit decision to renew and modify MGWPCS Permit No. MTX000164.

13. The Parties agree to continue to file Joint Status Reports with the BER every three months, beginning three months after the date the BER enters this First Amendment to the Second Stipulation and ending on the date DEQ issues a final permit decision.

14. The Parties agree Alpine may seek further modification of MTX000164 to increase the maximum permitted total discharge at Outfall 001 from 52,000 gpd to 100,000 gpd. Alpine agrees modification to increase the daily flow at Outfall 001 will require updated fate and transport modeling utilizing the QUAL2K water quality model; characterization of the existing water quality in Trumbull Creek; and characterization of the connectivity of Trumbull Creek to the receiving groundwater and the facility's effluent discharge..

15. DEQ agrees that the information to be provided in Paragraph 14 is the only outstanding information necessary to process the Outfall 001 modification from 52,000 gpd to 100,000 gpd and further, DEQ agrees that, although Alpine may be required to provide updated sampling and analysis of receiving ground water and downgradient surface water, Alpine will not have to resubmit information already deemed satisfactory by the DEQ.

16. Nothing in this First Amendment to the Second Stipulation limits DEQ's authority to review the permit renewal application, request additional information, and renew and modify MTX000164 under the MWQA, § 75-5-101, MCA et seq. and Montana administrative rules adopted under the MWQA.

17. Nothing in this First Amendment to the Second Stipulation limits Alpine from exercising any rights under the MWQA, including the right to seek further permit modifications.

18. Each of the signatories to this First Amendment to the Second Stipulation represents that he or she is authorized to enter this Stipulation and to bind the Parties represented by him or her to the terms of this Stipulation.

19. If for any reason the BER declines to enter this First Amendment to the Second Stipulation in the form presented, the terms of this Stipulation may not be used as evidence in any litigation, whether administrative or judicial, between the Parties.

20. The timeframes set forth herein may be modified for cause and by agreement between the Parties. Neither party shall unreasonably withhold their agreement to modify the timeframes.

21. This First Amendment to the Second Stipulation may only be modified or amended by written agreement executed by the Parties.

22. This First Amendment to the Second Stipulation may be signed in counterpart copies which together shall constitute a fully executed agreement.

ENTRY OF STIPULATION

The Parties request that the BER enter this First Amendment to the Second Stipulation.

This First Amendment to the Second Stipulation is hereby entered and the BER agrees to retain jurisdiction as described above and orders the Parties to proceed in compliance with the terms described herein.

Dated this ___ day of _____, 2025.

_____
David Simpson
BER Chairman

The Parties, by their respective counsel, hereby consent to the terms and conditions of the First Amendment to the Second Stipulation as set forth above and consent to the entry thereof.

Dated this 21st day of March, 2025.

/s/ Kirsten H. Bowers

Kirsten H. Bowers
Montana Department of Environmental Quality
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Helena, MT 59620-0901

ATTORNEY FOR THE DEPARTMENT OF ENVIRONMENTAL QUALITY

Dated this 21st day of March, 2025.

/s/ Rick C. Tappan

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ATTORNEY FOR ALPINE PACIFIC UTILITIES, LLC

CERTIFICATE OF MAILING

I hereby certify that on this 21st day of March, 2025, I caused to be served a true and correct copy of the foregoing document and any attachments to all parties or their counsel of record as set forth below:

Secretary, Board of Environmental Review Montana Department of Environmental Review P.O. Box 200901 Helena, MT 59620-0901 Sandy.MoiseyScherer@mt.gov	[ ] U.S. Mail [ ] Overnight Mail [ ] Hand Delivery [ ] Facsimile [X] E-Mail
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/s/ Catherine Armstrong
Catherine Armstrong, Paralegal
Montana Dept. of Environmental Quality

DEQ Montana Department of Environmental Quality

Board of Environmental Review

Memo

TO: Terisa Oomens, Board Attorney
Elena Hagen, Paralegal
Board of Environmental Review

FROM: Sandy Moisey Scherer, Board Secretary
P.O. Box 200901
Helena, MT 59620-0901

DATE: February 14, 2025

SUBJECT: Board of Environmental Review Case No. BER 2025-01 SM

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW OF THE STATE OF MONTANA	
IN THE MATTER OF: DECKER COAL COMPANY'S REQUEST FOR HEARING REGARDING PERMIT C1987001C (WEST DECKER MINE) AND PERMIT C1983007 (EAST DECKER MINE)	Case No. BER 2025-01 SM

On February 13, 2025, the BER received the attached request for hearing.

Please serve copies of pleadings and correspondence on me and on the following DEQ representatives in this case.

Jeremiah Langston Sam Doxzon Legal Counsel Department of Environmental Quality P.O. Box 200901 Helena, MT 59620-0901	Sam King Chief Legal Counsel Department of Environmental Quality P.O. Box 200901 Helena, MT 59620-0901

Attachments

Electronically Filed with the
Montana Board of Environmental Review
2/13/25 at 4:54 PM
By: *Sandy Moisey Scherer*
Docket No: BER 2025-01 SM

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DECKER COAL COMPANY'S REQUEST FOR HEARING

I. Introduction

Pursuant to Montana Code Annotated ("MCA") §82-4-427 and Montana Administrative Rule ("ARM") 17.24.425, please accept this as Decker Coal Company's ("DCC") request for a hearing before the Montana Board of Environmental Review ("BER") regarding the following orders issued by the Montana Department of Environmental Quality ("DEQ"):

- 1/29/25 *Order to Revise Permit C1987001C* (West Decker Mine)
- 1/29/25 *Notice of Noncompliance and Order of Abatement* (East Decker Mine Permit C1983007) issued to Decker Coal Company (DCC).

Attached as Exhibits 1 & 2.

II. Brief Statement of Facts

The Decker Coal Mine, situated in southern Montana's Powder River Basin near the town of Decker, commenced operations in the 1970s. The mine was divided into two distinct areas: East Decker and West Decker, separated by the Tongue River and each equipped with its own facilities.

Lighthouse Resources, Inc., the parent company of DCC, filed for Chapter 11 bankruptcy in December 2020 and began winding down active coal removal in January 2021 in order to focus on shipping remaining coal stock, addressing various outstanding obligations, and reclamation of the East and West Decker mines.

III. Summary of Contested Issues

A. Order Regarding West Decker Mine

On February 1, 2024, DCC submitted a request for permanent cessation of the West Decker Mine, indicating that it was relinquishing the right to mine. Exhibit 2. On October 18, 2024, the Bureau of Land Management confirmed that the eight federal coal leases associated with the West Decker Mine (Permit C1987001C) were "mined out" and relieved DCC of any further contractual obligations to operate under the terms of the relevant leases. On January 29, 2025, DEQ issued an *Order to Revise Permit C1987001C,* requiring DCC to revise its reclamation plan.

DEQ cited Montana Code Annotated ("MCA") §82-4-234's requirement that reclamation plans must be kept current with the operation. According to DEQ, the permanent cessation of operations at the West Decker Mine authorized it to order changes to Permit C1987001C pursuant to ARM 17.24.414(2), which authorizes DEQ to order "reasonable revision or modification of the permit provisions to ensure compliance with the Act…."

B. DCC Objections

DEQ, however, fails to read ARM 17.24.414 in unison with the Act. MCA §82-4-436 narrowly circumscribes the circumstances under which DEQ may propose a reclamation plan or operating permit:

> **82-4-436. Plan amendments by department.**
>
> (1) Unless an amendment to a plan of operation or permit is proposed by the operator, the department may amend only the terms of a plan or permit in compliance with this section.
>
> (2) If the department believes, based on credible evidence, that a continued opencut operation under the terms of an existing plan of operation or permit would violate a substantive numerical or narrative state standard or regulation or otherwise violate a purpose of this part, it may propose to the operator an amendment to the plan or permit.

That is, DEQ may not propose amendment of an operation/reclamation plan or permit simply to keep it "current." Rather, the Act limits DEQ's amendment proposal authority to those situations where it has credible evidence that continued operation will lead to violation of Montana's water quality standards or another regulatory violation. DEQ has not identified any substantive numeric or narrative water quality standards or other regulatory violations that would justify proposing an amendment to the reclamation plan at this point.

Furthermore, even in cases where revision or modification of permit provisions is authorized, ARM 17.24.414(2) only authorizes DEQ to require "reasonable" revision or

modification in accordance with the Act. The West Decker Mine order repeatedly demands detailed timelines of reclamation, even though such timelines have never been required before and are not required under the Act.

As an operator who went through bankruptcy fairly recently, DCC's resources are very limited. Requiring a precise timetable for reclamation is unreasonable in these circumstances because DCC relies, in part, on bond release proceeds from reclaimed areas to fund further reclamation. Accordingly, DCC cannot commit to specific areas and sequencing of reclamation before knowing the dates and amounts of cash collateral it will receive from Phase I bond release for areas already reclaimed. That is why DCC's currently approved reclamation schedule states that its "general sequence is as follows but it is subject to change." *See* Exhibit 4.

C. Order Regarding East Decker Mine

On April 8, 2021, DCC notified DEQ that it was relinquishing the right to mine the East Decker permit and that the operation was being placed in permanent cessation. On March 18, 2022 DEQ approved Minor Revision MR108, which revised the reclamation plan and showed reclamation as nearly complete by the end of 2032. Like the reclamation plan approved for the West Decker Mine, the East Decker reclamation plan provides that it is a general sequence that is subject to change. *See* Exhibit 5.

DCC wrote a reclamation status update to DEQ on September 17, 2024 and also submitted Minor Revision 119 (MR119) on December 2, 2024 to revise Attachment 313-1b, the Reclamation Schedule. The currently approved Reclamation Schedule lists a goal of 3,000,000 loose cubic yards ("LCY") via truck shovel and 5,600,000 LCY via Dragline/Dozer, for a total of 8,600,000 LCY. Decker, however, was able to move 9,120,600 LCY in 2024—over 520,000 more than projected—exclusively with the Dragline and Dozer.

DCC has been able to complete earthwork formerly budgeted as "Truck Shovel" volume by being innovative with the Dragline and Dozer. Additionally, it is simply more efficient and, therefore, more economical for earthwork to be completed with Dragline and Dozer. DCC submitted Form MR119 to commit to an annual yardage but move away from dictating the type of equipment used because budgeted volumes are being met ahead of schedule using Dragline and Dozer.

On January 29, 2025, DEQ issued a *Notice of Noncompliance and Order of Abatement* to DCC for failing to comply with the approved reclamation plan. DEQ cited DCC for a violation in the form of failure to comply with its approved reclamation plan. According to DEQ, DCC failed to follow its reclamation plan's commitment to move 3 million LCY of material via truck and shovel fleet. Additionally, DEQ cites a failure to

complete backfilling and grading within two years after coal removal, as required by ARM 17.24.501(6)(b). DEQ ordered DCC to revise its reclamation plan to include detailed timetables and plans to complete backfilling by 2035. DEQ also takes issue with the fact that DCC's 2024 earthwork was completed entirely with Dragline and Dozer, while its reclamation schedule provided for the use of Truck Shovel.

D. DCC Objections

First, as explained above, DCC was able to achieve more reclamation in 2024 by relying exclusively on Dragline and Dozer. DEQ fails to identify any harm caused by DCC's decision to perform reclamation more efficiently and ahead of schedule.

Second, ARM 17.24.501(6)(b) provides that backfilling and grading must be completed within two years "unless otherwise approved by the department upon adequate written justification and documentation provided by the operator…." DCC's currently approved reclamation schedule (Att. 313-1b), which was approved after DCC provided notice of permanent cessation to DEQ, does not require completion of backfilling and grading until the end of 2032—more than 11 years after completion of coal removal. Moreover, DEQ's abatement measure is for "DCC to revise the reclamation plan…to complete backfilling by 2035…." DEQ has already "otherwise approved" DCC's exemption from the two year requirement.

Furthermore, like the West Decker order for revision, the East Decker order's abatement measures repeatedly request precise timing and sequencing of reclamation operations. However, no provision in the administrative rules or the Act requires "exact sequence of dragline and pit work including a map of the reclamation sequence…."

Finally, the East Decker order's abatement measures include additional regulatory overreaches in the form of abatement measures that find no basis in the law, including:

- A weed management plan during reclamation that commits to spring and fall spraying (ARM 17.24.308 requires "a plan to prevent…noxious weeds on all lands within the proposed permit area until phase IV bond release…."; it does not require a commitment to spring and fall spraying);

- A timeline for the removal of buildings and other support facilities (no administrative rule requires a timeline for the removal of buildings or other support facilities).

For the reasons outlined above, as may be more fully explained at an evidentiary hearing and further written submissions to the BER, DCC hereby requests a hearing on the DEQ final agency actions described herein.

Tay Tonozzi
President of Decker Coal Company
Lighthouse Resources Inc
10980 South Jordan Gateway
South Jordan, UT 84095

DEQ
Montana Department
of Environmental Quality

January 29, 2025

Sent via certified mail

Tay Tonozzi
Lighthouse Resources Inc
10980 South Jordan Gateway
South Jordan, UT 84095

Permit ID: C1987001C (West Decker Mine)

ORDER TO REVISE PERMIT C1987001C

On July 26, 2023, the Department of Environmental Quality (DEQ) initiated a mid-permit review of Decker Coal Company's (DCC) West Decker permit (Permit # C1987001C). The Administrative Rules of Montana (ARM) 17.24.414 requires DEQ to conduct a mid-permit review, starting no later than the middle of the permit term. On September 27, 2023, DEQ sent DCC written finding outlining areas of the permit that required revision (Exhibit 3).

On February 1, 2024, DCC submitted a request for permanent cessation to DEQ indicating that the company would be relinquishing the right to mine (Exhibit 4). DEQ received a letter from the Bureau of Land Management (BLM) on October 18, 2024, declaring the eight federal coal leases associated with the West Decker permit "mined-out" and relieved DCC of any continued operation requirements (Exhibit 5).

Pursuant to Section 82-4-234, Montana Code Annotated (MCA), reclamation plans must be kept current with the operation. Receipt of BLM's determination that the federal coal leases for West Decker were "mined-out" in conjunction with DCC's request for permanent cessation are evidence DCC will no longer mine coal. Thus, the approved mine plan, coal conservation plan, and reclamation plan must be revised to be kept current with the mine operation.

ARM 17.24.414(2) states that DEQ may order changes in the permit as are necessary to ensure compliance with the Act. DEQ orders the DCC to revise the reclamation as follows:

1) Update the reclamation plan to include detailed steps and dates for completion, as required under ARM 17.24.313(1). A detailed plan, at minimum, must include:
    a) Timetables and plans for pit reclamation to be accomplished by 2035 including the exact sequence of dragline and truck-shovel operations to accomplish the pit backfilling.
    b) A map of the reclamation sequence (ARM 17.24.313(1)(b, d, g)) that identifies when and where material will be placed to accomplish the reclamation.

c) Timetable for mine pit dewatering in relation to the pit backfill sequence (ARM 17.24.313(1)(b, d, g)).
d) Sequence of soil laydown and details on the soil pile that will be used for specific fields (ARM 17.24.313(1)(g)).
e) The sequence and timing of seeding specific areas (ARM 17.24.313(1)(h)). Please remove crested wheatgrass from the Pastureland seed mix in reference to table 313-8.
f) A revised postmine topography (PMT) map and plan to integrate the reduction in disturbance into the overall reclamation plan (ARM 17.24.313(1)(v)).
    i. The revised PMT must also propose grading fixes for areas that failed bond release due to drainage connectivity and excessive erosion (ARM 17.24.313(1)(e)).
    ii. A detained design for Pearson Creek (ARM 17.24.313(1)(f)(i)).
    iii. General geomorphic drainage designs for non-critical drainages (ARM 17.24.313(1)(f)(ii)).
    iv. A map showing the small depressions that are proposed to remain, with special attention paid to small depressions that are within a channel (ARM 17.24.503).
    v. Drainages must be included on the PMT maps that show the drainage length that is committed to being replaced in the narrative sections of the reclamation plan. Premine drainages should also be shown on the premine topography map for comparison (ARM 17.24.313(1)(e)).

2) Plan for permanent mitigation of coal smokers (ARM 17.24.523; ARM 17.24.308(1)(d)).
3) Weed management plan during reclamation including commitments for spring and fall spraying (ARM 17.24.308(1)(f)).
4) Timeline for the removal of buildings and other support facilities (ARM 17.24.304(1)(b)).
5) Plan for facilities sampling for hydrocarbons including decommissioned shop areas and ready lines prior to grading work in the area. The plan must include the spacing of samples and the proposed parameter suite (ARM 17.24.308(1)(c)).
6) A hydrologic control plan, including the sizing and location of ponds, to show when and where ponds will be built for retention of sediment through at least Phase II bond release. Current pond locations and routing will not be sufficient through final reclamation as sumps and pits are filled in (ARM 17.24.308(1)(b)(vi)).
7) MR196, a minor revision to the reclamation plan, was approved on December 31, 2020 (Exhibit 1). This minor revision's reclamation plan is what is currently in the ePermit system as approved. MR200, a minor revision to the reclamation plan, was approved on March 15, 2022 (Exhibit 2). In this revision, DEQ approved annual bonding and a new reclamation timeline. However, this revision was not incorporated into the ePermit causing a conflict between the approved reclamation schedule and the schedule in the ePermit. While the revision commits to yearly backfilling at West Decker, backfilling of more than 25,000 loose cubic yards does not commence until 2030, once the majority of

backfilling with the dragline and dozer at the East Decker permit is finished. MR200 should also be appropriately included into any future reclamation plan revisions.

The plan must be submitted to DEQ as a revision within 30 days. If DEQ's review identifies that the plan is deficient, DCC must submit a revised plan within 15 days after receipt of a deficiency letter. DCC is encouraged to meet with DEQ to discuss the plan and any questions regarding this order prior to a submission in order to expedite the review and deficiency/approval process.

In addition to the reclamation plan updates, DEQ is still awaiting a satisfactory permit modification to address the following outstanding items. These items must also all be addressed with an appropriate permit revision and be approvable by July 1, 2025. In some instances, DCC submitted revision requests to DEQ but has not responded to DEQ deficiencies. In those instances, DCC needs to complete the respective permit revision request. Please refer to the attached mid permit review letter for the full list of DEQ's written findings.

Revision	Status
ARM 17.24.303(1)(b): Please review the current legal description. Make a note in the response letter if this information is accurate or needs to be updated and if so from which revision	This will be addressed with the approval of MR 208. A deficiency letter for MR208 was sent to DCC on 9/16/2024.
ARM 17.24.303(1)(b): Please review the current legal description. Make a note in the response letter if this information is accurate or needs to be updated and if so from which revision	This will be addressed with the approval of MR 208. A deficiency letter for MR208 was sent to DCC on 9/16/2024.
ARM 17.24.303(1)(j): Please review current acreage information. Make a note in the response letter if this information is accurate or needs to be updated and if so from which revision.	There have been no attempts to resolve this deficiency.
ARM 17.24.303(1)(l) & ARM 17.24.303(1)(u): Please review and update information as needed.	There is no statement regarding a prospecting permit. DCC's prospecting permit #X2013340 is not included on the ePermit list of other coal permits, Tab 1.16. There have been no attempts to resolve this deficiency.
ARM 17.24.303(1)(m): DCC should upload a new Compliance with 82-4-251, MCA document as the current one in the system is from 2016 and they have had Ownership and Control updates since then.	There have been no attempts to resolve this deficiency.
ARM 17.24.303(1)(o): Multiple items related	There have been no attempts to resolve this

to ownership and control	deficiency.
ARM 17.24.303(1)(p)(i): Map 303-2 shows a private estate of Mock-et-al* as private mineral ownership marked as "Fee Coal." This is under DCC's ownership on map 303-1. This appears to show a severed estate. Please provide the information required within 303(1)(p)(i) as appropriate to meet the requirements of the applicable rules.	There have been no attempts to resolve this deficiency.
ARM 17.24.303(1)(x): DCC needs to clean up these attachment sections as they include the public notices from the renewal in 2015.	This will be addressed with the approval of MR 208.A deficiency letter for MR208 was sent to DCC on 9/16/2024.
ARM 17.24.304(1)(k)(i)(D): The soil mapping units map was not locatable. Either the link is directed to the wrong location or the map was not included in the ePermit. Please upload the soil mapping units map(s) that coincide with the Baseline soils reports.	There have been no attempts to resolve this deficiency.
ARM 17.24.305(1)(e): Exhibit 305-2 and Exhibit 600-1 referenced in the transportation facilities plan is missing. Please add exhibits to the permit.	These maps were added with MR208, but not to the "6.1 Maps" tab of the ePermit. This deficiency has not been resolved.
ARM 17.24.305(1)(k): Two different PMTs are present in the permit. Please remove the superseded 2009 version.	This will be addressed with the approval of MR 208.A deficiency letter for MR208 was sent to DCC on 9/16/2024.
ARM 17.24.305(1)(l): Please update bond maps as appropriate in meeting commitments approved through MR200.	Bonding maps were submitted with MR207. A deficiency letter for MR207 was sent to DCC on 11/8/2024. DEQ is reviewing a deficiency response from DCC submitted on 1/9/2025.
ARM 17.24.305(1)(m): Exhibits 322-1, 322-2, 322-3, and 322-4 referenced in the "Coal Conservation" plan are missing. Please add the exhibits to the permit.	These maps were added with MR208, but not to the "6.1 Maps" tab of the ePermit. A deficiency letter for MR208 was sent to DCC on 9/16/2024.
ARM 17.24.305(3): Please upload DWG companions to pdf versions of existing maps and vice versa as appropriate.	There are still discrepancies between the .pdf list and .dwg list of maps in Tab "6.1 Maps" of the ePermit.
ARM 17.24.312(1)(d)(i): The Northern Long-eared Bat was listed as Endangered in 2023. Portions of West Decker may fall within their potential range. Please visit USFWS website https://ipac.ecosphere.fws.gov/ and	This will be addressed with the approval of MR 208.A deficiency letter for MR208 was sent to DCC on 9/16/2024.

complete the determination key for NLEB and submit the results to DEQ. You must add any conservation methods recommended by the USFWS to your Fish and Wildlife Protection Plan.	
ARM 17.24.312(1)(d)(iii): Provide a plan for wetland restoration, mitigation, and enhancement.	There have been no attempts to resolve this deficiency.
ARM 17.24.313(1)(b): MR200 was approved on March 15, 2022 but the updated documents have not been uploaded to the ePermit. Please update the ePermit with MR200 documents and submit the required annual bond calculation and associated annual bond release as committed to on page 4 of the reclamation plan.	This will be addressed with the approval of MR 208.A deficiency letter for MR208 was sent to DCC on 9/16/2024.
ARM 17.24.313(1)(b): On page 4 of the MR200 reclamation plan, please remove the last two sentences of the first paragraph. Removal of the second to last sentence is warranted as OSM determined that inflation and worst-case scenario must be considered as part of annual bonding. The last sentence needs to be removed as it does not comply with ARM 17.24.1116(1) and 17.24.1116(3)(a) that requires phases of reclamation must be met to release bond in any amount.	313_Bond_24_R2 was submitted with MR207. A deficiency letter for MR207 was sent to DCC on 11/8/2024. DEQ is reviewing a deficiency response from DCC submitted on 1/9/2025.
ARM 17.24.313(1)(g): In this section, the statement, "The soil replacement depths will be adjusted on an annual basis according to calculated soil salvage, and reported in the Annual Report." must be changed to reflect other soil depth commitments in the permit. For example 17.24.313(1)(h) designates soil depths based on vegetation types and most other discussions refer to this section for depth redistribution. Please evaluate and adjust accordingly.	There have been no attempts to resolve this deficiency.
ARM 17.24.322(2)(a)(iv): Maps associated with 322 Geologic Information and Coal Conservation Plan are missing from this permit section. With the realization mining is	These maps were added with MR208, but not to the “6.1 Maps” tab of the ePermit. A deficiency letter for MR208 was sent to DCC on 9/16/2024.

not occurring in this permit area maps identifying the character of the area are important for planning in the case Department or non-DCC personnel are required to continue closure of the mine. Additionally, the studies need the location information to make sense of the data. Please include these maps.	
ARM 17.24.1004(1): Please update the "Vegetation Monitoring" portion of the 1001 Permit Requirements.pdf to state that monitoring will occur in compliance with ARM17.24.723. The language currently included in this permit material refers to reference communities which are no longer being utilized.	This section was modified with MR208, but the deficiency has not yet been resolved. Reference communities are no longer being utilized with the approval of MR199 and therefore language indicating continued monitoring of those reference communities needs to be removed. A deficiency letter for MR208 was sent to DCC on 9/16/2024.

Provision for Administrative Review

Pursuant to ARM 17.24.425, the permittee must submit a written request for a hearing before the Board of Environmental Review (BER) on the reasons for the order and the terms outlined above within 30 days from receipt of this order if the permittee seeks a review by the Board of Environmental Review (BER). If a request is received, the BER shall commence the hearing within 30 days.

Sincerely,

Eric Dahlgren, Bureau Chief
Mining Bureau
Department of Environmental Quality
(406) 444-5245
edahlgren@mt.gov

CC: Jeffrey Fleischman, OSMRE - Casper Office
Emily Lodman, DEQ Coal Section
Ashley Eichhorn, DEQ Coal Section
Sam King, DEQ Legal
Matt Guptill, DCC

DEQ
Montana Department
of Environmental Quality

January 29, 2025

Sent via certified mail

Tay Tonozzi
Lighthouse Resources Inc
10980 South Jordan Gateway
South Jordan, UT 84095

Permit ID: C1983007
Noncompliance No: CN2025001

NOTICE OF NONCOMPLIANCE AND ORDER OF ABATEMENT

During a Department of Environmental Quality (DEQ) complete inspection of the East Decker Mine (Permit #C1983007) on December 19, 2024, DEQ documented that permit reclamation commitments for 2024 were not completed.

