



COLORADO

Division of Reclamation,
Mining and Safety

Department of Natural Resources

1313 Sherman Street, Room 215
Denver, CO 80203

March 14, 2017

Fremont Paving & Redi-Mix, Inc.
839 MacKenzie Avenue
Canon City, CO 81212

RE: Findings of Fact, Conclusions of Law and Order
Fremont Paving & Redi-Mix, Inc.
File No. M-2016-009

On March 13, 2017, the Mined Land Reclamation Board signed the enclosed Board Order for the above captioned operation. We strongly advise that you read this document carefully.

Based on the foregoing findings of fact and conclusions of law, the Board **DENIES** Objectors' petition for reconsideration of the January 2017 Order and the Board **AMENDS** the January 2017 Order as follows: paragraph 19 of the January 2017 Order is hereby stricken in its entirety and replaced with the following:

19. The Applicant has applied for a Storm Water Discharge Permit from the Water Quality Control Division of the Colorado Department of Public Health and Environment. The Applicant will be required to obtain the Storm Water Discharge Permit prior to commencing mining operations.

Sincerely,


Camille Mojar
Board Secretary

Enclosure(s)

Certified Mail

7016 2140 0000 2345 6892

Cc's

Elliott Russell
Wally Erickson
John Roberts
Camille Mojar



BEFORE THE MINED LAND RECLAMATION BOARD
STATE OF COLORADO

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

IN THE MATTER OF THE APPLICATION OF FREMONT PAVING & REDI-MIX, INC. FOR A 112
CONSTRUCTION MATERIALS RECLAMATION PERMIT, File No. M-2016-009

THIS MATTER came before the Mined Land Reclamation Board ("Board") on February 23, 2017 in Denver, Colorado for a hearing to consider the petition for reconsideration of the Board's order in this matter, file number M-2016-009. The petition was filed by Objectors Kelly G. Bond; David Cockrell; Hobbs Family Farm; Larga Vista Ranch; Pisciotta Farms & Produce Marketing; Jason and Tina Potestio; Michael and Velma Rinks; and Rusler Produce, Inc. ("Objectors"). Richard Ranson, Esq.; and John Ary appeared on behalf of Fremont Paving & Redi-Mix, Inc. ("Applicant"). There were no appearances on behalf of Objectors. Elliott Russell and Wally Ericson appeared on behalf of the Division of Reclamation, Mining and Safety ("Division").

The Board, having considered the parties' presentations and having been otherwise fully informed of the facts in the matter, hereby enters the following:

FINDINGS OF FACT

1. At its December 15, 2016 meeting, the Board considered the application of Applicant for a 112 construction materials reclamation permit ("Application"). After hearing, the Board granted the Application. The Board issued an order granting the Application, effective January 9, 2017 ("January 2017 Order").
2. The January 2017 Order provided, in paragraph 19, that: "The Applicant has obtained Storm Water Discharge Permit COR341772 from the Water Quality Control Division of the Colorado Department of Public Health and Environment." That finding of fact was based upon testimony presented at the December 15, 2016 hearing.
3. On January 18, 2017, the Board received a document entitled "Certain Objectors' Petition to Reconsider" ("Petition"). On February 10, 2017, the Board received Applicant's written response to the Petition.
4. At the February 23, 2017 hearing, the Division testified that information presented at the December 15, 2016 hearing was incorrect and that, in fact, Applicant has not yet obtained a Storm Water Discharge Permit from the Water Quality Control Division of the Colorado Department of Public Health and Environment. The Division testified that the Applicant has applied for, but not yet obtained, a Storm Water Discharge Permit.

CONCLUSIONS OF LAW

5. The Board has jurisdiction over this matter pursuant to the Colorado Land Reclamation Act for the Extraction of Construction Materials, Article 32.5 of Title 34, C.R.S. (2016).

6. Under Rule 2.9.1(2) of the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for Hard Rock, Metal, and Designated Mining Operations, 2 C.C.R. 407, petitions for reconsideration must "set forth a clear and thorough explanation of the grounds justifying reconsideration, including but not limited to new and relevant facts that were not known at the time of the hearing and the explanation why such facts were not known at the time of the hearing."

7. Rule 6.4.13 requires applicants to identify, in Exhibit M to the application, the permits that the applicant "holds or will be seeking in order to conduct the proposed mining and reclamation operations." Although the Petition presented relevant facts that were not known at the time of the hearing (i.e., that the Applicant has only applied for, but not obtained a Storm Water Discharge Permit), the incorrect information presented at the December 15, 2016 hearing and finding of fact in the January 2017 Order warrants either reconsideration of the Board's order altering the Board's finding that the Application should be granted. Under rule 6.4.13, the Applicant is not required to possess all required permits as a prerequisite for granting the Application; however, Applicant will be required to obtain all required permits, including but not limited to a Storm Water Discharge Permit, prior to commencing mining operations at the site.

ORDER

Based on the foregoing findings of fact and conclusions of law, the Board hereby orders as follows:

The Board DENIES Objectors' petition for reconsideration of the January 2017 Order.

The Board AMENDS the January 2017 Order as follows: paragraph 19 of the January 2017 Order is hereby stricken in its entirety and replaced with the following:

19. The Applicant has applied for a Storm Water Discharge Permit from the Water Quality Control Division of the Colorado Department of Public Health and Environment. The Applicant will be required to obtain the Storm Water Discharge Permit prior to commencing mining operations.

DONE AND ORDERED this 13 day of March 2017.

FOR THE COLORADO MINED LAND
RECLAMATION BOARD


Thomas Brubaker, Chair

NOTICE OF JUDICIAL REVIEW RIGHTS

This order becomes effective and final upon mailing. Any party adversely affected or aggrieved by agency action may commence an action for judicial review by filing a complaint with the district court within thirty-five (35) days after the effective date of this order, pursuant to section 24-4-106, C.R.S. (2016) and the Colorado Rules of Civil Procedure. In the event that a complaint for judicial review is filed, designations of record made in accordance with section 24-4-106(6), C.R.S. should be served on the Board at: 1313 Sherman Street, Room 215, Denver, CO 80203, Attention: Camie Mojar.

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER upon all parties herein by depositing copies of same in the United States mail, first-class postage prepaid, at Denver, Colorado, this 14 day of March 2017 addressed as follows:

By certified mail:

7016 2140 0000 2345 6892

Fremont Paving & Redi-Mix, Inc.
839 MacKenzie Avenue
Canon City, CO 81212

By electronic mail to:

Elliott Russell
Division of Reclamation, Mining & Safety
1313 Sherman Street
Denver, CO 80203

Wally Erickson
Division of Reclamation, Mining & Safety
1313 Sherman Street
Denver, CO 80203

John J. Roberts
First Assistant Attorney General
Department of Law
Business and Licensing Section
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 10th floor
Denver, CO 80203



Camille Mojar, Board Secretary