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September 14, 2017

Colorado Division of Reclamation Mining and Safety

Attn: Mr. Elliot Russell

Elliot.Russell@state.co.us

Via Electronic Mail and U.S. Mail

Re: Public Comment to Fox No 1 Clay Pit, 112- Regular Operation – amendment
Permit # M-1977-219

Dear Mr. Russell:

This firm represents Ms. Shelley Stuart-Bullock with respect to Summit Brick Company's (hereinafter "Summit") application to the Colorado Division of Reclamation Mining and Safety (hereinafter the "DRMS") for the purposes of increasing the permitted area of the Fox No 1 Clay Pit Mine in Pueblo County, Beulah, Colorado (herein after the "Mine"). Ms. Stuart-Bullock received notice of Summit's application via letter dated August 4, 2017. The letter indicates Ms. Stuart-Bullock may provide the DRMS with comment on Summit's application by 4:00 PM on September 14, 2017. Please find Ms. Stuart-Bullock's comments on the proposed expansion of the Mine in the paragraphs that follow.

I. Summit's application is procedurally insufficient for failure to provide required notice to Owners of Record.

Mr. Daniel W. Hanratty is the record title owner of real property affected by Summit's application, including property known as 4451 Siloam Road West, Beulah, CO 81023-9733 (Parcel # 2700000160). Pursuant to Rule 1.6.2(1)(e) of the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Material (hereinafter the "Rules and Regulations"), Summit is required to provide Mr. Hanratty, and all other Owners of Record, with a copy of the notice required by Rule 1.6.2(1)(d). By telephone call with this office on September 9, 2017, Mr. Hanratty disclosed that Summit did not mail or personally serve him a copy of the notice. Summit's failure to notice Mr. Hanratty raises the

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suspicion that it may have neglected to provide notice to other Owners of Record as required by Rule 1.6.2(1)(e). The DRMS should not approve Summit's application if it failed to meet all applicable notice procedures.

II. Expansion of the Mine will negatively impact the public's health, safety, and welfare.

Ms. Stuart-Bullock has significant concerns regarding the application's impact on the public's health, safety, and welfare. Ms. Stuart-Bullock rightfully worries how additional truck traffic, increase in noise/exhaust/dust from machinery and traffic, and compromised safety/security of the worksite and neighboring properties might affect the well-being of her and her neighbors.

Most notably, Ms. Stuart-Bullock fears approval of Summit's application will result in a decrease in neighboring property values. The expansion of the Mine will force neighboring owners to settle for lower prices from prospective buyers faced with the inconvenience of increased traffic, exhaust, noise, and risk of industrial accidents. Mr. Hanratty, a licensed and active appraiser, also shares Ms. Stuart-Bullock's decreased property value concern and is willing to provide his professional opinion at a public hearing. The DRMS should strongly consider the burdens it will place on the community if it approves Summit's application.

III. Summit's application provides an inadequate explanation of compliance with Colorado water law.

Rules 6.3.3(j) and 6.4.5(2)(c) require permits to specify how the permittee will comply with applicable Colorado water laws and regulations governing injury to existing water rights. The DRMS provided Summit with a letter dated April 30, 2010 (attached hereto as Exhibit 1) in which DRMS notified Summit that it may not have appropriate permit conditions to address certain reclamation liabilities arising from impacts to water resources (the "Compliance Letter").

In the Compliance Letter, the DRMS classified the Mine as an operation that potentially exposes groundwater, and as such, required Summit to obtain a well permit from the SEO pursuant to Section 37-90-137(11) of the Colorado Land Reclamation Act for the Extraction of Construction Materials (the "Act"), obtain a water-court approved augmentation plan, and/or provide sufficient bonding to provide an alternative method to mitigate injurious stream depletions that result from mining-related exposure of ground water. DRMS gave Summit until

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April 30, 2011 to meet the requirements of the Compliance Letter, and at the time of this writing, this firm is unaware of any resolution with respect to the Compliance Letter.

Summit's application makes two references to exposed groundwater. In both Exhibit G and Exhibit M, Summit contends that no ground water will be exposed at the Mine. Such an assertion directly contradicts the substance of the Compliance Letter and the application provides no closure to the potential exposed water compliance issue. In light of the confusion surrounding exposed ground water at the Mine, Ms. Stuart-Bullock requests that Summit formally addresses the topic at the subsequent public hearing. Absent a plausible explanation for the application's silence on the topic of exposed groundwater, the DRMS should deny the application for failure to comply with Rules 6.3.3(j) and 6.4.5(2)(c).

