

STATE OF
COLORADO

Ebert - DNR, Jared <jared.ebert@state.co.us>

Asphalt Specialties info

Christine Francescani <CFrancescani@adcogov.org>
To: "jared.ebert@state.co.us" <jared.ebert@state.co.us>

Fri, May 25, 2018 at 3:00 PM

Hey Jared,

Good to talk with you. Attached is the complaint the County filed with the Court listing their violations. The Court denied the emergency temporary restraining order (denial attached), so we are continuing with litigation to try to obtain a regular injunction prohibiting them from operating without permits.

I've also attached the notice letter our code officer sent in January, which is when this latest round started. It cites them for recycling and filling without a permit (see also the screen shot labeled "initial inspection"). I also included the code officer's case comments. Lastly, I've attached Jen's inspection report from January noting several violations.

Let me know if you have any questions.

Best,



Christine M. Francescani
Assistant County Attorney
Adams County Attorney's Office
4430 S. Adams County Parkway

5th Floor, Suite C5000B

Brighton, CO 80601-8206

720.523.6884 | Fax: 720.523.6114

cfrancescani@adcogov.org | adcogov.org

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7 attachments



image001.jpg
9K



TROComplaint.pdf

1218K



TRO Order Denied.pdf

196K



12021 BRIGHTON RD ZVNOV LETTER.pdf

230K



12021 BRIGHTON RD INITIAL INSPECTION.pdf

160K



12021 BRIGHTON RD CASE COMMENTS.pdf

156K



DOC052518-05252018135537.pdf

74K



**Community and Economic Development
Department Neighborhood Services Code
Enforcement Case Comments Report**

Record Number: VIO2018-00035

Parcel Number: 0157134000075

Primary Address: 12021 BRIGHTON RD

Work Description: Recycling operations without a current permit.

Case Comment: On 02-01-2018 I officer Flores completed a final inspection on this property after getting consent from the manager Gary (303-994-0408). I advised Gary and his employees i needed to do a site inspection to do follow up wit my case. I drove the property and took photos. Property is still in operation as loaders and construction equipment are operating on site property still has outside storage of recyclable concrete and rebar material. On this property machines are still operating and are working this material. I asked the site supervisor Mike if they had obtained the proper permits, he replied he doesn't know. He advised me to call Gary. Gary had left by the time I was done with the inspection. I will contact Gary to see what the status is on the permit paperwork.

02/08/2018
FLOREJ

Case Comment: 02-01-2018 Final inspection was completed.

02/08/2018

FLOREJ

Case Comment: On 02-08-2018 at 9:35 am I officer Flores contacted Gary (asphalt specialties manager) to talk to him about the status on renewing his permits. He advised me he had contacted CDPHE and had resolved his permits with them about recycling/reclamation. I advised him that I was contacting him in reference to our county case and that we did not have nothing to do with the state case or permitting. He advised me that he was not sure what the status was with the CUP permit and Certificate of designation. He also told me he would be contacting his permit guy to get that in order. I advised him to call Community and Economic Development Department (planning) to discuss with them what they need to obtain that permits. I also advised him that I was going to escalate his case to our county attorney office, since I completed the final inspection and they still where operating/recycling and had outside storage of concrete and rebar material on site. I also reminded him that there CUP permit had expired since December 6, 2017. All of this information was sent on the initial notice and sent to the involved parties and registered agent for this property, but yet nothing has been completed. This case will now be escalated to our county attorney's office, nothing further.

02/08/2018
FLOREJ

Record Number: VIO2018-00035

Parcel Number: 0157134000075

Primary Address: 12021 BRIGHTON RD

Work Description: Recycling operations without a current permit.

Case Comment: On 12-14-2017 I officer Flores completed a site inspection after on this property after receiving a complaint from our environmental specialist about this property operating with a expired CUP permit. Upon arrival I contacted a employee at the weight in station and advised them if I could complete a site inspection of the property. They told me that they had to contact the site manager to obtain permission. I was later then greeted by the two site managers and asked them if I could go onto the property to complete my site inspection. They responded yes and gave me permission. In my inspection I observed outside storage or mounds of concrete/asphalt material being stored. I also observed machines operating or recycling this material as my photos demonstrate this. I later came back to my office and reviewed my findings with Jen Rutter (environment specialist) and determined that they are still in violation. A zoning letter of violation was sent on 01-10-2018 to the involved personal with this property

02/08/2018

FLOREJ



January 10, 2018

DANIEL HUNT
REGISTERED AGENT FOR ASPHALT SPECIALTIES CO., INC.
10100 DALLAS STREET
HENDERSON CO 80640

RE: Property At: **12021 BRIGHTON RD**
Case #: **VIO2018-00035**
Tax Assessor Parcel #: **0157134000075**

Dear Property Owner(s), Occupant(s), Lender(s):

This office is charged with the duty of performing inspections for the enforcement of the zoning regulations of Adams County Colorado. A site inspection conducted on **12/14/2017** at the abovementioned premises indicates that this property is in violation of the following sections of the Adams County Development Standards and Regulations:

3-10-06 & 3-07-01 Use Chart -Per Use chart, outside storage is prohibited in an A-3 zone.

