



## COLORADO

Department of Public  
Health & Environment

Dedicated to protecting and improving the health and environment of the people of Colorado

October 19, 2015

Ronald G. Thompson, Registered Agent  
New Elk Coal Company, LLC  
12250 State Highway 12  
Westin, CO 81091

Certified Mail Number: 7012 1640 0000 0801 9403

**RE: Service of Notice of Violation/Cease and Desist Order, Number: IO-151015-1, and  
Service of Operator Certification Notice of Violation, Number: OW-151015-1**

Dear Mr. Thompson:

New Elk Coal Company, LLC is hereby served with the enclosed Notice of Violation / Cease and Desist Order (the "NOV/CDO"). This NOV/CDO is issued by the Colorado Department of Public Health and Environment's Water Quality Control Division (the "Division") pursuant to the authority given to the Division by §§25-8-602 and 25-8-605, C.R.S., of the *Colorado Water Quality Control Act*, (the "Act"). The Division bases this NOV/CDO upon findings that New Elk Coal Company, LLC has violated the Act, and/or regulations promulgated pursuant to the Act and/or a discharge permit, as described in the enclosed NOV/CDO.

Pursuant to §25-8-603, C.R.S., New Elk Coal Company, LLC is required, within thirty (30) calendar days of receipt of this NOV/CDO, to submit to the Division an answer admitting or denying each paragraph of the Findings of Fact and responding to the Notice of Violation.

This action could result in the imposition of civil penalties. The Division is authorized pursuant to §25-8-608, C.R.S. to impose a penalty of \$10,000 per day for each day during which such violation occurs. Please be advised that the Division is continuing its investigation into this matter and the Division may identify supplementary violations that warrant amendments to this NOV/CDO or the issuance of additional enforcement actions.

Additionally, New Elk Coal Company, LLC is hereby served with the enclosed Operator Certification Notice of Violation (the "OCNOV"). This OCNOV is issued by the Division pursuant to the authority given to the Division by §25-9-110(3), C.R.S., of the *Water and Wastewater Facility Operators Certification Statute*, (the "Statute"). The Division bases this OCNOV upon findings that New Elk Coal Company, LLC has violated the Statute and 5 CCR 1003-2, §100, the *Water and Wastewater Facility Operators Certification Requirements*, as described in the enclosed OCNOV.

Pursuant to §25-9-110(3), C.R.S., New Elk Coal Company, LLC is required, within thirty (30) calendar days of receipt of this OCNOV, to submit to the Division an answer to each alleged violation.

This operator certification action could result in the imposition of civil penalties. The Division is authorized pursuant to §25-9-110(5), C.R.S., to impose a penalty of up to \$300 per



day for each day during which such violation occurs. Please be advised that the Division is continuing its investigation into this matter and the Division may identify supplementary violations that warrant amendments to this OCNOV or the issuance of additional enforcement actions.

Should New Elk Coal Company, LLC desire to discuss the NOV/CDO or the OCNOV with the Division, or if you have any questions regarding NOV/CDO or the OCNOV, please don't hesitate to contact me at (303) 692-3584 or by electronic mail at [christy.pickens@state.co.us](mailto:christy.pickens@state.co.us).

Sincerely,



Christy Pickens, Enforcement Specialist  
Clean Water Enforcement Unit  
WATER QUALITY CONTROL DIVISION

*Enclosure(s)*

cc: Enforcement File

ec: Natasha Davis, EPA Region VIII  
John Martinez, Local Health Department  
Nicole Rowan, Watershed Section, CDPHE  
Michael Beck, Grants and Loans Unit, CDPHE  
Bret Icenogle, Engineering Section, CDPHE  
Kelly Jacques, Field Services Section, CDPHE  
Janet Keiler, Permits Section, CDPHE  
Christy Pickens, Compliance & Enforcement Unit, CDPHE  
Tania Watson, Compliance Assurance, CDPHE  
Jackie Whelan, Facility Operators Program, CDPHE  
Mike Harris, Clean Water Enforcement Unit, CDPHE





# COLORADO

## Department of Public Health & Environment

### WATER QUALITY CONTROL DIVISION

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OPERATOR CERTIFICATION NOTICE OF VIOLATION

NUMBER: OW-151015-1

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IN THE MATTER OF:      NEW ELK COAL COMPANY LLC  
   CDPS PERMIT NO. CO0000906  
   LAS ANIMAS COUNTY, COLORADO

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Pursuant to the authority vested in the Colorado Department of Public Health and Environment's Water Quality Control Division (the "Division") by §25-9-110(3), C.R.S., the Division hereby makes the following findings and issues this Operator Certification Notice of Violation:

#### GENERAL FINDINGS

1. At all times relevant to the violations cited herein, New Elk Coal Company LLC ("New Elk Coal") was a Colorado limited liability company in good standing.
2. New Elk Coal owns and/or operates the New Elk Mine and associated wastewater treatment works, located at 37.158233°N, 104.9658°W, near the unincorporated community of Weston, Las Animas County, Colorado (the "Facility").
3. The Facility is the subject of the Colorado Discharge Permit System, Permit No. CO0000906 (the "Permit"). The current version of the Permit (seventh renewal) became effective June 1, 2015 and is set to expire May 31, 2020.
4. The Facility includes an "industrial wastewater treatment facility" as defined by §25-9-102(4.7), C.R.S., and its implementing regulation, 5 CCR 1003-2, §100.2(9).
5. Pursuant to 5 CCR 1003-2, §100.6.2, the Facility's industrial wastewater treatment facility is classified as "Class D."

#### Failure to Have a Certified Operator in Responsible Charge

6. Pursuant to §25-9-110(2)(a), C.R.S., and 5 CCR 1003-2, §100.18.1(a), no owner of an industrial wastewater treatment facility shall allow the facility to be operated without the direct supervision of an operator-in-responsible-charge certified in a classification equivalent to or higher than the classification of the facility as specified in 5 CCR 1003-2, §§100.4 through 100.8.



7. In accordance with 5 CCR 1003-2, §100.18.5, New Elk Coal shall operate the Facility with an operator-in-responsible-charge certified at or above the Class D Wastewater Treatment certification.
8. Pursuant to 5 CCR 1003-2, §100.18.4(a), each owner of a wastewater facility shall submit in writing to the Division, no later than thirty (30) days following the date the facility is initially placed on-line and, thereafter, no later than thirty (30) days after changes to any of the following information:
  - a. Name, mailing address, phone number, and email address (if available) of the facility representative providing the information;
  - b. Name, mailing address, phone number, email address (if available) and the classification and expiration of certification of all operator(s)-in-responsible-charge employed by the owner;
  - c. Identification of the facility or facilities for which each operator-in-responsible-charge employed or contracted by the owner has responsibility;
  - d. The Colorado Discharge Permit System (CDPS) permit or certification number for all facilities listed.
9. Division records to-date establish that New Elk Coal has failed to provide the Division with information or documents demonstrating that the Facility is operated under the direct supervision of an operator-in-responsible-charge, certified in classification equivalent to or higher than Class D Wastewater Treatment certification.
10. New Elk Coal's failure to operate its industrial wastewater treatment facility under the supervision of a certified operator with the proper classification constitutes violation(s) of §25-9-110(2)(a), C.R.S., and 5 CCR 1003-2, §100.18.1(a) and §100.18.5.