IV. The Application does not include a description of the Mine expansion's effect on wildlife of the area as required by the Rules and Regulations.

Rule 6.4.8(d) requires Summit to include "a description of the general effect during and after the proposed operation on the existing wildlife of the area, including but not limited to temporary and permanent loss of food and habitat, interference with migratory routes, and the general effect on the wildlife from increased human activity, including noise."

Summit received a letter dated December 27, 2016 from Mr. Michael Trujillo of the Colorado Parks and Wildlife Department (the "CPW Letter") and concluded that the Mine expansion should not increase the impact to wildlife in the area. A closer review of the CPW Letter uncovers real wildlife concerns not addressed in the application. Mr. Trujillo notes that the "surrounding area is abundant with wildlife, and has a variety of both big game and small game species, and numerous migratory bird species, including raptors." Further, Mr. Trujillo affirms that the CPW is "strongly committed to minimizing raptor disturbance" and recommends that Summit comply with attached guidelines and buffer zones.

Summit's application neglects to provide any description of the general effect on the wildlife referenced in the CPW Letter. Summit's application is void of any discussion regarding raptor disturbance, a topic very clearly important to the CPW. Exhibit H does not reference or include the very guidelines and buffer zones recommended in the CPW Letter. Summit's application is incomplete without a description of the general effect on existing wildlife and without a premeditated plan to minimize raptor disturbance.

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V. Summit's application fails to demonstrate that off-site areas will not be adversely affected by blasting and fails to acknowledge historic EPA blasting violations.

Rules 6.3.3(p), 6.4.4(i), and 6.5(4) require Summit to demonstrate that off-site areas will not be adversely affected by blasting during mining or reclamation operations. Exhibit D of Summit's application describes how exposed sandstone will be "drilled and shot as described in the approved Blasting Plan," but the application does not include the Blasting Plan or demonstrate that off-site areas will not be adversely affected by the same. Even if the original Mine permit includes an approved Blasting Plan, such a plan surely did not contemplate a 1,000 acre-plus expansion. Summit must revisit its Blasting Plan and demonstrate both adequate methods of safety and effectiveness prior to DRMS approving its application.

Through conversation with Mr. Hanratty, this firm is aware that the Mine is subject to previous EPA blasting violations (the "EPA Violations"). Mr. Hanratty recalls that the EPA Violations placed certain restrictions on the type and frequency of blasting that can occur on the Mine. A search of the EPA's website confirms the existence of the EPA Violations, although the site does not provide any further detail. The screenshot attached hereto as Exhibit 2 highlights reference to the historic violations. The DRMS must require Summit to address the topic of the EPA Violations at the public hearing. If the EPA Violations are still in effect, Summit must provide a detailed and comprehensive explanation of how it will conduct its operation in accordance with the EPA Violations. The DRMS should strongly consider the history of EPA violations on the Mine when deciding if Summit can safely operate an expansion nearly 25 times larger than the originally permitted area.

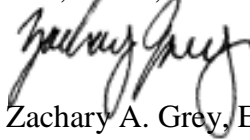
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We very much appreciate your consideration of Ms. Stuart-Bullock's comments. Please contact the undersigned should you have any questions regarding the foregoing.

Sincerely yours,
Frascona, Joiner, Goodman and Greenstein, P.C.

A handwritten signature in black ink, appearing to read "Zachary Grey", is positioned above the typed name.

By: Zachary A. Grey, Esq.
zac@frascona.com

cc: wally.erickson@state.co.us

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

Bill Ritter, Jr.
GovernorJames B. Martin
Executive DirectorLoretta E. Piñeda
Director

April 30, 2010

Summit Brick & Tile Co.
P.O. Box 533
Pueblo, CO 810020533

RE: Mining Operations with Exposed Ground water

To Whom It May Concern:

The Division of Reclamation Mining and Safety is responsible for ensuring that Sand and Gravel mining operators comply with the requirements of the Colorado Land Reclamation Act for the Extraction of Construction Materials (Act) and the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials (Rules). Among these requirements are provisions for the protection of water resources. The Act requires that reclamation plans must ensure minimization of disturbances to the prevailing hydrologic balance, including disturbances to the quantity of water in the area affected by mining and in the surrounding areas. § 34-32.5-116(4)(h). Rule 3.1.6(1)(a) requires compliance with Colorado water laws and regulations governing injury to existing water rights both during and after mining. Permits must specify how the permittee will comply with applicable Colorado water laws and regulations governing injury to existing water right rights. Rule 6.3.3(j); Rule 6.4.5(2)(c). After an extensive review, the Division determined that several operators may not have appropriate permit conditions to address certain reclamation liabilities arising from impacts to water resources.