As of December 6, 2017 this property is still operating or recycling material with no current CUP (conditional use permit) and expired filing for the CD (certificate of designation). Please cease all recycling and crushing of concrete on this property. All recycling requires a permit. Please contact Adams County Community and Economic Development (Planning Department) for more information on how to obtain proper permits to operate (720-523-6800).

You have fourteen (14) days to bring your property into compliance. A follow-up inspection will be made on or after **01/31/2018**. If at that time the violation still exists, the matter will be sent to the County Attorney's Office for further action.

Pursuant to Colorado Revised Statutes § 30-28-124.5, the penalty for violation of the County's Development Standards and Regulations is a court judgment of \$500 to \$1,000 in penalties per violation and up to \$100 per day per violation after judgment until the violation is corrected. Injunctive relief may also be sought.

If you have questions regarding this action, please contact the Adams County Community & Economic Development Department at 720-523-6800 between 8:00 a.m. and 4:30 p.m. Monday through Friday.

Sincerely,

Neighborhood Services Division
Code Compliance Unit

EXCERPTS FROM THE ADAMS COUNTY DEVELOPMENT STANDARDS AND REGULATIONS

3-07-01 USE CHART - The following tables summarize the permitted, conditionally permitted, and prohibited uses in each zone district. These tables are provided for ease of comparing allowed and prohibited uses between zone districts. Other standards or restrictions may apply within a specific zone district. The reader is advised to check the restrictions in the specific zone district section within these standards and regulations, review any restrictions within any overlay zone district which may further limit the permitted and conditional uses, and review any performance standards applicable to the use. If there is a conflict between the Use Chart and Dimensional Requirements (Chart) and the specific language in the zone district then the language in the zone district shall prevail over the chart.

3-10-06 PROHIBITED USES (A-3) - All uses: (1) not expressly identified as permitted uses in this Section; or (2) determined to be permitted by the Director of Community and Economic Development pursuant to Section 3-05-01 of these standards and regulations, are prohibited.

USE CATEGORIES	ZONE DISTRICT					
	A-1	A-2	A-3	RE	R-1-C	R-2
Mobile homes manufacturing and storage	-	-	-	-	-	-
Vacation camper manufacturing	-	-	-	-	-	-
Accessory Outdoor Storage (up to 25% of the building area)*	-	-	-	-	-	-
Accessory Outdoor Storage (in excess of 25% and up to 100% of the building area)*	-	-	-	-	-	-
Outdoor Storage (in excess of 100% of the building area)*	-	-	-	-	-	-



January 10, 2018

ASPHALT SPECIALTIES CO INC
10100 DALLAS STREET
HENDERSON, CO 80640

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3-10-06 & 3-07-01 Use Chart -Per Use chart, outside storage is prohibited in an A-3 zone.

As of December 6, 2017 this property is still operating or recycling material with no current CUP (conditional use permit) and expired filing for the CD (certificate of designation). Please cease all recycling and crushing of concrete on this property. All recycling requires a permit. Please contact Adams County Community and Economic Development (Planning Department) for more information on how to obtain proper permits to operate (720-523-6800).

You have fourteen (14) days to bring your property into compliance. A follow-up inspection will be made on or after **01/31/2018**. If at that time the violation still exists, the matter will be sent to the County Attorney's Office for further action.

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USE CATEGORIES	ZONE DISTRICT					
	A-1	A-2	A-3	RE	R-1-C	R-2
Mobile homes manufacturing and storage	-	-	-	-	-	-
Vacation camper manufacturing	-	-	-	-	-	-
Accessory Outdoor Storage (up to 25% of the building area)*	-	-	-	-	-	-
Accessory Outdoor Storage (in excess of 25% and up to 100% of the building area)*	-	-	-	-	-	-
Outdoor Storage (in excess of 100% of the building area)*	-	-	-	-	-	-

< Record ID: VIO2018-00035 

Update

Reset

Cancel

View Log 


Help

Inspection Detail


Checklist

Conditions

Documents


Addresses
Record
My TasksInspection Type *
Initial Inspection


Inspector * Current User

Joaquin Flores 

Department * Current Department

CED CODE INSP 


Status *

Zoning Recheck 


Inspection Date

12/14/2017 

Scheduled Date *

01/09/2018 

Request Date

01/08/2018 Result Comment  Standard Comments

As of December 6, 2017 this property is still operating or recycling material with no current CUP (conditional use permit) and expired filling for the CD (certificate of designation). Please cease all recycling and crushing of concrete on this property. All recycling requires a permit. Please contact Adams County Community and Economic Development (Planning Department) for more information on how to obtain proper permits to operate (720-523-6800).

check spelling

Request Comment

Scheduled via Script

Case No.