#### REQUIRED ACTION

The Division hereby orders New Elk Coal to comply with the following specific terms and conditions of this Operator Certification Notice of Violation:

11. Within thirty (30) calendar days from the date of this Notice of Violation, New Elk Coal shall retain an operator-in-responsible-charge certified in classifications equivalent to or higher than the classifications of the Facility as specified in the *Water and Wastewater Facility Operators Certification Requirements*, 5 CCR 1003-2.
12. Within forty-five (45) calendar days from the date of this Notice of Violation, New Elk Coal shall submit to the Division the information specified in 5 CCR 1003-2, §100.18.4, documenting that the Facility is being operated under the supervision of an operator with the proper certification(s). The attached Wastewater Operator in Responsible Charge Report form may be used to report the required information. *(Please note that the Facility's classification(s) may change upon completion of any Facility improvements.)*



## NOTICES AND SUBMITTALS

For all documents, plans, records, reports and replies required to be submitted by this Operator Certification Notice of Violation, New Elk Coal shall submit an original and an electronic copy to the Division at the following address:

Christy Pickens  
Colorado Department of Public Health and Environment  
Water Quality Control Division  
Mail Code: WQCD-CWE-B2  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530  
Telephone: 303-692-3584  
Email: christy.pickens@state.co.us

For any person submitting documents pursuant to this Operator Certification Notice of Violation, that person shall make the following certification with each submittal:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

## POTENTIAL CIVIL PENALTIES

You are also advised that any owner of a water treatment facility, a domestic or industrial wastewater treatment facility, a wastewater collection system, or a water distribution system in the State of Colorado who violates the Water and Wastewater Facility Operators Certification Statute (the “Statute”) at §25-9-110(2), C.R.S., shall be subject to a civil penalty of not more than three hundred dollars (\$300) per day for each day during which such violation occurs. By virtue of issuing this Operator Certification Notice of Violation, the State has not waived its right to bring an action for civil penalties under the Statute at §25-9-110(5), C.R.S., and may bring such action in the future.

## OBLIGATION TO ANSWER AND REQUEST FOR HEARING

Pursuant to §25-9-110(3), C.R.S., you are required to submit to the Division an answer to each alleged violation. The answer shall be filed no later than thirty (30) calendar days after receipt of this action.

Pursuant to §25-9-110(4), C.R.S., and 5 CCR 1003-2, §100.21.1, an alleged violator of the Statute at §25-9-110(2)(a), C.R.S., may request a public hearing to contest the contents of this Notice of Violation. Such request shall be filed in writing with the Division no later than thirty (30) days after service of this action, and shall contain, at a minimum, the information specified in 5 CCR 1003-2, §100.21.1(a-c). Hearings held pursuant to §25-9-110(4), C.R.S., shall be conducted before the Colorado Water and Wastewater Facility Operators Certification Board in accordance with §24-4-105, C.R.S. The filing of an answer does not constitute a request for hearing.



Issued at Denver, Colorado, this 15<sup>th</sup> day of October, 2015.

**FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**



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Patrick J. Pfaltzgraff, Director  
WATER QUALITY CONTROL DIVISION



For Agency Use Only  
 Date Received \_\_\_/\_\_\_/\_\_\_

Dedicated to protecting and improving the health and environment of the people of Colorado

**WASTEWATER OPERATOR IN RESPONSIBLE CHARGE REPORT**

**NOTE: This form is to be used only for initial reporting of Operator in Responsible charge ("ORC") information. Any updates and/or changes should be reported on the Division's [Change of Contacts Form](#)**

**1. PERMIT, CERTIFICATION, OR AUTHORIZATION NUMBER:**

- Individual Permit: CO00\_\_\_\_\_
- General Permit (begins with COG or COX): CO\_\_\_\_\_ (this number does not end in 0000)
- Collection Only Facility (please skip to number 3)

**2. PERMIT/CERTIFICATION INFORMATION:**

Facility Name \_\_\_\_\_  
 Permittee Name \_\_\_\_\_  
 Mailing Address \_\_\_\_\_  
 Telephone # \_\_\_\_\_ Email Address \_\_\_\_\_

**3. COLLECTION ONLY FACILITY INFORMATION:**

Legal name of collection system owner \_\_\_\_\_  
 Name of permit holder for the waste receiving facility \_\_\_\_\_  
 Permit number of waste receiving facility \_\_\_\_\_

**4. FACILITY ORC INFORMATION:**

**WASTEWATER TREATMENT ORC**

Operator Id# \_\_\_\_\_ Legal Name \_\_\_\_\_

**COLLECTION SYSTEM ORC**

Operator Id# \_\_\_\_\_ Legal Name \_\_\_\_\_

**5. LEGAL CONTACT COMPLETING THIS FORM:**

Signature (Legally Responsible Party) \_\_\_\_\_ Date \_\_\_\_\_

Name (printed) \_\_\_\_\_ Title \_\_\_\_\_







# COLORADO

## Department of Public Health & Environment

### WATER QUALITY CONTROL DIVISION

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NOTICE OF VIOLATION / CEASE AND DESIST ORDER

NUMBER: IO-151015-1

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IN THE MATTER OF:      NEW ELK COAL COMPANY LLC  
   CDPS PERMIT NO. CO0000906  
   LAS ANIMAS COUNTY, COLORADO

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Pursuant to the authority vested in the Colorado Department of Public Health and Environment's (the "Department") Division of Administration by §§25-1-109 and 25-8-302, C.R.S., which authority is implemented through the Department's Water Quality Control Division (the "Division"), and pursuant to §§25-8-602 and 25-8-605 C.R.S., the Division hereby makes the following Findings of Fact and issues the following Notice of Violation / Cease and Desist Order.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. At all times relevant to the violations cited herein, New Elk Coal Company LLC ("New Elk Coal") was a Colorado limited liability company in good standing.
2. New Elk Coal is a "person" as defined under the Water Quality Control Act, §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73).
3. New Elk Coal owns and/or operates the New Elk Mine, located at 37.158233°N, 104.9658°W, near the unincorporated community of Weston, Las Animas County, Colorado (the "Facility").
4. The Facility consists of an underground coal mine and coal preparation plant. Mine water and surface runoff are routed to sedimentation ponds for treatment and discharge.
5. The Facility is the subject of the Colorado Discharge Permit System, Permit No. CO0000906 (the "Permit"). During the times relevant to the alleged violations identified herein, two versions of the Permit were in effect: 1) the sixth renewal version of the Permit that became effective on December 1, 2008 and expired on October 24, 2008 (the "2008 Permit") but was administratively continued pending permit reissuance; and 2) the current Permit (seventh renewal) that became effective June 1, 2015 (the "2015 Permit") and is set to expire May 31, 2020.