In September 2009 the Division of Water Resources (DWR) updated its Guidelines for Sand and Gravel Pits. These guidelines provide guidance on achieving compliance with state law regarding replacement of depletions from sand and gravel mining, thus the guidelines provide a benchmark for the protection of hydrologic balance required under the Act and Rules. As noted in the Guidelines, sand and gravel operations which expose groundwater without complying with state law create a reclamation liability by impacting available groundwater.

State law requires that any person exposing ground water must obtain a well permit from the SEO pursuant to § 37-90-137(11). Because exposed groundwater results in out-of-priority water depletions, operations which expose ground water must also eventually obtain a water-court approved augmentation plan. Currently, several operators do not have either an augmentation plan or bonding to provide an alternative method to mitigate injurious stream depletions that result from mining-related exposure of ground water. The Division has a statutory duty to ensure that lands affected by mining are reclaimed in a manner that complies with state law and to ensure that operators have sufficient bonding to achieve reclamation. In order to assist operators in achieving compliance with these requirements, the Division proposes that, by April 30, 2011, operators should contact the Division and agree upon a plan for achieving compliance.

Exhibit 1

The Division has identified four approaches for operators:

1. File a financial warranty that will ensure backfilling of the pit to cover the exposed ground water to a depth of two feet above the static ground water level or,
2. Obtain a court approved augmentation plan prior to exposing ground water or,
3. File a financial warranty to cover the cost of installing a clay liner or slurry wall that meets the Division of Water Resources requirements for preventing ground water exposure or,
4. Obtain approval from the Division of Water Resources that acknowledges compliance with the SEO's requirements pursuant to § 37-90-137(11).

The Division will work with operators on an individual basis as they move to implement one of these plans. It is likely that options 1 and 3 will require the submittal of a technical revision or an amendment to the existing permit depending on the nature of the current mining and reclamation plan and the proposed changes. Increased financial warranties, as a result of these modifications, may be posted in a phased manner not to exceed three years. Amendments or revisions currently under review will be required to be approved by April 30, 2011 and may use the phased financial warranty approach described above. New applications going forward or presently under review by the Division will be required to meet the requirements of one of the options 1-4 at the time of application approval. Failure of affected operators to initiate contact with the Division and gain compliance as described above could result in an enforcement action being issued by the Division.

If you have any questions, please contact Tony Waldron at 303-866-3567, extension 8150.

cc: M1998067 Patton Clay Mine
M1985203 Edmundson Clay Mine
M1977320 8-Mile Clay Mine
M1977321 Native/Pierre Mine
M1977322 Beaver Crk Clay Mine
M1977324 Stocks Clay Mine
M1977219 Fox No. 1 Clay Pit
M1977317 Cedarwood Clay Mine
M1977325 Cherokee Clay Mine
M1993080 Calhan Clay Pit

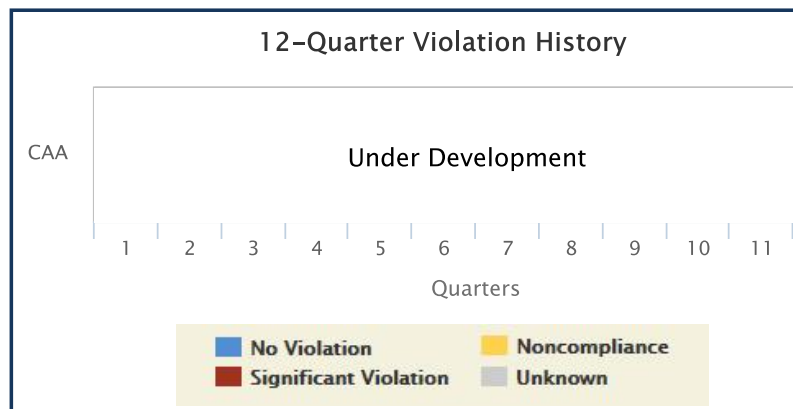


Detailed Facility Report

Facility Summary

SUMMIT BRICK AND TILE CO. - FOX #1 PIT
1.5 MI NO OF HWY 78 SILOAM RD, BEULAH, CO
81023 ⓘ

FRS (Facility Registry Service) ID: 110007353675
EPA Region: 08
Latitude: 38.10136
Longitude: -104.926308
Locational Data Source: NEI
Industry: Mining (except Oil and Gas)
Indian Country: N