Nature of the Violation: Failure to Comply with the Approved Reclamation Plan

The Administrative Rules of Montana (ARM) 17.24.501(6)(b) states that, unless otherwise approved by DEQ, backfilling and grading must be completed within two years after coal removal from each pit has been concluded. Attachment 313-1b (Exhibit 1) of the permit lists a general timeline of reclamation. In 2024, the East Decker Mine commitment was for 3 million cubic yards of material to be moved with a truck and shovel fleet. One hundred acres were also supposed to be seeded. DEQ conducted thirteen inspections in 2024, and DEQ recorded that the truck and shovel fleet was never activated and that no soil laydown or seeding had occurred in 2024. Decker Coal Company's (DCC) alternate reclamation schedule was approved in 2021 and revised in 2022. While Attachment 313-1b states that the schedule may be subject to change, ARM 17.24.313(1)(b) requires any changes to a reclamation plan to be approved by DEQ prior to implementation. No such approved changes were made.

Description of Conditions

A partial timeline of reclamation plan commitments and observations by DEQ is given as follows.

1) December 4, 2020. Lighthouse Resources Inc, owner of the East Decker Mine, files for Chapter 11 bankruptcy.
2) April 8, 2021. DCC notifies DEQ that the company has relinquished the right to mine in the East Decker permit and that the permit will be in permanent cessation (Exhibit 3).

Since no more coal can be mined once a permit goes into permanent cessation, reclamation commitments for all pits, including backfilling within 2 years unless otherwise approved, are immediately enacted.

3) April 21, 2021. Minor Revision MR106 is approved which revises the reclamation plan (Exhibit 2). The plan shows reclamation to be almost entirely completed by the year 2026 with only the facilities and out of pit spoils pile OB-1 to be reclaimed post 2026.
4) March 18, 2022. Minor Revision MR108 is approved which revises the reclamation plan to its current timetable (Exhibit 1).
5) January 9, 2024. East Decker inspection. Inspectors note the following: “The truck-haul for backfill is scheduled to begin in May.” (Exhibit 4)
6) February 6, 2024. East Decker inspection. Inspectors note the following: “Decker plans to hire truck shovel crews in 2024, per backfilling and reclamation schedule commitments in the permit. The operator reported that maintenance on the truck fleet has started in anticipation of hiring drivers. East Decker's 2024 permit commitments are for 3 million loose cubic yards truck shovel backfilling and 5.6 million loose cubic yards of dragline backfilling.” (Exhibit 5)
7) March 12, 2024. East Decker inspection. Inspectors note the following: “One of the hydraulic shovels had been relocated to the facilities area for maintenance in preparation for the upcoming truck and shovel work that is planned to start in May.” (Exhibit 6)
8) May 16, 2024. East Decker inspection. Inspectors note the following: “The operator indicated that only five new hires would be required for the truck-haul operation scheduled for May and that filling those positions on relatively short notice was not expected to be problematic.“ (Exhibit 7)
9) July 24, 2024. East Decker inspection. Inspectors note the following: “A truck shovel fleet (fleet) has not mobilized on site. The plan remains to utilize a truck shovel fleet for earth moving of 3,000,000 LCY in 2024; however, news from the managing firm to commence fleet establishment has not arrived. Updates on a timeframe have not been offered to the mine's personnel.” (Exhibit 8)
10) August 13, 2024. East Decker inspection. Inspectors note the following: “A truck shovel fleet has not been mobilized on site. The permit commitment is to use this fleet to move 3,000,000 LCY of material in 2024. No update of when this fleet would be hired was indicated.” (Exhibit 9)
11) August 30, 2024. DEQ notifies DCC that the company does not appear to be on track to meet the 2024 commitments for truck-shovel reclamation, and DEQ requests a written response outlining how the company plans to meet these permit reclamation commitments. (Exhibit 14)
12) September 17, 2024. DCC responds to DEQ with a letter stating that the permit contains a statement that “Plans are subject to change as equipment and manpower dictates.” DCC also states that the dragline and dozers were utilized in areas originally designated for truck-shovel work, and that soil and seeding were not done due to drought conditions in 2024. (Exhibit 15)

13) September 20, 2024. DEQ identified deficiencies in the spoil sampling data that was submitted. (Exhibit 12)
14) September 24, 2024. East Decker inspection. Inspectors note the following: "Decker also sent a letter requesting a revision to the approved reclamation schedule on 09/17/2024. Changes to the reclamation schedule must be submitted as a formal revision to the permit since it is a permit commitment. The current commitment includes 3,000,000 LCY of material to be reclaimed by a truck shovel fleet, which has yet to be mobilized." (Exhibit 10)
15) December 2, 2024. Minor Revision MR119 is submitted to DEQ by DCC to revise the reclamation schedule (Exhibit 13). This revision is not currently approved, and a deficiency letter was sent to the operator on January 22, 2025. The proposed revision changes the commitment from dragline and truck shovel cubic yards to only earthwork cubic yards, greatly reduces the commitment of cubic yards moved per year, and it commits to finishing earthwork movement by the year 2032. The proposed schedule also entirely eliminates commitments to seeding. No justification for the revision is given for how less earthwork movement will result in completion of the backfilling in the same amount of time as the currently approved reclamation plan. (Exhibit 12; Exhibit 16)
16) December 19, 2024. East Decker inspection. Inspectors note the following: "Decker stated no work had been completed during the 2024 year with a truck/shovel fleet as previously planned in May. Additionally, no seeding had been completed during 2024. Personnel indicated that there was difficulty in coordinating with the bond company for funds and finding qualified operators." (Exhibit 11)

Conditions to Abate

ARM 17.24.1202(3) states that DEQ may order changes in mining and reclamation plans as are necessary to ensure compliance with the Act and the rules adopted pursuant thereto.

1) DEQ requires DCC to revise the reclamation plan to include detailed steps and dates for completion, as required under ARM 17.24.313(1). A detailed plan, at minimum, must include:
   a) Timetables and plans to complete backfilling by 2035 including exact sequence of dragline and pit work including a map of the reclamation sequence (ARM 17.24.313(1)(b, d, g)).
   b) Timeline for mine pit dewatering (ARM 17.24.313(1)(b, d, g)).
   c) Sequence of soil laydown and details on the soil pile that will be used for specific fields (ARM 17.24.313(1)(g)).
   d) The sequence and timing of seeding specific areas (ARM 17.24.313(1)(h)).
2) Plan for permanent mitigation of coal smokers (ARM 17.24.523; ARM 17.24.308(1)(d)).
3) Weed management plan during reclamation including commitments for spring and fall spraying (ARM 17.24.308(1)(f)).
4) Timeline for the removal of buildings and other support facilities (ARM 17.24.304(1)(b)).

5) Plan for facilities sampling for hydrocarbons including decommissioned shop areas and ready lines prior to grading work in the area. The plan must include the spacing of samples and the proposed parameter suite (ARM 17.24.308(1)(c)).

The plan must be submitted to DEQ as a minor revision within 30 days. If DEQ's review identifies that the plan is deficient, DCC must submit a revised plan within 15 days after receipt of a deficiency letter. DCC is encouraged to meet with DEQ to discuss the plan and any questions regarding this order prior to a submission in order to expedite the review and deficiency/approval process.

Extension or Modification of this Order

Upon application by the Permittee, DEQ may, for good cause, extend the period for abatement. The period for abatement, however, may not be extended beyond 90 days unless one of the conditions set forth in ARM 17.24.1206(5)(b) exists. DEQ's decision on an application for extension beyond 90 days may be subject to a contested case hearing before the Board of Environmental Review (BER) if a hearing before the BER is requested, in writing, within 30 days of such decision by a person with an interest that is or may be adversely affected (ARM 17.24.1206(5)(d)).

This Notice of Noncompliance and Order of Abatement may be modified, vacated, or terminated at any time. The Permittee may submit a letter of mitigating circumstances to DEQ providing information about the violation. DEQ will consider any information submitted in determining the facts surrounding the violation and the amount of penalty.

The letter of mitigating circumstances must be sent to the Bureau Chief of the Mining Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901, on or before January 31, 2025. Failure to timely submit a letter of mitigating circumstances may result in the issuance of a Notice of Violation and Administrative Penalty Order without input from the Permittee. The failure to raise an issue in the letter of mitigating circumstances will not preclude the Permittee from raising the issue at a contested case hearing as set forth in 82-4-206, Montana Code Annotated (MCA).

Pursuant to Section 82-4-254(1), MCA, a Permittee who violates the Act, rules adopted, or orders issued under the Act, or term or condition of a permit, shall pay an administrative penalty of not less than $100 and not more than $5,000 and an additional administrative penalty within the same limits for every day during which the violation continues. In order to institute the penalty assessment process, DEQ will serve the Permittee a Notice of Violation and Administrative Penalty Order within 90 days after issuing the Notice of Noncompliance, unless the penalty is waived pursuant to Section 82-4-254(2), MCA. DEQ will determine the penalty based on the factors and penalty calculation procedures found in Section 82-4-1001, MCA, and ARM 17.4.301-308. Pursuant to 82-4-251(7), MCA, DEQ may also request attorney fees and costs associated with any judicial or administrative proceedings.

Hearing

Pursuant to 82-4-251(5), MCA, the Permittee may request an informal public hearing on this Notice of Noncompliance and Order of Abatement. Pursuant to 82-4-251(6), MCA, a person who has been issued a notice or order of cessation pursuant to subsection (1) or (2) may request a hearing before the BER within 30 days of the issuance of the notice.

Sincerely,

Eric Dahlgren, Bureau Chief
Mining Bureau
Department of Environmental Quality
(406) 444-5245

CC: Jeffrey Fleischman, OSMRE - Casper Office
Emily Lodman, DEQ Coal Section
Ashley Eichhorn, DEQ Coal Section
Sam King, DEQ Legal
Matt Guptill, DCC

DEQ Montana Department of Environmental Quality

Board of Environmental Review

Memo

TO: Terisa Oomens, Board Attorney
Elena Hagen, Paralegal
Board of Environmental Review

FROM: Sandy Moisey Scherer, Board Secretary
P.O. Box 200901
Helena, MT 59620-0901

DATE: March 3, 2025

SUBJECT: Board of Environmental Review Case No. BER 2025-01 SM

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

IN THE MATTER OF: DECKER COAL COMPANY'S REQUEST FOR HEARING REGARDING PERMIT C1987001C (WEST DECKER MINE	Case No. BER 2025-01 SM

On February 28, 2025, the BER received the attached amended request for hearing.

Please serve copies of pleadings and correspondence on me and on the following DEQ representatives in this case.

Jeremiah Langston Sam Doxzon Legal Counsel Department of Environmental Quality P.O. Box 200901 Helena, MT 59620-0901	Sam King Chief Legal Counsel Department of Environmental Quality P.O. Box 200901 Helena, MT 59620-0901

Attachments

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Attorney for Decker Coal Company

Electronically Filed with the
Montana Board of Environmental Review
2/28/25 at 5:17 PM
By: *Sandy Moisey Scherer*
Docket No: BER 2025-01 SM

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

IN THE MATTER OF: **DECKER COAL COMPANY'S REQUEST FOR HEARING REGARDING PERMIT C1987001C (WEST DECKER MINE) AND PERMIT C1983007 (EAST DECKER MINE)**	**CAUSE NO. BER 2025-01 SM** **DECKER COAL COMPANY'S AMENDED REQUEST FOR HEARING**

Decker Coal Company ("Decker") respectfully requests that the Board of Environmental Review ("Board") revise the caption of this matter to apply only to its appeal of the "ORDER TO REVISE PERMIT C1987001C" issued January 29, 2025 for the West Decker Mine ("Order"). The "NOTICE OF NONCOMPLIANCE AND ORDER OF ABATEMENT" issued January 29, 2025 for the East Decker Mine ("Notice") is being appealed in a separate Amended Request for Hearing contemporaneously filed. Both the Order and the Notice were issued January 29, 2025. The 30-day appeal period for both the Order and Notice extends to February 28, 2025. ARM 17.24.425; § 82-4-251(6), MCA. Decker's Amended Request for Hearings and the new Request for Hearing are timely filed, are filed just 15 days after the original Request for Hearing and before any action has been taken by either the Board or the Department of Environmental Quality ("DEQ" or "Department"). Decker's Amended Request for Hearing and

new Request for Hearing are timely and appropriate.

I. BACKGROUND

The West Decker Mine is governed by Coal Mine Permit C1987001C, Minor Revision 209, approved by DEQ on November 13, 2024 (the "Permit").[1] On July 26, 2023, DEQ initiated a mid-term review of the Permit pursuant to ARM 17.24.414. As a result of the mid-term review, DEQ issued written findings on September 27, 2023. Decker has addressed many of the issues noted in DEQ's mid-term review and continues to work with the agency to resolve the outstanding issues.

More than a full year after DEQ's mid-term review, DEQ issued its Order seeking seven new requests that were not previously raised in the mid-term review. The seven new requests were apparently triggered by Decker's February 1, 2024 request for permanent cessation of the West Decker Mine and DEQ's October 18, 2024 receipt of a letter from the Bureau of Land Management declaring the federal coal leases at the West Decker Mine to be "mined-out" and relieving Decker of any continued operation requirements. Ex. 1, p. 1. The seven new requests were not raised as a result of DEQ's mid-term review. *See*, Exhibit 1, *compare* list of seven issues on pp. 2-3 *with* table of original issues at pp. 3-6. DEQ's new requests seek extensively detailed schedules and plans. DEQ afforded Decker 30 days to submit the requested information in the form of a minor revision to the Permit, making the deadline for the submission exactly the same as the deadline to appeal the Order.

II. ISSUES ON APPEAL

Pursuant to ARM 17.24.425, incorporated into ARM 17.24.414(4), which allows administrative review of DEQ's Order, Decker timely challenges DEQ's Order by requesting a

[1] Permit documents are available online at https://deq.mt.gov/mining/Programs/coal.

contested case hearing in accordance with the Montana Administrative Procedure Act. The issues on appeal are described below. Decker reserves the right to seek amendment of this notice to include additional issues that arise and as discovered during the contested case hearing process.

A. DEQ LACKS AUTHORITY TO ORDER REVISIONS TO THE PERMIT.

DEQ's authority to order revisions derives from ARM 17.24.414, which connects the revisions sought to findings made as a result of the mid-term review. ARM 17.24.414(2). DEQ admits that the seven new issues it seeks as revisions to the Permit stem from information gained long after and disconnected from the mid-term review. The seven new issues are not tethered to DEQ's written findings from the mid-term review completed on July 26, 2023. DEQ therefore lacks authority to raise the seven new requests or require Decker to modify the permit to address those seven new requests.

B. THE REQUESTED CHANGES ARE CONTRARY TO MSUMRA.

The rule allows DEQ to "require reasonable revision or modification of the permit provisions to ensure compliance with the Act and this subchapter." ARM 17.24. 414(2). DEQ's seven new requests are unreasonable and go beyond the statutory and regulatory requirements of the Montana Strip and Underground Mine Reclamation Act ("MSUMRA"), in part by requiring an unreasonable level of detail not supported by MSUMRA that cannot be practically or reasonably implemented.

III. REQUESTED RELIEF

Decker respectfully requests a contested case hearing scheduled in accordance with ARM 17.24. 425 and seeks a Board decision invalidating DEQ's Order.

Dated this 28th day of February, 2025.

/s/Victoria A. Marquis
Victoria A. Marquis
CROWLEY FLECK PLLP
P. O. Box 2529
Billings, MT 59103-2529

Attorney for Decker Coal Company

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon the following counsel of record, by the means designated below, this 28th day of February, 2025:

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VICTORIA A. MARQUIS

EXHIBIT 1

DEQ
Montana Department of Environmental Quality

January 29, 2025

Sent via certified mail

Tay Tonozzi
Lighthouse Resources Inc
10980 South Jordan Gateway
South Jordan, UT 84095

Permit ID: C1987001C (West Decker Mine)

ORDER TO REVISE PERMIT C1987001C

On July 26, 2023, the Department of Environmental Quality (DEQ) initiated a mid-permit review of Decker Coal Company's (DCC) West Decker permit (Permit # C1987001C). The Administrative Rules of Montana (ARM) 17.24.414 requires DEQ to conduct a mid-permit review, starting no later than the middle of the permit term. On September 27, 2023, DEQ sent DCC written finding outlining areas of the permit that required revision (Exhibit 3).

On February 1, 2024, DCC submitted a request for permanent cessation to DEQ indicating that the company would be relinquishing the right to mine (Exhibit 4). DEQ received a letter from the Bureau of Land Management (BLM) on October 18, 2024, declaring the eight federal coal leases associated with the West Decker permit "mined-out" and relieved DCC of any continued operation requirements (Exhibit 5).

Pursuant to Section 82-4-234, Montana Code Annotated (MCA), reclamation plans must be kept current with the operation. Receipt of BLM's determination that the federal coal leases for West Decker were "mined-out" in conjunction with DCC's request for permanent cessation are evidence DCC will no longer mine coal. Thus, the approved mine plan, coal conservation plan, and reclamation plan must be revised to be kept current with the mine operation.

ARM 17.24.414(2) states that DEQ may order changes in the permit as are necessary to ensure compliance with the Act. DEQ orders the DCC to revise the reclamation as follows:

1) Update the reclamation plan to include detailed steps and dates for completion, as required under ARM 17.24.313(1). A detailed plan, at minimum, must include:
   a) Timetables and plans for pit reclamation to be accomplished by 2035 including the exact sequence of dragline and truck-shovel operations to accomplish the pit backfilling.
   b) A map of the reclamation sequence (ARM 17.24.313(1)(b, d, g)) that identifies when and where material will be placed to accomplish the reclamation.

c) Timetable for mine pit dewatering in relation to the pit backfill sequence (ARM 17.24.313(1)(b, d, g)).
d) Sequence of soil laydown and details on the soil pile that will be used for specific fields (ARM 17.24.313(1)(g)).
e) The sequence and timing of seeding specific areas (ARM 17.24.313(1)(h)). Please remove crested wheatgrass from the Pastureland seed mix in reference to table 313-8.
f) A revised postmine topography (PMT) map and plan to integrate the reduction in disturbance into the overall reclamation plan (ARM 17.24.313(1)(v)).
    i. The revised PMT must also propose grading fixes for areas that failed bond release due to drainage connectivity and excessive erosion (ARM 17.24.313(1)(e)).
    ii. A detained design for Pearson Creek (ARM 17.24.313(1)(f)(i)).
    iii. General geomorphic drainage designs for non-critical drainages (ARM 17.24.313(1)(f)(ii)).
    iv. A map showing the small depressions that are proposed to remain, with special attention paid to small depressions that are within a channel (ARM 17.24.503).
    v. Drainages must be included on the PMT maps that show the drainage length that is committed to being replaced in the narrative sections of the reclamation plan. Premine drainages should also be shown on the premine topography map for comparison (ARM 17.24.313(1)(e)).

2) Plan for permanent mitigation of coal smokers (ARM 17.24.523; ARM 17.24.308(1)(d)).
3) Weed management plan during reclamation including commitments for spring and fall spraying (ARM 17.24.308(1)(f)).
4) Timeline for the removal of buildings and other support facilities (ARM 17.24.304(1)(b)).
5) Plan for facilities sampling for hydrocarbons including decommissioned shop areas and ready lines prior to grading work in the area. The plan must include the spacing of samples and the proposed parameter suite (ARM 17.24.308(1)(c)).
6) A hydrologic control plan, including the sizing and location of ponds, to show when and where ponds will be built for retention of sediment through at least Phase II bond release. Current pond locations and routing will not be sufficient through final reclamation as sumps and pits are filled in (ARM 17.24.308(1)(b)(vi)).
7) MR196, a minor revision to the reclamation plan, was approved on December 31, 2020 (Exhibit 1). This minor revision's reclamation plan is what is currently in the ePermit system as approved. MR200, a minor revision to the reclamation plan, was approved on March 15, 2022 (Exhibit 2). In this revision, DEQ approved annual bonding and a new reclamation timeline. However, this revision was not incorporated into the ePermit causing a conflict between the approved reclamation schedule and the schedule in the ePermit. While the revision commits to yearly backfilling at West Decker, backfilling of more than 25,000 loose cubic yards does not commence until 2030, once the majority of

backfilling with the dragline and dozer at the East Decker permit is finished. MR200 should also be appropriately included into any future reclamation plan revisions.

The plan must be submitted to DEQ as a revision within 30 days. If DEQ's review identifies that the plan is deficient, DCC must submit a revised plan within 15 days after receipt of a deficiency letter. DCC is encouraged to meet with DEQ to discuss the plan and any questions regarding this order prior to a submission in order to expedite the review and deficiency/approval process.

In addition to the reclamation plan updates, DEQ is still awaiting a satisfactory permit modification to address the following outstanding items. These items must also all be addressed with an appropriate permit revision and be approvable by July 1, 2025. In some instances, DCC submitted revision requests to DEQ but has not responded to DEQ deficiencies. In those instances, DCC needs to complete the respective permit revision request. Please refer to the attached mid permit review letter for the full list of DEQ's written findings.

Revision	Status
ARM 17.24.303(1)(b): Please review the current legal description. Make a note in the response letter if this information is accurate or needs to be updated and if so from which revision	This will be addressed with the approval of MR 208. A deficiency letter for MR208 was sent to DCC on 9/16/2024.
ARM 17.24.303(1)(b): Please review the current legal description. Make a note in the response letter if this information is accurate or needs to be updated and if so from which revision	This will be addressed with the approval of MR 208. A deficiency letter for MR208 was sent to DCC on 9/16/2024.
ARM 17.24.303(1)(j): Please review current acreage information. Make a note in the response letter if this information is accurate or needs to be updated and if so from which revision.	There have been no attempts to resolve this deficiency.
ARM 17.24.303(1)(l) & ARM 17.24.303(1)(u): Please review and update information as needed.	There is no statement regarding a prospecting permit. DCC's prospecting permit #X2013340 is not included on the ePermit list of other coal permits, Tab 1.16. There have been no attempts to resolve this deficiency.
ARM 17.24.303(1)(m): DCC should upload a new Compliance with 82-4-251, MCA document as the current one in the system is from 2016 and they have had Ownership and Control updates since then.	There have been no attempts to resolve this deficiency.
ARM 17.24.303(1)(o): Multiple items related	There have been no attempts to resolve this

to ownership and control	deficiency.
ARM 17.24.303(1)(p)(i): Map 303-2 shows a private estate of Mock-et-al* as private mineral ownership marked as "Fee Coal." This is under DCC's ownership on map 303-1. This appears to show a severed estate. Please provide the information required within 303(1)(p)(i) as appropriate to meet the requirements of the applicable rules.	There have been no attempts to resolve this deficiency.
ARM 17.24.303(1)(x): DCC needs to clean up these attachment sections as they include the public notices from the renewal in 2015.	This will be addressed with the approval of MR 208.A deficiency letter for MR208 was sent to DCC on 9/16/2024.
ARM 17.24.304(1)(k)(i)(D): The soil mapping units map was not locatable. Either the link is directed to the wrong location or the map was not included in the ePermit. Please upload the soil mapping units map(s) that coincide with the Baseline soils reports.	There have been no attempts to resolve this deficiency.
ARM 17.24.305(1)(e): Exhibit 305-2 and Exhibit 600-1 referenced in the transportation facilities plan is missing. Please add exhibits to the permit.	These maps were added with MR208, but not to the "6.1 Maps" tab of the ePermit. This deficiency has not been resolved.
ARM 17.24.305(1)(k): Two different PMTs are present in the permit. Please remove the superseded 2009 version.	This will be addressed with the approval of MR 208.A deficiency letter for MR208 was sent to DCC on 9/16/2024.
ARM 17.24.305(1)(l): Please update bond maps as appropriate in meeting commitments approved through MR200.	Bonding maps were submitted with MR207. A deficiency letter for MR207 was sent to DCC on 11/8/2024. DEQ is reviewing a deficiency response from DCC submitted on 1/9/2025.
ARM 17.24.305(1)(m): Exhibits 322-1, 322-2, 322-3, and 322-4 referenced in the "Coal Conservation" plan are missing. Please add the exhibits to the permit.	These maps were added with MR208, but not to the "6.1 Maps" tab of the ePermit. A deficiency letter for MR208 was sent to DCC on 9/16/2024.
ARM 17.24.305(3): Please upload DWG companions to pdf versions of existing maps and vice versa as appropriate.	There are still discrepancies between the .pdf list and .dwg list of maps in Tab "6.1 Maps" of the ePermit.
ARM 17.24.312(1)(d)(i): The Northern Long-eared Bat was listed as Endangered in 2023. Portions of West Decker may fall within their potential range. Please visit USFWS website https://ipac.ecosphere.fws.gov/ and	This will be addressed with the approval of MR 208.A deficiency letter for MR208 was sent to DCC on 9/16/2024.

complete the determination key for NLEB and submit the results to DEQ. You must add any conservation methods recommended by the USFWS to your Fish and Wildlife Protection Plan.	
ARM 17.24.312(1)(d)(iii): Provide a plan for wetland restoration, mitigation, and enhancement.	There have been no attempts to resolve this deficiency.
ARM 17.24.313(1)(b): MR200 was approved on March 15, 2022 but the updated documents have not been uploaded to the ePermit. Please update the ePermit with MR200 documents and submit the required annual bond calculation and associated annual bond release as committed to on page 4 of the reclamation plan.	This will be addressed with the approval of MR 208.A deficiency letter for MR208 was sent to DCC on 9/16/2024.
ARM 17.24.313(1)(b): On page 4 of the MR200 reclamation plan, please remove the last two sentences of the first paragraph. Removal of the second to last sentence is warranted as OSM determined that inflation and worst-case scenario must be considered as part of annual bonding. The last sentence needs to be removed as it does not comply with ARM 17.24.1116(1) and 17.24.1116(3)(a) that requires phases of reclamation must be met to release bond in any amount.	313_Bond_24_R2 was submitted with MR207. A deficiency letter for MR207 was sent to DCC on 11/8/2024. DEQ is reviewing a deficiency response from DCC submitted on 1/9/2025.
ARM 17.24.313(1)(g): In this section, the statement, "The soil replacement depths will be adjusted on an annual basis according to calculated soil salvage, and reported in the Annual Report." must be changed to reflect other soil depth commitments in the permit. For example 17.24.313(1)(h) designates soil depths based on vegetation types and most other discussions refer to this section for depth redistribution. Please evaluate and adjust accordingly.	There have been no attempts to resolve this deficiency.
ARM 17.24.322(2)(a)(iv): Maps associated with 322 Geologic Information and Coal Conservation Plan are missing from this permit section. With the realization mining is	These maps were added with MR208, but not to the “6.1 Maps” tab of the ePermit. A deficiency letter for MR208 was sent to DCC on 9/16/2024.

not occurring in this permit area maps identifying the character of the area are important for planning in the case Department or non-DCC personnel are required to continue closure of the mine. Additionally, the studies need the location information to make sense of the data. Please include these maps.	
ARM 17.24.1004(1): Please update the "Vegetation Monitoring" portion of the 1001 Permit Requirements.pdf to state that monitoring will occur in compliance with ARM17.24.723. The language currently included in this permit material refers to reference communities which are no longer being utilized.	This section was modified with MR208, but the deficiency has not yet been resolved. Reference communities are no longer being utilized with the approval of MR199 and therefore language indicating continued monitoring of those reference communities needs to be removed. A deficiency letter for MR208 was sent to DCC on 9/16/2024.