6. The 2008 Permit authorized New Elk Coal to discharge treated wastewater from the Facility through the following outfalls:

New Elk Coal 2008 PERMIT OUTFALLS		
OUTFALL NUMBER	DESCRIPTION	RECEIVING WATER
001 (A,B, or C), MON1	Mine water	Middle Fork of Purgatoire River
004A	Surface water from refuse pile	Middle Fork of Purgatoire River
007A	Surface runoff from various sources	Middle Fork of Purgatoire River
008A	Surface runoff from refuse disposal area	Middle Fork of Purgatoire River
009 (A, B, or C), MON9	Mine water	Left Fork of Apache Canyon Creek

7. The 2008 Permit also included monitoring requirements associated with a domestic wastewater treatment plant that operated at the New Elk Mine until September 2011. The domestic wastewater treatment plant consisted of a package plant that discharged into an unlined holding pond known as Pond 6 (note Pond 6 also captured process water from the coal preparation plant). The 2008 Permit included requirements to monitor influent loading to the domestic wastewater treatment plant at Outfall 300I as well as requirements to monitor treated sewage from the domestic wastewater treatment plant prior to entering Pond 6 at an internal outfall designated as Outfall 033A. Because Pond 6 discharged to groundwater, the 2008 Permit included groundwater monitoring requirements associated with three groundwater monitoring wells: 050A (upgradient groundwater monitoring well) and 050B, 050C, and 050D (downgradient groundwater monitoring wells).
8. The 2015 Permit authorizes New Elk Coal to discharge treated wastewater from the Facility through the following outfalls:

New Elk Coal 2015 PERMIT OUTFALLS		
OUTFALL NUMBER	DESCRIPTION	RECEIVING WATER
001A	Mine water	Middle Fork of Purgatoire River
004A	Surface water from refuse pile	Middle Fork of Purgatoire River
007A	Surface runoff from various sources	Middle Fork of Purgatoire River
008A	Surface runoff from refuse disposal area	Middle Fork of Purgatoire River
010 A	Surface runoff from small area exemption, untreated, prior to comingling with 007 discharge	Middle Fork of Purgatoire River
011A	Surface runoff from small area exemption, untreated	Middle Fork of Purgatoire River
012A	Surface runoff from small area exemption, untreated	Middle Fork of Purgatoire River

*\*Note that with the issuance of the 2015 Permit, Outfalls 009A and 033A and monitoring locations 300I, 050A, 050B, and 050C were removed from the permit.*

9. Pursuant to 5 CCR 1002-61, §61.8, New Elk Coal must comply with all the terms and conditions of the Permit, and violations of such terms and conditions as specified in the Permit may be subject to civil and criminal liability pursuant to §§25-8-601 through 25-8-612, C.R.S.

**Failure to Comply with Permit Effluent Limitations**

10. The 2008 Permit effluent limitations associated with Outfall 001 were set based on discharge flow rates dependent on mine dewatering activities. Pursuant to Part I.A.1. of the 2008 Permit, at maximum discharge rate of 0.29 million gallons per day (“MGD”), the effluent limitations designated in the 2008 Permit as Outfall 001C apply and New Elk Coal’s effluent shall not exceed, among others not subject to this action, the effluent discharge limitations specified in the table below:

New Elk Coal DISCHARGE LIMITATIONS FOR OUTFALL 001C				
Parameter	Limitation		Sampling	
	30-day Avg.	Daily Max	Frequency	Type
Conductivity, dS/m	9.227	Report	2x/Month	Grab
pH, s.u. (min-max)		6.5-9	2x/Month	In-situ

11. Pursuant to Part I.A.1. of the 2008 Permit, New Elk Coal’s effluent at Outfall 007A shall not exceed, among others not subject to this action, the effluent discharge limitations specified in the table below:

New Elk Coal DISCHARGE LIMITATIONS FOR OUTFALL 007A				
Parameter	Limitation		Sampling	
	30-day Avg.	Daily Max	Frequency	Type
Total Suspended Solids (“TSS”), mg/l	35	70	Monthly	Grab
Total Iron, µg/l	3,500	7,000	Monthly	Grab

12. Pursuant to Part I.A.1. of the 2008 Permit, beginning January 1, 2011, New Elk Coal’s effluent at Outfall 033A shall not exceed, among others not subject to this action, the effluent discharge limitations specified in the table below:

New Elk Coal DISCHARGE LIMITATIONS FOR OUTFALL 033A				
Parameter	Limitation		Sampling	
	30-day Avg.	7-day Avg.	Frequency	Type
Total Suspended Solids (“TSS”), mg/l	35	45	2x/Month	Grab
BOD, 5-day, mg/l	35	45	2x/Month	Grab

13. Pursuant to Part I.A.1. of the 2008 Permit, beginning January 1, 2011, New Elk Coal's pollutant discharge as monitored in the groundwater wells 050B, 050C, and 050D shall not exceed, among others not subject of this action, the compliance limitations specified in the table below:

New Elk Coal COMPLIANCE LIMITATIONS FOR GROUNDWATER WELLS 050B, 050C, 050D				
Parameter	Limitation		Sampling	
	30-day Avg.	Daily Max	Frequency	Type
Dissolved Manganese, µg/l	50	Report	Monthly	Grab
pH, s.u. (min-max)		6.5-8.5	Monthly	In-situ
Dissolved Iron, µg/l	300	Report	Monthly	Grab
Total Coliform, no/100 ml	2.2	23	Monthly	Grab
Dissolved Nitrate + Nitrite mg/l	10	Report	Monthly	Grab

14. Pursuant to Part I.B.1. of the 2008 Permit, New Elk Coal is required to monitor the defined parameters at specified frequencies to provide an indication of compliance or non-compliance with the limitations of the 2008 Permit.
15. Pursuant to Part I.D.1. of the 2008 Permit, New Elk Coal is required to summarize and report the analytical results of its effluent monitoring and groundwater monitoring to the Division via monthly discharge monitoring reports ("DMRs"). Each DMR is to include a certification by New Elk Coal that the information provided therein is true, accurate and complete to the knowledge of New Elk Coal.
16. New Elk Coal's DMRs include, among other information and data, the following pollutant concentration summary data which exceeded the effluent limitations and groundwater compliance limitations outlined in Part I.A.1. of the 2008 Permit:

New Elk Coal EFFLUENT SELF-MONITORING DATA			
DISCHARGE MONITORING REPORTING PERIOD	SAMPLE MEASUREMENTS FOR OUTFALL 001C		
<b>Conductivity, dS/m</b>	<b>30-DAY AVG. LIMIT=</b> 9.227 dS/m	<b>7-DAY AVG. LIMIT=</b> NA	<b>DAILY MAXIMUM=</b> REPORT
3 <sup>rd</sup> Quarter 2013 (7/1/2013-9/30/2013)	1,940	--	--
4 <sup>th</sup> Quarter 2013 (10/1/2013-12/31/2013)	1,938	--	--
<b>pH, s.u. (min - max)</b>	<b>30-DAY AVG. LIMIT=</b> NA	<b>7-DAY AVG. LIMIT=</b> NA	<b>DAILY MAXIMUM=</b> 6.5-9
4th Quarter 2013 (10/1/2013-12/31/2013)	--	--	9.02
DISCHARGE MONITORING REPORTING PERIOD	SAMPLE MEASUREMENTS FOR OUTFALL 007A		
<b>Total Suspended Solids ("TSS"), mg/l</b>	<b>30-DAY AVG. LIMIT=</b> 35	<b>7-DAY AVG. LIMIT=</b> NA	<b>DAILY MAXIMUM=</b> 70
1 <sup>st</sup> Quarter 2013 (1/1/2013-3/31/2013)	42	--	74