VIO2018-00035

CAP Type *

Enforcement/Violation/NA/NA

CAP ID *

18VIO-00000-00035

Address

12021 BRIGHTON RD, -, CO 000000000

As of December 6, 2017 this property is still operating or recycling material with no current CUP (conditional use permit) and expired filling for the CD (certificate of designation). Please cease all recycling and crushing of concrete on this property. All recycling requires a permit. Please contact Adams County Community and Economic Development (Planning Department) for more information on how to obtain proper permits to operate (720-523-6800).

3-10-06 & 3-07-01 Use Chart -Per Use chart outside storage is prohibited in a A-3 zone.

DISTRICT COURT, ADAMS COUNTY, COLORADO		<p>DATE FILED: February 28, 2018 4:47 PM CASE NUMBER: 2018CV30294</p>
Court Address: 1100 Judicial Center Drive, Brighton, CO, 80601		
Plaintiff(s) BD OF COUNTY COMMISSIONERS v. Defendant(s) ASPHALT SPECIALTIES CO INC		
		<p style="text-align: center;">△ COURT USE ONLY △</p> <p>Case Number: 2018CV30294 Division: W Courtroom:</p>
<p style="text-align: center;">Order: ORDER RE VERIFIED COMPLAINT FOR EMERGENCY TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION</p>		

The motion/proposed order attached hereto: DENIED.

The court has reviewed the motion for the issuance of an ex parte temporary restraining order and rejects the plaintiff's contention that the requested relief should be granted ex parte and without notice to the defendant. As best as the court can discern from the pleadings, defendant's continued activities essentially mirror what defendant was permitted to do after being issued conditional use permits and thus any threat to the public is no different than when the defendant was operating pursuant to the conditional use permits. The facts alleged do not warrant the issuance of injunctive relief without first giving notice to the defendant.

Accordingly, the court denies the plaintiff's request and orders the plaintiff to provide proper notice to the defendant about the pendency of plaintiff's complaint for injunctive relief. Assuming proper notice, plaintiff shall then contact the court to set this matter for further proceedings if need be.

Issue Date: 2/28/2018



ROBERT WALTER KIESNOWSKI JR.
District Court Judge

DISTRICT COURT ADAMS COUNTY, COLORADO 1100 Judicial Center Drive Brighton, CO 80601 <hr/> Plaintiff: BOARD OF COUNTY COMMISSIONERS OF ADAMS COUNTY v. Defendant: ASPHALT SPECIALTIES CO., INC.	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
Christine M. Francescani, #44665 Assistant Adams County Attorney 4430 S. Adams County Parkway 5 th Floor, Suite C5000B Brighton, CO 80601 Telephone: 720-523-6116 Facsimile: 720-523-6114	Case Number: <div style="display: flex; justify-content: space-between;"> Division Courtroom </div>
TEMPORARY RESTRAINING ORDER	

This matter is before the court on a Verified Complaint for Emergency Temporary Restraining Order and Motion for Preliminary Injunction filed by the Board of County Commissioners of Adams County (“County”) seeking to prevent ASCI from continuing to fill a pit with material, and continuing to crush and recycle materials, on the property located at 12021 Brighton Road in unincorporated Adams County.

The Court, having reviewed the Verified Complaint for Emergency Temporary Restraining Order and Motion for Preliminary Injunction and being advised on the premises, does hereby find that the County’s Verified Complaint for Emergency Temporary Restraining Order should be GRANTED for the following reasons:

Without the required authorizations for ASCI’s operations in place, namely a Conditional Use Permit for recycling and a Certificate of Designation for filling, the County is irreparably injured by being unable to ensure the health, safety, and welfare of its citizens. The County has notified ASCI of its violations and intention to seek enforcement and ASCI continues to operate without County authorization, and thus this Order is granted without notice.

The Court hereby ORDERS that ASCI cease filling the pit on the Property located at 12021 Brighton Road in unincorporated Adams County with material, and cease all crushing and recycling of materials onsite. The Court further ORDERS that the only operations that ASCI

may perform on the Property is to remove materials from the Property. The Adams County Sheriff's Office shall have the authority to enforce this temporary restraining order by any means necessary.

