



COLORADO

**Division of Reclamation,
Mining and Safety**

Department of Natural Resources

1313 Sherman Street, Room 215
Denver, CO 80203

April 13, 2017

Ben Langenfeld
Greg Lewicki and Associates
11541 Warrington Court
Parker CO, 80138

RE: Ayers Pit, M-1981-004, Conversion Application (CN01), Adequacy Review No. 1

Dear Mr. Langenfeld,

On December 15, 2016 the Colorado Division of Reclamation Mining and Safety (Division/Office) received a conversion application to the Ayers Pit, DRMS File No. M-1981-004, operated by Dilley Sand and Gravel, LLC. The Division found the application complete on February 16, 2017. The Division has identified several adequacy review issues that will need to be addressed prior to the Divisions approval of the application. The Division is required to issue a decision on the application by May 17, 2017. Please address the following issues:

Rule 6.4.3; Exhibit C – Pre-mining and Mining Plan Map(s) of Affected Area

1. Please show the owner's name of the Ditch that is located within two hundred (200) feet of the affected land.
2. The mining plan Table D-1 shows three distinct mining stages; "Dune Excavation", "Reclamation", and "Undisturbed Pre-law". The table indicates these mining stages are shown on Maps C-1, C-2 and F. However, the boundaries of these individual parcels are not clearly shown on these maps. Please update Map C-2 to show these parcels. Please update the mining plan narrative and Table D-1 to indicate these parcels are shown on Map C-2.

Rule 6.4.4; Exhibit D – Mining Plan Map

3. Section 4 of the mining plan only indicates topsoil is available for salvage within the 1.3 acre "Dune Excavation". Based on Exhibit C-1 and C-2 it appears mining/excavation will advance east of the current highall to near the eastern boundary of the site in areas likely outside of the "Dune Excavation Area" and likely within the "Reclamation" mining stage. Please evaluate the topsoil availability for this portion of the excavation and supply a topsoil salvaging plan for this area.
4. Table D-2 of the mining plan projects the time to complete certain mining stages but does not indicate when in the time frame these stages will be initiated. Does the operator intend to conduct



the mining in the “Dune Excavation” area first prior to initiating mining/reclamation operations in the “Reclamation” area? Please clarify the sequence of the mining operation in Exhibit D. Also, when revising this table please consider the next adequacy review question.

5. Please see the adequacy review questions regarding Exhibit S and the Geotechnical Stability Exhibit. If a structure damage agreement cannot be obtained for the ditch or it cannot be demonstrated that the ditch will remain stable during the proposed mining and reclamation operation, the applicant will need to initiate reclamation of the highwall adjacent to the ditch prior to initiating mining of the “Dune Excavation Area” unless material is needed from the “Dune Excavation” area to backfill the highwall in question.

Rule 6.4.5; Exhibit E Reclamation Plan

6. Table E-1 is partially cut off on Page E-1. Please submit a revised page E-1 that shows the entire table.
7. Please update the reclamation plan narrative to indicate the mine slope will be graded to a 3H:1V ratio.
8. Table E-2 provides an estimated time to complete mining the “Dune area”, backfilling the slopes and topsoiling the disturbed area. However, the table does not indicate the sequence of when these activities will be initiated, it is not tied to the mining stages identified in the mining plan. Please update the schedule to tie the components of the reclamation plan to the mining stages identified in the Mining Plan.
9. Also, Table E-2 does not include a time frame for revegetation activities. Please include this in the updated reclamation schedule.
10. Page E-2 states “the Operator may elect to import material for placement in excavated areas; as detailed below”. No additional details about importation of material is discussed. Any imported material brought to the site to be used as fill or growth media must be “Inert Material” as defined by Rule 1.1(20). Please provide details regarding the importation of material or remove this statement from Page E-2. If the Operator desires to import material, the details regarding this activity must address the requirements of Rule 3.1.5(9).
11. “Ferry’s oatgrass” is included in the seed mixture proposed on Table E-3. The Division is not familiar with this species. Please provide the scientific name of this species and ascertain the availability of seed stock for this species. Or, please remove this species from the seed mixture.

Rule 4.4.7; Exhibit G Water Information

12. Please specifically identify the sources that will be used for water consumption at the site. Please indicate the projected amount from each of the sources of water to supply the project water requirements for the mining and reclamation operation.

Rule 6.4.12; Exhibit L – Reclamation Costs

13. The Division has reviewed the reclamation cost estimate submitted with Exhibit L and has estimated the cost to reclaim the site based on the information provided and based on the April 12, 2017 site inspection. The Division's estimate is attached. The Division may issue a Surety Increase revision that will require the operator to submit additional financial warranty within sixty (60) days of such a notice in accordance with Rule 4.2.1(2).

Rule 6.4.14, Exhibit N – Source of Legal Right to Enter

14. The eastern portion of the permit area is owned by Beverly J and Marvin D Kembel. Exhibit N includes a signed notarized statement granting Dilley Sand and Gravel, LLC. legal right to enter on the subject property until December 31, 2017. On March 16, 2017 the Division received a letter from Robert B Chapin of the Law Offices of Anderson and Chapin. Mr. Chapin represents the Kembels. This letter was forwarded to you on March 21st, 2017. On April 11, 2017 the Division received a letter from Mr. Chapin clarifying that the letter received on March 16, 2017 was not to be considered an objection. Based on the information provided by Mr. Chapin, it appears the Kembels are amenable to extending the right of entry based on the timelines provided on Table D-2. The Operator will need to keep this in mind and must maintain right of entry. Failure to do so may result in an enforcement action.

Rule 6.4.19; Exhibit S – Permanent Man-made Structures and Rule 6.5 ; Geotechnical Stability Exhibit

15. If the applicant does not own the ditch that is located east of the affected area, they must attempt to obtain notarized agreements between themselves and the person(s) having an interest in the structure that the Applicant is to provide compensation for any damage to the structure. Please provide these agreements or supply evidence these agreements were sought.
16. Included with the application was a Geotechnical Stability Exhibit. If the above referenced notarized agreement cannot be reached the applicant can utilize a geotechnical engineering evaluation to demonstrate compliance with Rule 6.4.19. The evaluation submitted demonstrates the ditch should be stable when the site has been reclaimed and the pit slopes have been graded to a 3H:1V ratio. However, based on the Division's last inspection, it appears portions of the current highwall are located within 100 feet of the ditch and the highwall is near vertical. Please demonstrate the ditch will not be damaged by the proposed mining and reclamation operations

near the ditch given the current site conditions and the method and angle this slope will be excavated.

As indicated above, the Division is required to issue a decision on the application by May 17th, 2017. If you need additional time to address these issues you must request an extension of the decision date in writing. If the decision date arrives and there are outstanding adequacy review issues and an extension has not been approved, the Division may deny the application.

If you have any questions feel free to contact me at (303) 866-3567, extension 8120.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jared Ebert", with a stylized flourish at the end.

Jared Ebert
Environmental Protection Specialist III

CC: Jim Dilley, Dilley Sand and Gravel

Enclosures: 1.) *CIRCES Reclamation Cost Estimate April 13, 2017.*