Enforcement and Compliance Summary ⓘ

Statute	Insp (5 Years)	Date of Last Inspection	Compliance Status	Qtrs in NC (Non-Compliance) (of 12)	Qtrs in Significant Violation	Informal Enforcement Actions (5 years)	Formal Enforcement Actions (5 years)	Penalties from Formal Enforcement Actions (5 years)	EPA Cases (5 years)	Penalties from EPA Cases (5 years)
CAA	1	06/13/2017		0	0	--	--	--	--	--

Regulatory Information

Clean Air Act (CAA): Operating Minor (CO0000000810100257)
Clean Water Act (CWA): No Information
Resource Conservation and Recovery Act (RCRA): No Information
Safe Drinking Water Act (SDWA): No Information

Other Regulatory Reports

Air Emissions Inventory (EIS): No Information
Greenhouse Gas Emissions (eGGRT): No Information
Toxic Releases (TRI): No Information

Facility/System Characteristics

Facility/System Characteristics

System	Statute	Identifier	Universe	Status	Areas	Permit Expiration Date	Indian Country	Latitude	Longitude
FRS		110007353675					N	38.10136	-104.926308
AIR	CAA	CO0000000810100257	Minor Emissions	Operating	CAASIP		N		

Facility Address

System	Statute	Identifier	Facility Name	Facility Address
FRS		110007353675	SUMMIT BRICK AND TILE CO. - FOX #1 PIT	1.5 MI NO OF HWY 78 SILOAM RD, BEULAH, CO 81023
AIR	CAA	CO0000000810100257	SUMMIT BRICK AND TILE CO. - FOX #1 PIT	SW SE SEC 30 T22S R67W, RYE 12.2 MI N OF, CO 81023

Facility SIC (Standard Industrial Classification) Codes

System	Identifier	SIC Code	SIC Desc
AIR	CO0000000810100257	1459	Clay And Related Minerals

Facility NAICS (North American Industry Classification System) Codes

System	Identifier	NAICS Code	NAICS Description
AIR	CO0000000810100257	212325	Clay and Ceramic and Refractory Minerals Mining

Facility Tribe Information

Reservation Name	Tribe Name	EPA Tribal ID	Distance to Tribe (miles)
No data records returned			

Enforcement and Compliance

Compliance Monitoring History (5 years)

Statute	Source ID	System	Inspection Type	Lead Agency	Date	Finding
CAA	CO0000000810100257	AIR	FCE On-Site	State	06/13/2017	

Entries in italics are not considered inspections in official counts.

Compliance Summary Data

Statute	Source ID	Current SNC (Significant Non-compliance)/HPV (High Priority Violation)	Description	Current As Of	Qtrs in NC (Non-Compliance) (of 12)
CAA	CO0000000810100257	No		09/09/2017	0

Three Year Compliance Status by Quarter

Statute	Program/Pollutant/Violation Type												
	CAA (Source ID: C00000000810100257)												
	Facility-Level Status												
	No Violation												
	HPV History												
Violation Type		Agency	Programs	Pollutants									
Historic Violations													

Informal Enforcement Actions (5 Years)

Statute	System	Source ID	Type of Action	Lead Agency	Date
No data records returned					

Formal Enforcement Actions (5 Years)

Statute	Source ID	Type of Action	Lead Agency	Date	Penalty	Penalty Description
No data records returned						

ICIS (Integrated Compliance Information System) Case History (5 years)

Primary Law/Section	Case No.	Case Type	Lead Agency	Case Name	Issued/Filed Date	Settlement Date	Federal Penalty	State/Local Penalty	SEP (Supplemental Environmental Project) Cost	Comp Action Cost
No data records returned										