New Elk Coal EFFLUENT SELF-MONITORING DATA			
3 <sup>rd</sup> Quarter 2013 (7/1/2013-9/30/2013)	375	--	--
<b>Total Iron, µg/l</b>	<b>30-DAY AVG. LIMIT= 3,500</b>	<b>7-DAY AVG. LIMIT= NA</b>	<b>DAILY MAXIMUM= 7,000</b>
3 <sup>rd</sup> Quarter 2013 (7/1/2013-9/30/2013)	4,035	--	--
DISCHARGE MONITORING REPORTING PERIOD	SAMPLE MEASUREMENTS FOR OUTFALL 033A		
<b>Total Suspended Solids ("TSS"), mg/l</b>	<b>30-DAY AVG. LIMIT= 30</b>	<b>7-DAY AVG. LIMIT= 45</b>	<b>DAILY MAXIMUM= NA</b>
2 <sup>nd</sup> Quarter 2011 (4/1/2011-6/30/2011)	731	2,700	--
3 <sup>rd</sup> Quarter 2011 (7/1/2011-9/30/2011)	266	1,200	--
1 <sup>st</sup> Quarter 2013 (1/1/2013-3/31/2013)	262	520	--
<b>BOD, 5-day, mg/l</b>	<b>30-DAY AVG. LIMIT= 30</b>	<b>7-DAY AVG. LIMIT= 45</b>	<b>DAILY MAXIMUM= NA</b>
2 <sup>nd</sup> Quarter 2011 (4/1/2011-6/30/2011)	558	930	--
3 <sup>rd</sup> Quarter 2011 (7/1/2011-9/30/2011)	365	530	--
DISCHARGE MONITORING REPORTING PERIOD	SAMPLE MEASUREMENTS FOR GROUNDWATER MONITORING WELL 050B		
<b>Dissolved Manganese, µg/l</b>	<b>30-DAY AVG. LIMIT= 50</b>	<b>7-DAY AVG. LIMIT= NA</b>	<b>DAILY MAXIMUM= Report</b>
4 <sup>th</sup> Quarter 2011 (10/1/2011-12/31/2011)	80	--	--
1 <sup>st</sup> Quarter 2012 (1/1/2012-3/31/2012)	112	--	--
2 <sup>nd</sup> Quarter 2012 (4/1/2012-6/30/2012)	744	--	--
3 <sup>rd</sup> Quarter 2012 (7/1/2012-9/30/2012)	1,113	--	--
4 <sup>th</sup> Quarter 2012 (10/1/2012-12/31/2012)	13,170	--	--
1 <sup>st</sup> Quarter 2013 (1/1/2013-3/31/2013)	1,840	--	--
2 <sup>nd</sup> Quarter 2013 (4/1/2013-6/30/2013)	981	--	--
<b>pH, s.u. (min - max)</b>	<b>30-DAY AVG. LIMIT= NA</b>	<b>7-DAY AVG. LIMIT= NA</b>	<b>DAILY MAXIMUM=8.5</b>
2 <sup>nd</sup> Quarter 2012 (4/1/2012-6/30/2012)	--	--	8.6
4 <sup>th</sup> Quarter 2013 (10/1/2013-12/31/2013)	--	--	13.2
<b>Total Coliform, no/100 µg/l</b>	<b>30-DAY AVG. LIMIT=2.2</b>	<b>7-DAY AVG. LIMIT= NA</b>	<b>DAILY MAXIMUM=23</b>
3 <sup>rd</sup> Quarter 2012 (7/1/2012-9/30/2012)	53	--	53

New Elk Coal EFFLUENT SELF-MONITORING DATA			
4 <sup>th</sup> Quarter 2012 (10/1/2012-12/31/2012)	202	--	551
1 <sup>st</sup> Quarter 2013 (1/1/2013-3/31/2013)	10.3	--	27
2 <sup>nd</sup> Quarter 2013 (4/1/2013-6/30/2013)	547	--	1,095
3 <sup>rd</sup> Quarter 2013 (7/1/2013-9/30/2013)	30,260	--	86,640
4 <sup>th</sup> Quarter 2013 (10/1/2013-12/31/2013)	248	--	570
3 <sup>rd</sup> Quarter 2014 (7/1/2014-9/30/2014)	1,160	--	--
4 <sup>th</sup> Quarter 2013 (10/1/2013-12/31/2013)	11.5	--	--
1 <sup>st</sup> Quarter 2015 (1/1/2015-3/31/2015)	107	--	--
<b>Dissolved Iron, µg/l</b>	<b>30-DAY AVG. LIMIT=300</b>	<b>7-DAY AVG. LIMIT= NA</b>	<b>DAILY MAXIMUM= Report</b>
3 <sup>rd</sup> Quarter 2012 (7/1/2012-9/30/2012)	593	--	--
1 <sup>st</sup> Quarter 2013 (1/1/2013-3/31/2013)	430	--	--
2 <sup>nd</sup> Quarter 2013 (4/1/2013-6/30/2013)	465	--	--
3 <sup>rd</sup> Quarter 2013 (7/1/2013-9/30/2013)	340	--	--
<b>DISCHARGE MONITORING REPORTING PERIOD</b>	<b>SAMPLE MEASUREMENTS FOR GROUNDWATER MONITORING WELL 050C</b>		
<b>Dissolved Manganese, µg/l</b>	<b>30-DAY AVG. LIMIT= 50</b>	<b>7-DAY AVG. LIMIT= NA</b>	<b>DAILY MAXIMUM= Report</b>
1 <sup>st</sup> Quarter 2012 (1/1/2012-3/31/2012)	70.5	--	--
3 <sup>rd</sup> Quarter 2013 (7/1/2013-9/30/2013)	173	--	--
<b>Total Coliform, no/100 µg/l</b>	<b>30-DAY AVG. LIMIT=2.2</b>	<b>7-DAY AVG. LIMIT= NA</b>	<b>DAILY MAXIMUM=23</b>
4 <sup>th</sup> Quarter 2012 (10/1/2012-12/31/2012)		--	27
2 <sup>nd</sup> Quarter 2013 (4/1/2013-6/30/2013)	22	--	45
3 <sup>rd</sup> Quarter 2013 (7/1/2013-9/30/2013)	2,487.3	--	5,910
4 <sup>th</sup> Quarter 2013 (10/1/2013-12/31/2013)	174.33	--	255
1 <sup>st</sup> Quarter 2014 (1/1/2014-3/31/2014)	4.5	--	--
3 <sup>rd</sup> Quarter 2014 (7/1/2014-9/30/2014)	68.3	--	--
4 <sup>th</sup> Quarter 2014 (10/1/2014-12/31/2014)	11.5	--	--

Dissolved Nitrate + Nitrite mg/l	30-DAY AVG. LIMIT=10	7-DAY AVG. LIMIT= NA	DAILY MAXIMUM= Report
3 <sup>rd</sup> Quarter 2013 (7/1/2013-9/30/2013)	49.86	--	--
Dissolved Iron, µg/l	30-DAY AVG. LIMIT=300	7-DAY AVG. LIMIT= NA	DAILY MAXIMUM= Report
3 <sup>rd</sup> Quarter 2013 (7/1/2013-9/30/2013)	360	--	--
<b>DISCHARGE MONITORING REPORTING PERIOD</b>	<b>SAMPLE MEASUREMENTS FOR GROUNDWATER MONITORING WELL 050D</b>		
Dissolved Nitrate + Nitrite mg/l	30-DAY AVG. LIMIT=10	7-DAY AVG. LIMIT= NA	DAILY MAXIMUM= Report
3 <sup>rd</sup> Quarter 2013 (7/1/2013-9/30/2013)	49.08	--	--
Total Coliform, no/100 µg/l	30-DAY AVG. LIMIT=2.2	7-DAY AVG. LIMIT= NA	DAILY MAXIMUM=23
3 <sup>rd</sup> Quarter 2013 (7/1/2013-9/30/2013)	2,387.33	--	4,838
4th Quarter 2013 (10/1/2013-12/31/2013)	387	--	922
1 <sup>st</sup> Quarter 2014 (1/1/2014-3/31/2014)	2.5	--	--
3 <sup>rd</sup> Quarter 2014 (7/1/2014-9/30/2014)	5	--	--
4th Quarter 2014 (10/1/2014-12/31/2014)	2.5	--	--

