

STATE OF COLORADO

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

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Colorado Department
of Public Health
and Environment

COMPLIANCE ADVISORY

Issued By:

Air Pollution Control Division
4300 Cherry Creek Drive South
MS: APCD-B1-SS
Denver, Colorado 80246-1530
Telephone: 303-683-3150

U.S. Certified Mail No. 7007 0220 0001 0162 5724
Mailing Date: August 5, 2010

Issued To:

Oxbow Mining LLC
3737 Highway 133
Somerset, CO 81434

Contact: Jim Kiger

Case No: 2010-037, 2010-038
AIRS No: 029/0011, 051/0007
Inspection Date: August 25, 2009

This Compliance Advisory provides notice, pursuant to § 25-7-115(2), C.R.S., regarding information gained during the Air Pollution Control Division's ("Division's") inspection and/or review of records related to Oxbow's Elk Creek Coal Mine located in Somerset, Gunnison County, Colorado and Oxbow's coal crushing and screening plant, operated by Oxbow's subsidiary, Terror Creek Company, located in Bowie, Delta County, Colorado. The Division believes that the compliance issues identified below may constitute violations of the Colorado Air Pollution Prevention and Control Act ("the Act") and its implementing regulations.

Please be aware that you are responsible for complying with applicable State air pollution requirements and that there are substantial administrative and civil penalties for failing to do so. C.R.S. §25-7-115 provides that any person who violates the Act, its implementing regulations or any permit issued thereunder may be subject to an administrative penalty of up to \$15,000 per day of such violation. The issuance of this Compliance Advisory does not in any way limit or preclude the Division from pursuing its additional enforcement options concerning this inspection/review, including issuance of a Compliance Order and assessment of penalties. Also, this Compliance Advisory does not constitute a bar to enforcement action for conditions not addressed in this Compliance Advisory.

Failure to respond to this Compliance Advisory by the date indicated at the end of this Compliance Advisory may be considered by the Division in the subsequent enforcement action and the assessment of penalties. Furthermore, the Division's enforcement process contemplates a full and final resolution of the compliance issues herein addressed, and those that may result from further review, in a timely manner. If at any time throughout the process of reaching such a resolution the Division determines that the Parties cannot agree to the dispositive facts, compliance requirements and/or penalty assessments (if any) associated with this Compliance Advisory, or a resultant enforcement action, the Division may exercise its full enforcement authority allowed under the law.

Oxbow Mining LLC ("Oxbow") owns and operates Elk Creek Coal Mine at 3737 Highway 133, Somerset, Gunnison County, Colorado, ("Elk Creek"). Elk Creek is subject to the terms and conditions of the Colorado Construction

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Permit Number 98GU0812 [AIRS 051/0007] Final Approval Modification 5 issued to Oxbow on July 16, 2009 (“Permit Number 98GU0812”), Colorado Air Quality Control Statutes, and Colorado Air Quality Control Commission (“AQCC”) Regulations.

On August 25, 2009, Ms. Marley Bain, of the Division, inspected Elk Creek. Based on Ms. Bain’s inspection, and a review of records related to Elk Creek, the Division has identified the following compliance issues:

- A. Pursuant to Permit Number 98GU0812, Condition 1.h, Oxbow shall treat unpaved haul roads at Elk Creek with chemical stabilizers. Oxbow reported that unpaved haul roads at Elk Creek are not being treated with any chemical stabilizers, violating Permit Number 98GU0812, Condition 1.h.
- B. Pursuant to Permit Number 98GU0812, Condition 4, Elk Creek’s processing of coal shall not exceed 36,000 tons per day and Elk Creek’s rock dust throughput in the Rock Dust Silo shall not exceed 68 tons per day. Elk Creek exceeded its daily processing limits of coal and its rock dust throughput in the Rock Dust Silo, as detailed below, violating Permit Number 98GU0812, Condition 4:

Coal Processing Limit: 36,000 tpd	
<i>Date</i>	<i>Throughput (tons)</i>
08/07/08	36,657
03/12/09	36,824
04/02/09	37,500
04/08/09	36,317
04/11/09	37,249
04/16/09	36,192
04/22/09	36,693
07/11/09	36,103
08/04/09	37,123
08/11/09	36,169