Provision for Administrative Review

Pursuant to ARM 17.24.425, the permittee must submit a written request for a hearing before the Board of Environmental Review (BER) on the reasons for the order and the terms outlined above within 30 days from receipt of this order if the permittee seeks a review by the Board of Environmental Review (BER). If a request is received, the BER shall commence the hearing within 30 days.

Sincerely,

Eric Dahlgren

Eric Dahlgren, Bureau Chief
Mining Bureau
Department of Environmental Quality
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Montana Board of Environmental Review
2/28/25 at 5:17 PM
By: Sandy Moisey Scherer
Docket No: BER 2025-02 SM

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

IN THE MATTER OF: **DECKER COAL COMPANY'S REQUEST FOR HEARING REGARDING PERMIT C1983007 (EAST DECKER MINE)**	**CAUSE NO.** BER 2025-02 SM **DECKER COAL COMPANY'S REQUEST FOR HEARING**

Decker Coal Company ("Decker") respectfully requests that the Board of Environmental Review ("Board") revise the caption of in Case No. BER 2025-01 SM to apply only to its appeal of the "ORDER TO REVISE PERMIT C1987001C" issued January 29, 2025 for the West Decker Mine ("Order"). The "NOTICE OF NONCOMPLIANCE AND ORDER OF ABATEMENT" issued January 29, 2025 for the East Decker Mine ("Notice") is appealed separately in this Request for Hearing. Both the Order and the Notice were issued January 29, 2025. The 30-day appeal period for both the Order and Notice extends to February 28, 2025. ARM 17.24.425; § 82-4-251(6), MCA. Decker's Amended Request for Hearing and this Request for Hearing are timely filed, are filed just 15 days after the original Request for Hearing and before any action has been taken by either the Board or the Department of Environmental Quality ("DEQ" or "Department"). Decker's Amended Request for Hearing and new Request

for Hearing are timely and appropriate.

I. BACKGROUND

The East Decker Mine is governed by Coal Mine Permit C1983007, Minor Revision 118, approved by DEQ on November 15, 2024 (the "Permit").[1] DEQ alleges that on December 19, 2024, it documented incomplete permit reclamation commitments for 2024, specifically lack of truck and shovel fleet operations and lack of soil laydown and seeding. Exhibit 1. However, on September 17, 2024, Decker informed DEQ that it had exceeded its earthmoving commitment for dragline/dozers by nearly 600,000 cubic yards as of August 2024. While DEQ prohibits Decker from relying on use of the on-site dragline to calculate reclamation bonds; when actually conducting reclamation, Decker uses its onsite dragline, which is a more efficient and effective reclamation tool than a truck and shovel fleet. Decker is therefore ahead of its reclamation schedule in terms of the volume of soil moved. Due to drought concerns in 2024, seeding at the Decker East Mine was at significant risk of failure. Recognizing the environmental conditions beyond Decker's control, seeding in 2024 was delayed until more favorable conditions occurred.

The currently approved Reclamation Schedule lists a goal of 3,000,000 loose cubic yards ("LCY") via truck shovel and 5,600,000 LCY via Dragline/Dozer, for a total of 8,600,000 LCY. Decker, however, was able to move a total of 9,120,600 LCY in 2024—over 520,000 more than projected—exclusively with the Dragline and Dozer. Decker has been able to complete earthwork formerly budgeted as "Truck Shovel" volume by being innovative with the Dragline and Dozer. Additionally, it is simply more efficient and, therefore, more economical for earthwork to be completed with Dragline and Dozer. Decker submitted Form MR119 to commit to an annual yardage but move away from dictating the type of equipment used because

[1] Permit documents are available online at https://deq.mt.gov/mining/Programs/coal.

budgeted volumes are being met ahead of schedule using Dragline and Dozer.

On January 29, 2025, DEQ issued a *Notice of Noncompliance and Order of Abatement* to Decker alleging a failure to comply with the approved reclamation plan. According to DEQ, Decker failed to follow its reclamation plan's commitment to move 3 million LCY of material via truck and shovel fleet. Additionally, DEQ cites a failure to complete backfilling and grading within two years after coal removal, pursuant to ARM 17.24.50l(6)(b). DEQ ordered Decker to revise its reclamation plan to include detailed timetables and plans to complete backfilling by 2035. DEQ also takes issue with the fact that Decker's 2024 earthwork was completed entirely with Dragline and Dozer, while its reclamation schedule provided for the use of Truck Shovel.

II. ISSUES ON APPEAL

Pursuant to § 82-4-251(6), MCA, which allows administrative review of DEQ's Notice, Decker timely challenges DEQ's Notice by requesting a contested case hearing in accordance with the Montana Administrative Procedure Act. The issues on appeal are described below. Decker reserves the right to seek amendment of this request for hearing to include additional issues that arise and as discovered during the contested case hearing process.

A. DECKER IS IN COMPLIANCE WITH THE APPROVED RECLAMATION PLAN.

ARM 17.24.50l(6)(b) provides that backfilling and grading must be completed within two years "unless otherwise approved by the department upon adequate written justification and documentation provided by the operator..." Decker's currently approved reclamation schedule, which was approved by DEQ after Decker provided notice of permanent cessation to DEQ, does not require completion of backfilling and grading until the end of 2032—more than 11 years after completion of coal removal. Moreover, DEQ's abatement measure is for Decker "to revise the reclamation plan... to complete backfilling by 2035..." DEQ has already "otherwise

approved" DCC's exemption from the two-year requirement. No violation exists to support DEQ's Notice.

B. THE REQUESTED CHANGES ARE CONTRARY TO MSUMRA.

The Notice's order of abatement is contrary to MSUMRA in at least two ways. First, the abatement measures (in addition to DEQ's deficiency letter regarding Minor Revision 119) repeatedly request precise timing and sequencing of reclamation operations. However, no provision in the administrative rules or the Act requires "exact sequence of dragline and pit work including a map of the reclamation sequence..." Second, the Notice's order of abatement includes additional regulatory overreaches that find no basis in the law, including:

- A weed management plan during reclamation that commits to spring and fall spraying (ARM 17.24.308 requires "a plan to prevent...noxious weeds on all lands within the proposed permit area until phase IV bond release... it does not require a commitment to spring and fall spraying);
- A timeline for the removal of buildings and other support facilities (no administrative rule requires a timeline for the removal of buildings or other support facilities).

Additionally, the order of abatement does not connect back to the primary allegations raised by DEQ, specifically the alleged failure to comply with the schedule for earthmoving and seeding.

III. REQUESTED RELIEF

Decker respectfully requests a contested case hearing and seeks a Board decision invalidating DEQ's Notice.

Dated this 28th day of February, 2025.

/s/Victoria A. Marquis
Victoria A. Marquis
CROWLEY FLECK PLLP
P. O. Box 2529
Billings, MT 59103-2529

Attorney for Decker Coal Company

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon the following counsel of record, by the means designated below, this 28th day of February, 2025:

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Attorneys for Montana Department of Environmental Quality

/s/Victoria A. Marquis
VICTORIA A. MARQUIS

EXHIBIT
1

DEQ
Montana Department
of Environmental Quality

January 29, 2025

Sent via certified mail

Tay Tonozzi
Lighthouse Resources Inc
10980 South Jordan Gateway
South Jordan, UT 84095

Permit ID: C1983007
Noncompliance No: CN2025001

NOTICE OF NONCOMPLIANCE AND ORDER OF ABATEMENT

During a Department of Environmental Quality (DEQ) complete inspection of the East Decker Mine (Permit #C1983007) on December 19, 2024, DEQ documented that permit reclamation commitments for 2024 were not completed.

Nature of the Violation: Failure to Comply with the Approved Reclamation Plan

The Administrative Rules of Montana (ARM) 17.24.501(6)(b) states that, unless otherwise approved by DEQ, backfilling and grading must be completed within two years after coal removal from each pit has been concluded. Attachment 313-1b (Exhibit 1) of the permit lists a general timeline of reclamation. In 2024, the East Decker Mine commitment was for 3 million cubic yards of material to be moved with a truck and shovel fleet. One hundred acres were also supposed to be seeded. DEQ conducted thirteen inspections in 2024, and DEQ recorded that the truck and shovel fleet was never activated and that no soil laydown or seeding had occurred in 2024. Decker Coal Company's (DCC) alternate reclamation schedule was approved in 2021 and revised in 2022. While Attachment 313-1b states that the schedule may be subject to change, ARM 17.24.313(1)(b) requires any changes to a reclamation plan to be approved by DEQ prior to implementation. No such approved changes were made.

Description of Conditions

A partial timeline of reclamation plan commitments and observations by DEQ is given as follows.

1) December 4, 2020. Lighthouse Resources Inc, owner of the East Decker Mine, files for Chapter 11 bankruptcy.
2) April 8, 2021. DCC notifies DEQ that the company has relinquished the right to mine in the East Decker permit and that the permit will be in permanent cessation (Exhibit 3).

Since no more coal can be mined once a permit goes into permanent cessation, reclamation commitments for all pits, including backfilling within 2 years unless otherwise approved, are immediately enacted.

3) April 21, 2021. Minor Revision MR106 is approved which revises the reclamation plan (Exhibit 2). The plan shows reclamation to be almost entirely completed by the year 2026 with only the facilities and out of pit spoils pile OB-1 to be reclaimed post 2026.
4) March 18, 2022. Minor Revision MR108 is approved which revises the reclamation plan to its current timetable (Exhibit 1).
5) January 9, 2024. East Decker inspection. Inspectors note the following: "The truck-haul for backfill is scheduled to begin in May." (Exhibit 4)
6) February 6, 2024. East Decker inspection. Inspectors note the following: "Decker plans to hire truck shovel crews in 2024, per backfilling and reclamation schedule commitments in the permit. The operator reported that maintenance on the truck fleet has started in anticipation of hiring drivers. East Decker's 2024 permit commitments are for 3 million loose cubic yards truck shovel backfilling and 5.6 million loose cubic yards of dragline backfilling." (Exhibit 5)
7) March 12, 2024. East Decker inspection. Inspectors note the following: "One of the hydraulic shovels had been relocated to the facilities area for maintenance in preparation for the upcoming truck and shovel work that is planned to start in May." (Exhibit 6)
8) May 16, 2024. East Decker inspection. Inspectors note the following: "The operator indicated that only five new hires would be required for the truck-haul operation scheduled for May and that filling those positions on relatively short notice was not expected to be problematic." (Exhibit 7)
9) July 24, 2024. East Decker inspection. Inspectors note the following: "A truck shovel fleet (fleet) has not mobilized on site. The plan remains to utilize a truck shovel fleet for earth moving of 3,000,000 LCY in 2024; however, news from the managing firm to commence fleet establishment has not arrived. Updates on a timeframe have not been offered to the mine's personnel." (Exhibit 8)
10) August 13, 2024. East Decker inspection. Inspectors note the following: "A truck shovel fleet has not been mobilized on site. The permit commitment is to use this fleet to move 3,000,000 LCY of material in 2024. No update of when this fleet would be hired was indicated." (Exhibit 9)
11) August 30, 2024. DEQ notifies DCC that the company does not appear to be on track to meet the 2024 commitments for truck-shovel reclamation, and DEQ requests a written response outlining how the company plans to meet these permit reclamation commitments. (Exhibit 14)
12) September 17, 2024. DCC responds to DEQ with a letter stating that the permit contains a statement that "Plans are subject to change as equipment and manpower dictates." DCC also states that the dragline and dozers were utilized in areas originally designated for truck-shovel work, and that soil and seeding were not done due to drought conditions in 2024. (Exhibit 15)

13) September 20, 2024. DEQ identified deficiencies in the spoil sampling data that was submitted. (Exhibit 12)
14) September 24, 2024. East Decker inspection. Inspectors note the following: "Decker also sent a letter requesting a revision to the approved reclamation schedule on 09/17/2024. Changes to the reclamation schedule must be submitted as a formal revision to the permit since it is a permit commitment. The current commitment includes 3,000,000 LCY of material to be reclaimed by a truck shovel fleet, which has yet to be mobilized." (Exhibit 10)
15) December 2, 2024. Minor Revision MR119 is submitted to DEQ by DCC to revise the reclamation schedule (Exhibit 13). This revision is not currently approved, and a deficiency letter was sent to the operator on January 22, 2025. The proposed revision changes the commitment from dragline and truck shovel cubic yards to only earthwork cubic yards, greatly reduces the commitment of cubic yards moved per year, and it commits to finishing earthwork movement by the year 2032. The proposed schedule also entirely eliminates commitments to seeding. No justification for the revision is given for how less earthwork movement will result in completion of the backfilling in the same amount of time as the currently approved reclamation plan. (Exhibit 12; Exhibit 16)
16) December 19, 2024. East Decker inspection. Inspectors note the following: "Decker stated no work had been completed during the 2024 year with a truck/shovel fleet as previously planned in May. Additionally, no seeding had been completed during 2024. Personnel indicated that there was difficulty in coordinating with the bond company for funds and finding qualified operators." (Exhibit 11)

Conditions to Abate

ARM 17.24.1202(3) states that DEQ may order changes in mining and reclamation plans as are necessary to ensure compliance with the Act and the rules adopted pursuant thereto.

1) DEQ requires DCC to revise the reclamation plan to include detailed steps and dates for completion, as required under ARM 17.24.313(1). A detailed plan, at minimum, must include:
   a) Timetables and plans to complete backfilling by 2035 including exact sequence of dragline and pit work including a map of the reclamation sequence (ARM 17.24.313(1)(b, d, g)).
   b) Timeline for mine pit dewatering (ARM 17.24.313(1)(b, d, g)).
   c) Sequence of soil laydown and details on the soil pile that will be used for specific fields (ARM 17.24.313(1)(g)).
   d) The sequence and timing of seeding specific areas (ARM 17.24.313(1)(h)).
2) Plan for permanent mitigation of coal smokers (ARM 17.24.523; ARM 17.24.308(1)(d)).
3) Weed management plan during reclamation including commitments for spring and fall spraying (ARM 17.24.308(1)(f)).
4) Timeline for the removal of buildings and other support facilities (ARM 17.24.304(1)(b)).

5) Plan for facilities sampling for hydrocarbons including decommissioned shop areas and ready lines prior to grading work in the area. The plan must include the spacing of samples and the proposed parameter suite (ARM 17.24.308(1)(c)).

The plan must be submitted to DEQ as a minor revision within 30 days. If DEQ's review identifies that the plan is deficient, DCC must submit a revised plan within 15 days after receipt of a deficiency letter. DCC is encouraged to meet with DEQ to discuss the plan and any questions regarding this order prior to a submission in order to expedite the review and deficiency/approval process.

Extension or Modification of this Order

Upon application by the Permittee, DEQ may, for good cause, extend the period for abatement. The period for abatement, however, may not be extended beyond 90 days unless one of the conditions set forth in ARM 17.24.1206(5)(b) exists. DEQ's decision on an application for extension beyond 90 days may be subject to a contested case hearing before the Board of Environmental Review (BER) if a hearing before the BER is requested, in writing, within 30 days of such decision by a person with an interest that is or may be adversely affected (ARM 17.24.1206(5)(d)).

This Notice of Noncompliance and Order of Abatement may be modified, vacated, or terminated at any time. The Permittee may submit a letter of mitigating circumstances to DEQ providing information about the violation. DEQ will consider any information submitted in determining the facts surrounding the violation and the amount of penalty.

The letter of mitigating circumstances must be sent to the Bureau Chief of the Mining Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901, on or before January 31, 2025. Failure to timely submit a letter of mitigating circumstances may result in the issuance of a Notice of Violation and Administrative Penalty Order without input from the Permittee. The failure to raise an issue in the letter of mitigating circumstances will not preclude the Permittee from raising the issue at a contested case hearing as set forth in 82-4-206, Montana Code Annotated (MCA).

Pursuant to Section 82-4-254(1), MCA, a Permittee who violates the Act, rules adopted, or orders issued under the Act, or term or condition of a permit, shall pay an administrative penalty of not less than $100 and not more than $5,000 and an additional administrative penalty within the same limits for every day during which the violation continues. In order to institute the penalty assessment process, DEQ will serve the Permittee a Notice of Violation and Administrative Penalty Order within 90 days after issuing the Notice of Noncompliance, unless the penalty is waived pursuant to Section 82-4-254(2), MCA. DEQ will determine the penalty based on the factors and penalty calculation procedures found in Section 82-4-1001, MCA, and ARM 17.4.301-308. Pursuant to 82-4-251(7), MCA, DEQ may also request attorney fees and costs associated with any judicial or administrative proceedings.

Hearing

Pursuant to 82-4-251(5), MCA, the Permittee may request an informal public hearing on this Notice of Noncompliance and Order of Abatement. Pursuant to 82-4-251(6), MCA, a person who has been issued a notice or order of cessation pursuant to subsection (1) or (2) may request a hearing before the BER within 30 days of the issuance of the notice.

Sincerely,

Eric Dahlgren

Eric Dahlgren, Bureau Chief
Mining Bureau
Department of Environmental Quality
(406) 444-5245

CC: Jeffrey Fleischman, OSMRE - Casper Office
Emily Lodman, DEQ Coal Section
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Electronically Filed with the
Montana Board of Environmental Review
3/28/25 at 7:20 PM
By: *Sandy Moisey Scherer*
Docket No: BER 2025-02 SM

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

IN THE MATTER OF: **DECKER COAL COMPANY'S REQUEST FOR HEARING REGARDING PERMIT C1983007 (EAST DECKER MINE)**	**CAUSE NO. BER 2025-02 SM** **DECKER COAL COMPANY'S MOTION TO SUSPEND ABATEMENT REQUIREMENTS**

Pursuant to section 82-4-254(1)(c), MCA, Decker Coal Company ("Decker") respectfully moves the Board of Environmental Review ("Board") for an order suspending the abatement requirements in the Department of Environmental Review's Notice of Noncompliance and Order of Abatement. Alternatively, if a Board decision on this motion is delayed beyond April 29, 2025, Decker respectfully requests the Board declare as soon as possible that, in accordance with section 82-4-254(1)(c), MCA, the period permitted for completion of the abatement requirements is extended and does not expire while the Board considers and decides this motion. A brief in support of this motion is contemporaneously filed.

Dated this 28th day of March, 2025.

/s/Victoria A. Marquis
Victoria A. Marquis
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Billings, MT 59103-2529

Attorney for Decker Coal Company

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon the following counsel of record, by the means designated below, this 28th day of March, 2025:

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BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

IN THE MATTER OF: **DECKER COAL COMPANY'S REQUEST FOR HEARING REGARDING PERMIT C1983007 (EAST DECKER MINE)**	**CAUSE NO. BER 2025-02 SM** **DECKER COAL COMPANY'S BRIEF IN SUPPORT OF ITS MOTION TO SUSPEND ABATEMENT REQUIREMENTS**

Pursuant to section 82-4-254(1)(c), MCA, Decker Coal Company ("Decker") respectfully moves the Board of Environmental Review ("Board") for an order suspending the abatement requirements in the Department of Environmental Review's ("DEQ") Notice of Noncompliance and Order of Abatement ("Notice"). Alternatively, if a Board decision on this motion is delayed beyond April 29, 2025, Decker respectfully requests the Board declare as soon as possible that, in accordance with section 82-4-254(1)(c), MCA, the period permitted for completion of the abatement requirements is extended and does not expire while the Board considers and decides this motion.

I. BACKGROUND

On January 29, 2025, DEQ issued the Notice for an alleged violation at the East Decker Mine**.** Exhibit 1, attached. Decker concluded the Notice was both legally unsupported and

factually inaccurate and therefore filed a Request for Hearing with the Board on February 13, 2025. On February 28, 2025, Decker amended the Request for Hearing specific to the Notice issued for the East Decker Mine, noting that no valid legal or factual basis exists for DEQ's alleged violation and even if a valid basis did exist, DEQ's abatement requirements would not cure the alleged violation. Subsequently, DEQ made clear that it intends to pursue further enforcement if Decker does not acquiesce to its demands by April 29, 2025. Exhibit 2, attached; Aff. M. Guptill (March 28, 2025), attached; Aff. T. Tonozzi (March 28, 2025), attached.

Absent a Board Order suspending the abatement requirements, it appears likely that DEQ may pursue a Cessation Order and/or listing in the federal "Applicant/Violator System" or "AVS." *Id.* Any further adverse action by DEQ associated with the Notice, including a Cessation Order or AVS listing, is likely to jeopardize the ongoing reclamation work at both the West Decker and East Decker mines. *Id.* No abatement requirements should apply until resolution of this contested case. DEQ's Notice cites no imminent dangers or environmental harms. In fact, reclamation at East Decker is ahead of schedule. In contrast, DEQ's assertions of further adverse actions create very real and substantial threats to reclamation of both the East and West Decker Mines. Additionally, DEQ's imposition of the abatement requirements would negate Decker's due process right to a contested case hearing in this matter. The Board has authority to, and should, order suspension of the abatement requirements pending final disposition of this contested case. Alternatively, if a Board decision on this motion is delayed beyond April 29, 2025, Decker respectfully requests the Board declare as soon as possible that, in accordance with section 82-4-254(1)(c), MCA, the period permitted for completion of the abatement requirements is extended and does not expire while the Board considers and decides this motion.

II. LEGAL STANDARD

Section 82-4-254(1)(c), MCA allows the Board to issue "a final order suspending the abatement requirements" of any Notice or Order issued pursuant to section 82-4-251(2), MCA, including DEQ's Notice at issue here. That statute, section 82-4-251(2), MCA, provides:

> If, upon expiration of the period of time as originally fixed [for abatement] **or subsequently extended**, for good cause shown and upon the written finding of the director or an authorized representative, the director or an authorized representative finds that the violation has not been abated, the director or an authorized representative shall immediately order a cessation of the operation or the portion of the operation relevant to the violation.

§ 82-4-251(2), MCA (emphasis added). As DEQ noted, Subsection (6) of that statute provides Decker the right to appeal DEQ's Notice to the Board. Ex. 1, p. 5 (*citing* § 82-4-251(6), MCA).

The statute governing the appeal specifically provides that in such cases, the "period permitted for correction of a violation does not … end until entry of a final order suspending the abatement requirements." § 82-4-254(1)(c), MCA. This provides two important relief valves: 1) by operation of law, the period of time to complete the abatement requirements is **subsequently extended** as anticipated in section 82-4-251(2), MCA and does not expire while the Board considers this motion, and 2) the Board may issue a final order suspending the abatement requirements completely or temporarily.

No legal framework or requirements are provided in section 82-4-254(1)(c), MCA, leaving the Board to determine whether and under what conditions DEQ's abatement requirements may be suspended. However, should the Board look for guidance, Montana rule and federal law governing temporary relief during administrative review of coal mine permitting issues may be helpful. Specific to Montana, ARM 17.24.425(3) provides:

> The board may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate, pending final determination of the proceeding, if:

> (a) all parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;
>
> (b) the person requesting that relief shows that there is a substantial likelihood that he or she will prevail on the merits of the final determination of the proceeding; and
>
> (c) the relief will not adversely affect the public health or safety, or cause significant, imminent environmental harm to land, air, or water resources; and
>
> (d) the relief sought is not the issuance of a permit where a permit has been denied, in whole or in part, by the department.

Similarly, federal rules governing administrative review of notices and orders directed at coal mining operations provide temporary relief if:

> (1) a hearing has been held in the locality of the permit area on the request for temporary relief in which all parties were given an opportunity to be heard;
>
> (2) the applicant shows that there is substantial likelihood that the findings of the Secretary will be favorable to him; and
>
> (3) such relief will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources.

30 U.S.C. § 1275(c).

III. ARGUMENT

An Order Suspending the Abatement Requirements is appropriate in this case because no violation has occurred, the allegations DEQ presents in its Notice do not support finding a violation, and the abatement ordered by DEQ is disconnected from DEQ's alleged violation such that the ordered abatement would not, in any event, resolve the alleged violation. Justice and common sense support the Board exercising its authority to suspend the abatement requirements. Both Montana rule and federal law support suspending the abatement requirements. Due process considerations require that DEQ's abatement requirements be suspended.

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A. THE ABATEMENT REQUIREMENTS SHOULD BE SUSPENDED BECAUSE DEQ'S ALLEGATIONS DO NOT SUPPORT A VIOLATION.

On page 1 of its Notice, DEQ alleges a violation of ARM 17.24.501(6)(b), citing only to that portion of the rules which states "Backfilling and grading must be completed within two years after coal removal from each pit has been concluded." Ex. 1, p. 1. Subsection (b) of the rule cannot be read independent of the prefatory language in the rule itself:

> (6) Backfilling and grading must be kept current with mining operations. To be considered current, backfilling and grading must meet the following requirements, **unless otherwise approved by the department upon adequate written justification and documentation provided by the operator**:
> ***
> (b) Backfilling and grading must be completed within two years after coal removal from each pit has been concluded. For the purpose of this provision, "each pit" means any continuous dragline pass within a particular permit area.

ARM 17.24.501(6) (emphasis added).

