

BEFORE THE MINED LAND RECLAMATION BOARD  
STATE OF COLORADO

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THE DIVISION OF RECLAMATION, MINING AND SAFETY'S RESPONSE TO  
CARGILL CATTLE FEEDERS LLC'S PETITION FOR A DECLARATORY ORDER

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IN THE MATTER OF CARGILL CATTLE FEEDERS, LLC, File No. M-2016-  
040

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The Division of Reclamation, Mining and Safety ("Division") submits its Response to a Petition for a Declaratory Order ("Petition") from Cargill Cattle Feeders, LLC ("Cargill") received by the Division on January 17, 2017. The Division states as follows:

**I. Factual Background**

- 1) On May 20, 2016, the Division received a response to their "Is It Mining?" questionnaire from Cargill for a proposed mining operation 12 miles northwest of Eckley, Colorado in Yuma County.
- 2) Answers to the questionnaire (found on the Division's publically available website) help assist the Division to determine whether a permit is needed for a proposed activity.
- 3) In their May 20, 2016, response to the "Is It Mining?" questionnaire, Cargill stated that the proposed mining operation was to extract on less than 3 acres at an approximate depth of 60 feet and that 35,000 yards of material would be extracted annually.
- 4) On July 24, 2016, the Division responded to Cargill's submitted "Is It Mining?" questionnaire.
- 5) The Division assigned file number M-2016-040 to the Cargill project.
- 6) The Division's final determination from the "Is It Mining?" questionnaire is that Cargill's proposed mining operation required a mined land reclamation permit from the Board prior to initiating the mining operation. This determination was never appealed by Cargill.
- 7) The Division received Cargill's 110(c) Permit Application on September 28, 2016.

- 8) Cargill's September Permit Application requested for 100 acres to be permitted, stated "the estimate timeframe for the mine's existence is infinite," and that the open pit mine would remove clay based soil to use to build up land for cattle pens and to fill holes at the operator's feedlot.
- 9) On October 6, 2016, the Division sent an Incompleteness Notice to Cargill in response to their September Permit Application.
- 10) The Division received Cargill's revised Permit Application on November 7, 2016. The revised permit application requested 9.97 acres to be permitted.
- 11) On November 9, 2016, the Division found the application complete for filing purposes, noticed various agencies regarding the application on file with the Division, and set the decision date for the application to December 9, 2016.
- 12) On December 1, 2016, the Division sent a Permit Application Adequacy Review letter to Cargill.
- 13) On December 2, 2016, the Division received a request for an extension to March 2, 2017, to respond to the Division's adequacy review from Joel Lemons of Cargill. The Division approved Cargill's request.
- 14) The Division received a Petition for Declaratory Order on behalf of Cargill from Deanne Frederickson of AGPROfessionals on January 17, 2017.

## II. Legal Definitions

- 15) The statutory definition of Mining Operation "includes transportation and processing operations on affected land." § 34-32.5-103(13), C.R.S.
- 16) Mining Operation is further defined by Construction Materials Rule 1.1(27) as "the development or extraction of construction material from its natural occurrences on affected land. The term includes, but is not limited to, open mining and surface operation and the disposal of refuse from underground and in situ mining. The term includes transportation or processing on affected lands."
- 17) Construction Material means rock, clay, silt, sand, gravel, limestone, dimension stone, marble or shale extracted for use in the production of non-metallic construction products. Construction Materials Rule 1.1(11).
- 18) Extraction means the removal of construction materials and/or overburden from places of natural occurrence to surface locations. Construction Materials Rule 1.1(15).

### **III. Legal Analysis**

- 19) Cargill's submitted an "Is It Mining?" questionnaire stating that their proposed mining operation consists of a "front end loader performing open pit mining" and the use of a county road to facilitate transport. Therefore, the Division determined that Cargill must obtain the necessary mined land reclamation permit prior to initiating the mining operation.
- 20) Cargill's Petition for a Declaratory Order is moot due to Cargill's Reclamation Permit application received by the Division on September 28, 2016.
- 21) As a result of the Reclamation Permit application received by the Division from Cargill, Deanne Frederickson's Petition is moot because there is no longer an actual controversy which has any practical significance.
- 22) In addition, Cargill's Petition for a Declaratory Order is no longer ripe due to:
  - a. Cargill's commencement of Mining Operations at the site;
  - b. Cargill's Reclamation Permit Application to the Division; and
  - c. Failure by Cargill to appeal the Division's final determination made on July 24, 2016, that Cargill's proposed mining operation required a mined land reclamation permit from the Board prior to initiating the mining operation.
- 23) Cargill's Petition for a Declaratory Order lacks a factual basis.
- 24) There is no exemption from a mined land reclamation permit for Cargill's proposed mining operation anywhere in the statute or rules.
- 25) Cargill's Petition for a Declaratory Order lacks a legal basis.

### **IV. Conclusion**

The Division respectfully requests that the Board deny Cargill's Petition for a Declaratory Order on its face. In addition, the Division requests that the Board require Cargill to obtain the necessary permit(s) prior to any further operation.

Respectfully submitted to the Colorado Mined Land Reclamation Board on  
January 23<sup>rd</sup>, 2017.

/s/ Scott Schultz

Scott Schultz #38666

Assistant Attorney General

Attorney for the Division of Reclamation,  
Mining and Safety

### Certificate of Service

I, Scott Schultz, hereby certify that on this 23<sup>rd</sup> day of January, 2017, I served **via electronic mail or regular mail** a true copy of the foregoing THE DIVISION OF RECLAMATION, MINING AND SAFETY'S RESPONSE TO CARGILL CATTLE FEEDERS, LLC PETITION FOR A DECLARATORY ORDER, addressed to the following:

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 1/23/17  
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Signature and date