



October 23, 2017

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**DIVISION OF RECLAMATION
MINING AND SAFETY**

Colorado Department of Natural Resources
Division of Reclamation, Mining and Safety
Attn: Mr. Michael Cunningham
1313 Sherman Street; Room 215
Denver Colorado, 80203

**RE: Appeal of Office Decision to Deny Permit No. M-2016-054 Application
And Statement of Issues
Irwin/Thomas Mine – Aggregate Industries – WCR, Inc. (Applicant)**

Dear Mr. Cunningham:

This letter is provided as Applicant's appeal of the Office's (Division) decision to deny the Irwin/Thomas Mine (M-2016-054) Regular 112 Reclamation Permit application and Applicant's petition for a hearing before the Mined Land Reclamation Board. The Applicant waives the Division's 30-day written notice of the formal Board Hearing date requirement and requests scheduling of the appeal for the first available Board Hearing date.

Applicant also includes with this letter its statement of issues, pursuant to Rule 1.4.12(a), within ten (10) days of the Office's Notice of Application Denial dated October 13, 2017. The statement includes an explanation of the grounds for seeking a reversal of the Office's decision. In the Office's Notice of Application Denial, the unresolved adequacy issues include, but are not limited to, the following:

1. The Applicant did not adequately demonstrate how disturbances to the prevailing hydrologic balance of the affected land and the surrounding area will be minimized during a flood event.
2. The Applicant did not adequately demonstrate through an appropriate engineering analysis that permanent man-made structures within 200 feet of the affected area would not be damaged by activities occurring at the mine site.

The Division's final adequacy review comments dated August 25, 2017, only addressed these two issues and confirmation of reclamation cost estimates. The Applicant filed responses to the final adequacy items on October 2, 2017 and subsequently submitted a request for an extension of decision date from October 6 to October 31 based upon telephone communications with Division staff which indicated that an extension beyond the 365th day of filing could be granted since the Applicant and Division were close to resolving the remaining issues.

Issue #1 – Hydrologic Balance

The Division's adequacy review comments have requested information regarding Exhibit G, Water Information, and disturbances to the hydrologic balance. Applicant believes that, with each response to these comments, information adequate to address the Division's concerns were provided; however, the Division, in its adequacy review comments dated August 25, 2017, advised that a flood impact analysis is required.

In order to satisfy this requirement, Applicant performed a flood impact analysis for the Irwin/Thomas Mine areas using the best available information and submitted the analysis to the Division in Applicant's October 2, 2017 adequacy responses. The additional analyses reference the 2013 Urban Drainage and Flood Control District "Technical Review Guidelines for Gravel Mining and Water Storage Activities within or Adjacent to 100-year Floodplains" as requested by the Division. Additional materials and sources of information used in the analyses were also referenced in the adequacy review response. The analyses addressed both the stability of St. Vrain Creek and post-mining pit slope protection. Based on the analyses, the Applicant committed to flood protection measures both during mining activities and for final reclamation. The Applicant also noted that a Flood Plain Development Permit was required by the City of Longmont and a copy of the approved permit would be provided to the Division. We believe the flood impact analysis satisfies the Division's final adequacy review comment regarding minimizing disturbance to the prevailing hydrologic balance. However, if the Division requires further clarification, reference material, analyses, or flood protection measures, the Applicant commits to addressing all issues.

Issue #2 – Setback Distance

The Division's adequacy review comments have also requested information regarding Exhibit S, Permanent Man-made Structures, which the Applicant believes it has addressed. Exhibit S provides options for addressing stability "Where the mining operation will (emphasis added) adversely affect the stability of significant, valuable and permanent man-made structures located within two hundred (200) feet of the affected land". Based upon Applicant's proposed mining setbacks, Applicant believes that structures within two hundred feet of the affected land are not at risk and that mining operations will not adversely affect such structures.

The Applicant initially committed to a minimum mining setback from the permit boundary of 50 feet or twice the pit depth, whichever is greater. A setback of twice the pit depth has previously been accepted by the Division as a conservative permit boundary setback for the protection of man-made structures within 200 feet of the affected area in lieu of a detailed engineering analysis.

While Applicant's proposed mining setbacks are expected to preclude adverse effects on structures within 200 feet of the affected area, the Division required that Applicant provide notarized agreements with all structure owners and that an engineering analysis be provided if agreements could not be obtained. The Applicant reads Rule 6.4.19 as saying that "either" structure agreements can be obtained "or" an appropriate engineering evaluation can be

*Mr. Michael Cunningham
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provided. The interpretation by the Applicant suggests that notarized agreements are not required. This is consistent with the Division's interpretation in previously approved Regular 112 Reclamation Permit applications.

Based upon Applicant's position that the proposed mining setbacks are a conservative setback historically accepted by the Division as adequate protection of man-made structures, neither structure agreements nor an engineering analysis would be required under the Rule. However, in response to the adequacy review comments dated August 25, 2017, the Applicant provided, by certified letter, information to all structure owners within 200 feet of the affected area with an agreement offer to compensate potential damages to their structure(s). Copies of the structure agreements, transmittal letters and proof of mailing were submitted to the Division with Applicant's October 2, 2017 adequacy review responses. The Applicant further committed to providing the Division all certified letter return receipts as proof of attempted delivery and copies of all structure agreements obtained.

In order to further resolve the Division's concerns regarding its position that the requirements of Exhibit S apply to Applicant's proposed mining operations, a geotechnical engineering firm has been contracted to perform an engineering slope stability evaluation to confirm the applicability of the Applicant's original setback commitment (50 feet or twice the pit depth) or to provide an alternative appropriate setback. The Applicant commits to providing the Division with the final geotechnical analysis results and to establish mining setbacks recommended by the analysis from permit boundaries and man-made structures not owned by the Applicant.

As there have been no objections filed in opposition to its application and Applicant is currently providing all of the information requested by the Division and is committed to resolving the remaining issues as set forth in the Division's Decision to Deny the application, Applicant respectfully requests that the Board reverse the Division's decision and grant approval of Permit M-2016-054.

Sincerely,
Blue Earth Solutions, LLC



William Schenderlein, P.E.
Project Manager