1. DEQ's Assertions Contradict Both the Rule and Decker's Reclamation Plan.

The approved reclamation plan for East Decker is found in Minor Revision 111, which was approved by DEQ on March 17, 2023. Exhibit 3, attached. On page 4, it specifically provides that there will be instances where completion of backfilling and grading within two years of coal removal "is not possible." On page 5, the approved reclamation plan acknowledges that areas "exceed the 2-year time frame requirements for backfilling and grading" and specifies that "[t]he actual time frame to complete the reclamation operation will vary from pit to pit." Ex. 3, pp. 4-5. Therefore, the approved Reclamation Plan acknowledges and allows exceedance of the 2-year requirement. This meets the condition in ARM 17.24.501(6): "unless otherwise approved by the department." Therefore, the 2-year requirement found in ARM 17.24.501(6)(b) does not apply. DEQ's assertion that the 2-year requirement must be strictly applied in this case is contrary to both the rule and the approved Reclamation Plan.

Similarly, DEQ's allegation regarding "soil laydown or seeding" is also contrary to the rule. ARM 17.24.501(6)(b) says nothing about soil or seeding and is limited to backfilling and regrading. Therefore, DEQ's allegations regarding soil and seeding are irrelevant to the alleged violation. Even so, the approved Reclamation Plan provides that seeding will occur subject to favorable seedbed conditions and contractor availability. Ex. 3, p. 26. As Decker explained in September 2024, "the United States Department of Agriculture (USDA) has designated Big Horn County contiguous to a primary natural disaster area due to drought." Exhibit 4, attached. Therefore, in compliance with the approved Reclamation Plan that specifically allows flexibility to ensure favorable seedbed conditions (Ex. 3, p. 26), the seeding was delayed to "a more appropriate time when there is adequate moisture in the soil." Ex. 4, p. 1. No violation of ARM 17.24.501(6)(b) can be found based on soil or seeding conditions because the rule does not apply to soil or seeding. Even if it could apply, no violation occurred in any event because Decker wisely complied with the approved Reclamation Plan's built-in flexibility to ensure efficient and effective seeding operations, including adjustments during drought.

2. The Facts Provided by DEQ Prove DEQ's Alleged Violation Wrong.

The reclamation schedule provided in Attachment 313-1b provides additional information and specifically notes "The general sequence is as follows but it is subject to change." Exhibit 5, attached. Even so, the schedule estimates that from 2021 through the end of 2024, a grand total of 23,800,000 Loose Cubic Yards ("LCY") of material would be moved during reclamation. *Id*. On September 17, 2024, Decker informed DEQ that it was ahead of that estimated schedule of material to be moved. Ex. 4, p. 2. Specifically, at that time, Decker had moved a grand total of 29,896,126 LCY of material during reclamation – more than 6,000,000 LCY ahead of schedule. *Id.* DEQ provides no assertion or evidence that the volumes, as

measured and tracked by Decker, are inaccurate. Therefore, at least four months prior to issuing the Notice, DEQ knew that Decker was more than 6,000,000 LCY ahead of schedule. To the extent DEQ's Notice asserts a violation of ARM 17.24.501(6)(b) based on an allegation that Decker has not met the estimated schedule for moving material, the facts presented in DEQ's Notice do not support that assertion and instead reveal that Decker is more than 6,000,000 LCY ahead of the estimated schedule.

3. Neither the Rule nor the Reclamation Plan Require a Truck and Shovel Fleet.

DEQ's Notice also alleges that the "truck and shovel fleet was never activated" as support for violation of ARM 17.24.501(6)(b). The rule only requires completion of backfilling and grading and does not require use of any specific equipment. Even so, Decker addressed equipment in its approved Reclamation Plan, noting that "[e]quipment that is typically used for final highwall reduction and grading operations includes scrapers, motor graders, dozers, shovels, backhoes, and possibly draglines in the future." Ex. 3, p. 7. Attachment 313b lists both truck shovel and dragline/dozer and, as noted above, specifically states "it is subject to change." Ex. 5. To the extent DEQ alleges that Decker's more efficient use of its dragline/dozer operation rather than a truck and shovel fleet to move material is a violation of ARM 17.24.501(6)(b), the allegation is not supported in law or fact. No requirement exists in law, rule, or the Reclamation Plan to use truck and shovel equipment. Ultimately, the undisputed evidence that Decker is more than 6,000,000 LCY ahead of the reclamation schedule proves that the equipment being used is more than sufficient to meet the requirements of the Reclamation Plan.

Decker is ahead of the estimated schedule of material to be moved for reclamation and has adhered to the approved Reclamation Plan. The facts presented in DEQ's Notice do not

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support its alleged violation of ARM 17.30.501(6)(b); therefore, the abatement requirements should never have been issued and should now be suspended.

B. THE ABATEMENT REQUIREMENTS SHOULD BE SUSPENDED BECAUSE DEQ'S ABATEMENT REQUIREMENTS ARE DISCONNECTED FROM THE ALLEGED VIOLATION.

As explained above, DEQ's alleged violation is invalid, but even if it was valid, DEQ's abatement requirements would not abate the alleged violation. DEQ alleges violation of ARM 17.24.501(6)(b), which requires timely backfilling and grading of pits. DEQ does not specify which pits have not been timely backfilled or graded, nor does DEQ require actual backfilling and grading to return to compliance. Instead, DEQ ordered changes to Decker's reclamation plan. Ex. 1, pp. 3-4. Changes to a reclamation plan are paperwork requirements that do not and cannot, in and of themselves, cure any alleged lack of backfilling and regrading in any pit.

Further, DEQ's laundry list of very detailed timetables, plans, and sequencing required for abatement includes issues unrelated to backfilling and regrading, such as "permanent mitigation of coal smokers," "weed management," "removal of buildings and support facilities," and "sampling for hydrocarbons" at decommissioned shop areas. Ex. 1, pp. 3-4. None of those abatement requirements would abate a failure to timely backfill and regrade any pit.

Additionally, the abatement requirements seek a level of detail unsupported by the rules and contrary to DEQ's recent approval of Decker's Reclamation Plan. Ex. 3 (approved by DEQ March 17, 2023). DEQ offers no explanation why the Reclamation Plan it previously approved suddenly lacks sufficient detail to warrant any abatement. The abatement requirements should be suspended because they are wholly disconnected from the alleged violation and incapable of mitigating the alleged violation.

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C. SHOULD THE BOARD RELY ON LEGAL FRAMEWORK PROVIDED IN STATE RULE AND FEDERAL LAW, THAT FRAMEWORK SUPPORTS SUSPENSION OF THE ABATEMENT REQUIREMENTS.

Montana law authorizes the Board to order suspension of the Notice's abatement requirements. § 82-4-254(1)(c), MCA. As noted above, *Supra,* § II., the law provides no criteria or framework, leaving the consideration within the discretion of the Board. As a quasi-judicial agency, the Board has authority to adjudicate this matter, exercising its "judgment and discretion in making determinations," in part by "interpreting, applying, and enforcing existing rules and laws," including section 82-4-254(1)(c), MCA. §§ 2-15-3502; 2-15-102 (10) (defining "Quasi-judicial function"). Based on the Board's considerations and the arguments raised above - that DEQ's Notice does not support a violation and DEQ's abatement requirements are disconnected from any alleged violation – the Board may order suspension of the abatement requirements in DEQ's Notice. However, should the Board desire to consider helpful elements of Montana rule and Federal law regarding temporary relief pending final disposition of an appeal, Decker's motion also satisfies those criteria.

1. Decker and DEQ will have Opportunity to Raise Arguments and Be Heard on this Motion.

ARM 17.24.425(3)(a) counsels that notice and opportunity to be heard should be extended to all parties. DEQ will be served with this motion and have the opportunity to respond in writing to the Board. Additionally, should the Board desire oral argument on this motion, DEQ would have the opportunity to provide oral argument as well. Federal law advises holding a hearing in the locality of the permit area. 30 USC § 1275(c). No express requirement is found in Montana law; however, should the Board desire an evidentiary hearing, DEQ would also have the opportunity to participate and present evidence to the Board.

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2. There is a Substantial Likelihood that Decker will Prevail on the Merits of its Claims.

Both ARM 17.24.425(3) and 30 USC § 1275(c) include consideration of whether the moving party "shows that there is a substantial likelihood that he or she will prevail on the merits of the final determination in the proceeding." ARM 17.24.425(3)(b). As argued above, *Supra* §§ III.A. and B., DEQ's Notice is contrary to the law and the facts, as presented by DEQ itself in the Notice. DEQ alleges a failure to timely backfill and regrade the pits, which is physically impossible because Decker is more than 6,000,000 LCY ahead of the estimated schedule for backfilling and grading. Ex. 4, p. 2. Additionally, the abatement requirements ordered are disconnected from the alleged a violation and would not, in any event, abate the alleged violation. Therefore, Decker has shown a substantial likelihood of prevailing on the merits of its claims.

3. Suspension of the Abatement Requirements will Not Adversely Affect Public Health or Safety, or cause Significant, Imminent Environmental Harms.

Both Montana rule and federal law include consideration of the consequences of suspending the abatement requirements. ARM 17.24.425(3)(c); 30 USC § 1275(c)(3). Here, because the abatement requirements do not mitigate any alleged violation, suspension of those abatement requirements does not adversely affect public health or safety or cause any environmental harm. The abatement requirements seek paperwork modifications to Decker's Reclamation Plan. No on-the-ground actions are required or prohibited. Therefore, suspension of the abatement requirements cannot and does not affect public health, public safety, or the environment. Additionally, Decker continues reclamation and, as of September 2024, was already more than 6,000,000 LCY ahead of the estimated reclamation schedule. Therefore, no harm to the reclamation schedule will result from suspending the abatement requirements. In

contrast however, imposition of the abatement requirements will likely trigger DEQ strictly imposing the April 29, 2025 deadline, which might include or be followed by issuance of a Cessation Order and/or entry in the AVS. *Supra*, § 1; Aff. M. Guptill; Aff. T. Tonozzi. In this case, none of that subsequent enforcement and adverse action by DEQ would be helpful and instead, might actually harm the progress of reclamation now or in the future. Aff. T. Tonozzi.

D. AN ORDER SUSPENDING THE ABATEMENT REQUIREMENTS DURING THE PENDENCY OF THIS APPEAL SHOULD ISSUE TO ENSURE DECKER'S DUE PROCESS RIGHTS ARE PROTECTED.

Montana law provides a right to a contested case hearing on DEQ's Notice. § 82-4-251(6), MCA. Decker timely exercised its right to the contested case hearing. The contested case hearing is governed by the Montana Administrative Procedure Act ("MAPA"), the purpose of which is to "establish general uniformity and due process safeguards in … contested case proceedings," including this matter regarding DEQ's Notice. § 2-4-101(2)(b), MCA. The right to due process of law is established in Article 2, section 17 of the Constitution of the State of Montana. Decker has therefore invoked its constitutional right to due process by filing the appeals with the Board.

DEQ's assertions that Decker may be subject to further enforcement, specifically a Cessation Order and/or entry into AVS before the contested cases have been completed are contrary to Montana law and Decker's due process rights as guaranteed by the Montana Constitution. If DEQ's Notice proceeds toward further enforcement or other adverse actions, every one of those further actions will be built on a house of cards presuming that the alleged violation is valid when it really is not. Yet every further adverse action will likely cause harm to Decker, to the reclamation at both East Decker and West Decker, and to Decker's property. Decker has raised valid claims challenging the alleged violation and, pursuant to MAPA and the

Montana Constitution, has the due process right to have those claims fully adjudicated before further enforcement or other adverse actions are taken. A Board Order suspending the abatement requirements during the pendency of this contested case will ensure that Decker's due process rights are protected.

IV. CONCLUSION

The abatement requirements in DEQ's Notice should be suspended because no violation occurred and the ordered abatement could not correct a violation in any event. Additionally, Decker's motion demonstrates the legal framework provided within Montana rules and federal law for temporary relief are met. Finally, Decker's due process rights support suspending the abatement requirements during the pendency of this contested case. Alternatively, if a Board decision on this motion is delayed beyond April 29, 2025, Decker respectfully requests the Board declare as soon as possible that, in accordance with section 82-4-254(1)(c), MCA, the period permitted for completion of the abatement requirements is extended and does not expire while the Board considers and decides this motion.

Dated this 28th day of March, 2025.

/s/Victoria A. Marquis

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Attorneys for Decker Coal Company

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon the following counsel of record, by the means designated below, this 28th day of March, 2025:

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BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

IN THE MATTER OF: **DECKER COAL COMPANY'S REQUEST FOR HEARING REGARDING PERMIT C1983007 (EAST DECKER MINE)**	**CAUSE NO. BER 2025-02 SM** **AFFIDAVIT OF MATTHEW GUPTILL**

STATE OF Florida)
: ss.
County of Broward)

MATTHEW GUPTILL, being first duly sworn, deposes and says:

1. I am over the age of eighteen, have personal knowledge of the facts below, and am competent to testify.

2. I am the General Manager for the Decker Coal Company ("Decker"). Decker holds Montana Coal Mine Permit C1983007, governing operations at the East Decker Mine.

3. I am personally familiar with the facts and circumstances regarding the Montana Department of Environmental Quality's ("DEQ") Notice of Noncompliance and Order of Abatement ("Notice") issued January 29, 2025 for the East Decker Mine, which is the subject of this matter before the Board of Environmental Review.

4. On March 27, 2025, I attended a meeting at DEQ's offices in Billings, Montana with several DEQ Coal Section employees, including Mike Glenn, Emily Lodman, Joshua Bridgeman, Mitch Hoofman, Julian Calabrese. Ric Casteel and Eric Dahlgren, also with DEQ, participated remotely. Decker's Permit Coordinator, Sabrina Temple, attended the meeting with me.

5. During the March 27, 2025 meeting, DEQ asserted that the Notice must be resolved within 90 days, by April 29, 2025, and further, that no monetary bond releases would be issued on pending bond release applications until the reclamation plan, as requested by DEQ in the Notice, was submitted to DEQ and the Notice was resolved.

6. I understood DEQ's statements to mean that if Decker does not acquiesce to DEQ's demands by April 29, 2025, then DEQ intends to pursue additional adverse actions, including withholding of bond releases.

FURTHER AFFIANT SAYETH NOT.

Dated: 03/28/2025.

Matthew Guptill

Matthew Guptill

IN WITNESS WHEREOF, I have hereunto set my hand and seal the date first above written.

(SEAL)

KELSEY PROPER
Notary Public - State of Florida
Commission # HH415727
Expires on June 28, 2027

Notary Public for the State of Florida

Kelsey Proper
[printed name]

Residing at Broward County, Florida

My commission expires: 06/28/2027

Notarized remotely online using communication technology via Proof.
Driver License produced for ID.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon the following counsel of record, by the means designated below, this 28th day of March, 2025:

[ ] U.S. Mail
[ ] FedEx
[x] Email
[ ] Sharefile

Sandy Moisey Scherer, Board Secretary
Board of Environmental Review
1520 E Sixth Avenue
P.O. Box 200901
Helena, MT 59620-0901
deqbersecretary@mt.gov

[ ] U.S. Mail
[ ] FedEx
[x] Email
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Sam King
Chief Legal Counsel
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Department of Environmental Quality
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Attorneys for Montana Department of Environmental Quality

/s/Victoria A. Marquis
VICTORIA A. MARQUIS

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

IN THE MATTER OF: **DECKER COAL COMPANY'S REQUEST FOR HEARING REGARDING PERMIT C1983007 (EAST DECKER MINE)**	**CAUSE NO. BER 2025-02 SM** **AFFIDAVIT OF TAY TONOZZI**

STATE OF Nevada)
: ss.
County of Clark)

TAY TONOZZI, being first duly sworn, deposes and says:

1. I am over the age of eighteen, have personal knowledge of the facts below, and am competent to testify.

2. I am the President and CEO of Lighthouse Resources Inc., which is the parent company of the Decker Coal Company ("Decker"). Decker holds Montana Coal Mine Permit C1983007, governing operations at the East Decker Mine.

3. I am personally familiar with the facts and circumstances regarding the Montana Department of Environmental Quality's ("DEQ") Notice of Noncompliance and Order of Abatement ("Notice") issued January 29, 2025 for the East Decker Mine, which is the subject of this matter before the Board of Environmental Review.

4. Beginning almost immediately upon receipt of DEQ's Notice, I have had multiple conversations, both in-person and by telephone with DEQ employees, including Eric Dahlgren, DEQ's Mining Bureau Chief. During these conversations, DEQ initially asserted that the abatement requirements in the Notice must be completed by February 28, 2025. DEQ now

asserts that the abatement requirements must be completed by April 29, 2025. DEQ has also asserted that if the abatement requirements are not met, a Cessation Order and listing in the federal Applicant/Violator System ("AVS") would follow.

5. Any further adverse action stemming from the Notice, including a Cessation Order or listing in the AVS would significantly undermine Decker's reclamation efforts at both the East Decker and West Decker mines. The reclamation is currently funded with money received from Decker's sureties. Additionally, revenues from Lighthouse Resource's joint interest in the Black Butte Coal Project located in Wyoming are intended to fund reclamation at both East Decker and West Decker. Any further adverse action stemming from the Notice will jeopardize relationships with the sureties as well as the permitting actions in Wyoming, both of which are critical to funding reclamation in Montana.

FURTHER AFFIANT SAYETH NOT.

Dated: 03/28/2025.

Tay Tonozzi

Tay Tonozzi

IN WITNESS WHEREOF, I have hereunto set my hand and seal the date first above written.

(SEAL)

Carlos Pittman
NOTARY PUBLIC
STATE OF NEVADA
Appt. No. 21-5441-01
Expires March 7, 2029

Carlos Pittman

Notary Public for the State of Nevada

Carlos Pittman
[printed name]

Residing at Clark, Nevada

My commission expires: 03/07/2029

Notarized remotely using audio-video communication technology via Proof.

DEQ
Montana Department
of Environmental Quality

January 29, 2025

Sent via certified mail

Tay Tonozzi
Lighthouse Resources Inc
10980 South Jordan Gateway
South Jordan, UT 84095

Permit ID: C1983007
Noncompliance No: CN2025001

NOTICE OF NONCOMPLIANCE AND ORDER OF ABATEMENT

During a Department of Environmental Quality (DEQ) complete inspection of the East Decker Mine (Permit #C1983007) on December 19, 2024, DEQ documented that permit reclamation commitments for 2024 were not completed.

Nature of the Violation: Failure to Comply with the Approved Reclamation Plan

The Administrative Rules of Montana (ARM) 17.24.501(6)(b) states that, unless otherwise approved by DEQ, backfilling and grading must be completed within two years after coal removal from each pit has been concluded. Attachment 313-1b (Exhibit 1) of the permit lists a general timeline of reclamation. In 2024, the East Decker Mine commitment was for 3 million cubic yards of material to be moved with a truck and shovel fleet. One hundred acres were also supposed to be seeded. DEQ conducted thirteen inspections in 2024, and DEQ recorded that the truck and shovel fleet was never activated and that no soil laydown or seeding had occurred in 2024. Decker Coal Company's (DCC) alternate reclamation schedule was approved in 2021 and revised in 2022. While Attachment 313-1b states that the schedule may be subject to change, ARM 17.24.313(1)(b) requires any changes to a reclamation plan to be approved by DEQ prior to implementation. No such approved changes were made.

Description of Conditions

A partial timeline of reclamation plan commitments and observations by DEQ is given as follows.

1) December 4, 2020. Lighthouse Resources Inc, owner of the East Decker Mine, files for Chapter 11 bankruptcy.
2) April 8, 2021. DCC notifies DEQ that the company has relinquished the right to mine in the East Decker permit and that the permit will be in permanent cessation (Exhibit 3).

Since no more coal can be mined once a permit goes into permanent cessation, reclamation commitments for all pits, including backfilling within 2 years unless otherwise approved, are immediately enacted.

3) April 21, 2021. Minor Revision MR106 is approved which revises the reclamation plan (Exhibit 2). The plan shows reclamation to be almost entirely completed by the year 2026 with only the facilities and out of pit spoils pile OB-1 to be reclaimed post 2026.
4) March 18, 2022. Minor Revision MR108 is approved which revises the reclamation plan to its current timetable (Exhibit 1).
5) January 9, 2024. East Decker inspection. Inspectors note the following: "The truck-haul for backfill is scheduled to begin in May." (Exhibit 4)
6) February 6, 2024. East Decker inspection. Inspectors note the following: "Decker plans to hire truck shovel crews in 2024, per backfilling and reclamation schedule commitments in the permit. The operator reported that maintenance on the truck fleet has started in anticipation of hiring drivers. East Decker's 2024 permit commitments are for 3 million loose cubic yards truck shovel backfilling and 5.6 million loose cubic yards of dragline backfilling." (Exhibit 5)
7) March 12, 2024. East Decker inspection. Inspectors note the following: "One of the hydraulic shovels had been relocated to the facilities area for maintenance in preparation for the upcoming truck and shovel work that is planned to start in May." (Exhibit 6)
8) May 16, 2024. East Decker inspection. Inspectors note the following: "The operator indicated that only five new hires would be required for the truck-haul operation scheduled for May and that filling those positions on relatively short notice was not expected to be problematic." (Exhibit 7)
9) July 24, 2024. East Decker inspection. Inspectors note the following: "A truck shovel fleet (fleet) has not mobilized on site. The plan remains to utilize a truck shovel fleet for earth moving of 3,000,000 LCY in 2024; however, news from the managing firm to commence fleet establishment has not arrived. Updates on a timeframe have not been offered to the mine's personnel." (Exhibit 8)
10) August 13, 2024. East Decker inspection. Inspectors note the following: "A truck shovel fleet has not been mobilized on site. The permit commitment is to use this fleet to move 3,000,000 LCY of material in 2024. No update of when this fleet would be hired was indicated." (Exhibit 9)
11) August 30, 2024. DEQ notifies DCC that the company does not appear to be on track to meet the 2024 commitments for truck-shovel reclamation, and DEQ requests a written response outlining how the company plans to meet these permit reclamation commitments. (Exhibit 14)
12) September 17, 2024. DCC responds to DEQ with a letter stating that the permit contains a statement that "Plans are subject to change as equipment and manpower dictates." DCC also states that the dragline and dozers were utilized in areas originally designated for truck-shovel work, and that soil and seeding were not done due to drought conditions in 2024. (Exhibit 15)

13) September 20, 2024. DEQ identified deficiencies in the spoil sampling data that was submitted. (Exhibit 12)
14) September 24, 2024. East Decker inspection. Inspectors note the following: "Decker also sent a letter requesting a revision to the approved reclamation schedule on 09/17/2024. Changes to the reclamation schedule must be submitted as a formal revision to the permit since it is a permit commitment. The current commitment includes 3,000,000 LCY of material to be reclaimed by a truck shovel fleet, which has yet to be mobilized." (Exhibit 10)
15) December 2, 2024. Minor Revision MR119 is submitted to DEQ by DCC to revise the reclamation schedule (Exhibit 13). This revision is not currently approved, and a deficiency letter was sent to the operator on January 22, 2025. The proposed revision changes the commitment from dragline and truck shovel cubic yards to only earthwork cubic yards, greatly reduces the commitment of cubic yards moved per year, and it commits to finishing earthwork movement by the year 2032. The proposed schedule also entirely eliminates commitments to seeding. No justification for the revision is given for how less earthwork movement will result in completion of the backfilling in the same amount of time as the currently approved reclamation plan. (Exhibit 12; Exhibit 16)
16) December 19, 2024. East Decker inspection. Inspectors note the following: "Decker stated no work had been completed during the 2024 year with a truck/shovel fleet as previously planned in May. Additionally, no seeding had been completed during 2024. Personnel indicated that there was difficulty in coordinating with the bond company for funds and finding qualified operators." (Exhibit 11)

Conditions to Abate

ARM 17.24.1202(3) states that DEQ may order changes in mining and reclamation plans as are necessary to ensure compliance with the Act and the rules adopted pursuant thereto.

1) DEQ requires DCC to revise the reclamation plan to include detailed steps and dates for completion, as required under ARM 17.24.313(1). A detailed plan, at minimum, must include:
   a) Timetables and plans to complete backfilling by 2035 including exact sequence of dragline and pit work including a map of the reclamation sequence (ARM 17.24.313(1)(b, d, g)).
   b) Timeline for mine pit dewatering (ARM 17.24.313(1)(b, d, g)).
   c) Sequence of soil laydown and details on the soil pile that will be used for specific fields (ARM 17.24.313(1)(g)).
   d) The sequence and timing of seeding specific areas (ARM 17.24.313(1)(h)).
2) Plan for permanent mitigation of coal smokers (ARM 17.24.523; ARM 17.24.308(1)(d)).
3) Weed management plan during reclamation including commitments for spring and fall spraying (ARM 17.24.308(1)(f)).
4) Timeline for the removal of buildings and other support facilities (ARM 17.24.304(1)(b)).

5) Plan for facilities sampling for hydrocarbons including decommissioned shop areas and ready lines prior to grading work in the area. The plan must include the spacing of samples and the proposed parameter suite (ARM 17.24.308(1)(c)).

The plan must be submitted to DEQ as a minor revision within 30 days. If DEQ's review identifies that the plan is deficient, DCC must submit a revised plan within 15 days after receipt of a deficiency letter. DCC is encouraged to meet with DEQ to discuss the plan and any questions regarding this order prior to a submission in order to expedite the review and deficiency/approval process.

Extension or Modification of this Order

Upon application by the Permittee, DEQ may, for good cause, extend the period for abatement. The period for abatement, however, may not be extended beyond 90 days unless one of the conditions set forth in ARM 17.24.1206(5)(b) exists. DEQ's decision on an application for extension beyond 90 days may be subject to a contested case hearing before the Board of Environmental Review (BER) if a hearing before the BER is requested, in writing, within 30 days of such decision by a person with an interest that is or may be adversely affected (ARM 17.24.1206(5)(d)).

This Notice of Noncompliance and Order of Abatement may be modified, vacated, or terminated at any time. The Permittee may submit a letter of mitigating circumstances to DEQ providing information about the violation. DEQ will consider any information submitted in determining the facts surrounding the violation and the amount of penalty.

The letter of mitigating circumstances must be sent to the Bureau Chief of the Mining Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901, on or before January 31, 2025. Failure to timely submit a letter of mitigating circumstances may result in the issuance of a Notice of Violation and Administrative Penalty Order without input from the Permittee. The failure to raise an issue in the letter of mitigating circumstances will not preclude the Permittee from raising the issue at a contested case hearing as set forth in 82-4-206, Montana Code Annotated (MCA).