Rock Dust Silo Limit: 68 tpd	
<i>Date</i>	<i>Throughput (tons)</i>
11/14/08	83
02/06/09	110
02/25/09	81
05/05/09	83

- C. Pursuant to Permit Number 98GU0812, Condition 3, emissions of PM10 at Elk Creek shall not exceed 229.80 pounds per day, and 41.94 tons per year. Based on the exceedances cited in Paragraph B of this Compliance Advisory, Oxbow exceeded the permitted limits of PM10 on 14 days at Elk Creek, violating Permit Number 98GU0812, Condition 3.

Terror Creek Company (“TCC”), a subsidiary of Oxbow, operates the coal crushing and screening plant located at NW Sec 14 T3S R91 W CR 4365, Bowie, Delta County, Colorado (“TCC Plant”). TCC Plant is subject to Colorado Air Quality Control Statutes, Colorado Air Quality Control Commission (“AQCC”) Regulations, and the terms and conditions of a number of Colorado Construction Permits, including, but not limited to, Colorado Construction Permit Number 82DL343-1F [AIRS 029/0011] Final Approval issued to TCC on May 15, 1995 (“Permit Number 82DL343-1F”).

On August 25, 2009, Ms. Bain inspected the TCC Plant. Based on Ms. Bain’s inspection, and a review of records related to the TCC Plant, the Division has identified the following compliance issue:

- D. Pursuant to Permit Number 82DL343-1F, Condition 5, TCC shall limit handling of coal and coal products, in aggregate, to 4,000 tons per day. TCC provided records showing daily handling of 5,021.93 tons on September 25, 2008 and 4,087.97 tons on November 19, 2008. TCC exceeded the permitted limit of daily coal handling on two days in 2008, violating Permit Number 82DL343-1F, Condition 5.

The Division notes that it is important to resolve the above-referenced issues as soon as possible. Therefore, the Division encourages Oxbow to immediately identify those compliance issues that are not in dispute and to rectify those issues before the upcoming Compliance Advisory meeting. The Division also requests that Oxbow provide the Division with a

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brief written response to the alleged violations (“Source Response¹”). The Source Response should identify the undisputed compliance issues and, if an alleged violation is disputed, the basis for the dispute. The Division requests that Oxbow provide the Source Response, to the attention of Marley Bain, no later than ten business days before the Compliance Advisory meeting. At the upcoming meeting, the Division will confirm the actions taken to rectify the undisputed compliance issues and proceed with unresolved matters as outlined below.

If you have any questions regarding this Compliance Advisory, the Division’s enforcement processes, or any related issues, please refer to the APCD Enforcement Manual located at www.cdphe.state.co.us/ap/down/Enforcement_Guide.pdf and/or contact the Division personnel identified below.

To close out this Compliance Advisory, Oxbow is requested to contact the Division and schedule a meeting to:

- Discuss the disputed Compliance Advisory issues and answer any remaining questions you may have;
- Submit information necessary to successfully show that the deficiencies and noncompliance issues (or any portion of them) are not violations of Colorado’s air pollution laws; and
- Establish a mutually acceptable schedule and guidelines for the full and final resolution of any remaining deficiencies and noncompliance issues in a timely manner.

Please contact one of the compliance officers identified below by no later than August 12, 2010 to schedule a meeting with the Division to discuss the Compliance Advisory. The Division currently anticipates that the meeting will take place during the week of August 30, 2010

Bob Jorgenson, Field Enforcement Supervisor (303-692-3171)

Marley Bain, Field Enforcement Inspector (303-692-3253)

cc: Bob Jorgenson, APCD
Arch Crouse, APCD
Albion Carlson, EPA (Region VIII)
File

Marley Bain, APCD
Shannon McMillan, APCD
Will Allison, Attorney General’s Office

¹ The Division considers the Source Response to be subject to the C.R.E. Rule 408 settlement communication privilege.