This Order expires on _____, 2018.

DONE AND SIGNED THIS _____ DAY OF _____, 2018 at _____
a.m./p.m.

BY THE COURT:

District Court Judge

DISTRICT COURT ADAMS COUNTY, COLORADO 1100 Judicial Center Drive Brighton, CO 80601 <hr/> Plaintiff: BOARD OF COUNTY COMMISSIONERS OF ADAMS COUNTY v. Defendant: ASPHALT SPECIALTIES CO., INC.		DATE FILED: February 22, 2018 4:20 PM FILING ID: 10C137AD3C0AE CASE NUMBER: 2018CV30294 ▲ COURT USE ONLY ▲
Christine M. Francescani, #44665 Assistant Adams County Attorney 4430 S. Adams County Parkway 5 th Floor, Suite C5000B Brighton, CO 80601 Telephone: 720-523-6116 Facsimile: 720-523-6114	Case Number: Division Courtroom	
<p style="text-align: center;"> VERIFIED COMPLAINT FOR EMERGENCY TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION </p>		

Pursuant to C.R.S. § 30-28-124(2), § 30-28-124.5, and C.R.C.P. 65(a) and (b), Plaintiff, the Board of County Commissioners of Adams County, Colorado, through counsel, alleges as follows:

1. Asphalt Specialties Co., Inc. ("ASCI"), owns the property located at 12021 Brighton Road ("the Property").
2. The Property is located in unincorporated Adams County, Colorado.
3. The Property is zoned A-3, an agricultural zoning.

BACKGROUND

4. On October 16, 2000, the Board of County Commissioners approved a Conditional Use Permit to allow sand and gravel mining, a concrete plant, concrete recycling, equipment storage, and a maintenance facility on the Property.

5. On February 10, 2003, the Board of County Commissioners approved a second request from ASCI to expand the mining area of the Conditional Use Permit.

6. On October 16, 2010, the Conditional Use Permit allowing sand and gravel mining, a concrete plant, concrete recycling, equipment storage, and a maintenance facility on the Property expired.

7. To date, the mining operations on the Property have been completed.

8. On December 6, 2010, the Board of County Commissioners approved a Certificate of Designation (“CD”) to allow approximately 500,000 cubic yards of inert fill material on the Property, to be placed into the former mining pit on the Property.

9. The CD was set to expire on December 6, 2017.

10. On June 14, 2016, the County filed a case in County Court, Case Number 2016C39219, against ASCI regarding the same Property

11. The County filed Case Number 2016C39219 because ASCI was recycling on the Property without a permit in violation of Section 3-07-01 of the County’s Development Standards and Regulations, and had failed to have screen fencing on the Property to conceal outdoor storage from the adjacent road right-of-way and lesser intensity uses, in violation of 4-06-01-02-01-06 of the County’s Development Standards and Regulations.

12. On July 11, 2016, the parties entered into a Settlement Agreement in Case Number 2016C39219.

13. In that Settlement Agreement, ASCI agreed to be in compliance with the Sections 3-07-01 and 4-06-01-02-01-06 of the County’s Development Standards and Regulations on the Property by 5:00pm on December 16, 2016.

14. Ultimately, ASCI met the terms of the Settlement Agreement and the County dismissed Case Number 2016C39219 with prejudice.

15. In 2017, after County staff had documented new violations at the Property, the Board of County Commissioners (“BoCC”) held a public hearing on March 14, 2017, at which ASCI was ordered, after notice, to show cause why its Certificate of Designation, granting it permission to place inert fill on the Property, should not be revoked or suspended.

16. The authority of the BoCC to hold a show cause hearing is set forth in Section 1-02-01-02-09 of the County’s Development Standards and Regulations:

A permit may be suspended or revoked by the Board of County Commissioners if, in the opinion of the Board of County Commissioners,

the permit holder or operator conducting the use fails to abide by the terms, requirements, conditions, or stipulations of the permit The public hearing on suspension or revocations requires written notice to the permit holder informing them of the time and place of the hearing, and requiring them to show cause why the permit should not be suspended or revoked.

17. The County initiated the “show cause” process because of the following violations of the Certificate of Designation on the Property:

- a. Accepting non-inert material onto the Property as well as placing non-inert material into the lake on the Property as fill;
- b. Operating during periods wind speed exceeding thirty-five miles per hour or twenty-five miles per hour sustained;
- c. Failure to have screen fencing to conceal outdoor storage from adjacent road right-of-way and lesser intensity uses; and
- d. Failure to inspect trucks entering the site for materials that may not be allowed on site,

18. On March 14, 2017, the BoCC continued the matter to allow staff and ASCI to discuss remedies to resolve the violations and formulate potential recommendations to the BoCC.