Pursuant to Section 82-4-254(1), MCA, a Permittee who violates the Act, rules adopted, or orders issued under the Act, or term or condition of a permit, shall pay an administrative penalty of not less than $100 and not more than $5,000 and an additional administrative penalty within the same limits for every day during which the violation continues. In order to institute the penalty assessment process, DEQ will serve the Permittee a Notice of Violation and Administrative Penalty Order within 90 days after issuing the Notice of Noncompliance, unless the penalty is waived pursuant to Section 82-4-254(2), MCA. DEQ will determine the penalty based on the factors and penalty calculation procedures found in Section 82-4-1001, MCA, and ARM 17.4.301-308. Pursuant to 82-4-251(7), MCA, DEQ may also request attorney fees and costs associated with any judicial or administrative proceedings.

Hearing

Pursuant to 82-4-251(5), MCA, the Permittee may request an informal public hearing on this Notice of Noncompliance and Order of Abatement. Pursuant to 82-4-251(6), MCA, a person who has been issued a notice or order of cessation pursuant to subsection (1) or (2) may request a hearing before the BER within 30 days of the issuance of the notice.

Sincerely,

Eric Dahlgren, Bureau Chief
Mining Bureau
Department of Environmental Quality
(406) 444-5245

CC: Jeffrey Fleischman, OSMRE - Casper Office
Emily Lodman, DEQ Coal Section
Ashley Eichhorn, DEQ Coal Section
Sam King, DEQ Legal
Matt Guptill, DCC

Montana Department of Environmental Quality

March 25, 2025

Sent via e-mail

Tay Tonozzi
Lighthouse Resources Inc
10980 South Jordan Gateway
South Jordan, UT 84095

Permit ID: C1983007
Noncompliance No: CN2025001
Action: Response to February 28, 2025 Noncompliance Reply Letter

The Department of Environmental Quality (DEQ) received Decker Coal Company's (DCC) February 28, 2025 response to the issuance of Notice of Noncompliance (NON) CN2025001 on January 28, 2025. In your letter, the approved bond calculation document "Appendix A BondCalcTables 1-10_2024 MR115 R3.pdf" was repeatedly cited as containing the required reclamation plan documentation. However, the bond calculation does not contain sufficient detail to describe how reclamation will be completed. The Montana Strip and Underground Mine Reclamation Act specifically separates the reclamation plan requirements (e.g. Administrative Rules of Montana (ARM) 17.24.313 and ARM 17.24.308) from the bonding requirements and bond calculations (e.g. ARM 17.24.1101 through ARM 17.24.1122). DEQ bases the bond calculation, in part, on the reclamation plan. DEQ has reviewed DCC's responses and is providing additional clarification to the items identified in DCC's initial response to the Notice of Noncompliance.

1) DEQ requires DCC to revise the reclamation plan to include detailed steps and dates for completion, as required under ARM 17.24.313(1). A detailed plan, at minimum, must include:

> (a) Timetables and plans to complete backfilling by 2035 including exact sequence of dragline and pit work including a map of the reclamation sequence (ARM 17.24.313(1)(b, d, g)).
>
> DCC responded, in part, that no rules require an exact sequence of dragline and truck-shovel operations. However, ARM 17.24.501(6)(b) states that backfilling and grading must be completed within two years after coal removal from each pit has been concluded, unless otherwise approved by the department. The permit in "501 General Backfilling and Grading Requirements TR3.pdf" states that prior commitments with DEQ allowed an exceedance due to coal blending and that grading will be done in accordance with Section 17.24.313(1) of the permit. DEQ issued NON CN2025001 due to DCC's failure to follow the reclamation plan submitted by DCC and approved by DEQ. Any

additional deviation from the 2-year backfilling and grading requirement is based on DEQ approving an updated reclamation plan that contains adequate information for DEQ to ensure the reclamation will be completed. DEQ is requiring an updated reclamation plan similar to the plan shown in Exhibit 2 that was sent in the January 28, 2025 Notice of Noncompliance. This map shows areas of backfilling and the year it will be accomplished. Exact equipment is not required unless certain tasks can only be accomplished with specific equipment.

b) Timeline for mine pit dewatering (ARM 17.24.313(1)(b, d, g)).

While the permit document "Appendix A BondCalcTables 1-10_2024 MR115 R3.pdf" contains an estimate of 1,810 hours for the purpose of bond calculation, DEQ requires a plan of how the current operation proposes to run the pit pumping operation and therefore the timeline that is necessary to remove sufficient water to safely work in the Ramp 0 area. This timeline would be used in conjunction with the order for a reclamation plan sequence and map as discussed under (1)(a) of NON CN2025001. For example, the table states that the pump will run at 1,500 gallons per minute (3.3 cubic feet per second (cfs)). Montana Pollutant Discharge Elimination System permit reporting to DEQ has indicated that the mine has discharged between 0.01 cfs and 1.4 cfs since April, 2024.

c) Sequence of soil laydown and details on the soil pile that will be used for specific fields (ARM 17.24.313(1)(g)).

DEQ requires a general plan to note when soil piles will be used to ensure piles are not inadvertently surrounded by reclamation prior to their use. Additionally, temporary soil piles were approved and created in 2023 that still have not been utilized due to the timing and sequencing of the highwall reduction. DEQ requires a plan to ensure that any additional temporary soil piles that will be required for reclamation are approved prior to their creation and that piles are used in a timely manner to ensure soil is not lost as required by ARM 17.24.702.

d) The sequence and timing of seeding specific areas (ARM 17.24.313(1)(h)).

ARM 17.24.713 states that seeding and planting of disturbed areas must be conducted during the first appropriate period favorable for planting after final seedbed preparation. The current approved reclamation schedule in "Attachment 313-1b – Reclamation Schedule.pdf" lists acres of seeding, but there is no indication where this seeding would occur. DEQ requires either a map showing the sequencing and timing of soiling and seeding or a commitment that areas shown in a backfilling and grading map will be submitted for a phase I bond release in the year the backfilling is completed with a commitment to soil and seed in the next available season after bond release approval.

e) Plan for permanent mitigation of coal smokers (ARM 17.24.523; ARM 17.24.308(1)(d)).

DCC stated that the plan for permanent mitigation of coal smokers is located in the "Fire Control Plan.pdf" in the permit. This document is focused on fire control during mine operations, and it states that "Coal fires situated in regraded backfill and spoils will be evaluated to determine the potential environmental impacts". DEQ is requiring this evaluation to be completed, persistent fires identified on a map, and plans created for fires that require extinguishing.

f) Weed management plan during reclamation including commitments for spring and fall spraying (ARM 17.24.308(1)(f)).

Maintaining an approved weed management plan approved by Big Horn County will satisfy this reclamation plan requirement.

2) Timeline for the removal of buildings and other support facilities (ARM 17.24.304(1)(b)).

DEQ acknowledges that an incorrect rule was cited. The correct rule is ARM 17.24.308(1)(b). The timeline and sequence of building removal is required to be provided. If pit disposal of building material is proposed, the pit that will be used must be provided and included on a map, and a narrative description of how the plan to complies with ARM 17.24.507 must be given.

3) Plan for facilities sampling for hydrocarbons including decommissioned shop areas and ready lines prior to grading work in the area. The plan must include the spacing of samples and the proposed parameter suite (ARM 17.24.308(1)(c)).

Please include the commitments cited in "313_Bond_2024_R3.pdf" in Section 4.11 Facilities Reclamation Plan (addressing rule ARM 17.24.308(1)(c) and ARM 17.24.313(1)(j)).

DCC is reminded that the notice of noncompliance must be abated in full by **April 29, 2025** (90 days after the issuance of the NON on January 29, 2025), unless a specific provision in ARM 17.24.1206(5)(ii) prevents compliance with the abatement order. Thank you for your prompt attention to this matter.

Sincerely,

Eric Dahlgren

Eric Dahlgren, Bureau Chief
Mining Bureau
Department of Environmental Quality
(406) 444-5245

CC: Jeffrey Fleischman, OSMRE - Casper Office

Emily Lodman, DEQ Coal Section
Ashley Eichhorn, DEQ Coal Section
Sam King, DEQ Legal
Nicholas Whitaker, DEQ Legal
Jeremiah Langston, DEQ Legal
Matt Guptill, DCC
Vicki Marquis, Crowley Fleck PLLP

DECKER COAL COMPANY

17.24.313 EAST PITS RECLAMATION PLAN

DESCRIPTION OF RECLAMATION OPERATIONS

Table of Contents

a. Proposed Postmining Land Use

The postmining land uses at the East Pits will be designated as follows: predominantly Pastureland, secondary Wildlife Habitat; predominantly Livestock Grazing, secondary Wildlife Habitat; Livestock Grazing and Wildlife Habitat codominant; predominantly Wildlife Habitat, secondarily Livestock Grazing. These same uses were present before mining and are now the dominant land uses on adjacent lands.

b. Detailed Timetable for Major Steps

Table 313-1 summarizes the approximate mining/reclamation sequence and time frames for a typical cut.

Table 313-1: Typical Mining and Reclamation Schedule

TIME FRAME (YEARS)	SPECIFIC OPERATION TAKING PLACE
0 – 1	Soil Pre-stripping Begins
1 – 2	Truck and Shovel Assist Operations
1.5 – 2.5	Dragline Operations/Backfilling
2 – 3	Coal Mining Operations
3.5 – 6	Haul Back Material and Final Grading (Coal Removal +2 Years)
5 – 6	Spoil Scarification and Soil Placement
5 – 6	Revegetation / Final Reclamation

Land affected by coal removal, backfilling, and grading to the approved surface will be completed within 2 years of coal removal and at least within four spoil peaks of the active pit. There are instances, however, where this scenario is not possible. All coal and overburden ramps are backfilled only periodically, which may not fit the sequence described. Also, in some areas the final surface is constructed using

truck/shovel assist material. This material is not always available within the above time frames.

Exhibit 11-1 and the above schedule can then be used to anticipate possible time frames for finishing the backfilling and grading process. Due to the present mine plan and subsequent reclamation progression, most areas shown on ***Exhibit 11-1*** exceed the 2-year time frame requirements for completing backfilling and grading.

A generalized reclamation schedule for the final cut of each specific pit can be derived from ***Exhibit 11-1*** and ***Table 313-1*** listed at the beginning of this section. Upon finishing the final removal of coal, the final cut will have reclamation operations begin on a large scale. The actual time frame to complete the reclamation operation will vary from pit to pit. The size of area will also vary. Typically, whole pit sections will be reclaimed as one unit. The reclamation operations may jump from pit to pit depending upon the location of other operations and the utilization of the reclamation operations to conduct other tasks. In general, the areas will be reclaimed as adequately sized blocks become available. Final high wall reduction and final pit backfill can only be completed after all of the economically mineable coal has been removed.

Areal extent also will vary. When scheduling allows, areas affected by mining will be reclaimed in large reclamation blocks. These blocks will facilitate reclamation operations by providing a large working area for cover soil placement and seeding.

All final grading will be accomplished to construct the final surface configuration as depicted on ***Exhibit 12-2*****.** However, the contour intervals depicted on ***Exhibit 12-2*** do not show every feature or undulation found between them. This is done to allow the regrading operations the flexibility to take advantage of field conditions to create a more diverse topography. Although these features are not shown, the mine-wide reclamation plan is dedicated to establish topographic diversity in a manner that will not affect the overall mass balance of material. Examples of diversity to be constructed below the 10-foot intervals can be found in Section 17.24.313(1)(d)(v) of Decker Coal's Reclamation Plan. The aforementioned examples can be achieved while also adhering

to the guidelines outlined in the Montana Department of Environmental Quality Postmine Topography Plan Guideline.

c. Cost Estimate for the Performance Bond

The East Pits bond is recalculated annually, and these bond calculations are approved by the Department. A map of the topography that the bond is based on is contained in Exhibit 313-2 and the Bond Surface is shown on Exhibit 313-4. Exhibit 313-6 is a map displaying the Earthwork detail. The bond calculations are contained in 313_Bond.

d. Plan for Backfilling

(d)(i.) Final Location of All Overburden and Parting Materials in the Fill

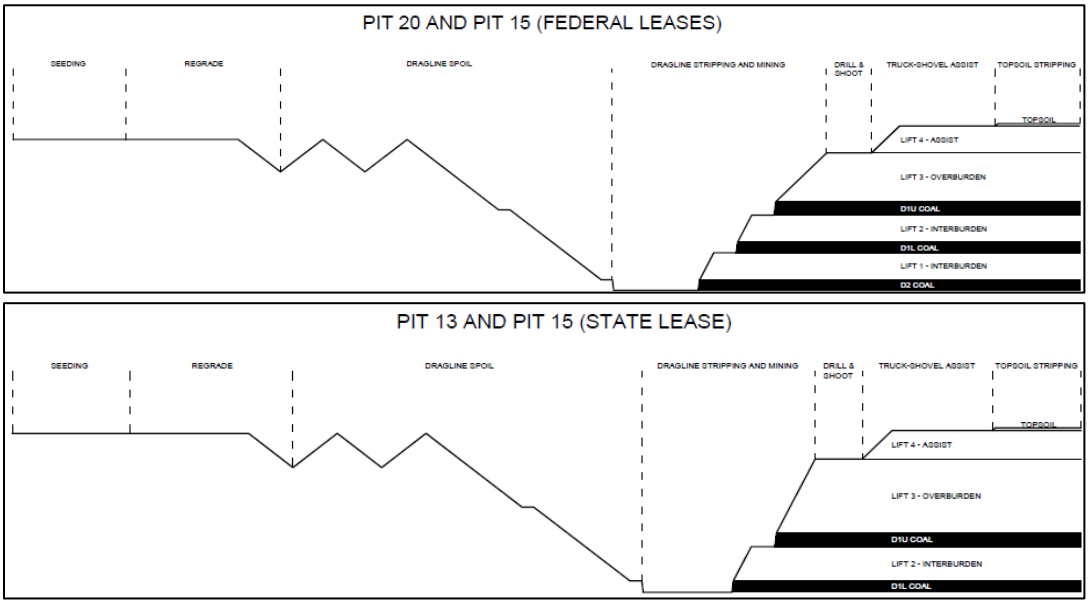


Figure 12-1: Typical Pit Cross-Sections

(d)(ii.) Highwall Reduction

Equipment that is typically used for final highwall reduction and grading operations includes scrapers, motor graders, dozers, shovels, backhoes, and possibly draglines in the future. For a discussion of slopes and highwall reduction alternatives please refer to Section 17.24.515. The affected area disturbed above the highwall will be minimized and will not penetrate any buffer zone unless otherwise approved by the Department. See the ***Exhibit 12-5*** entitled "Typical Reclamation Cross-Section for Highwall Reduction" for a cross-section showing the plan of highwall reduction. Highwall reduction alternatives may be permitted where the Department determines that:

- They are compatible with the postmining land use
- They are stable, achieving a minimum static safety factor of 1.3

(d)(iii.) Derivation of the Bulking Factor (Swell)

Decker Coal Company studied swell factors for the East Pits during the initial start-up period of mining. The method used to determine the appropriate swell factor at that time was aerial photogrammetry. Computer cross-sections were taken throughout the mining area at 50' intervals. Cut and fill quantities were generated from the cross-sections of two flights, using the average end area method. The swell factor was then obtained using the following formula:

$$(\%)\ \text{Swell} = \frac{\text{total fill } (yd^3)}{\text{total cut } (yd^3) - \text{coal mined } (yd^3)} - \text{blasting swell adjustment factor } (yd^3)^* - 1 \times 100$$

The blasting swell adjustment factor took into account any material which was blasted at the time of the first flight. The factor simply converted the blasted material to its bank yardage.

The data obtained yielded a swell of 27%. Using flights of June 20, 1980 and March 29, 1981 the following quantities were obtained:

Total Cut	=	11,924,412 yd^3
Total Fill	=	10,584,097 yd^3
Coal Mined During the Period	=	3,892,328 yd^3
	=	3,604,007 yd^3 @ 2160 lb/yd^3
	=	27%

DCC realizes the importance of obtaining an accurate swell factor. Although the initial swell factor was projected at 27%, the revised mine plan requires a swell factor of 25%. This is primarily due to special handling areas (i.e. North Haulback) where spoil material will be rehandled by the truck shovel operation. Decker Coal Company anticipates a compaction factor of 2% due to the truck shovel operation. This yields an overall swell factor of 25%. This is a conservative value that will ensure a sufficient amount of spoil material to achieve the final regraded surface. In the event that subsequent information yields a swell factor which varies significantly from the 25% used to generate the regraded surface, the Department will be notified.

(d)(iv.) Post Mine Topography Map

Decker Coal developed a new East Decker Post Mining Topography (PMT) Map when Pit 20 was added to the mining operation. The mine plan was used to develop a final mining pit shell. See ***Exhibit 13-9*** for the extent of the current mine plan. The final pit shell was combined with June 2016 topography to create a base for developing the PMT volume balance. Prime volumes were calculated for all remaining cuts and non-scoria overburden swelled at 25%, scoria from burn areas swelled at 0%. The coal waste from each cut was calculated and added to each cut volume. In addition to the prime volumes, the rehandle required to be moved to mine the remaining cuts, mostly resulting from existing haulroad modification, was calculated. The volume of material in the overburden storage areas and any material that is below the PMT on the prime

and spoil side of the active pits was also added to the above listed items to determine the total material that is available for pit backfill. The PMT was developed with an overall volume balance for East Decker. The volumes used to develop the PMT and the volume balance check are shown in ***Table 12-1***. The contours of the post mining topography surface are shown on ***Exhibit 12-2***.

The Coal Creek and Middle Creek channels have been designed in detail and the detailed designs incorporated into the East Decker PMT. ***Exhibit 12-8 Sheet 1*** and ***Exhibit 12-8 Sheet 2*** provide the design information for the postmining Coal Creek channel. This design was done using a variety of methods as well as recommendations from Montana DEQ staff. The Coal Creek design incorporates an overall concave profile, and the profile can be seen on ***Exhibit 12-8 Sheet 2.*** A SEDCAD program was used to generate the resultant hydrograph for the designed Coal Creek from a 100-year, 6-hour design storm with 2.40 inches of rainfall. The hydrograph and peak flow for the designed channel can be seen on ***Exhibit 12-8 Sheet 1***. Representative cross-sections were chosen at the midpoint of each 1000-foot stream reach. These representative cross-sections are presented on ***Exhibit 12-8 Sheet 2***. The results of the SEDCAD hydrograph were input into the Army Corps of Engineers HEC-1 program to obtain the resultant water surface elevations, flow depths and velocities. The design flow, design channel top widths, flow velocities and flow depths for the Coal Creek Channel can all be seen on ***Exhibit 12-8 Sheet 1 and 2***.

Similarly, ***Exhibit 12-9 Sheet 1*** and ***Exhibit 12-9 Sheet 2*** provide the design information for the postmining Middle Creek channel. This design was done using the methodology described above for Coal Creek, and the resultant overall profile for the Middle Creek design is concave longitudinal. The cross sections were developed in a similar manner as the Coal Creek design, and show considerable diversity in flood plain width and side slopes.

The postmine channels will be constructed with substantial variability in

side channel slopes, flood plain width, meander lengths and widths and in many cases may not follow ***Exhibit 12-8*** and ***Exhibit 12-9*** in detail. Channels will be constructed using Section 3.0 of the **MT DEQ Postmine Topography Plan Guideline** (Guideline) as a reference. The Guideline states in Section A.(2) that for a Primary Drainage to be considered consistent with the approved PMT map the area of concentrated flow must (a) Provide flow in the same general direction as that depicted on the PMT map; (b) Outlet at the approved location; (c) Contain similar lengths of similar gradients to that approved and exhibit an overall concave longitudinal profile; (d) When applicable, connect up-gradient to a native drainage; (e) Provide a smooth transition between graded and native areas and between graded areas with different completion dates. Decker Coal will abide by these guidelines when constructing the Coal Creek and Middle Creek channels. When feasible, the side slopes will blend with adjacent valley bottom topography, with gentler slopes corresponding with side swales, tributaries and valleys. Steep side slopes will generally correspond with ridges and knobs. The final slopes will fluctuate considerably as they do in native channels.

(d)(v.) Reclamation Enhancement Features

DCC will, as opportunities arise, construct topographic/habitat features as part of its reclamation plan. These features will provide more topographic and vegetational diversity that better reflect premine or native land found in the area. Features will be constructed as part of the regrading process, matching similar features found in the surrounding area. All feature construction will conform to postmine land uses. Opportunities for feature construction tend to be revealed in the field during the rough regrade operations. DCC will inform the Department of the constructed features during the inspection process. DCC will consult with and receive approval from the Department prior to completion of steep-gradient (>3:1) features. Special habitat enhancements will include, but are not limited to, the construction of the following:

Rock Piles/Ledges - In the process of backfilling and grading, numerous large and durable rocks become available. Instead of trying to bury all of these rocks, some will be placed to provide habitat for wildlife (e.g., thermal cover.)

Steep Slopes/Escarpments - The mining process often results in areas with steep slopes and/or rough terrain. Leaving portions of these steep slope areas will create a more diverse topography and provide a more desirable habitat for different species of wildlife than is associated with gentler slopes. Some of these areas may naturally have scoria substrates that would be left as the growth media without cover soil. These features also provide the opportunity for specific plantings of woody species that would not normally compete effectively with grasses on more productive substrates.

Steep Slope Features (SSF) help minimize disturbance that occurs in the process of tying reclamation into native ground and promote the creation of niches for vegetation and wildlife that would otherwise be lost with standard high wall reduction practices. Many times, the placement of these SSFs will not be planned in advance because the opportunity for creating a SSF often presents itself in the process of grading an area. Due to the nature of the grading operations, this enables the SSFs to blend effectively with the surrounding topography.

Decker may create SSFs without any slope stability analysis or Departmental approval under the following conditions:

- Slopes are no steeper than 1½:1
- Slopes greater than 3:1 are no higher than 10 feet

These SSF parameters are justified in the **West Permit *Appendix 313-1*** in a slope stability analysis performed by the Department in 2004 entitled "TDN Slope Stability Analysis for the C- Section Highwall Area" (TDN).

SSFs that conform to these parameters will have geotechnical parameters comparable to those used in the TDN analyses (cohesion, unit weight, friction angle, etc.) and be similarly located to those used in the TDN analyses (cut slopes with shallow layers of spoil material at the surfaces, i.e. high wall reduction areas).

Steep Slope Replacement Features - Premine steep slope features have been documented within the Decker permit limits and are shown in ***Appendix 313-1,*** entitled "Pre-Mine Slope Map".

Steep Slope Replacement Features (SSRF) also help minimize disturbance that occurs in the process of tying reclamation into native ground and promote the creation of niches for vegetation and wildlife that would otherwise be lost with standard highwall reduction practices. Many times, the placement of these SSRF's will not be planned in advance because the opportunity for creating a SSRF often presents itself in the process of grading an area. Due to the nature of the grading operations, this enables the SSRF's to blend into the surrounding reclamation and native topography.

Decker will demonstrate that each SSRF achieves a 1.3 static safety factor for any SSRF where a slope stability analysis is required. The requirement of a slope stability analysis will be mutually agreed upon by the Department and DCC.

Beginning in the 2005 Annual Report, Decker will document the use of SSRFs and keep a running account of premine features that have been replaced.

Moisture Catchment Basins - Topographic features that are constructed to cause the accumulation of snow (e.g. perpendicular to the prevailing

wind), thereby increasing the available moisture (e.g. snow melt) and enhancing the survival of trees and shrubs.

Small Depressions - Native depressions are usually found along drainages or in the uplands; therefore, similar areas will be expected in postmine reclamation. Depressions will act as moisture catchment basins and will hold water for a portion of the year. Small depressions will not hold more than one acre-foot of water unless specifically approved by the Department, and will have side slopes that allow easy access. Depressions in drainages will generally be smaller, similar to natural channel features, (e.g. less than floodplain width, with lengths up to 2 to 3 times longer than width). When depressions are incorporated into the postmine landscape, they will function to minimize erosion and conserve moisture. Depressions will serve to provide seasonal wetland habitat, replacing or enhancing areas for wildlife and providing additional plant diversity and production. In some cases, the depressions may be used seasonally by livestock, depending on the duration of surface water. The depressions will be compatible with the approved postmining land use and will not restrict normal access throughout the area or constitute a hazard.

For other, usually larger features, such as conversion of traps and sediment ponds to post-mine depressions and construction of larger playas, Decker Coal Company will address them under ARM 17.24.751(2)(f) and (g) and 17.24.642, and receive Department approval prior to construction.

Stock ponds - These water sources may be constructed at various locations to facilitate livestock grazing and wildlife habitat postmine land uses. These features would be constructed during the regrading process as incised ponds in tributaries to main channels. The upper portion of

the drainage channel will be constructed with a concave profile to the bottom of the pond, which will hold 4-8 acre-feet of water. The downstream portion of the drainage channel will be constructed with a concave longitudinal profile, beginning with the pond outlet. The incised nature of the ponds will alleviate much of the design criteria for spillways and provide for a stable structure. Possible locations of stock ponds will be depicted on the "PMT Map". Final location will be based on consideration of many factors, including but not limited to improving livestock and wildlife access, improving wildlife habitat diversity, and need for a water source to better distribute livestock use. Stock ponds will need DEQ approval prior to construction.

Brush Piles - Prior to soil salvage in some areas, it is necessary to clear trees that are too large for stripping equipment. In some cases, these trees may be placed on reclaimed areas for bird perches and small wildlife cover.

e. Drainage Control

Drainage channels will be designed for preventing material damage to the hydrologic balance in adjacent areas and will meet the performance standards of 17.24.634. Drainageway configurations, both longitudinal and cross-sectional, mimic nearby natural systems. Drainage designs will keep the following in mind:

1. Drainages traversing portions of the backfilled final pit area will be reconstructed similar to premine conditions to the extent possible. They will tie into native drainages and swales (see ***Exhibit 12-2,*** entitled "PMT Map"), and all efforts will be made to avoid the placement of highly erosive materials in the channel bottoms.
2. First-order drainage designs will not be submitted to the Department. These drainages will meet the following parameters:
    - They will have a concave-longitudinal profile
    - They will conform to the approved PMT before topsoiling

3. Coal Creek and Middle Creek designs can be seen in ***Exhibit 12-8*** and ***Exhibit 12-9***.
4. Most small internal drainages within the pit areas have an average slope of 2.0 percent with concave longitudinal profiles.
5. Accumulated geomorphic data for affected watersheds will serve as guidelines for design and will be used in conjunction with other methods to develop channel geometry.

