



COLORADO

Division of Reclamation,
Mining and Safety

Department of Natural Resources

1313 Sherman Street, Room 215
Denver, CO 80203

Warren H. Dean
6 South Tejon Street, Ste 660
Colorado Springs, CO 80903

January 25, 2019

Via: e-mail

RE: Pikeview Quarry, Permit No. M1977211, Financial Warranty Inquiry Response

Greeting Mr. Dean,

The Division of Reclamation, Mining and Safety (DRMS) received your additional correspondence via email regarding the Pikeview Quarry. DRMS would like to give update you on what DRMS is working on in regard to this site. As you are aware, DRMS inspected the site on January 8th, 2019. An inspection report was generated and a copy sent to you on January 11th, 2019 via e-mail. As noted in that e-mail, DRMS staff is currently working on an updated reclamation liability estimate.

In response to your e-mail, received on January 24, 2019, I have copied your e-mail inquiries into this formal written response. Your email text is in **bold italics** and DRMS responses to those inquiries will be in normal font. Response to you most recent email is as follows:

... I just heard that Transit Mix concrete (TM), the local subsidiary of Continental Materials of Chicago (CM), which owns and operates the Pikeview Quarry, has just sold its concrete business to Aggregate Industries. I presume that the actual quarry was not included in the sale due to it large reclamation liability.

This was Transit Mix's largest business interests in Colorado, and I think the State of Colorado should consider this when it sets the bond amount for Pikeview. The fewer business interests that TM's parent has here, the less committed it will be to reclamation. I think there is a high probability Continental Materials and it's subsidiaries could walk away and leave the State to complete the Pikeview reclamation.



DRMS Response: The facility in question is not part of any DRMS permit and therefore, we have no jurisdiction. DRMS permittees are not required to report their business affairs to the division.

TM pays the bond cost for Pikeview, so why wouldn't the State have TM bond the full reclamation cost now and remove any chance of a shortfall should the State have to step in? Given these new developments, which don't yet fully understand, the State of Colorado should make sure it is fully protected.

DRMS Response: DRMS as noted is currently evaluating the Financial Warranty liabilities for this permit. That evaluation will determine if additional bonding is required. The current Financial Warranty for this permit is \$4,226,000.00. The bond is a Corporate Surety issued by XL Specialty Insurance Company. XL Specialty has an "A – Excellent" rating. DRMS is confident that those funds would be available for reclamation.

Additional Considerations / Questions:

CDRMS has stated that it believes TM will complete all reclamation as required, even though it has posted only a small bond. Is CDRM sure TM will perform and is CDRMS sure that the entity which owns the quarry is a company with assets, and not a subsidiary without assets?

DRMS Response: The current Financial Warranty for this permit is \$4,226,000.00, to refer to it as "only a small bond" is not accurate. The amount held is in the middle range of similar type operations. DRMS has no reason at this time to question Transient Mix's commitments to future mining and reclamation.

Has CDRMS reviewed TM's and it's parent company's deteriorating financial condition? Detailed information is fully available through their public disclosures.

DRMS Response: DRMS does not have the jurisdiction through statute or rule to review business and financial issues of permittees or applicants.

Has CDRMS considered this recent sale and factored it into the equation of the bond amount?

DRMS Response: The sale of the business has no bearing on the financial warranty evaluation for this permit. The facility in question is not part of any DRMS permit and therefore, we have no jurisdiction.

Has CDRMS reviewed the federal lawsuit between TM and its landlord, Valco, related to TM's breach of lease at its Pueblo Quarry? It was scheduled to be heard January 28, but due the federal shutdown it is now scheduled for May 13, 2019. All documentation is available to the public. If TM loses, it will incur a large financial obligation. Has CDRMS factored in this potential, significant liability to the guarantor of the Pikeview reclamation?

DRMS Response: DRMS is not a party to this litigation regarding business affairs and therefore has no jurisdiction.

Is CDRMS comfortable that it has a full grasp of issues related to Pikeview?

DRMS Response: The Pikeview Quarry is a complicated site. It was mined well before any reclamation permitting was required. The slope failure has created additional issues for final reclamation. DRMS has been and is currently engaged in the evaluation of the slide with the permittee in regards to safety, mitigation, and the final goal of reclamation. The issues with the slide are still evolving. This may require additional amendments to the currently approved mining and reclamation plans to address changes based on information and data as it becomes available.

• What will it do about the ongoing pitwall movements, which caused a slide in 2015 and are significant enough to require Technical Amendment 18?