19. On April 4, 2017, the matter was continued again until April 18, 2017, so that staff and ASCI could finalize resolution of the outstanding violations.

20. On April 18, 2017, the matter was continued again until May 23, 2017, so that County staff could publish ASCI’s corrective action plan on the County’s website.

21. Also on April 18, 2017, the BoCC directed County staff to send notices to surrounding property owners to inform them of the corrective action plan.

22. The action plan was also posted on the County’s website on April 28, 2017, and a notice informing surrounding property owners was mailed on the same date.

23. On May 23, 2017, the BoCC approved a “Resolution for No Further Action in the Show Cause Hearing.”

24. In the May 23, 2017, Resolution, the BoCC found that ASCI had achieved compliance and that no further action was required, and that ASCI may continue to operate at the Property under its Certificate of Designation.

25. Also on May 23, 2017, the BoCC approved a Conditional Use Permit for ASCI to conduct recycling on the Property, with that permit to expire on December 6, 2017.

FACTS

26. ASCI's Certificate of Designation, which authorized it to fill a pit on the Property with inert material in aid of mining reclamation on the Property, expired on December 6, 2017.

27. The Conditional Use Permit authorizing ASCI to recycle on the Property also expired on December 6, 2017.

28. On December 14, 2017, Code Compliance Officer Joaquin Flores performed an inspection at the Property to follow up to ensure ASCI was no longer performing activities that require a Conditional Use Permit or CD.

29. During Officer Flores' inspection, he observed concrete and asphalt being processed for recycling on the Property.

30. On January 10, 2018, Officer Flores sent letters to ASCI, including ASCI's registered agent, Daniel Hunt, notifying ASCI of its violation of Section 3-07-01 for outdoor storage and for continuing to recycle on the Property without a Conditional Use Permit.

31. On January 10, 2018, the County's Senior Environmental Analyst, Jennifer Rutter, attended an inspection of the Property with staff from the Colorado Department of Public Health and Environment and the Tri-County Health Department.

32. During that inspection, Ms. Rutter observed ASCI performing recycling of concrete and asphalt on the Property in the form of crushing and separating materials.

33. During that inspection, Ms. Rutter also observed empty trucks enter the facility, take on a load of recycled materials, and leave the facility.

34. During that inspection, Mike Rodabaugh, a representative of ASCI, told Ms. Rutter that ASCI continues to fill the pit on the Property.

35. During that inspection, Mr. Rugebaugh also told Ms. Rutter that ASCI is removing material from the site for the purpose of selling it.

36. On February 1, 2018, Officer Flores performed a second inspection at the Property.

37. Prior to that inspection on February 1, 2018, Officer Flores obtained permission from Gary Stillmunkes, a representative of ASCI, to inspect the Property.

38. During Officer Flores' inspection on February 1, 2018, he observed concrete and asphalt being processed for recycling on the Property.

39. Subsequently, on February 8, 2018, Officer Flores spoke with Mr. Stillmunkes by phone.

40. During that conversation, Officer Flores informed Mr. Stillmunkes that Officer Flores would be referring the matter to the County Attorney's Office for enforcement because ASCI continued to recycle on the Property without County authorization.

41. During that conversation, Officer Flores also reminded Mr. Stillmunkes that the Conditional Use Permit for recycling expired on December 6, 2017.

COUNTY REGULATIONS

42. Plaintiff's claims arise from the following violations pursuant to C.R.S. § 30-28-124.5(1), which provides that, "[i]t is unlawful to erect, construct, reconstruct, alter, or use any building, structure, or land in violation of any regulation in, or of any provisions of, any zoning resolution or any amendment thereof, enacted or adopted by the board of county commissioners under the authority of this part 1¹":

a. Violation of Section 3-07-01 of the Adams County Development Standards and Regulations, the Use Chart, which indicates that recycling facilities require a Conditional Use Permit in the A-3 zone district.

b. Violation of Section 3-10-04-05 of the Adams County Development Standards and Regulations, which indicates that extraction and disposal uses, including inert fill, require a Conditional Use Permit or Certificate of Designation in the A-3 zone district.

43. Section 2-02-03-06 of the County's Development Standards and Regulations provides the criteria that the BoCC must find in approving a Certificate of Designation, and includes requirements that the BoCC find that:

(4) The certificate of designation is compatible with the surrounding area, harmonious with the character of the neighborhood, not detrimental to the immediate area, not detrimental to the future development of the area, and not detrimental to the health, safety, or welfare of the inhabitants of the area and the County. In making this determination, the Planning Commission and the Board of County Commissioners shall find, at a minimum, that the certificate of designation will not result in excessive traffic generation, noise, vibration, dust, glare, heat, smoke, fumes, gas, odors, or inappropriate hours of operation.