Environmental Conditions

Water Quality

Permit ID	Combined Sewer System?	Number of CSO (Combined Sewer Overflow) Outfalls	12-Digit WBD (Watershed Boundary Dataset) HUC (RAID Reach Address Database)	WBD (Watershed Boundary Dataset) Subwatershed Name (RAID Reach Address Database)	State Waterbody Name (ICIS (Integrated Compliance Information System))	Impaired Waters	Impaired Class	Causes of Impairment(s) by Group(s)	Watershed with ESA (Endangered Species Act)-listed Aquatic Species?
No data records returned									

Waterbody Designated Uses

Reach Code	Waterbody Name	Exceptional Use	Recreational Use	Aquatic Life Use	Shellfish Use	Beach Closure Within Last Year	Beach Closure Within Last Two Years
No data records returned							

Air Quality

Non-Attainment Area?	Pollutant(s)	Applicable Non-Attainment Standard(s)
No	Ozone	
No	Lead	
No	Particulate Matter	
No	Sulfur Dioxide	

Pollutants

Toxics Release Inventory History of Reported Chemicals Released in Pounds per Year at Site ⓘ

TRI Facility ID	Year	Total Air Emissions	Surface Water Discharges	Off-Site Transfers to POTWs (Publicly Owned Treatment Works)	Underground Injections	Releases to Land	Total On-site Releases	Total Off-site Releases
No data records returned								

Toxics Release Inventory Total Releases and Transfers in Pounds by Chemical and Year ⓘ

Chemical Name
No data records returned

Demographic Profile

Demographic Profile of Surrounding Area (3 Miles)

This section provides demographic information regarding the community surrounding the facility. ECHO compliance data alone are not sufficient to determine whether violations at a particular facility had negative impacts on public health or the environment. Statistics are based upon the 2010 US Census and American Community Survey data, and are accurate to the extent that the facility latitude and longitude listed below are correct. The latitude and longitude are obtained from the EPA Locational Reference Table (LRT) when available.

Radius of Area:	3	Land Area:	100%	Households in Area:	132
Center Latitude:	38.10136	Water Area:	0%	Housing Units in Area:	170
Center Longitude:	-104.926308	Population Density:	11/sq. mi.	Households on Public Assistance:	0
Total Persons:	303	Percent Minority:	8%	Persons Below Poverty Level:	91

Race Breakdown	Persons (%)	Age Breakdown	Persons (%)
White:	292 (96%)	Child 5 years and younger:	16 (5%)
African-American:	0 (0%)	Minors 17 years and younger:	63 (21%)
Hispanic-Origin:	19 (6%)	Adults 18 years and older:	240 (79%)
Asian/Pacific Islander:	0 (0%)	Seniors 65 years and older:	62 (20%)

Race Breakdown	Persons (%)	Age Breakdown	Persons (%)
American Indian:	3 (1%)		
Other/Multiracial:	7 (2%)		

Education Level (Persons 25 & older)	Persons (%)	Income Breakdown	Households (%)
Less than 9th Grade:	5 (2.39%)	Less than \$15,000:	17 (13.08%)
9th through 12th Grade:	2 (.96%)	\$15,000 - \$25,000:	16 (12.31%)
High School Diploma:	51 (24.4%)	\$25,000 - \$50,000:	25 (19.23%)
Some College/2-yr:	85 (40.67%)	\$50,000 - \$75,000:	26 (20%)
B.S./B.A. or More:	66 (31.58%)	Greater than \$75,000:	46 (35.38%)

STATE OF
COLORADO

Russell - DNR, Elliott <elliott.russell@state.co.us>

Public Comment to Fox No 1 Clay Pit - Ms. Shelley Stuart-Bullock

Zachary A. Grey <zac@frascona.com>

Thu, Sep 14, 2017 at 3:35 PM

To: "elliott.russell@state.co.us" <elliott.russell@state.co.us>

Cc: "wally.erickson@state.co.us" <wally.erickson@state.co.us>

Mr. Russell,

Please find the letter outlining my client's comments with respect to the Fox No 1 Clay Pit permit application. A hard copy will follow by mail. Per a phone call with your office and mine, the timely electronic mailing of this letter satisfies the 4:00 PM deadline.

Please confirm your receipt of this email with the referenced attachment.

Thank you,

Zachary A. Grey, Esq.

Frascona, Joiner, Goodman and Greenstein, P.C.

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zac@frascona.com www.frascona.com

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170914 ZAG to DRMS re Fox No 1 Clay Pit.pdf

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