Drainageways will receive thicker cover soils than adjacent slopes and be seeded with the approved alluvial seed mix (***Tables 313-11*** and ***11a***). Channel bottoms may or may not be topsoiled depending on the slope and drainage area of the basin. Other than run-in from nearby reclaimed slopes, the hydrology of ephemeral drainageways will not achieve their full potential until they tie into their upstream counterparts and assume natural flows. These temporal constraints will limit the establishment and survival of planted riparian species.

The computer generated final surface takes into account the material balance and represents an achievable postmine landscape configuration. Mining of the East Pits will disturb the Middle Creek and Coal Creek watersheds in the downstream area of each basin. A pre vs. post comparison of each of these stream channels is shown in ***Exhibit 12-8 and 12-9.*** A description of the postmine drainage basin reclamation can be found in the Backfilling and Grading Plan.

<u>Premine and Postmine Comparison</u>

Drainage areas disturbed by mining activity will be reconstructed similar to premining conditions to the extent possible. A comparison of premining and postmining drainage basin size and drainage density is found in ***Table 12-3***. The similar drainage densities contribute to the protection of the hydrologic balance by retaining roughly the same length of stream per acre of sub-watershed. For additional discussion on the protection of the hydrologic balance please refer to Sub-Chapter 3 Plan for Protection of the Hydrologic Balance.

(e)(i.) Drainage Profiles

Longitudinal profiles are provided for Coal Creek and Middle Creek on ***Exhibit 12-8 Sheet 2*** *and* ***Exhibit 12-9 Sheet 2,*** *respectively*. Each longitudinal profile shows both premine and postmine channel profiles. The Coal Creek and Middle Creek designs described in detail in Section 313.1(d)(iv) will need to be finalized and approved by DEQ prior to the actual channel construction.

A. Discussion of How the Drainage Basins Plan Meets Performance Standards in ARM 17.24.634

A discussion of how the plan meets drainage basin performance standards in ARM 17.24.634 is presented primarily in the Reclamation of Drainages which can be found in 17.24.313(1)(e). Additional "Reclamation Plan" subsections that address requirements from Section 17.24.634 are 17.24.501 and 17.24.313(1)(d). Further discussion of performance standards is found in section 17.24.313(1)(d)(iv) of the permit, as well as 17.24.314.

B. Discussion of How the Drainage Basins Plan Meets Requirements from 82-4-231(10)(k)

A discussion of how the plan meets requirements of 82-4-231(10)(k) is found in Section 17.24.314. The text includes plans for minimizing disturbances to the hydrologic balance and to the quality and quantity of ground and surface water systems.

f. Drainage Channel Designs

(f)(i.) Detailed Drainage Designs

Drainage Channel Designs will be appropriate for preventing material damage to the hydrologic balance in the adjacent area and meet the performance standards of ARM 17.24.634. In addition to the designs provided for Coal and Middle Creek, a variety of first order postmining channels are shown on the postmining topographic surface to mimic the premining conditions. These will have varying meander sizes and will tie into native drainages and swales where appropriate. A comparison of the postmining profiles with the premining profiles demonstrate that postmining channel lengths and average gradients are similar to the premining streams. As shown on Exhibit 12-7, Post Mine Drainage Basins, these tributary channels serve relatively small drainage areas (from less than 50 acres to about 500 acres) with moderate basin slopes. See ***Table 12-3*** for a summary of the Pre-Mine and Post-Mine Channel Lengths and Drainage Density.

(f)(ii.) Designs for Other Channels

Typical designs will incorporate an approximately trapezoidal channel with a varying bottom width and will have a concave longitudinal profile. Channel side slopes will be typically 3H:1V but will be constructed with diverse sideslope ranges from approximately 2H:1V to 5H:1V. The reclaimed drainages will be designed using the methods presented in Section 3.5.2 and will be constructed to safely pass the peak discharge from the 100- year, 6-hour precipitation event. After construction, more frequent events such as the 1.5-year precipitation event, will occur and allow for the natural formation of a channel within the constructed floodplain.

g. Plan for Removal, Storage, and Redistribution of Soil, Overburden, and Other Materials

Details are presented in 17.24.313(1)(g)(iii) (soil thickness), 17.24.501 (general backfilling and grading), 502 (cut and fill terraces), 503 (small depressions, see also 17.24.313(1)(d)(iv) of this permit), 504 (permanent impoundments, see also 17.24.313(1)(d)(iv) of this permit), 505 (burial and treatment of waste), 507 (storage/disposal of garbage), 510 (disposal of offsite waste, fly ash), 515 (highwall reduction), 516 (adjacent operations), 517 (slides and other damage), 518 (buffer zones), 519 (monitoring for cessation), 520 (excess spoil), 521 (temporary cessation of operations), 522 (permanent cessation of operations), 701 (removal of soil), 702 (redistribution/stockpiling of soil), and 703 (soil substitutes).

(g)(i.) Using Overburden and Soil Characteristics to Develop Reclamation Plans

For overburden and coal characteristics, refer to Section 17.24.308 (Operations Plan) and Sections 17.24.304(1)(g) Geologic Information. For soil characteristics, refer to 17.24.313(1)(g) (Soil Handling Plan) and Section (ii) below.

(g)(ii.) Proposed Salvage Depths for Each Lift, Each Soil Mapping Unit

Based on soil survey information, the estimated salvage depth by horizon (A and B combined vs. C) of each soil component of each mapping unit is shown in the Annual Report. The Annual Report also estimates soil replacement depths by lift, based on soil remaining to be stripped and stockpiled soil. 17.24.313. (l)(h)(iii) indicates the target soil replacement depths for each revegetation type. The soil replacement depths will be adjusted on an annual basis according to calculated soil salvage, and reported in the Annual Report. Please refer also to 17.24.313(1)(h)(v) (methods of planting and seeding) and 17.24.701(1-4).

(g)(iii.) Supporting Calculations for Cover Soil

Calculations showing total acreages and volumes of salvageable soil are shown in each Annual Report.

B. <u>Anticipated Thickness of Soil Redistribution Following Regrading</u>

Soil distribution will generally follow 17.24.313(l)(h)(v) and ***Figure 313-1***. As a plant rooting medium at the Rosebud Mine, Keck (1998, p. 60) found that soil depth in reclamation has less influence on plant species suitability and productivity than in pre-disturbance landscapes. While he found unpredictable textural discontinuities both within the profile and across the landscape, he saw function differences between spoil underlying soil and sedimentary rock. Native soils at the Rosebud Mine vary in depth to underlying sedimentary rocks. Spoil beneath the replaced materials presents less of a barrier to water movement or root growth than the original pre-disturbance sedimentary rock. As a result, spoil must be considered as part of the soil profile. The mine soils, although varying in depth of salvaged material over spoil, are uniformly deep as rooting media. Moreover, drainageways may not develop a soil moisture regime moister than uplands until they are connected to the upper reaches of drainages. The potential for dramatic differences in upland revegetation, such as structural development and physiognomy, lies with soil substitutes such as scoria and suitable spoil (Prodgers, 2004) and dramatic topographic differences. Within these constraints, DCC will use variable soil redistribution thickness to promote satisfactory revegetation and the postmine land use. Revegetation expresses relationships among surface substrates, topography, seed mixes and seeding implementation, and to a lesser extent soil thickness over suitable spoil. Certain topographic positions and features are favorable for variable soil depths, soil substitution, and microsite development. These topographic/habitat features and positions are, in turn, favorable for a variety of seeding and planting species and techniques. Associated with each revegetation type (***Table 313-2***) is a cover soil thickness range or a different substrate (17.24.313(1)(h)(iii)). Where cover soil is the seeding substrate, the mean for all samples must fall within the designated range.

Table 313-2: Land uses, substrates, and site features found at the Decker Mine.

Land Use	Substrate	Site
Predominantly pastureland, secondarily wildlife habitat	Topsoil	Flat to undulating, <8% slopes.
Predominantly livestock grazing, secondarily wildlife habitat	Topsoil and Alluvial Topsoil	Gentle, mostly <15% slopes. Includes alluvial drainages.
	Suitable Spoil	Minor inclusions (<4%) within grazing land.
	Scoria	Very minor inclusions (<2%) within grazing land.
Livestock grazing, codominant with wildlife habitat	Topsoil and Alluvial Topsoil	Gentle to moderate, <25% slopes. Includes alluvial drainages.
	Suitable Spoil	Inclusions within grazing land.
	Scoria	Inclusions within grazing land.
Predominantly wildlife habitat, secondary livestock grazing	Thin Topsoil	Moderate to steep dissected slopes.
Livestock grazing	Suitable Spoil	Moderate to steep slopes, dissected
	Scoria	Uplands, often steep, convex slopes

The following percentages of individual samples may fall outside the range according to land use:

1. Predominately pastureland, secondarily wildlife habitat: 15% of cover soil thickness samples may fall outside the designated range.
2. Predominantly livestock grazing, secondarily wildlife habitat: 25% of samples may fall outside the designated range.
3. Livestock grazing and wildlife habitat codominant: 35% of samples may fall outside the range designated.
4. Predominantly wildlife habitat, secondarily livestock grazing: 50% of samples may fall outside the designated range where cover soil is applied. The requirement that mean cover soil thickness fall within the designated range is not based on in situ substrates that may not strictly

qualify as soil. Scoria and suitable spoil, both in situ and placed, may be revegetated without cover soil.

Figure 313-1 shows how cover soil thickness may vary according to topography. Associated cover soil thicknesses are in 17.24.313(1)(h)(iii).

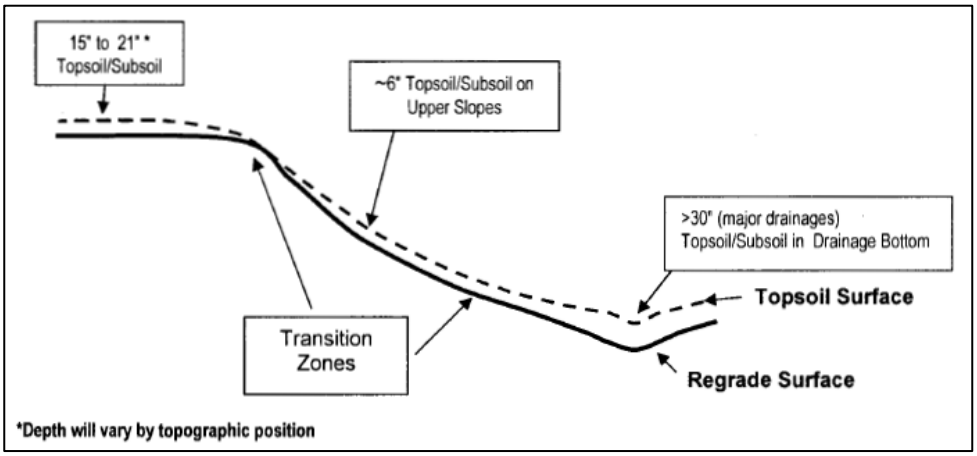


Figure 313-1: Representative Soil Thickness and Transition Areas

Each land use emphasis will be achieved, in part, by complementary seed mixes. Some land uses will receive a single seed mix. Others may have the option for several major seed mixes and one or more minor seed mixes. The minor seed mixes will be used to create shrub mosaics on cover soil or on soil substitutes.

(g)(iv.) Monitoring of Soil, Overburden, and Spoils

Regraded spoil and the depth of soil replacement is discussed in 17.24.702 (6). Soil quality is determined prior to salvage with further discussion in 17.24.701(1). The need for other spoil or soil monitoring may be addressed on a case-by-case basis.

h. Narrative of Revegetation

The revegetation plan is designed to achieve the postmining land uses, with multiple simultaneous land uses in all units. In 2023, as part of MR111, Decker Coal Company sumbitted Addendum 17.24.313-h Technical Standards to the Reclamation Plan. The technical standards were prepared by WESTECH Environmental Services, Inc. The addendum includes land uses, technical standard development, technical standards, and sampling methods. The land uses (tied to physiognomic types) are shown in ***Exhibit 12-3***, entitled "Revegetation Distribution Map". The primary and secondary land uses are:

Pastureland/wildlife habitat	Emphasis on livestock grazing and occasional haying; secondary emphasis on wildlife habitat for adapted species. Low topographic positions, gentle slopes.
Livestock grazing/wildlife habitat	Primary emphasis on livestock grazing, secondary emphasis on wildlife habitat. Low to mid slope positions, gentle to moderate slopes.
Livestock grazing - wildlife	Equal emphasis on grazing and wildlife habitat. Mid habitat to upper slope positions, moderate slopes.
Wildlife habitat/livestock grazing	Primary emphasis on wildlife habitat, secondary emphasis on livestock grazing. Mid to upper, moderate to steep slopes and benches.

In reclamation, DCC is creating habitats to support designated land uses. Grazing is a land use, but DCC actually is creating livestock habitat to support that use. The use of these habitats by both livestock and wildlife may not reach full potential until after the liability period due to field isolation, travel impediments, mining activities, distance to a drinking-water source, or for other reasons. Key elements of general cattle habitat are forage (grasses and when available, legumes), proximity to a source of drinking water, and rather gentle slopes. DCC is not attempting to create special livestock habitat such as calving grounds. Wildlife habitat is a far more complicated term, one that goes beyond how land is "dedicated" or "managed" (82-4-203(20)). Any landscape or plant community will provide habitat for several or many animal species. Even

though many species may use a habitat, the quality (attractiveness) of that habitat may vary drastically for different species. Some species may use a habitat intensively, whereas use by other species may be incidental. There is also a temporal element (e.g., winter habitat, fawning habitat, transient use, etc.). Habitat can only be defined, created, and evaluated with specific species in mind, for example, the ones for which that habitat is most important (Morrison 2002). DCC proposes using the following characteristic animal species to guide creation of wildlife habitat, recognizing that some use is seasonal:

Pastureland/wildlife habitat	Pronghorn, meadowlark, grasshopper sparrow, sharp-tailed grouse, deer mouse, vole sp., desert cottontail, white-tailed jackrabbit, American kestrel.
Livestock grazing/wildlife habitat	Pronghorn, meadowlark, grasshopper sparrow, sharp-tailed grouse, deer mouse, vole sp., desert cottontail, white-tailed jackrabbit, American kestrel, homed lark, red fox.
Livestock grazing - wildlife habitat	Mule deer, pronghorn, meadowlark, vesper sparrow, Brewer's sparrow, homed lark, sage grouse, deer mouse, vole sp., western harvest mouse, desert cottontail, white-tailed jackrabbit, northern harrier, American kestrel, yellow-bellied marmot, red fox.
Wildlife habitat/livestock grazing	Mule deer, vesper sparrow, Brewer's sparrow, sage grouse, deer mouse, vole sp., western harvest mouse, desert cottontail, northern harrier, yellowbellied marmot, red fox, bobcat.

(h)(i) Revegetation Types and Acreage of Each

Revegetation was previously structured by physiognomic type. The correlation with the current land use emphases follow in ***Table 313-3***. Major and minor seed mixes associated with each land use are listed in ***Table 313-4*** and enumerated in ***Tables 313-9*** through ***313-13***. In conjunction with ***Table 313-3***, these provide revegetation types and acreages. More detailed information, such

as specifying types named for dominant plant species far in advance of reclamation, cannot be provided in advance for the following reasons:

1. DCC can specify what it will seed but not what it will get in terms of species composition for many reasons. Each seed mix contains a host of species; which ones will become dominant either initially or from interseeding/reseeding or in the course of vegetational development as influenced by weather and management activities cannot be predicted. In the past, promising detailed revegetation types by acreage proved to be fiction, requiring modifications to bring the plan into conformation with actual revegetation.
2. Depending on what type of vegetation develops from early seedings, later seeding in nearby areas may be chosen to bring the larger area into compliance with the designated land use. Thus, the specific vegetation type for each field within the disturbance limits cannot be predicted.
3. Mine operators usually don't know what the configuration of a field will be, what substrate will be used, etc. until shortly before it is constructed (e.g., one year or less). That is when a seed mix appropriate for the designated land use and site is chosen.
4. When operational opportunities to create diverse microtopography arise, the mine operator should have the flexibility to immediately capitalize on them.

For these reasons, DCC's revegetation plan has proactive and adaptive elements; the latter cannot be specified in advance.

Table 313-3: Correlation of physiognomic types, historic types, and current land use emphases at the Decker Mine.

Old Types	Symbols	Acres	%	New Land Use Emphasis	Acres	%
Pasture/hayland Previously disturbed[1]	Q, P F, R	287 95		Predominantly pastureland, secondary wildlife habitat		
	Subtotal	382	10%		0	0%
Steppe Physiognomic Type	D, H, O, U, X, T	935		Predominantly livestock grazing, secondary wildlife habitat		
	Subtotal	935	26%		2889	79%
Shrub-Steppe Physiognomic Type	A, B, C, G, S, Y, Z, V	2254		Livestock grazing and wildlife habitat codominant		
	Subtotal	2254	62%		646	18%
Badlands, Open Scrub & Woodland Physiognomic Types	E, W, J, N, I	84		Predominantly wildlife habitat, secondary livestock grazing		
	Subtotal	84	2%		120	3%
Total Permitted Acres (North and West of County Road 25)		3655[2]			3655[2]	

1. Prior to mining, County Road 25 was aligned through what is now the active mining area. Restoration of any of this acreage would represent an improvement in ecological condition.
2. Acreage based on approved permit boundary that is North and West of Highway. Total Permit Area is 4361.4 acres. 3655 North & West of County Road 25, 685.8 in block Reference area, and 20.6 acres south of the County Road in the Upper Coal Creek drainage.

(h)(ii.) Revegetation Schedule

Transplanting will occur in spring. Seeding will occur at the first opportunity following cover soil application for dormant fall or spring seeding, assuming seedbed conditions are favorable. An example of unfavorable seedbed conditions is a dry, powdery seedbed in fall. In this case, waiting for spring seeding may give a better opportunity for successful seeding. In addition, DCC presently uses contractors to implement seeding; occasionally, the contractor may be unavailable at the desired time. DCC recognizes the need for a more natural mode of revegetation. Premine vegetation developed in the fullness of time under varying climatic conditions and historic land uses in conjunction with natural site features such as substrate, topography, and hydrology. Revegetation is typically initiated by simultaneously seeding all species, no matter what their usual role in vegetational development or realized niches. We are faced with achieving a facsimile of natural

or semi-natural vegetation in a compressed time schedule to achieve Phase III bond release. This requires the realistic and flexible application of approved husbandry practices that do not reset the bond release clock, along with the realization that a close approximation of premine revegetation cannot always be fully re-created in a single decade. The role of revegetation in creating suitable postmine land uses is predicated first on matching plant species to habitats, primarily substrates and topography, but effective implementation also requires incorporating temporal considerations. A single seeding may not achieve some wildlife habitat requirements. In semiarid areas, woody plants often establish episodically, with high mortality until plants are well established. Likewise, a temporal approach to revegetation will be required and is proposed here. The appearance of shrub-steppe may take years or decades to develop, depending upon species, soil moisture regime, and land management. It is Decker's goal to initiate development of plant communities that allow the desired land uses, not deliver them fully developed at their inception. While reseeding, including seedbed preparation, is considered the re-initiation of revegetation, interseeding of unsatisfactory fields to promote any of the bond release parameters (cover, production, diversity, woody plant density, utility, or seasonality) is considered a normal husbandry practice. Interseeding may use a different seed mix than was initially used (e.g., a shrub mosaic seed mix) or a subset of the initial seed mix, (e.g., only the light-seeded species may be broadcast). The choice of species and seeding rates for interseeding will be tailored to meet each individual field's needs. Interseeding will occur no later than six years preceding a Phase III bond release application and will not affect the 10-year responsibility period. Interseeding may take several forms without resetting the bond release clock.

Shrub mosaics on both generic cover soil and soil substitutes may be interseeded using the appropriate seed mix (***Tables 313-l0a, 313-11a, 313-12a, or 313- 12b***). Interseeding may be implemented by broadcasting, using a no-till drill, or some innovative seeding technique.

In unsatisfactory upland and alluvial sites, interseeding the shrub mosaic seed mixes **(*Tables 313-10a or 313-11a*)** or a subset of the initial seeded species by broadcasting or no-till drill may be implemented, possibly in conjunction with another management practice such as grazing.

Where competitive grasses establish well but additional shrubs are desired to better achieve the mix of postmine land uses, DCC proposes to chemically kill narrow strips through the established revegetation. This will occur while the plants are actively growing, as the herbicide must be taken into growing foliage to be effective. This practice of chemical treatment before interseeding is considered a Standard Conservation Practice for native and disturbed lands as defined by the USDA-NRCS (see FOTG, Section IV Practices, Standards and Specifications, 340, 490, and 550). Standing and belowground portions of dead grasses and forbs will provide a useful degree of erosion control. Standing plant litter can promote the establishment of selected forbs, shrubs, or warm-season grasses.

Chemical application areas, which will comprise <20% of any field, will be clearly visible. After the plants have died, hard-to-establish shrubs (and possibly other desired growth-forms) will be seeded into the plant litter. Along these visible swaths, the following shrub mosaic seed mixes may be broadcast, or just selected elements of these mixes:

- In alluvial shrub-steppe, the mix described in ***Table 313-11a***.
- In upland shrub-steppe or steppe, the mix described in ***Table 313-l0a***.

Chemical treatment will be designed to avoid impacting adjacent areas and, when possible, to target only those species that impair the growth of the desired vegetation. Herbicide usage will comply with label guidelines, the approved permit, and all applicable local, state, and federal laws and regulations. Herbicides used will be compatible with the species to be seeded/planted following treatment or rendered ineffective through decomposition or being adsorbed onto organic matter or soil particles.

Fertilizer may be used as a carrier for trashy seed; the amount of fertilizer

used will be determined based on the ability of a particular seed mix to feed in a particular seeding implement. The rate of fertilizer application is so low as to be all but irrelevant in terms of plant growth and qualifies as a normal husbandry practice.

DCC will use the normal husbandry practices in accordance with applicable Rules [e.g. ARM 17.24. 718(2) (management and land use practices), 725(1) (period of responsibility-normal husbandry practices), and 17.24.733(3) (the 80/60 rule)] to manage reclaimed areas to achieve Phase 3 bond release. The "Reclamation History" section of the Annual Report will document the use of any normal husbandry practice, including a narrative description of the treatment and the desired objectives, cumulative use of management practices, and initial results of individual treatments.

(h)(iii.) Seed Mixes and Transplants

Compared to seeding, transplanting plays a minor role in DCC revegetation. The main use of transplants is to establish an incipient open coniferous forest type. The two main species, which will probably be planted as 10-cubic-inch seedlings, are Ponderosa pine and Rocky Mountain juniper. In addition, DCC may transplant as seedlings a variety of shrubs that may include, but not be limited to, *Prunus americana, Rhus trilobata, Ribes aureum, Shepherdia argentea, Symphoricarpos occidentalis, Prunus virginiana,* and *Rosa spp.* Most of these shrubs require enhanced soil moisture; that habitat requirement must be fulfilled before transplanting. The occurrence of favorable microsites cannot be predicted in advance of final grading and cover soil laydown. DCC will continue to use high quality seed in its revegetation. Seed will be locally adapted and certified whenever possible. Seed older than two years will be tested for germination before use. Seed mixes are listed in ***Table 313-4*** with details in ***Tables 313-9*** through ***313-13***. DCC will attempt to establish a higher density of shrubs in mosaic areas than in the rest of the type in which they occur. Denser shrub patches complement some types and seasons of wildlife use (e.g., those

requiring more structural diversity for nesting cover and security, and those partially dependent upon shrubs for winter forage). If successful, they will also help to achieve shrub density standards.

Table 313-4: List of Seed Mixes

Pastureland/Secondarily Wildlife Habitat	Table 313-8
Predominantly Livestock Grazing, Secondarily Wildlife Habitat	
Steppe Seed Mix	Table 313-9
Warm-season Steppe Seed Mix	Table 313-9a
Livestock Grazing and Wildlife Habitat Codominant	
Upland Shrub-Steppe Seed Mix	Table 313-10
Upland Shrub Mosaic Seed Mix	Table 313-10a
Alluvial Shrub-Steppe Seed Mix	Table 313-11
Alluvial Shrub Mosaic Seed Mix	Table 313-11a
Mixed Shrub Seed Mix, Scoria Soils	Table 313-12a
Mixed Shrub Seed Mix, Suitable Spoil	Table 313-12b
Predominantly Wildlife Habitat, Secondarily Livestock Grazing	
Mixed Shrub Seed Mixes	
Scoria and Thin Soil Substrates	Table 313-12a
Spoil Substrates	Table 313-12b
Upland Shrub-Steppe, Shrub Mosaic Seed Mix	Table 313-10a
Temporary Seed Mix	Table 313-13

Shrub mosaic locations will be based upon the occurrence of favorable shrub establishment environments in generic cover soil laydown areas or on soil substitutes.

Seed mixes are reevaluated routinely and may be modified with identified alternatives. Before application on reclamation in any permitted area, all mixes will be reviewed based upon availability and suitability, with changes proposed to MDEQ if requested. Approval will be obtained before making substitutions other than those approved in ***Tables 313-9*** through ***13***.