¹ The County's Development Standards and Regulations are adopted by the BoCC pursuant to C.R.S. § 30-28-124.5(1).

44. Section 11-02-449 of the County's Development Standards and Regulations defines "recyclable materials" as

A type of material subject to reuse or recycling. Recyclable materials include metal, glass, cloth, paper, plastic, or any other material which presently has a *commercial use or value as a commodity, raw material, or feedstock and is intentionally separated from a waste stream for reprocessing or remanufacture*. Recyclable materials do not include any material meeting the definition of a hazardous waste under Section 25-15-101(6), C.R.S., any material meeting the definition of an infectious waste under Section 25-15-402(1), C.R.S., any material meeting the definition of a putrescible waste, or any other materials likely to contaminate ground water, create off-site odors, or otherwise pose a threat to human health or the environment as a result of processing, reclaiming, recycling, storage prior to recycling, or use of the material.

Emphasis added.

45. Section 2-02-08-06 of the County's Development Standards and Regulations provides the general criteria that the BoCC must find in approving Conditional Use Permits, and includes requirements that the BoCC find that:

(4) The conditional use is compatible with the surrounding area, harmonious with the character of the neighborhood, not detrimental to the immediate area, not detrimental to the future development of the area, and not detrimental to the health, safety, or welfare of the inhabitants of the area and the County. In making this determination, the Planning Commission and the Board of County Commissioners shall find, at a minimum, that the conditional use will not result in excessive traffic generation, noise, vibration, dust, glare, heat, smoke, fumes, gas, odors, or inappropriate hours of operation.

46. Section 2-02-08-07-03 of the County's Development Standards and Regulations provides the criteria that recycling facilities must meet, including that:

(2) The request is compatible with the Adams County Comprehensive Plan, complies with the minimum zoning requirements of the zone district in which the Conditional Use Permit is to be granted, and complies with all other applicable requirements of the Adams County Zoning and Subdivision Regulations;

and

(5) The request is compatible with the surrounding area.

47. According to Section 1-01-03 of the County's Development Standards and Regulations, the purpose of the County's Development Standards and Regulations is to "preserve the health, safety, and welfare of the public."

LAW APPLIED

48. Materials being processed for sale, as witnessed by Ms. Rutter and Mr. Flores at ASCI's Property, meet the definition of "recyclable materials," and the process of recycling requires a Conditional Use Permit pursuant to Section 3-07-01 of the County's Development Standards and Regulations.

49. Without a Conditional Use Permit in place for recycling on the Property, the BoCC cannot assure that the criteria such as those set forth in Sections 2-02-08-06(4) and 2-02-08-07-03(2) and (5) are met, and thus cannot ensure that the health, safety, and welfare of the citizens of Adams County are protected.

50. Additionally, without a Certificate of Designation in place, the BoCC cannot ensure that criteria such as those set forth in Section 2-02-03-06(4) are met, and thus cannot ensure that the health, safety, and welfare of the citizens of Adams County are protected.

51. This action for injunctive relief is authorized by C.R.S. § 30-28-124(2), and thus the County need not meet the common law criteria for injunctive relief. *Lloyd A. Fry Roofing Co. v. Dep't. of Health*, 553 P.2d 800, 808 (1976); *see also Kourlis v. District Court*, 930 P.2d 1329, 1335 (Colo. 1997) ("Special statutory procedures may supersede or control the more general application of a rule of civil procedure.").

52. Pursuant to *Langlois v. Board of County Comm'rs of El Paso*, "[a] party [seeking a preliminary injunction] must demonstrate that: (1) there is a reasonable probability of success on the merits; (2) there is a danger of real, immediate, and irreparable injury that may be prevented by injunctive relief; (3) there is no plain, speedy, and adequate remedy at law; (4) the granting of an injunction will not disserve the public interest; (5) the balance of equities favors the injunction; and (6) the injunction will preserve the status quo pending a trial on the merits." *Langlois v. Board of County Comm'rs of El Paso*, 78 P.3d 1154, 1158 (Colo. Ct. App.2003) (citing *Rathke v. MacFarlane*, 648 P.2d 648, 653-654 (Colo. 1982)).

53. In this matter there is a reasonable probability of success on the merits because the facts are unambiguous. ASCI held a Conditional Use Permit to recycle on the Property and that permit is expired; ASCI held a Certificate of Designation to fill on the Property and that authorization is expired, yet ASCI continues to both recycle and fill on the Property, in blatant violation of the County's Development Standards and Regulations. The County's likelihood of success on the merits of a case is undeniably assured.

