

# STATE OF COLORADO

## DIVISION OF RECLAMATION, MINING AND SAFETY

Department of Natural Resources

1313 Sherman St., Room 215

Denver, Colorado 80203

Phone: (303) 866-3567

FAX: (303) 832-8106



March 26, 2013

John W. Hickenlooper  
Governor

Mike King  
Executive Director

Loretta Piñeda  
Director

Jason Burkey  
Oldcastle SW Group dba United Companies of Mesa County  
P.O. Box 3609  
Grand Junction, CO 81502

**Re: File No. M-2012-050, Otter Creek Pit, 112c Decision Letter - Financial and Performance Warranty Request - Construction Material Operation**

Mr. Burkey,

On March 26, 2013, the Division of Reclamation, Mining and Safety approved your 112c mining permit application.

The amount of financial warranty set by the Division for this operation is \$124,375.61. You must submit a financial warranty in this amount and a performance warranty in order for us to issue a permit. In the event you have requested a financial warranty form, we have enclosed it in this letter. If you have not, please select a type of financial warranty from Rule 4.3. Then contact us so that we can provide you with the appropriate warranty form. We have enclosed a performance warranty form with this letter for your use.

**PLEASE NOTE THAT MINING OPERATIONS MAY NOT COMMENCE UNTIL A PERMIT HAS BEEN ISSUED BY THE DIVISION AFTER RECEIPT OF YOUR FINANCIAL WARRANTY AND PERFORMANCE WARRANTY. A PERMIT WILL NOT BE ISSUED UNTIL WE VERIFY THE ADEQUACY OF BOTH YOUR FINANCIAL WARRANTY AND PERFORMANCE WARRANTY.**

If you have any questions, please contact me (970) 241-2042.

Sincerely,

A handwritten signature in black ink, appearing to read "Travis Marshall".

Travis Marshall  
Environmental Protection Specialist

Enclosure – Performance Warranty

cc: Greg Lewicki  
Greg Lewicki and Associates, PLLC  
11541 Warrington Court  
Parker, CO 80138

ec: Russ Means, DRMS

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## PERFORMANCE WARRANTY

Operator: Oldcastle SW Group dba United Companies of Mesa County

Operation: Otter Creek Pit

Permit No: M-2012-050

*This form has been approved by the Mined Land Reclamation Board pursuant to sections 34-32-117, C.R.S., of the Mined Land Reclamation Act and 34-32.5-117, C.R.S., of the Colorado Land Reclamation Act for the Extraction of Construction Materials. Any alteration or modification of this form, without approval by the Board shall result in the financial warranty being invalid and result in the voiding of any permit issued in conjunction with such invalid financial warranty and subject the operator to cease and desist orders and civil penalties for operating without a permit pursuant to sections 34-32-123, C.R.S., of the Mined Land Reclamation Act and 34-32.5-123, C.R.S., of the Colorado Land Reclamation Act for the Extraction of Construction Materials .*

KNOW ALL MEN BY THESE PRESENTS, THAT:

WHEREAS, the Colorado Mined Land Reclamation Act, C.R.S. 34-32-101 et seq. (the "Act"), as amended, and the Colorado Land Reclamation Act for the Extraction of Construction Materials, C.R.S. 34-32.5-101 et seq. (the "Act"), as amended, provides that no permit may be issued under the Act until the Mined Land Reclamation Board (the "Board") receives a performance warranty (or warranties) that is a written promise to comply with all applicable requirements of the Act.

WHEREAS, Oldcastle SW Group dba United Companies of Mesa County (the "Operator"), has applied for a permit to conduct a mining operation known as Otter Creek Pit (the "Operation") on certain lands in Mesa County, Colorado. These lands are described in the permit application, as amended and supplemented, and are referred to herein as the "Affected Lands".

WHEREAS, in its application for the permit, the Operator has agreed to be bound by all requirements of the Act and all applicable rules and regulations of the Board, as amended from time to time.

WHEREAS, the Board has determined, in accordance with the Act, that the estimated costs of reclamation with regard to those affected lands in Mesa County which are now or may become subject to the permit are those amounts for the stated periods of time as set forth in the financial warranty, which may be amended from time to time to reflect revised estimates of said costs of reclamation.

WHEREAS, the Operator hereby gives the Board a performance warranty pursuant to Section 34-32-117(2) or Section 34-32.5-117(2) of the Act, and herein promises the Board that it will comply with all applicable requirements of the Act with regard to those Affected Lands.

NOW, THEREFORE, the Operator hereby promises the Board that it will comply with all applicable requirements of the Act and rules and regulations of the Board with respect to the Affected Lands.

FURTHER, the Operator hereby promises the Board that it will comply with all of the terms of the application for a permit, as amended and supplemented, as well as any conditions attached to the permit by the Board.

FURTHER, the Operator promises the Board, pursuant to 34-32-112(2)(d) or 34-32.5-112(1)(c)(iv) of the Act, that it has the lawful authority to enter upon the Affected Lands to conduct mining operations, including, but not limited to, reclamation. The Operator further recognizes the right of the Board to enter to reclaim lands affected by the operation.

The description of lands herein is for convenience of reference only, and no error in such description, nor any revision of the permitted mining area, nor the disturbance by the Warrantor of lands outside of the permitted mining area shall alter or diminish the Operator's obligation hereunder, which shall extend to the reclamation of all such lands disturbed.

The obligation of the Operator hereunder is such that, if the Operator shall successfully comply with the requirements of the Act, applicable rules and regulations, and the permit, then the Board, upon a finding that the Operator has so complied, shall release this performance warranty, and the Operator from its obligation hereunder, to the extent that the Board determines that such compliance has been accomplished. The obligation of the Operator hereunder shall continue until released in whole or in part by the Board in accordance with applicable law.

In further satisfaction of the requirements of the Act, the Operator promises to be responsible for the cost of reclamation up to the amount established by the Board and has attached hereto its financial warranty, which may be amended from time to time. The Operator agrees that it will maintain a financial warranty (or warranties) for the estimated costs of reclamation in good standing for the entire life of the permit. Please note that under the provisions of the Colorado Mined Land Reclamation Act and the Colorado Land Reclamation Act for the Extraction of Construction Materials, any Applicant or Operator that submits proof, acceptable to the Board or Division of Reclamation, Mining and Safety, that an Applicant or Operator is a unit of County or Municipal government, or is a department or division of State government, the Applicant or Operator is not required to submit or post any other instrument of financial responsibility but hereby promises to be responsible for the cost of reclamation up to the amount specified by the Board.

If the Board determines that the Operator is in default under this performance warranty and has failed to cure such default, although written notice of such default and ample time to cure such default have been given, the Operator's financial warranty shall be subject to forfeiture.

This performance warranty may be executed in multiple copies, each of which shall be treated as an original, but together they constitute only one agreement, the validity and interpretation of which shall be governed by the laws of the State of Colorado.

The provisions hereof shall bind and inure to the benefit of the parties hereto and their successors -and assigns.

SIGNED, SEALED AND DATED this \_\_\_\_\_ day of \_\_\_\_\_.

Mesa County (SEAL)

Oldcastle SW Group dba United Companies of

Operator

By: \_\_\_\_\_

Title: \_\_\_\_\_

**NOTARIZATION OF OPERATOR'S ACKNOWLEDGEMENT**

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission expires: \_\_\_\_\_

APPROVED:  
State of Colorado  
Mined Land Reclamation Board  
Division of Reclamation, Mining and Safety

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Division Director