17. Conductivity, pH, TSS, Iron, BOD, manganese, nitrate + nitrite, and total coliform are “pollutants,” or indicators thereof, as defined by §25-8-103, C.R.S. and its implementing permit regulation 5 CCR 1002-61, §61.2(76).
18. The 2008 Permit did not authorize the pollutant levels identified above in paragraph 16. Division records establish that during the reporting periods identified above, New Elk Coal did not have any other permit authorizing such discharge into State Waters.
19. New Elk Coal’s failure to comply with the 2008 Permit limitations constitutes violations of Part I.A.1. of the 2008 Permit.

#### **Failure to Use Required Analytical Method / Failure to Report Representative Monitoring Data**

20. Pursuant to Part I.D.1. of the 2008 Permit, reporting of the data gathered in compliance with Part I.A.1. shall comply with the requirements of Part I.D. (General Requirements) of the Permit. Monitoring results shall be summarized for each month and reported on the DMRs. Each DMR is to include a certification by New Elk Coal that the information provided therein is true, accurate and complete to the knowledge of New Elk Coal.
21. Pursuant to Part I.D.3. of the 2008 Permit, all sampling shall be performed by the permittee according to specified methods in 40 CFR Part 136; methods approved by EPA pursuant to 40 CFR Part 136; or methods approved by the Division, in the absence of a method specified in or approved pursuant to 40 CFR Part 136. The analytical method selected for a parameter shall be the one that can measure the lowest detected limit for that parameter unless the permit limitation or stream standard for those parameters not limited is within the testing range of

another approved method. When the most sensitive analytical method which complies with this part has a detection limit greater than or equal to the permit limit, the permittee shall report "less than (the detectable limit)" on the DMR.

22. The lowest detection limits for dissolved arsenic, dissolved cadmium, dissolved chromium, dissolved copper, dissolved lead, dissolved nickel, dissolved silver, dissolved mercury and dissolved zinc are based on the practical quantitation limits ("PQL") outlined in Part I.D.3. of the 2008 Permit. The PQLs for these parameters are as follows:

New Elk Coal PRACTICAL QUANTITATION LIMITS	
Effluent Parameter	PQL
Dissolved Arsenic	1 µg/l
Dissolved Cadmium	0.06 µg/l
Dissolved Chromium	2 µg/l
Dissolved Copper	5 µg/l
Dissolved Lead	1 µg/l
Dissolved Nickel	3 µg/l
Dissolved Silver	0.5 µg/l
Dissolved Mercury	0.003 µg/l
Dissolved Zinc	10 µg/l

\* note that the Division subsequently updated the PQLs outlined above with the issuance of the "Practical Quantitation Limits (PQLs)" Policy CW6 in 2015. This policy also sets a PQL of 0.1 mg/L for Nitrate + Nitrite.

23. New Elk Coal's DMRs include, among other information and data, the following concentration data that does not comply with the analytical (PQL) and/or reporting requirements outlined in Part I.D.3. of the 2008 Permit:

New Elk Coal REPORTED EFFLUENT DATA				
DISCHARGE MONITORING REPORTING PERIOD	OUTFALL	PARAMETER	REPORTED VALUE 30-DAY AVG.	30-DAY AVG. LIMIT
4th Quarter 2013 (10/1/2013-12/31/2013)	050B	Nitrate + Nitrite, mg/l	>0.2	10
4th Quarter 2013 (10/1/2013-12/31/2013)	050B	Dissolved Arsenic, mg/l	>0.002	50
4th Quarter 2013 (10/1/2013-12/31/2013)	050B	Dissolved Cadmium, µg/l	>0.1	5
4th Quarter 2013 (10/1/2013-12/31/2013)	050B	Dissolved Chromium, µg/l	>0.5	100
4th Quarter 2013 (10/1/2013-12/31/2013)	050B	Dissolved Copper, µg/l	>0.5	200
4th Quarter 2013 (10/1/2013-12/31/2013)	050B	Dissolved Lead, µg/l	>0.1	50
4th Quarter 2013 (10/1/2013-12/31/2013)	050B	Dissolved Nickel, µg/l	>10	100
4th Quarter 2013 (10/1/2013-12/31/2013)	050B	Dissolved Silver, µg/l	>0.5	50
3 <sup>rd</sup> Quarter 2014 (7/1/2014-9/30/2014)	050B	Nitrate + Nitrite, mg/l	>0.2	10
3 <sup>rd</sup> Quarter 2014 (7/1/2014-9/30/2014)	050B	Dissolved Arsenic, mg/l	>0.0002	50

New Elk Coal REPORTED EFFLUENT DATA				
DISCHARGE MONITORING REPORTING PERIOD	OUTFALL	PARAMETER	REPORTED VALUE 30- DAY AVG.	30-DAY AVG. LIMIT
3 <sup>rd</sup> Quarter 2014 (7/1/2014-9/30/2014)	050B	Dissolved Cadmium, µg/l	>0.0001	5
3 <sup>rd</sup> Quarter 2014 (7/1/2014-9/30/2014)	050B	Dissolved Chromium, µg/l	>0.0005	100
3 <sup>rd</sup> Quarter 2014 (7/1/2014-9/30/2014)	050B	Dissolved Copper, µg/l	>0.0005	200
3 <sup>rd</sup> Quarter 2014 (7/1/2014-9/30/2014)	050B	Dissolved Lead, µg/l	>0.0001	50
3 <sup>rd</sup> Quarter 2014 (7/1/2014-9/30/2014)	050B	Dissolved Nickel, µg/l	>0.008	100
3 <sup>rd</sup> Quarter 2014 (7/1/2014-9/30/2014)	050B	Dissolved Silver, µg/l	>0.00005	50
3 <sup>rd</sup> Quarter 2014 (7/1/2014-9/30/2014)	050B	Dissolved Mercury, µg/l	>0.4	50
4 <sup>th</sup> Quarter 2013 (10/1/2013-12/31/2013)	050C	Dissolved Arsenic, mg/l	>0.2	50
4 <sup>th</sup> Quarter 2013 (10/1/2013-12/31/2013)	050C	Dissolved Chromium, µg/l	>0.5	100
4 <sup>th</sup> Quarter 2013 (10/1/2013-12/31/2013)	050C	Dissolved Copper, µg/l	>0.5	200
4 <sup>th</sup> Quarter 2013 (10/1/2013-12/31/2013)	050C	Dissolved Iron, µg/l	>20	300
4 <sup>th</sup> Quarter 2013 (10/1/2013-12/31/2013)	050C	Dissolved Nickel, µg/l	>10	100
4 <sup>th</sup> Quarter 2013 (10/1/2013-12/31/2013)	050C	Dissolved Silver, µg/l	>0.5	50
4 <sup>th</sup> Quarter 2013 (10/1/2013-12/31/2013)	050C	Dissolved Zinc, µg/l	>10	2,000
3 <sup>rd</sup> Quarter 2014 (7/1/2014-9/30/2014)	050C	Dissolved Arsenic, mg/l	>0.0002	50
3 <sup>rd</sup> Quarter 2014 (7/1/2014-9/30/2014)	050C	Dissolved Cadmium, µg/l	>0.0001	5
3 <sup>rd</sup> Quarter 2014 (7/1/2014-9/30/2014)	050C	Dissolved Chromium, µg/l	>0.0005	100
3 <sup>rd</sup> Quarter 2014 (7/1/2014-9/30/2014)	050C	Dissolved Copper, µg/l	>0.0005	200
3 <sup>rd</sup> Quarter 2014 (7/1/2014-9/30/2014)	050C	Dissolved Lead, µg/l	>0.0001	50
3 <sup>rd</sup> Quarter 2014 (7/1/2014-9/30/2014)	050C	Dissolved Nickel, µg/l	>0.008	100
3 <sup>rd</sup> Quarter 2014 (7/1/2014-9/30/2014)	050C	Dissolved Silver, µg/l	>0.00005	50
3 <sup>rd</sup> Quarter 2014 (7/1/2014-9/30/2014)	050C	Dissolved Zinc, µg/l	>0.1	2,000
4 <sup>th</sup> Quarter 2013 (10/1/2013-12/31/2013)	050D	Dissolved Arsenic, mg/l	>0.2	50
4 <sup>th</sup> Quarter 2013 (10/1/2013-12/31/2013)	050D	Dissolved Cadmium, µg/l	>0.1	5