54. *Fry* provides that when an injunction is sought pursuant to a statute rather than the rules of civil procedure, irreparable injury need not be shown. *Fry*, 553 P.2d at 808. C.R.S. § 30-

28-124(2) provides for injunctive relief in a case where "...any land is or is proposed to be used in violation of any regulation or provision of any zoning resolution. . . ." Therefore, injunctive relief is appropriate where a violation of a zoning regulation or provision is proven. *See Fry*, 553 P.2d at 808. Here, it is clear that ASCI is in violation of the County's Development Standards and Regulations, as it is performing operations on the Property that require permits or other authorizations, without such authorizations.

55. Furthermore, the Colorado Supreme Court in *Colorado Springs v. Blanche* found that a violation of a municipal regulation is tantamount to a finding of immediate and irreparable injury. *Colo. Springs v. Blanche*, 761 P.2d 212, 218 (Colo. 1988). Specifically, the Court found that the District Court did not abuse its discretion when it granted temporary and permanent injunctive relief for the City of Colorado Springs. *Blanche*, 761 P.2d at 218. The District Court, in its temporary restraining order found that the Defendants were acting in violation of the City Code, and "unless the Defendants are restrained from continuing to operate...the laws of the City of Colorado Springs...will be frustrated and continually violated, all in contrary to the public health, safety, and welfare, which is tantamount to immediate and irreparable injury." *Blanche*, 761 P.2d at 218 n.6.

56. Given the County's previous enforcement activity and the involvement of the Court and the Board of County Commissioners in this matter, coupled with ASCI's failure to maintain compliance, it is clear that without an emergency restraining order followed by a preliminary injunction, there is no plain, speedy, or adequate remedy at law.

57. ASCI is conducting filling and recycling operations on the Property without the required County authorizations, and is thus not entitled to continue such operations. Therefore, any injury to ASCI's business interests in requiring it to cease operations is outweighed by the regulatory scheme violation, as set forth in *Fry*, and the County's inability to ensure the preservation of citizens' health, safety, and welfare with regard to ASCI's operations, and the balance of equities favors an injunction.

58. Section 1-03-01 of the County's Development Standards and Regulations gives the direct intent of the Regulations, to "preserve the health, safety, and welfare of the public." Requiring ASCI to cease operations will not only *not* adversely affect the public interest, but will serve to protect it. Without giving the BoCC the opportunity to confirm that the requirements such as those in Sections 2-02-03-06(4), 2-02-08-06(4), and 2-02-08-07-03(2) and (5), cited above in paragraphs 43, 45, and 46, are met through requiring the appropriate authorizations, the County's purpose in protecting the health, safety, and welfare of the County is unambiguously stymied, and thus the County is entitled to injunctive relief in the form of an emergency temporary restraining order.

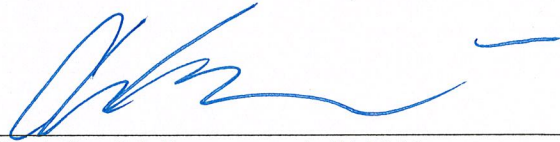
NOTICE

59. As counsel to the BoCC, I hereby certify that, pursuant to C.R.C.P. 65(b), the County has not provided notice to ASCI of its specific intent to seek an emergency temporary

restraining order and preliminary injunction. However, pursuant to Mr. Flores' discussion with Mr. Stillmunkes and the notice letters sent to ASCI, both set forth above, ASCI is aware that the County intends to seek enforcement against ASCI's violations. Ultimately, ASCI's history of violation of the County's Regulations and coming into compliance only when forced to by the County demonstrates the need for utilization of much more significant enforcement mechanisms, namely an emergency temporary restraining order.

WHEREFORE, Plaintiff requests that the Court, in accordance with C.R.S. §§ 30-28-124(2) and 30-28-124.5 and C.R.C.P. 65(a) and (b), grant a temporary restraining order and a preliminary injunction against ASCI and in favor of Plaintiff, ordering ASCI to cease filling the pit on the Property located at 12021 Brighton Road in unincorporated Adams County with material, and cease all crushing and recycling of materials onsite, and ordering that the only operations that ASCI may perform on the Property is to remove materials from the Property. The Plaintiff additionally requests that the Court grant the Adams County Sheriff's Office the authority enforce the temporary restraining order and preliminary injunction by any means necessary.

Respectfully submitted this 22nd day of February, 2018.