Table 313-9: Steppe Seed Mix

Species	Lbs/Acre P.L.S.	Alternative Species*
Cool Season Grasses – Not to Exceed 60% of Overall Mix		
Western wheatgrass (Rosana)	1.50 ± 0.25	Prairie junegrass
Slender wheatgrass (Pryor, Revenue)	0.50 ± 0.25	Indian ricegrass
Needle-and-thread	1.00 ± 0.25	Whitmar wheatgrass
Green needlegrass (Lodorm)	1.50 ± 0.25	Streambank wheatgrass
Snake River wheatgrass (Secar)	1.25 ± 0.50	Sandberg bluegrass
Thickspike wheatgrass (Critana)	1.25 ± 0.25	
Sherman big bluegrass	0.75 ± 0.25	
Forbs – Not to Exceed 47% of Overall Mix		
Alfalfa, yellow-flowered	1.50 ± 0.50	Dotted greyfeather
Western yarrow (native)	0.25 ± 0.10	Yucca
Maximilian sunflower	0.50 ± 0.25	Slimflower scurfpea
Echninacea	0.10 ± 0.05	Scarlet globemallow
American vetch	0.40 ± 0.20	Hairy goldenaster
Rocky Mountain bee plant	0.50 ± 0.25	Purple prairieclover (Bismark)
Shrubs and Sub-Shrubs – Not to Exceed 23% of Overall Mix**		
Big sagebrush (Wyoming var.)	0.35 ± 0.10	
Rubber rabbitbrush	0.25 ± 0.10	
Fourwing saltbrush (Natrona, no var.)	1.00 ± 0.50	
Winterfat (Artillery, Open Range)	0.25 ± 0.10	
Maximum Seed Rate Not to Exceed 19.65 lbs/acre		

*When using an alternate species is necessary, Decker Coal will substitute a similar species, except as otherwise approved by the Department.

**A small number of shrubs is being seeded to help meet Decker Coal's overall shrub commitment, although they are not strictly required in steppe.

Table 313-9a: Warm Season Steppe Seed Mix

Species	Lbs/Acre P.L.S.			Alternative Species*
Cool Season Grasses – Not to Exceed 33% of Overall Mix				
Canada wildrye	0.50	±	0.25	Canby bluegrass
Snake River wheatgrass (Secar)	0.50	±	0.25	Slender wheatgrass
Indian ricegrass	0.50	±	0.25	Prairie junegrass
Sandberg bluegrass (High plains)	0.50	±	0.25	Squirreltail
Warm Season Grasses – Not to Exceed 54% of Overall Mix				
Alkali sacaton	1.75	±	0.35	Blue grama
Sideoats grama (Pierre, Killdeer, Butte)	1.50	±	0.40	
Sand dropseed	1.25	±	0.25	
Prairie sandreed (Goshen)	1.25	±	0.25	
Little bluestem (Blaze)	1.25	±	0.25	
Forbs – Not to Exceed 29% of Overall Mix				
Scarlet globemallow	0.35	±	0.10	Dotted gayfeather
Prairie coneflower	1.00	±	0.25	Hairy goldenaster
White prairieclover (Antelope)	0.50	±	0.25	Sainfoin
Yucca	1.00	±	0.25	
Shrubs and Sub-Shrubs – Not to Exceed 23% of Overall Mix**				
Big sagebrush	0.50	±	0.25	Skunkbrush sumac
Rubber rabbitbrush	0.25	±	0.10	Shadscale
Fourwing saltbrush (Natrona, no var.)	0.75	±	0.25	
Winterfat (Artillery, Open Range)	0.25	±	0.10	Service berry
Maximum Seed Rate Not to Exceed 19.15 lbs/acre				

*When using an alternate species is necessary, Decker Coal will substitute a similar species, except as otherwise approved by the Department.

**While not a shrub type, some shrubs will be seeded to meet Decker Coal's overall shrub commitment. The heavy seeding of warm-season grasses should be less competitive than where the normal steppe mix is seeded.

Table 313-10: Upland Shrub-Steppe Seed Mix

Species	Lbs/Acre P.L.S.	Alternative Species*
Cool Season Grasses – Not to Exceed 67% of Overall Mix		
Western wheatgrass (Rosana)	2.00 ± 0.25	Sherman big bluegrass
Prairie junegrass	0.75 ± 0.25	
Needle-and-thread	0.75 ± 0.15	Indian ricegrass
Thickspike wheatgrass (Critana)	1.50 ± 0.50	Streambank wheatgrass
Green needlegrass (Lodorm)	2.00 ± 0.50	Canby bluegrass
Snake River wheatgrass (Secar)	0.75 ± 0.25	Whitmar wheatgrass
Warm Season Grasses		
Contained in the Upland Shrub-Steppe Mosaic Mix		
Forbs – Not to Exceed 27% of Overall Mix		
Purple prairieclover (Kanab)	0.75 ± 0.25	Prairie coneflower
Western yarrow (native)	0.25 ± 0.10	Dotted gayfeather
Yellow alfalfa (M.*sativa var falcate*)	1.25 ± 0.25	Yucca
		Slimflower scurfpea
		Scarlet globemallow
		Hairy goldenaster
Shrubs and Sub-Shrubs – Not to Exceed 36% of Overall Mix		
Fourwing saltbrush (Northern if available)	1.50 ± 0.25	
Winterfat	0.50 ± 0.25	
Rubber rabbitbrush	0.50 ± 0.25	
Fringed sagewort	0.25 ± 0.10	
Big sagebrush	0.75 ± 0.15	
Maximum Seed Rate Not to Exceed 17.00 lbs/acre		

*When using an alternate species is necessary, Decker Coal will substitute a similar species, except as otherwise approved by the Department.

Table 313-10a: Upland Shrub-Steppe Mosaic Seed Mix

Species	Lbs/Acre P.L.S.	Alternative Species*
Warm Season Grasses – Not to Exceed 69% of Overall Mix		
Blue grama	1.00 ± 0.50	Prairie sandreed (Goshen)
Sideoats grama (Pierre, Killdeer, Butte)	2.00 ± 0.50	
Alkali sacaton	1.50 ± 0.50	
Sand dropseed	1.50 ± 0.50	
Forbs – Not to Exceed 24% of Overall Mix		
Western yarrow (native)	0.25 ± 0.10	Blue aster
Rocky Mountain bee plant	0.50 ± 0.25	Prairie coneflower
Scarlet globemallow	0.20 ± 0.10	
White prairie clover (Antelope)	0.35 ± 0.10	Purple prairie clover
		Maximilian sunflower
Shrubs and Sub-Shrubs – Not to Exceed 37% of Overall Mix		
Big sagebrush (de-fuzzed)	2.00 ± 0.50	
Rubber rabbitbrush (de-fuzzed)	0.50 ± 0.10	
Winterfat	0.50 ± 0.10	
Maximum Seed Rate Not to Exceed 13.55 lbs/acre		

*When using an alternate species is necessary, Decker Coal will substitute a similar species, except as otherwise approved by the Department.

**Fertilizer, cracked corn, or rice hulls will be used as carrier for broadcast seeding.

Table 313-11: Alluvial Shrub-Steppe Seed Mix

Species	Lbs/Acre P.L.S.	Alternative Species*
Cool Season Grasses – Not to Exceed 51% of Overall Mix		
Western wheatgrass (Rosana)	1.75 ± 0.25	Prairie junegrass
Sandberg bluegrass (High plains)	0.50 ± 0.25	Streambank wheatgrass
Green needlegrass (Lodorm)	1.75 ± 0.25	Thickspike wheatgrass
Canada wildrye	0.75 ± 0.25	Slender wheatgrass (Pryor)
Basin wildrye (Trailhead)	1.25 ± 0.25	
Warm Season Grasses – Not to Exceed 28% of Overall Mix		
Switchgrass (Dacotah)	0.60 ± 0.20	Blue grama
Sand dropseed	1.00 ± 0.50	
Alkali sacaton	0.60 ± 0.20	
Forbs – Not to Exceed 29% of Overall Mix		
Western yarrow	0.25 ± 0.10	Purple prairie clover
American vetch	0.35 ± 0.15	
Alfalfa, yellow flowered	1.50 ± 0.50	
Purple prairie clover (Bismark)	0.40 ± 0.10	
Shrubs and Sub-Shrubs – Not to Exceed 32% of Overall Mix		
Silver sagebrush	1.50 ± 0.25	
Cudweed sagewort	0.25 ± 0.10	
Fringed sage	0.25 ± 0.10	
Grease wood	0.75 ± 0.25	
Winterfat	0.25 ± 0.10	
Maximum Seed Rate Not to Exceed 17.50 lbs/acre		

*When using an alternate species is necessary, Decker Coal will substitute a similar species, except as otherwise approved by the Department.

Table 313-11a: Alluvial Shrub-Steppe Mosaic Seed Mix

Species	Lbs/Acre P.L.S.	Alternative Species*
Warm Season Grasses – Not to Exceed 55% of Overall Mix		
Sand dropseed	1.00 ± 0.25	None, may delete one
Blue grama	2.00 ± 1.00	
Sideoats grama	1.50 ± 0.50	
Alkali sacaton	1.00 ± 0.25	
Forbs – Not to Exceed 33% of Overall Mix		
Western yarrow	0.25 ± 0.10	Spiny aster
American vetch	0.50 ± 0.15	Pacific aster
Rocky mountain bee plant	1.00 ± 0.25	
Maximilian sunflower	0.80 ± 0.10	
Shrubs and Sub-Shrubs – Not to Exceed 42% of Overall Mix		
Silver sagebrush***	2.50 ± 0.50	Wyoming big sagebrush
Grease wood	0.75 ± 0.25	
Cudweed sagewort	0.35 ± 0.10	
Big sagebrush	0.75 ± 0.25	
Maximum Seed Rate Not to Exceed 13.85 lbs/acre		

*When using an alternate species is necessary, Decker Coal will substitute a similar species, except as otherwise approved by the Department.

**Decker Coal anticipates broadcast interseeding (interseeding refers to supplemental seeding with all or part of the original mix) sometimes may be required. If so, the above mix can be used, or just the component most in need of supplement. Fertilizer, seed hulls, or cracked corn will be used as a carrier if needed.

***Monitor to see if silver sagebrush establishes effectively in mosaics and in the general mix. Snow accumulation favors silver sagebrush, hence the tall, non-persistent forbs. Grain stubble would also favor snow accumulation.

****Other shrubs can be transplanted into carefully selected locations before the seed mix establishes.

Shrubs and Sub-Shrubs**	
Golden current	Transplants
Chokecherry	Transplants
Wood rose (or *Rosa arkansana*)	Transplants

Rocky Mountain juniper	Transplants

Table 313-12a: Open Scrub/Mixed Shrub-Scoria Substrate Seed Mix

Species	Lbs/Acre P.L.S.	Alternative Species*
Cool Season Grasses – Not to Exceed 36% of Overall Mix		
Indian ricegrass (Nezpar)	1.50 ± 0.50	Whitmar wheatgrass
Squirreltail	0.50 ± 0.15	Prairie junegrass
Needle-and-thread	0.75 ± 0.25	Sandberg bluegrass
Snake River wheatgrass (Secar)	1.50 ± 0.50	
Warm Season Grasses – Not to Exceed 32% of Overall Mix		
Little bluestem (Blaze)	1.50 ± 0.50	Red threeawn
Sideoats grama (Pierre, Killdeer, Butte)	1.00 ± 0.25	Blue grama
Prairie sandreed (Goshen)	1.25 ± 0.25	
Forbs – Not to Exceed 37% of Overall Mix		
Yucca	2.00 ± 0.50	Western yarrow
Prairie coneflower	0.50 ± 0.25	Slimflower scurfpea
White prairie clover (Antelope)	0.50 ± 0.25	Scarlet globemallow
Oxytropis sericea when available	0.25 ± 0.10	
Alfalfa, yellow-flowered	1.25 ± 0.25	
Shrubs and Sub-Shrubs – Not to Exceed 36% of Overall Mix		
Big sagebrush (Wyoming var.)	2.00 ± 0.50	Gardner saltbrush
Rubber rabbitbrush	0.60 ± 0.15	
Fourwing saltbrush (Northern)	1.25 ± 0.25	
Fringed sagewort	0.25 ± 0.05	
Dragon sagewort	0.50 ± 0.10	
Maximum Seed Rate Not to Exceed 21.90 lbs/acre		

*When using an alternate species is necessary, Decker Coal will substitute a similar species, except as otherwise approved by the Department.

**Decker Coal anticipates broadcast interseeding (interseeding refers to supplemental seeding with all or part of the original mix) scoria substrates as necessary, especially on warm aspects. The above mix can be used, or just

the component most in need of supplement. Fertilizer, hulls, or cracked corn will be used as a carrier if needed.

Table 313-12b: Open Scrub/Mixed Shrub-Suitable Spoil Substrate Seed Mix

Species	Lbs/Acre P.L.S.	Alternative Species*
Cool Season Grasses – Not to Exceed 38% of Overall Mix		
Slender wheatgrass (Pryor)	0.75 ± 0.25	Whitmar wheatgrass
Western wheatgrass (Rosana)	1.50 ± 0.25	Trailhead basin wildrye
Indian ricegrass	1.50 ± 0.50	
Green needlegrass (Lodorm)	1.00 ± 0.25	Bluebunch wheatgrass
Warm Season Grasses – Not to Exceed 30% of Overall Mix		
Sand dropseed	0.75 ± 0.25	Blue grama
Switchgrass (Dacotah)	0.75 ± 0.25	Prairie sandreed (sandy spoil)
Sideoats grama (sandy spoil)	0.75 ± 0.25	
Alkali Sacaton	1.00 ± 0.25	
Forbs – Not to Exceed 33% of Overall Mix		
Yucca	1.75 ± 0.25	Western yarrow
Purple prairie clover (Bismark)	0.75 ± 0.25	Pacific aster
Scarlet globemallow	0.20 ± 0.10	Purple prairie clover
Alfalfa, yellow-flowered	1.50 ± 0.25	
Shrubs and Sub-Shrubs – Not to Exceed 39% of Overall Mix		
Silver sagebrush	1.50 ± 0.25	Gardner saltbrush
Rubber rabbitbrush	0.50 ± 0.10	
Fourwing saltbrush (Northern)	1.25 ± 0.25	
Shadscale	1.25 ± 0.25	
Grease wood	0.75 ± 0.25	
Maximum Seed Rate Not to Exceed 21.65 lbs/acre		

*When using an alternate species is necessary, Decker Coal will substitute a similar species, except as otherwise approved by the Department.

**Due to a tendency for crusting and surface sealing, broadcast interseeding will be less effective on suitable spoil than on scoria, and heavy-seeded species are more important than light for effective revegetation. No-till drill seeded may therefore be more effective in interseeding than broadcast seeding. Substrates on slopes will be aggressively ripped on the contour prior to the initial seeding due to the erosive substrate. In that case, the initial seeding may be broadcasting without subsequent harrowing.

Table 313-13: Temporary Seed Mix

Species	Lbs/Acre P.L.S.	Alternative Species*
Cool Season Grasses and Legumes		
Alfalfa (Spredor III, Travois, Rangelander, etc.)	2.00 ± 0.50	
Western wheatgrass (Rosana)	2.50 ± 0.50	
Slender wheatgrass (Pryor or Revenue)	1.50 ± 0.50	
Thickspike wheatgrass (Critana)	1.75 ± 0.25	
Green needlegrass	2.00 ± 0.50	

*These species are always available at reasonable cost, so substitutes are not needed.

**For erosion control and seedings of areas that would be permanently seeded later, as opposed to cover soil stockpiles temporarily seeded for an indefinite period, a grain (barley, rye, wheat) will be drilled at 30 pounds/acre with 0.5 pounds/acre sweetclover. A few pounds of Sainfoin would be added if more legume seed is needed to be practically seeded from a legume box or broadcast seeder. The permanent mix may later be drill seeded or broadcast as appropriate.

PREDOMINANTL PASTURELAND, SECONDARY WILDLIFE HABITAT

This is potentially the most productive land use. The utility of pastureland for haying would be impaired by the usual wildlife enhancement features (e.g., diverse microtopography, shrub mosaics, rock piles). Pasture land is integrated with wildlife enhancement features because the pastureland units are relatively small and juxtaposed with other seeding types and associated wildlife habitat features. Drainageways in otherwise pastureland areas again are seeded differently.

Premine

Substrate

Moderate to deep loams and clay loams.

Vegetation

Introduced grasses, mainly smooth brome and crested wheatgrass with lesser amounts of intermediate wheatgrass and Russian wildrye. Productivity varies with condition, but forage production (utility) can be higher than native types.

Slope

Less than 10%.

Postmine

Substrate

Target Depth: AB-horizon target depths will be 9", +/- 6" (3-15"). Total target depth is 18", +/- 6" (12-24"). The C-horizon target depth is the total target depth minus the AB horizon.

Revegetation

Before 1983: Introduced species predominated in seed mixes, although a few fields were seeded mainly with western wheatgrass. Shrubs are generally few, mainly fourwing saltbush.

1984 to 2004: No pastureland was purposely seeded during this interval, but a few fields developed a prevalence of introduced species.

Present: The seed mix is enumerated in ***Table 313-8***. Alfalfa may not endure throughout the liability period, but its short-term benefits to productivity and forage (livestock and wildlife) make its inclusion desirable. A rhizomatous grass (intermediate wheatgrass) is critical to spread vegetative as the alfalfa declines.

Slope

Less than 10%.

Technical Standard: Subject to 17.24.726(2) and (3), the standard for post-1978 fields for perennial canopy coverage is 61% and the standard of peak standing crop (PSC) is 1,010 kg/ha (oven-dried). There is no shrub requirement.

PREDOMINATELY LIVESTOCK GRAZING, SECONDARY WILDLIFE HABITAT

This is the dominant premine and postmine land use in areal extent. It calls for mainly a steppe type of vegetation. The main steppe seed mix (***Table 313-9***) will be used and to a much lesser extent a steppe mix favoring warm-season grasses (***Table 313-9a***); However, in the interest of habitat diversity and increased wildlife use due to interspersion, DCC will seed shrub mosaics on generic cover soil (***TableE 313-l0a***) or use scoria or suitable spoil substrates and seed mixes (***Table 313-12a*** and ***313-12b***, respectively) on at least 4% of areas where livestock grazing is the primary land use starting in 2006. The two types of revegetation, steppe and shrub mosaics, use different seed mixes and sometimes substrates. They are discussed separately next.

Steppe Vegetation

Most of this land use correlates with steppe (grassland) vegetation. Significant drainages within these land use units will be reclaimed as drainageways and seeded with the alluvial shrub-steppe seed mix, which is discussed next under the land use where livestock grazing and wildlife habitat are codominant.

Premine

Substrate

Found on moderate to deep (rarely shallow) soils of variable texture, often loams and clay loams.

Vegetation

Western wheatgrass, needle-and-thread, green needle-grass, and annual bromes were dominant grasses in premine steppe vegetation. While present, shrubs were a minor component, probably due to fire exclusion or shrub removal practices designed to increase forage. Premine mapping units D, H, 0, and U (cool season steppe), and if present X, T, and V (warm-season steppe) correlate with an affinity for livestock grazing.

Slope

Flat or gently sloping, generally less than 10% slopes but occasionally as steep as 25% over small areas.

Postmine

A land use emphasizing primarily livestock grazing and secondarily wildlife habitat will predominate the postmine landscape. For characteristic wildlife, see the beginning of this section.

Substrate

Target Depth: AB-horizon target depths will be 9", +/- 6" (3-15"). Total target depth is 18", +/- 6" (12-24") of topsoil and subsoil on gentle slopes. No special soil substitutes will be used. Total target depth is 12", +/- 6" (6-18") of topsoil and subsoil on steeper slopes, using coarse cover soil to the extent practical, depending on availability. The C-horizon target depth is the total target depth minus the AB horizon.

Revegetation

Seed Mix Prior to 1995: Permanent Seed Mix (approved by MDEQ at the time) was used before 1995. Prominent grasses included western wheatgrass, green needlegrass, slender wheatgrass and beardless wheatgrass. A complete accounting of the seed mix content for each year is in the Annual Reports.

Seed Mix 1995-2001: Grassland areas reclaimed between 1995 and 2001 were seeded with the Upland and Sidehill Seed Mixes, also approved by MDEQ before use. These seed mixes are listed in the Annual Report for each year. The seed mixes contained some shrub seed. However, no special attempts (e.g., spoil/scoria substrates, transplants) were made to establish shrubs in this subtype, and few are present.

Seed Mix 2002-Present: Approximately 90% of new fields in this land use will receive the Steppe Seed Mix (***Table 313-9***). Roughly 5% will use a warm-season variant (***Table 313-9a***). Beginning in 2006, another 4% of areas in this type will be seeded as shrub mosaics (discussed next).

Slope

Both steppe seed mixes (***Tables 313-9*** and ***313-9a***) may be applied anywhere in appropriate land use units. Refer to the "Revegetation Distribution Map" for a visual representation of typical areas suitable for predominantly livestock grazing and secondarily wildlife habitat.

Technical Standards

Subject to 17.24.726(2) and (3), the standard for perennial canopy coverage is 43%; the standard for peak standing crop (PSC) is 720 kg/ha (oven-dried); the standard for shrubs is 400 individuals/ha. These standards apply to bond release units including shrub mosaics where the land use emphasis is primarily livestock grazing and secondarily wildlife habitat. See also 17.24.313.l(h)(x).

Shrub Mosaics

Beginning in 2006, shrub mosaics are intended on at least 4% of areas where the land use is predominantly livestock grazing and secondarily wildlife habitat. If successful, this element of revegetation will be of the shrub-steppe or open scrub types.

Premine

Substrate

Found on shallow to deep soils of variable texture, including shallow skeletal soil over sedimentary bedrock, paralithic shale, and in lowlands, deep unconsolidated sediment deposits.

Vegetation

The main shrub was Wyoming big sagebrush. Other important woody species were rubber rabbitbrush (often cropped closely by wild ungulates), black greasewood, broom snakeweed, fourwing saltbush, and shadscale. Depending upon site factors, important

associated grasses were western wheatgrass, bluebunch wheatgrass, and green needlegrass.

Slope

Variable slopes from nearly flat to 50%.

Postmine

DCC believes that interspersing shrub mosaics providing escape and thermal cover, as well as perching sites and browse, will promote more wildlife use of the prevailing steppe vegetation than would otherwise be the case. For characteristic wildlife, see the beginning of this section.

Substrate

Three substrate combinations may be used:

1. AB-horizon target depths will be 9", +/- 6" (3-15"). Total target depth is 18", +/- 6" (12-24") of topsoil and subsoil on gentle slopes. This substrate is undistinguished from the steppe substrate previously described. The C-horizon target depth is the total target depth minus the AB-horizon.
2. Total target depth is 18", +/- 6" (12-24") of scoria of fragment size suitable for plant growth.
3. Total target depth is 18", +/- 6" (12-24") of suitable spoil, conforming to the extent possible with these properties: tan color, slightly saline to the lower range of saline, SAR less than 8, texture of clay loam or "lighter," and rock fragment content 20-60% by volume.

Revegetation

Seed Mix 2002-Present: Scoria will be broadcast seeded with the Mixed Shrub Seed Mix, Scoria Substrates (***Table 313-12a***). Suitable spoil will be seeded with the Mixed Shrub Mix, Suitable Spoil Substrates (***Table 313-12b***). Replaced soil will be seeded with the Upland Shrub-Steppe Mosaic Mix (***Table 313- l0a***).

Slope

Slopes are generally gentle. Shrub mosaics may be constructed/seeded anywhere within this land use with no special microtopography.

Technical Standards

Technical Standards apply to bond release units, not individual seedings. The technical standards described above for this land use apply whether or not a shrub mosaic(s) falls within the bond release unit.

LIVESTOCK GRAZING AND WILDLIFE HABITAT CODOMINANT

This land use is distinguished by more shrubs than where livestock grazing is the dominant use, resulting in more vegetational structure, thermal cover, escape cover, and browse. Slopes are steeper and terrain more rugged than where grazing predominates, and distance to a drinking water source may be greater. Beginning in 2006, at least 8% of these units will be seeded as shrub mosaics either on generic cover soil or on soil substitutes with corresponding seed mixes already described. This land use may be characterized as having three types of revegetation:

* Upland Shrub-Steppe and Shrub Mosaics
* Alluvial Shrub-Steppe and Shrub Mosaics
* Shrub Mosaics on Soil Substitutes

Upland Shrub-Steppe Vegetation and Shrub Mosaics

Premine

Substrate

Shallow to moderately deep, usually well-drained loams.

Vegetation

The upland phase featured an overstory of big sagebrush with an understory of perennial graminoids such as needle-and-thread, threadleaf sedge, green needlegrass,

bluebunch wheatgrass, western wheatgrass, and blue grama. Scattered forbs included desert alyssum, Hood's phlox, and American vetch. Subshrubs included broom snakeweed.

Slope

Terraces, side slopes <35% or occasionally steeper, rolling hills, and broad ridges.

Postmine

For characteristic wildlife, see the beginning of this section.

Substrate

Target Depth: AB-horizon target depths will be 9", +/- 6" (3-15"). The C-horizon target depth is the total target depth minus the AB- horizon.

Upper convex slopes: Total target depth is 9", +/- 6" (3-15").

Lower straight to concave slopes: Total target depth is 12", +/- 6" (6-18")

Slopes < 10%: Total target depth is 18", +/-6" (12-24").

Revegetation

Upland Shrub-Steppe Mix (***Table 313-10***). Upland Shrub Mosaic Mix (***Table 313-l0a***).

Considerations: To promote core shrub areas, shrub mosaics will be seeded in some areas.

Slope

This type is suitable in uplands with a variety of substrates, aspects, and slopes up to 40%.

Technical Standards

Subject to 17.24.726(2) and (3), the standard for perennial canopy coverage it 40%; the standard for peak standing crop (PSC) is 480 kg/ha (oven-dreid); the standard for shrubs is 1,300 individuals/ha. These standards apply to bond release units where grazing and wildlife habitat are codominant, whether or not shrub mosaics are present in that unit.

Alluvial Shrub-Steppe Vegetation

Premine

Substrate

Usually deep, well-drained loams, sandy loams, and silt loams formed in alluvium.

Vegetation

Silver sagebrush was the dominant shrub, usually with an understory of western wheatgrass and green needlegrass on loams or sandy clay loams. Greasewood was locally important. On sandy loams, needle-and-thread and threadleaf sedge were important understory components. Yarrow was one of the most important forbs, but false scarlet globemallow and pinnate tansymustard also were common.

Slope

Alluvial drainages, sometimes extending into uplands along swales or incised channels.

Postmine

Substrate

Target Depth: AB-horizon target depths will be 9", +/- 6" (3-15"). The C-horizon target depth is the total target depth minus the AB-horizon. As depicted in ***Figure 313-1***, soil depths will increase from 12-21 inches to 24-36 inches at the transition from upland slope to drainage bottom.