New Elk Coal REPORTED EFFLUENT DATA				
DISCHARGE MONITORING REPORTING PERIOD	OUTFALL	PARAMETER	REPORTED VALUE 30- DAY AVG.	30-DAY AVG. LIMIT
4th Quarter 2013 (10/1/2013-12/31/2013)	050D	Dissolved Chromium, µg/l	>0.5	100
4th Quarter 2013 (10/1/2013-12/31/2013)	050D	Dissolved Silver, µg/l	>0.5	50
4th Quarter 2013 (10/1/2013-12/31/2013)	050D	Dissolved Zinc, µg/l	>10	2,000
3 <sup>rd</sup> Quarter 2014 (7/1/2014-9/30/2014)	050D	Dissolved Arsenic, mg/l	>0.0002	50
3 <sup>rd</sup> Quarter 2014 (7/1/2014-9/30/2014)	050D	Dissolved Cadmium, µg/l	>0.0001	5
3 <sup>rd</sup> Quarter 2014 (7/1/2014-9/30/2014)	050D	Dissolved Chromium, µg/l	>0.0005	100
3 <sup>rd</sup> Quarter 2014 (7/1/2014-9/30/2014)	050D	Dissolved Copper, µg/l	>0.0005	200
3 <sup>rd</sup> Quarter 2014 (7/1/2014-9/30/2014)	050D	Dissolved Manganese, µg/l	>0.005	50
3 <sup>rd</sup> Quarter 2014 (7/1/2014-9/30/2014)	050D	Dissolved Nickel, µg/l	>0.008	100
3 <sup>rd</sup> Quarter 2014 (7/1/2014-9/30/2014)	050D	Dissolved Silver, µg/l	>0.00005	50
3 <sup>rd</sup> Quarter 2014 (7/1/2014-9/30/2014)	050D	Dissolved Zinc, µg/l	>0.1	2,000

24. New Elk Coal's failure to use the analytical method capable of producing the required PQL and/or New Elk Coal's failure to properly report pollutant concentration data on the DMRs as "less than (the detectable limit)" constitutes violations of Part I.D.3. of the 2008 Permit.

**Failure to Properly Monitor and Report**

25. Pursuant to Part I.D.1. of the 2008 Permit and Part I.L.1. of the 2015 Permit, New Elk Coal is required to monitor effluent parameters and groundwater parameters at specified frequencies and report the results on a DMR.
26. Pursuant to Part I.D.1. of the 2008 Permit and Part I.L.1. of the 2015 Permit, New Elk Coal is required to report all monitoring results on a quarterly basis (monthly for the 2015 Permit) using Division approved DMRs. New Elk Coal is required to ensure the DMRs are received by the Division no later than the 28<sup>th</sup> day of the month following the reporting period. The 2008 Permit and 2015 Permit specify that if no discharge occurs during the monitoring period, "No Discharge" shall be reported on the DMR. Each DMR is to include a certification by New Elk Coal that the information provided therein is true, accurate and complete to the knowledge of New Elk Coal.

27. Division records establish that New Elk Coal failed to submit DMRs to the Division for the reporting periods listed below:

New Elk Coal DELINQUENT DMRS	
DISCHARGE MONITORING REPORTING PERIOD	OUTFALLS
4th Quarter 2010 (10/1/2010-12/31/2010)	001A, 001AX, 001B, 001BX, 001C, 001CX, 004A, 007A, 008A, 009A, 009AW, 009B, 009BW, 009C, 009CW, 033A, MON1, MON9
1 <sup>st</sup> Quarter 2011 (01/1/2011-3/31/2011)	050A, 050B, 050C, 050D
1 <sup>st</sup> Quarter 2013 (01/1/2013-3/31/2013)	300I
June 2015 (2015 Permit)	001A, 004A, 00A7, 008A, 01A0, 011A, 012A
July 2015 (2015 Permit)	001A, 004A, 007A, 008A, 010A, 01A1, 012A
August 2015 (2015 Permit)	001A, 004A, 007A, 008A, 010A, 011A, 012A

28. Division records establish that New Elk Coal failed to submit DMR data to the Division for the reporting periods and associated effluent and groundwater parameters listed below:

New Elk Coal DEFICIENT DMRS		
DISCHARGE MONITORING REPORTING PERIOD	OUTFALL	DEFICIENT PARAMETERS
1st Quarter 2010 (1/1/2010-3/31/2010)	001C	pH (minimum)
2 <sup>nd</sup> Quarter 2010 (4/1/2010-6/30/2010)	001C	Total Magnesium
2 <sup>nd</sup> Quarter 2011 (4/1/2011-6/30/2011)	033A	pH, Flow
3rd Quarter 2011 (7/1/2011-9/30/2011)	050A	pH (minimum)
3rd Quarter 2011 (7/1/2011-9/30/2011)	050B	pH (minimum)
3rd Quarter 2011 (7/1/2011-9/30/2011)	050C	pH (minimum)
3rd Quarter 2011 (7/1/2011-9/30/2011)	050D	pH (minimum)
4th Quarter 2011 (10/1/2011-12/31/2011)	050A	Nitrate + Nitrite, (daily max), Total Coliform
4th Quarter 2011 (10/1/2011-12/31/2011)	050B	Total Coliform
4th Quarter 2011 (10/1/2011-12/31/2011)	050C	Total Coliform
4th Quarter 2011 (10/1/2011-12/31/2011)	050D	Total Coliform