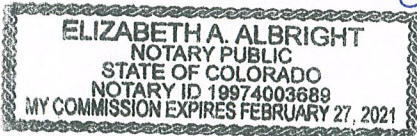
Christine M. Francescani, #44665
Assistant County Attorney

VERIFICATION OF COMPLAINT

I swear or affirm under penalty of perjury that the information contained in this Verified Complaint is true and correct.

Jennifer Rutter
Jennifer Rutter, Environmental Analyst

Subscribed and sworn to before me in the county of Adams, State of Colorado, on this 27th day of February, 2018.

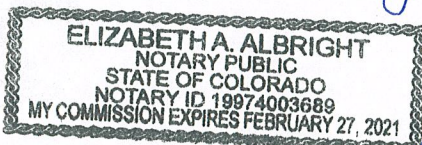


Elizabeth A. Albright
Notary Public

My commission expires: 2/27/2021

Joaquin Flores
Joaquin Flores, Code Compliance Officer

Subscribed and sworn to before me in the county of Adams, State of Colorado, on this 27th day of February, 2018.



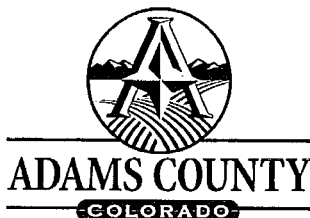
Elizabeth A. Albright
Notary Public

My commission expires: 2/27/2021

Plaintiff's Representative Address and Phone Number:

Christine M. Francescani
Assistant County Attorney
4430 South Adams County Parkway
5th Floor, Suite C5000B
Brighton, CO 80601
(720) 523-6884

WARNING: ALL FEES ARE NON-REFUNDABLE. IN SOME CASES, A REQUEST FOR A JURY TRIAL MAY BE DENIED PURSUANT TO LAW EVEN THOUGH A JURY FEE HAS BEEN PAID.



LANDFILL INSPECTION CHECKLIST

FACILITY:	Speer Pit		
CASE NUMBER:	EXG 1/10/18 <i>gc</i>		
INSPECTOR:	J. Rutter	INSPECTION DATE:	1/9/18
Site Weather Conditions: cool, cloudy, no wind			
Facility Representatives:		Mike	
Inspection Type:	Unannounced		
Facility Type:	inertfill landfill, recycling facility		
<p>INSPECTION SUMMARY:</p> <p>Large piles of processed + unprocessed material: Concrete, asphalt, gravel, sand, etc. Inert-fill CD and recycling CUP expired Dec 6, 2017. Material no longer accepted after Dec 1, 2017. At least three crushers processing material on-site. lots of dust.</p>			

BOARD OF COUNTY COMMISSIONERS

Eva J. Henry
DISTRICT 1

Charles "Chaz" Tedesco
DISTRICT 2

Erik Hansen
DISTRICT 3

Steve O'Dorisio
DISTRICT 4

Jan Pawlowski
DISTRICT 5

	<u>GENERAL OPERATIONS</u>	In Compliance	NOT in Compliance	Follow-up required
1.	Visual Screening. Landfill screened from public view?	X		
	Notes:			
2.	Waste Unloading. Signs, fences, barriers clearly define waste unloading areas?		X	
	Notes:			
3.	Litter. Litter controlled and picked up? N/A			
	Notes:			
4.	Vector control. Active landfill area has minimal birds, insects, rodents? N/A			
	Notes:			
5.	Air Quality, Noise. Dust, odors, and noise controlled?		X	
	Notes:			
6.	Access. Entry roads are safe, provide all-weather access, and are well-maintained?		X	
	Notes:			
7.	Entrance Signs. Entrance signs indicate facility name, emergency phone #, schedule, applicable and prohibited wastes, and restrict site access?		X	
	Notes:			
8.	Public Access. Adequate security, prevents unauthorized entry and dumping?	X		
	Notes:			
9.	Cover Methods. Cover (including ADC) complies with CDPHE-approved operations plan? N/A			
	Notes:			
10.	Records. Permittee keeps all records for at least 5 years?			
	Notes:			
11.	Fire Protection. Permittee provides adequate on-site fire control measures? Has arranged for assistance from local Fire District, if needed?			
	Notes:			
12.	Tipping Fees. Permittee has paid the most recent quarterly fee?			
	Notes:			

	<u>CODE COMPLIANCE</u>	In Compliance	NOT in Compliance	Follow-up required
1.	Outdoor Storage.		X	
	Notes:			
2.	Pile Heights.		X	
	Notes:			
3.	Recycling.		X	
	Notes:			
4.	Sales.			
	Notes:			
5.	Covered Trucks.		X	
	Notes:			

Signature Jeff K. R. Date 1/10/13