Revegetation

Alluvial Shrub-Steppe Seed Mix (***Table 313-11***). Alluvial Shrub-Steppe Mosaic Mix (***Table 313-11a***). Alluvial or riparian shrub survival may be limited until drainageways connect with their upstream counterparts in undisturbed topography. Until then, the hydrologic regime of reconstructed drainageways will be essentially that of uplands augmented with occasional run-in. Later shrub establishment may require herbicide to reduce herbaceous competition.

Considerations: Heavy silver sagebrush seeding in conjunction with light grass seeding will be practiced in shrub mosaics. Temporary snow fence may be used to promote silver

sagebrush establishment in these areas.

Slope

Drainage bottoms and adjacent areas where slope gradient is usually <5%.

Technical Standards

Bond Release units in this land-use type will be compared to the same standards described under upland shrub-steppe above.

Soil-Substitute Shrub Mosaics

The same soil substitute mosaics and seed mixes described for areas where the land use is predominantly livestock grazing and secondarily wildlife habitat will be used where those land uses are codominant. Technical standards are the same throughout this land use where livestock grazing and wildlife habitat are equally emphasized, whether or not a bond release unit contains shrub mosaic areas.

Predominately Wildlife Habitat and Secondary Livestock Grazing

This land use is distinguished by steep slopes, diverse microtopography, shallow or no soils, and more woody plants for plant community structure and wildlife thermal cover, escape cover, and browse than other land uses. Primary productivity is low, which in conjunction with terrain and distance to drinking water limits livestock use. This land use may be characterized as having two types of revegetation:

* Open scrub
* Open coniferous woodland

The Mixed Shrub seed mixes (***Table 313-12a*** (scoria substrate) and ***Table 313-12b*** (spoil substrate)) are expected to compete minimally with pine and/or juniper seedlings. The scoria substrate is less erosive than others, so the usual objective of quick and fairly complete plant cover is being sacrificed to shrub and conifer establishment. Where nearby older established

stands of pines and junipers remain above the disturbance limits, they may serve as a viable seed source for recruitment.

Premine

Substrate

Thin to very thin, skeletal soils and shale, siltstone, sandstone, and scoria outcrops.

Vegetation

This distinctive type is visually dominated substrate and by shrubs and subshrubs. Productivity and total plant cover are low compared to most other types. Shaley substrates might be called badlands or scablands. Scoria substrates were far more common. The shrub stratum consists of big sagebrush, skunkbush sumac, winterfat, and shadscale. Among subshrubs, snakeweed may be a codominant woody species. Bluebunch wheatgrass is the most common grass on both scoria and shale. Species diversity was high, especially on scoria substrates. Forbs found scattered throughout include annual buckwheat, scarlet gaura, slimflower scurfpea, and stiff goldenrod.

Slope

Steep to very steep, sometimes >50%.

Postmine

For characteristic wildlife, see the beginning of this section.

Substrate

Two substrates paralleling premine conditions will be used as substrate: suitable spoil and scoria. Suitable spoil is formally defined in 17.24.501(2), but in the interest of good revegetation, further screening is desirable. Based on the sodic overburden test plots at the Spring Creek Mine (SCCC) (Prodgers 2Q02), these spoil characteristics are associated with good revegetation, especially shrubs and warm-season grasses: tan color, slightly saline to the lower range of saline, SAR less than 8, texture of clay loam or "lighter," and rock fragment content 20-60% by volume. Due to the limited range of spoil characteristics in the test plots, it is possible

that spoil with other characteristics can be a suitable plant growth medium for adapted species. Scoria will be used more extensively than spoil in reclamation. Scoria is far less erosive than spoil and better suited to slopes > 10%. If not too coarse, it has proven to be a good substrate for shrubs and a diverse assemblage of species. At the SCCC sodic overburden test plots, shrub establishment increased with cover soil thickness up to the 18-inch maximum.

Revegetation

Mixed Shrub -Scoria/Thin-Soil Substrates (***Table 313-12a***) and Mixed Shrub-Spoil Substrates (***Table 313-12b***).

Transplants: Ponderosa pine and Rocky Mountain juniper seedlings will be planted in select areas of favorable topography and microtopography, mostly on scoria substrates. Planting conifers is the only deference between open scrub and open coniferous woodland. Shrub transplants are not planned, but they remain an option.

Considerations: Hand broadcasting of the Mixed Shrub Seed Mixes may be necessary in some areas due to rough seedbeds or steep slopes. Hand broadcasting rates are extremely variable when light/chaffy seed is used and may exceed the rates in tables listed above. Reseeding may be required if initial shrub establishment is unsatisfactory.

Slope

Regraded steep slopes, rocky knobs, and areas that mimic naturally occurring thin soil/outcrop sites.

Technical Standards

Subject to 17.24.726(2) and (3), the standards are: 30% perennial canopy coverage, PSC of 300 kg/ha (oven-dried), and 2,000 shrubs/ha for bond release units.

(h)(iv.) Use of Introduced Species

Seeding introduced species is proposed in the following circumstances:

1. Temporary seed mix
2. Inoculated alfalfa is being included in the basic, non-mosaic seed mixes at a rate that will benefit the soil through nitrogen fixation, boosting productivity while providing forage for all herbivorous mammals and some of the birds identified at the beginning of 313(h). Alfalfa also provides a greater amount of root exudates for soil microbes than would otherwise be the case. It will not establish everywhere it's seeded and may not persist as an important species throughout the liability period.

(h)(v.) Methods of Planting and Seeding

DCC will use a variety of seeding techniques. Three variables determine seeding technique:

1. Condition of the seedbed.
2. Available farming and seeding equipment.
3. Seed characteristics.

Depending upon the specific combination of the above variables, DCC will use drill seeding, broadcast seeding (to include a rangeland "drill"), or a combination of the two (two-phase seeding). Any attempt to enumerate the variables would be incomplete.

Seedbed preparation likewise requires the broadest flexibility. The same field might have to be disced or harrowed in one condition and compacted in another. Skilled operators are granted the flexibility to improvise seeding and seedbed preparation methods and modify revegetation practices with supervisor approval. In some cases, this may require regulatory approval. Transplanting will probably be done by professional crews provided by the same vendor that provides the plants. Hoedads are the preferred planting implement. Where conifers will be transplanted, the application rate of the scoria seed mix (***Table 3 l3-12a***) will be reduced to minimize competition and conifer seed added to the mix when available. The precipitation regime at Decker is marginal for Ponderosa pine, so husbandry

practices must overcome natural limitations in years of near-normal precipitation. These practices will include scoria substrate, microtopography (planting in depressions, trenches), locally adapted origin for seed/seedlings, ectomycorrhizal-inoculated seedlings, minimizing competition, tree- protectors, fertilization, and seeding/transplanting over several years. To the extent practical, a fungal-based soil food web will be initiated by using PJ soils as a substrate or possibly amending with wood-based compost.

(h)(vi.) Seeding and Planting Dates

Transplanting will be done in the spring, preferably April. Seeding and planting of disturbed areas will be conducted during the first appropriate period for favorable planting conditions after final seedbed preparation. The appropriate period for favorable planting will be determined based on seedbed conditions. DCC will consult with the Department if field conditions or equipment availability do not allow planting during the first appropriate period.

(h)(vii.) Nurse and Cover Crops and Mulches

If seeding conditions appear unfavorable for permanent seeding but temporary erosion control is desired, a cereal grain may be seeded as a preparatory crop. If a preparatory crop is used, appropriate permanent mixes may be seeded later directly into the standing litter or following additional seedbed preparation. While it is unlikely to be used often, a cereal grain may be included in some seed mixtures as a nurse crop.

(h)(viii.) Soil Tillage and Amendments

Improper or inadequate seedbed preparation has limited revegetation success at the mine in the past. Due to differences in cover soil characteristics as modified by moisture content and laydown and grading practices, the final graded surface will require site specific seedbed preparation before planting. Uneven, excessively fluffy seedbeds have been a common problem. Such fields may require additional smoothing and discing or harrowing followed by light compaction before or after seeding, or possibly fallowing until spring. Where seed is broadcast followed by

harrowing or the light seed is broadcast after the heavy seed is planted, compaction may be the final step.

Less common are excessively compacted surfaces, which must be ripped and disced or chisel-plowed before seeding. DCC is continually learning through experience and is tailoring seedbed preparation to the specific conditions in each field.

Fertilization has proven unnecessary when using topsoil. The upper lift of these soils has a nutrient reservoir (organic matter) and soil food web that can sustain revegetation.

Two reclamation substrates, suitable spoil and scoria, will require initial fertilization because they lack organic matter and are biologically depauperate. Essential macronutrients, particularly nitrogen, are deficient. The initial stock of mineralized nutrients will be immobilized swiftly in vascular plants. Appropriate fertilization will increase primary productivity and thereby promote soil development. Inorganic fertilizers may be used at Decker's discretion, possibly including slow- release fertilizers.

Vegetational manipulation may include mowing, livestock grazing, and/or burning.

(h)(ix.) Vegetation Monitoring

Vegetation monitoring is conducted periodically on all permanent reclamation to identify conditions during the period of liability. Regular monitoring of reclaimed areas will include a rotating schedule. Each area will be monitored a least once every three years. Newly seeded areas will be monitored on a yearly basis after vegetation has been well established. These new reclamation areas will be included in the three-year rotating schedule after the vegetation composition has stabilized. The same general sampling methods as used in the baseline inventories will be utilized. The monitoring parameters will be the same as given in the Annual Reports, the Baseline Inventories and those listed below:

1. % vegetation cover by species and life form (morphological class). The

perennial grass life form is separated into "cool season" and "warm season" perennial grasses.

2. Relative cover by species and life form.
3. % total vegetation cover (sum of all species).
4. % total ground cover (vegetation + litter + rock).
5. % bare ground (soil).
6. Annual production (standing crop) of herbaceous vegetation by species and by life form. Minor species may be given in aggregate. Shrubs and cacti will not be harvested for annual production.
7. Shrub density.
8. Other information may be gathered depending on possible needs. The above information will be gathered on each permanently reclaimed area and reference area at least once every three years during the liability period. The last year of monitoring may substitute for the first year of bond release evaluation if appropriate.

(h)(x.) Measures to Determine Success of Vegetation

Reference areas are the approved standard for East Decker, and will be used unless new Technical Standards are approved.

(h)(xi.) Plan to Check Quality, Fertility, and Thickness of Redistributed Soil

Refer to Sections 17.24.313(h)(iii) and (g)(ii), and 17.24.702(4) and (6) Regraded Spoils (quality). Refer to Sections 17.24.313(g)(iii)(b), 17.24.501(2), and 17.24.702(4).

(h)(xii) Types of Major Equipment

A comprehensive, updated equipment list can be found in the Annual Report. Generally, the equipment will be used as follows:

Table 313-7: Typical Reclamation Equipment

	Removal of Soil	Storage of Soil	Redistribution of Soil

Loading Shovels		X	X
Off-Road Trucks		X	X
Dozers	X	X	X
Scrapers	X	X	X
Backhoes		X	X

Types of equipment used for cultivation, soil preparation, and/or seeding may include but is not limited to:

1. Farm tractors
2. Grain and grass drills
3. Other grass and grain seeders
4. All types of harrows
5. Disc plows
6. Broadcast seeders
7. Chisel plows

i. Sealing Bore Holes

Cross Sections generated from drilling completed at Decker Coal and the locations of drill holes can be found in the Coal Conservation Plan (17.24.322).

DCC will use the following procedures to prevent changes in quality and quantity of underground waters and the escape of oil and gas during exploratory drilling:

1. No cuttings will be placed in the hole. Where practical, cuttings will be spread over the adjacent surface to a depth of less than ½ inch, or cuttings will be transported to an approved disposal area.
2. If exploration holes are cased for monitoring activities, the casing will be cut off at the surface on rangeland and two feet below the surface on cropland. All holes will be marked with a wooden stake or metal fencepost.
3. If a lost circulation or flowing artesian situation is not encountered, the hole will be filled to within two feet of the surface with a high quality sodium bentonite grout containing at least 50% solids by volume (usually bentonite "chips", poured dry). The remaining two feet will be backfilled with topsoil or other suitable plant growth material, and a magnetic marker placed below the final two feet of fill.
4. Where gassy or flowing artesian conditions are encountered, the hole will be filled to within two feet of the surface with a cement slurry, and the remaining two feet backfilled with topsoil or other suitable plant growth material, and a magnetic marker placed below the final two feet of fill.

j. Facilities Reclamation

At the end of mine life, all facilities listed under ARM 17.24.308(1)(b) will be removed unless otherwise approved by the Department. Upon removal, the affected land shall be regraded and vegetated according to Rule 17.24.313(4) and (5), and 17.24.711- 733 as shown on the "PMT Maps" and "Revegetation Distribution Maps".

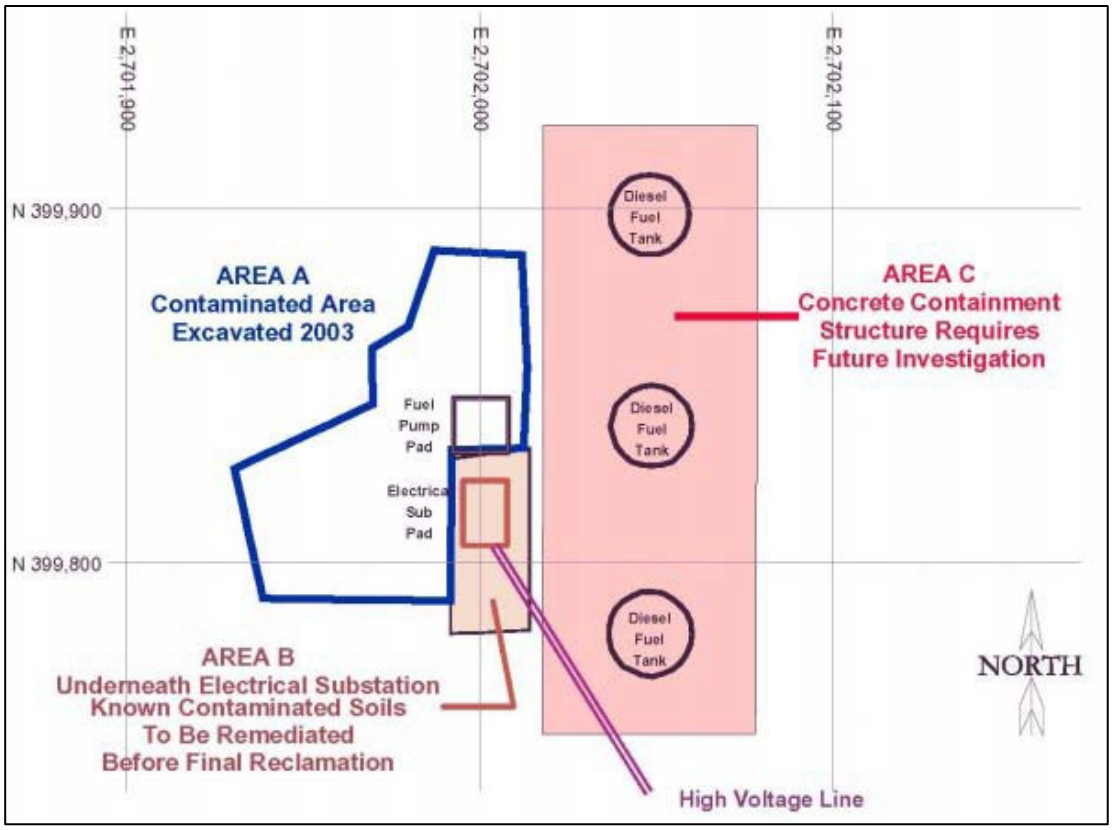
East Decker Diesel Spill Remediation 2003

On April 26, 2003 an accidental spill of approximately 250 gallons of diesel fuel occurred at the East Decker fuel island. This spill was reported to the MDEQ on April 29, 2003. MDEQ requested sampling and analysis of soils within the spill area to determine the extent and concentration of contamination. The affected area is shown on the drawing below.

Excavation (Area A) of approximately 3,000 cy of scoria fill and loosely consolidated bedrock at the fueling site reduced contamination to acceptable concentrations according to RBCA guidelines. The contaminated material was moved to the East Decker Land-farm for remediation. On November 19, 2003, Decker submitted to MDEQ the final report describing the remediation of the diesel fuel contamination at the East Decker fueling station. This report was approved by the Department on December 5, 2003 in a letter to Decker Coal Company. Prior to submitting the final report, the Department and Decker reached a mutual understanding that the remediation of the East Decker fueling station would not be considered complete until further investigation and possible excavation of contamination below the electrical sub-station (Area B) and concrete fuel containment structure (Area C). Consequently, prior to closure of the East Decker fueling station, Decker will investigate and remove the contaminated materials that exceed acceptable contamination levels.

An area of known contamination beneath the sub-station is 21 feet wide and 51 feet long and consists of approximately 300 cy of diesel contaminated soils at concentrations of 1200 to 4700 mg/kg Diesel Range Organics (DRO). High

voltage underground power lines between the electrical sub-station and the concrete containment structure prevented the excavation of contaminated soils in the area during initial remediation efforts.



After the concrete containment structure is removed (immediately east of the spill area) the underlying soils-will be investigated to determine if contamination is present.

East Decker Diesel Spill Remediation 2006

On July 27, 2006 an accidental spill of approximately 150 gallons of diesel fuel occurred at the East Decker wash pad. This spill was reported to the MDEQ and the Department requested sampling and analysis of soils within the spill area to determine the extent and concentration of contamination. The affected area is shown on the drawing below. Excavation of the contaminated materials consisted of the following phases:

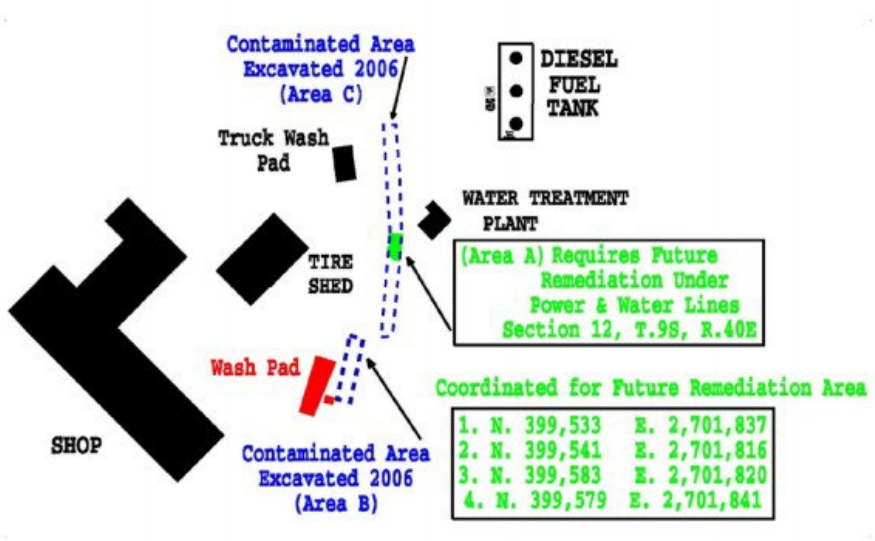
Phase 1: Area from washbay to railroad crossing (Area B). The contaminated area is approximately 104 ft long x 28 ft wide and 4 ft deep with a total excavated volume of

420 cubic yards of material.

Phase 2: Area from Railroad crossing to road crossing (Area C). The contaminated area is approximately 320 ft long x 28 ft wide and 4 ft deep with a total excavated volume of 1,330 cubic yards of material.

On December 21, 2006, Decker submitted to MDEQ the final "Diesel Spill Excavation Report" describing the remediation of the diesel fuel contamination at the East Decker wash pad. The Departments letter on March 13, 2007 determined that the clean-up effort was complete, except for the small area where the power lines and water lines cross the excavated channel (Area A). Remediation efforts at the East Decker wash pad can't be considered complete until further investigation and possible excavation of contaminated materials around the power lines and water lines is complete. Consequently, prior to final closure of the East Decker facilities, Decker will thoroughly investigate and remove the contaminated materials from (Area A) that exceed acceptable contamination levels.

The area of known contamination (Area A) beneath the power lines and water lines is 22 feet wide and 44 feet long and consists of approximately 145 cubic yards of diesel contaminated soils at concentrations of 355 to 2,160 mg/kg, Total Extractable Hydrocarbons (TEH). The high voltage underground power lines and water line between the water treatment plant and the shop facilities prevented the excavation of contaminated soils in the area during initial remediation efforts.


Contaminated Area
Excavated 2006
(Area C)
DIESEL
FUEL
TANK
Truck Wash
Pad
WATER TREATMENT
PLANT
TIRE
SHED
(Area A) Requires Future
Remediation Under
Power & Water Lines
Section 12, T.9S, R.40E
Wash Pad
Coordinated for Future Remediation Area
1. N. 399,533 E. 2,701,837
2. N. 399,541 E. 2,701,816
3. N. 399,583 E. 2,701,820
4. N. 399,579 E. 2,701,841
SHOP
Contaminated Area
Excavated 2006
(Area B)

REFERENCES 17.24.313

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September 17, 2024

Decker Coal
Excellence in Mining

Mr. Eric Dahlgren
Department of Environmental Quality
Mining Bureau
1520 E 6th Avenue
Helena, MT 59601

Permit ID: C1983007
Revision Type: NA
Permitting Action: NA
Reference #: Reclamation Schedule Status Update

Dear Eric:

Decker Coal Company (DCC) has attached a copy of the "Attachment 313-1b-Reclamation Schedule" with a line added for comparison of actual yardage completed per year. As of the end of August 2024, with four months remaining in 2024, DCC is more than 6,096,000 LCY ahead of schedule.

As stated in the "Attachment 313-1b-Reclamation Schedule" "Plans are subject to change as equipment and manpower dictates." DCC posted job openings for truck shovel, but we were not able to fill the positions. The plan also states "A sequence map is not feasible as equipment will be changing areas and overlapping multiple times throughout the life of reclamation" Decker Coal has utilized the Dragline and Dozers in areas that were originally designated for Truck Shovel.

DCC completed overburden sampling in preparation for topsoil placement. Results of backfill sampling were submitted to the MT DEQ on August 13, 2024. DCC also attained numerous bids for seed as well as seeding. DCC has chosen not to seed or move topsoil due to the drought. It is crucial to note that 2024 has been a year of drought. The United States Department of Agriculture (USDA) has designated Big Horn County contiguous to a primary natural disaster area due to drought. It would not be prudent to seed until moisture from the winter months can be retained in the soil. DCC has a minimal seeding commitment of 100 acers. This commitment could easily be achieved at a more appropriate time when there is adequate moisture in the soil.

Please call or email if you have any questions or require any additional information.

Sincerely,

Sabrina Temple

Permit Coordinator
Email: s.temple@deckercoal.com
Phone: (406) 300-0929

Attachments:
Attachment 313-1b-Recleamation Schedule

Gilbert, Sharona

From: Sabrina Temple <s.temple@aecoal.com>
Sent: Tuesday, September 17, 2024 1:03 PM
To: Dahlgren, Eric; Matt Guptill
Cc: Glenn, Michael; jfleischman@osmre.gov; etrent@osmre.gov; DEQ AEMD Coal
Subject: [EXTERNAL] RE: Reclamation Schedule Status Update
Attachments: RecScheduleStatusUpdate_Response_20240917.pdf

Eric,

Please see the attached response.

Sabrina Temple
Permit Coordinator
Decker Coal Company
12 Lakeshore Dr.
Decker, MT 59025
(406)300-0929
s.temple@deckercoal.com

From: Dahlgren, Eric <EDahlgren@mt.gov>
Sent: Friday, August 30, 2024 4:31 PM
To: Sabrina Temple <s.temple@aecoal.com>; Matt Guptill <m.guptill@deckercoal.com>
Cc: Glenn, Michael <MGlenn@mt.gov>; jfleischman@osmre.gov; etrent@osmre.gov; DEQ AEMD Coal <DEQCoal@mt.gov>
Subject: Reclamation Schedule Status Update

Sabrina,

See the attached request for an update on Decker Coal Company's reclamation status as it relates to the reclamation schedule in Permit No. C1983007. Please contact me if you have any questions.

Thank you,

ERIC DAHLGREN | Acting Bureau Chief
Mining Bureau
Montana Department of Environmental Quality
DESK: 406-444-5245
Website [link.edgepilot.com] | **Facebook** [link.edgepilot.com] | **Twitter** [link.edgepilot.com] | **YouTube** [link.edgepilot.com]
How did we do? Let us know here: Feedback Survey [link.edgepilot.com]

Attachment 313-1b - Reclamation Schedule		Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15	
East		2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	Total
Truck Shovel	LCY	-	-	-	3,000,000	3,300,000	3,300,000	3,300,000	3,300,000	3,300,000	3,300,000	3,300,000	500,000	-	-	-	26,600,000
Dragline/Dozer	LCY	4,000,000	5,600,000	5,600,000	5,600,000	5,600,000	5,600,000	5,600,000	5,600,000	5,100,000	250,000	-	-	-	-	-	48,550,000
Seeding	Acres	-	-	-	100	200	300	300	300	300	300	300	242	-	-	-	2,342

The general sequence is as follows but it is subject to change. The dragline will work in the general Pit 20 area to begin with. The dragline will then work towards Pit 13 highwall side for highwall reduction and then will transition to spoil side in Pit 13. After completing the dragline portion of reclamation in Pit 13 the dragline will work on the West Leg OB-2 pile. Once complete with East, the dragline will relocate to West Decker to continue reclamation. The D11 dozers will work in P15 to begin with. The dozers will also be at different parts of the mine at any given time depending on dragline needs or truck shovel needs. In general the dozers will follow behind the dragline cleaning up what the dragline can not effectively reclaim. The truck shovel fleet will start in Pit 20 and then follow behind the dragline/dozer operations filling in the gaps that are left behind. Topsoil will be spread as areas are regraded to PMT during the life of reclamation. A sequence map is not feasible as equipment will be changing areas and overlapping multiple times throughout the life of reclamation. Plans are subject to change as equipment and manpower dictates.