New Elk Coal DEFICIENT DMRS		
DISCHARGE MONITORING REPORTING PERIOD	OUTFALL	DEFICIENT PARAMETERS
1st Quarter 2012 (1/1/2012-3/31/2012)	050A	Temperature
1st Quarter 2012 (1/1/2012-3/31/2012)	050B	Total Coliform
1st Quarter 2012 (1/1/2012-3/31/2012)	050C	Total Coliform
1st Quarter 2012 (1/1/2012-3/31/2012)	050D	Total Coliform
2nd Quarter 2012 (4/1/2012-6/30/2012)	050B	Total Coliform
2nd Quarter 2012 (4/1/2012-6/30/2012)	050C	Total Coliform
2nd Quarter 2012 (4/1/2012-6/30/2012)	050D	Total Coliform
1st Quarter 2013 (1/1/2013-3/31/2013)	001C	Total Iron, Flow
2nd Quarter 2013 (4/1/2013-6/30/2013)	050B	Dissolved Sulfate
2nd Quarter 2014 (4/1/2014-6/30/2014)	050A	Total Coliform (daily max)
2nd Quarter 2014 (4/1/2014-6/30/2014)	050B	Total Coliform (daily max)
2nd Quarter 2014 (4/1/2014-6/30/2014)	050C	Total Coliform (daily max)
2nd Quarter 2014 (4/1/2014-6/30/2014)	050D	Total Coliform( daily max)
2nd Quarter 2014 (4/1/2014-6/30/2014)	MON1	Total Recoverable Iron (30 day avg), Total Arsenic (30 day avg), Total Boron (30 day avg), Total Recoverable Aluminum (30 day avg), Total Recoverable Chromium (30 day avg), Zinc (30 day avg), Silver (30 day avg), Copper (30 day avg), Lead (30 day avg), Manganese (30 day avg), Nickel (30 day avg), Selenium (30 day avg), Mercury (30 day avg)
3 <sup>rd</sup> Quarter 2014 (7/1/2014-9/30/2014)	050A	Total Coliform (daily max)
3 <sup>rd</sup> Quarter 2014 (7/1/2014-9/30/2014)	050B	Total Coliform (daily max)
3 <sup>rd</sup> Quarter 2014 (7/1/2014-9/30/2014)	050C	Total Coliform (daily max)
3 <sup>rd</sup> Quarter 2014 (7/1/2014-9/30/2014)	050D	Total Coliform (daily max)
4th Quarter 2014 (10/1/2014-12/31/2014)	050A	Total Coliform (daily max)
4th Quarter 2014 (10/1/2014-12/31/2014)	050B	Total Coliform (daily max)
4th Quarter 2014 (10/1/2014-12/31/2014)	050C	Total Coliform (daily max)



New Elk Coal DEFICIENT DMRS		
DISCHARGE MONITORING REPORTING PERIOD	OUTFALL	DEFICIENT PARAMETERS
4th Quarter 2014 (10/1/2014-12/31/2014)	050D	Total Coliform (daily max)

29. New Elk Coal's failure to submit complete DMRs to the Division by the 28<sup>th</sup> day of the month following each reporting period, as identified above in paragraphs 27 and 28, constitutes violations of Part I.D.1. of the 2008 and Part I.L.1. of the 2015 Permit.

### NOTICE OF VIOLATION

26. Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined that New Elk Coal has violated the following sections of the Colorado Water Quality Control Act's implementing permit regulations.

**Part I.A.1. of the 2008 Permit** which states in part: "In accordance with the Water Quality Control Commission Regulations for Effluent Limitations, Section 62.4, and the Colorado Discharge Permit System Regulations, Section 61.8(2), the permitted discharge shall not contain effluent parameter concentrations, which exceed the following limitations:..."

**Part I.D.3. of the 2008 Permit** which states in part: "The analytical method selected for a parameter shall be the one that can measure the lowest detected limit for that parameter...When the most sensitive analytical method which complies with this part, has a detection limit greater than or equal to the permit limit, the permittee shall report "less than (the detectable limit)," as appropriate... The present lowest practical quantitation limits (PQLs) for specific parameters... are as follows..."

**Part I.D.1. of the 2008 Permit** which states in part: "Reporting of the data gathered in compliance with Part I.B.1. shall be on a quarterly basis. Monitoring results shall be summarized for each calendar month and reported on Division approved discharge monitoring report (DMR) forms (EPA forms 3320-1). One form shall be mailed to the Water Quality Control Division... so that the DMR is received no later than the 28<sup>th</sup> day of the following month... If no discharge occurs during the reporting period, "No Discharge" shall be reported. The DMR forms shall be filled out accurately and completely in accordance with the requirements of this permit and the instructions on the forms."

**Part I.L.1. of the 2015 Permit** which states in part: "Reporting of all data gathered shall comply with the requirements of the general monitoring and sampling requirements section and the reporting and recordkeeping section of this permit. The permittee shall summarize monitoring results for each month and report on Division approved discharge monitoring report (DMR) forms (EPA form 3320-1). The permittee must submit these forms either by mail, or by using the Division's Net-DMR services so that the DMR is received no later than the 28<sup>th</sup> day of the following month...If no discharge occurs during the reporting period, "No Discharge" shall be reported on the DMR...The Discharge Monitoring Report forms shall be filled out accurately and completely in accordance with requirements of this permit and the instructions on the forms."

## REQUIRED CORRECTIVE ACTION

Based upon the foregoing factual and legal determinations and pursuant to §25-8-602 and §25-8-605, C.R.S., New Elk Coal is hereby ordered to:

27. Cease and desist from all violations of the Colorado Water Quality Control Act, §§25-8-101 through 25-8-803, C.R.S., its implementing regulations promulgated thereto and the Permit.

Furthermore, the Division hereby orders New Elk Coal to comply with the following specific terms and conditions of this Order:

28. New Elk Coal shall immediately initiate measures to ensure complete DMRs are submitted to the Division pursuant to the terms and conditions of the 2015 Permit. Within thirty (30) calendar days of receipt of this Order, New Elk Coal shall submit a written plan and certification to the Division outlining New Elk Coal's actions to ensure that DMRs are submitted to the Division accurately and completely by no later than the 28<sup>th</sup> day of the month following the end of a reporting period.
29. Within thirty (30) calendar days of receipt of this Order, New Elk Coal shall provide a summary of all influent, effluent, and groundwater monitoring from January 2010 through the date of this Order. The data shall be summarized in Excel format and shall be clear and understandable. Laboratory data reports, all field measurement reports, and all calibration and maintenance records shall be submitted as attachments to the data summary.
30. Within thirty (30) calendar days of receipt of this Order, for all monitoring periods listed above in paragraph 23, New Elk Coal shall submit revised DMRs, as appropriate, that comply with the reporting requirements outlined in Part I.D.3. of the 2008 Permit. Laboratory data reports establishing the PQLs achieved by the laboratory shall be submitted as attachments to the revised DMRs.
31. Within thirty (30) calendar days of receipt of this Order, New Elk Coal shall retain the services of an individual or entity experienced in coal mine related wastewater treatment and management to perform an evaluation of the Facility and recommend measures to ensure that the Facility reliably and consistently complies with all terms and conditions of the 2015 Permit, specifically including the numeric effluent limitations, alternate limitation burden of proof requirements, practiced based limitations, and monitoring requirements of the 2015 Permit. The evaluation shall include, but not be limited to:
  - a. An evaluation of the personnel requirements and qualifications for the operation and management of the Facility, including an evaluation of each individual's role, duties, and responsibilities in ensuring the proper operation and maintenance of the Facility and Permit compliance;
  - b. An evaluation of the contributing pollutant sources and pollutant concentrations for all pollutants that could influence the treatment process, and an evaluation of whether the Facility's treatment system as a whole is adequate to properly treat all contributing pollutant sources and pollutant concentrations to a level that consistently complies with the effluent limitations outlined in Part I.C.1. of the 2015 Permit. This evaluation shall include identification and cost comparison of the techniques or technologies that may be utilized at the Facility to comply with the effluent limitations of the 2015 Permit, and;

- c. An evaluation of whether the Facility's control measures as a whole are adequate to comply with the practice-based limitations outlined in Part I.C.3. of the 2015 Permit. This evaluation shall include identification of the measures, techniques or technologies that may be utilized at the Facility to consistently comply with the practice based limitations and maintenance requirements outlined in Parts I.C.3. and I.G. of the 2015 Permit.
32. Within forty five (45) calendar days of receipt of this Order, New Elk Coal shall provide documentation to the Division that it has retained the services of the qualified individual or entity identified in paragraph 31. This documentation shall include at, a minimum, a copy of the individual or entity's qualifications and a copy of the written contract or agreement for such services, including a copy of the scope of services to be provided.
33. Within ninety (90) calendar days of receipt of this Order, New Elk Coal shall submit in writing to the Division a final report on the findings of the evaluation identified and outlined in paragraph 31 above. Along with the findings of the evaluation, the report must identify, for each criterion, specific short-term and long-term measures that will be taken by New Elk Coal to rectify deficiencies identified by the evaluation so that the Facility consistently produces effluent in compliance with the numeric and practiced based limitations outlined in Part I.C. of the 2015 Permit. For each short-term and long-term measure identified, New Elk Coal shall also submit a time schedule for completion of each measure. The implementation time schedule submitted must identify completion of all measures by no later than May 31, 2016. The measures and time schedule submitted shall become a condition of this Order, and New Elk Coal shall implement the measures and time schedule as submitted unless notified by the Division, in writing, that alternate measures and/or time schedules are appropriate. If the Division imposes alternate measures and/or time schedules, they shall also become a condition of this Order.
34. New Elk Coal shall submit monthly progress reports to the Division outlining efforts taken to achieve compliance with this Order. The first report shall be submitted to the Division on or before December 31, 2015 and subsequent reports shall be due at the end of every month thereafter. At a minimum, each report shall outline activities completed in the previous month and activities planned for the next month to remain in compliance with this Order. The progress reports shall be required until the issuance of written notice from the Division that the reports are no longer necessary.
35. If New Elk Coal becomes aware of any situation or circumstances that cause New Elk Coal to become unable to comply with any condition or time schedules set forth by this Order, New Elk Coal shall provide written notice to the Division within five (5) calendar days of New Elk Coal becoming aware of such circumstances. New Elk Coal's notice shall describe what, if any, impacts will occur on New Elk Coal's ability to comply with the Colorado Water Quality Control Act and any impacts on the remaining conditions and/or time schedules specified by this Order, and what steps are being taken to mitigate the impacts.
36. All documents submitted under this Order shall use the same titles as stated in this Order, and shall reference both the number of this Order and the number of the paragraph pursuant to which the document is required. Within thirty (30) calendar days of receiving Division comments on submitted documents, New Elk Coal shall revise the submitted document(s) to properly address the Division's comments and resubmit the document(s) for Division review.

## NOTICES AND SUBMITTALS

For all documents, plans, records, reports and replies required to be submitted by this Notice of Violation/Cease and Desist Order, New Elk Coal shall submit an original and an electronic copy to the Division at the following address:

Christy Pickens  
Colorado Department of Public Health and Environment  
Water Quality Control Division  
Mail Code: WQCD-CWE-B2  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530  
Telephone: (303) 692-3584  
Email: christy.pickens@state.co.us

For any person submitting documents, plans, records and reports pursuant to this Notice of Violation / Cease and Desist Order, that person shall make the following certification with each submittal:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

### OBLIGATION TO ANSWER AND REQUEST FOR HEARING

Pursuant to §25-8-603, C.R.S. and 5 CCR 1002, §21.11 you are required to submit to the Division an answer affirming or denying each paragraph of the Findings of Fact and responding to the Notice of Violation. The answer shall be filed no later than thirty (30) calendar days after receipt of this action.

Section 25-8-603, C.R.S. and 5 CCR 1002, §21.11 also provide that the recipient of a Notice of Violation may request the Division to conduct a public hearing to determine the validity of the Notice, including the Findings of Fact. Such request shall be filed in writing with the Division and include the information specified in 5 CCR 1002, §21.4(B)(2). Absent a request for hearing, the validity of the factual allegations and the Notice of Violation shall be deemed established in any subsequent Department proceeding. The request for hearing, if any, shall be filed no later than thirty (30) calendar days after issuance of this action. The filing of an answer does not constitute a request for hearing.

### FALSIFICATION AND TAMPERING

Be advised, in accord with §25-8-610, C.R.S., that any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Colorado Water Quality Control Act or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this article is guilty of a misdemeanor and, upon conviction thereof, shall be

punished by a fine of not more than ten thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

### POTENTIAL CIVIL AND CRIMINAL PENALTIES

You are also advised that any person who violates any provision of the Colorado Water Quality Control Act (the "Act"), §§25-8-101 to 803, C.R.S., or of any permit issued under the Act, or any control regulation promulgated pursuant to the Act, or any final cease and desist order or clean-up order issued by the Division shall be subject to a civil penalty of not more than ten thousand dollars per day for each day during which such violation occurs. Further, any person who recklessly, knowingly, intentionally, or with criminal negligence discharges any pollutant into any state waters commits criminal pollution if such discharge is made without a permit, if a permit is required by the Act for such discharge, or if such discharge is made in violation of any permit issued under the Act or in violation of any Cease and Desist Order or Clean-up Order issued by the Division. By virtue of issuing this Notice of Violation / Cease and Desist Order, the State has not waived its right to bring an action for penalties under §§25-8-608 and 609, C.R.S., and may bring such action in the future.

### RELEASE OR DISCHARGE NOTIFICATION

Pursuant to §25-8-601, C.R.S., you are further advised that any person engaged in any operation or activity which results in a spill or discharge of oil or other substance which may cause pollution of the waters of the state, shall notify the Division of the discharge. If said person fails to so notify, said person is guilty of a misdemeanor, and may be fined or imprisoned or both.

### EFFECT OF ORDER

Nothing herein contained, particularly those portions requiring certain acts to be performed within a certain time, shall be construed as a permit or license, either to violate any provisions of the public health laws and regulations promulgated thereunder, or to make any discharge into state waters. Nothing herein contained shall be construed to preclude other individuals, cities, towns, counties, or duly constituted political subdivisions of the state from the exercise of their respective rights to suppress nuisances or to preclude any other lawful actions by such entities or the State.

For further clarification of your rights and obligations under this Notice of Violation / Cease and Desist Order you are advised to consult the Colorado Water Quality Control Act, §§25-8-101 to 803, C.R.S., and regulations promulgated thereunder, 5 CCR 1002.

Issued at Denver, Colorado, this 15<sup>th</sup> day of October, 2015.

### FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT



Patrick J. Pfaltzgraff, Director  
WATER QUALITY CONTROL DIVISION