DRMS Response: The slide movement is under rigorous monitoring. The backfilling and stabilization of the pit is seen as the first step in addressing further movement and possible mitigation of the slide. DRMS must be satisfied that the slide movement has been minimized prior to any final reclamation configuration approvals. Additional revisions may be required beyond TR-18.

• Is CDRMS prepared to use “non traditional mining methods” (expensive) which might be required by the unsafe slopes?

DRMS Response: The term “non-traditional mining methods” refers to the permittee mining in areas throughout the affected lands that are more stable based on real time data, as opposed to a normal sequential, phased operation. While this method is less efficient and therefore more expensive, it is the safest method and that is paramount. This non-traditional method is being employed in part to address pressures on the slide area, continue mining available resources, as well as safety.

• Has CDRMS factored in the existing slow progress? Note that TM’s submitted timelines state that it should be well into, or have completed, reclamation by now. A comparison of submitted timelines to the current lack of reclamation progress might cause some concern.

DRMS Response: DRMS permittees submit timelines for mining and reclamation based on evaluations that can and most times do change based on a number of factors. Per the Act and Rules, any permittee that ceases mining must complete reclamation in five years unless extended by the Board or DRMS. This site is actively mining as observed on January 8th, 2019. Due to the nature of the mining and slope stability evaluations, it is highly probable that reclamation will go past any original or current projections. As for current reclamation, the permittee has to date imported 1.2 million cubic yards of material (2.5 million tonnes) to backfill the pit at the toe of the slide. This is an ongoing reclamation task that DRMS observed on January 8th, 2019. The backfilling of the pit is a critical component for stabilization of the slide so that other aspects of reclamation can occur at a later date. Several areas along the edge of the affected lands have been fully reclaimed. DRMS considers the backfilling of the pit an key reclamation task that is in progress. DRMS will continue to work with the permittee as necessary to ensure mining and reclamation are completed per the Act and Rules.

Placement of Pikeview on the Governor’s Designated Mining Operations list should cause CDRMS to acknowledge the risk of being insufficiently bonded on the Pikeview Quarry reclamation.

DRMS Response: DRMS would like to clarify that Pikeview is not a Designated Mining Operation, but a “High Priority” site. DRMS has identified eight quarries for “High Priority” designation across the state. While potential reclamation liabilities most certainly are one of the considerations, it is not the “only” consideration. Pikeview met the criteria based on ongoing stability issues, public awareness, and potential reclamation liabilities just as the other seven do. The designation is not an acknowledgment of insufficient bonding. Rather, the designation is a commitment by DRMS to monitor site conditions and update these permits, including financial warranties as necessary, on a shorter time line than is required by the Mined Land Reclamation

Board Policy for other construction materials permits. The more frequent inspections will ensure adequate regulatory oversight given their unique circumstances.

DRMS anticipates an increase in the financial warranty for this site based on inflation alone, which is normal. Other factors may increase or decrease that amount based on site specific conditions observed during the last inspection. As noted, this site will have more inspections and financial warranty updates based on its designation as a "High Priority" site. DRMS will send you a copy of the updated reclamation liability estimate once that process is completed as requested.

I hope that these responses clarify where DRMS currently stands with this particular permit and acknowledges your issues of concern.

Regards,

A handwritten signature in blue ink, appearing to read "Russ Means".

Russ Means
Minerals Program Director

Ec: Ginny Brannon, DRMS Director
Michael Cunningham, DRMS Senior EPS
Tim Cazier, DRMS EPS
Jeff Fugate, Attorney General Office, DRMS Legal Counsel
Andre LaRoche, Continental Materials Corporation

Attachment: Copy of original email from Warren Dean to Ginny Brannon 1/24/2019

Forwarded message -----

From: **Ginny Brannon - DNR** <ginny.brannon@state.co.us>

Date: Thu, Jan 24, 2019 at 8:32 AM

Subject: Fwd: Sale of Transit Mix concrete business

To: <russ.means@state.co.us>

From: Warren Dean <warren@rosenbaumdean.com>

Date: January 24, 2019 at 7:07:10 AM MST

To: Ginny Brannon - DNR <ginny.brannon@state.co.us>

Subject: Sale of Transit Mix concrete business

Hello Ginny, Sorry to bother you , as I am sure you have a full plate given the transition in Denver.

However, I just heard that Transit Mix concrete (TM), the local subsidiary of Continental Materials of Chicago (CM), which owns and operates the Pikeview Quarry, has just sold its concrete business to Aggregate Industries. I presume that the actual quarry was not included in the sale due to it large reclamation liability.

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1/25/2019

Fwd: Sale of Transit Mix concrete business - russ.means@state.co.us - State.co.us Executive Branch Mail

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Thanks for your time and consideration of these new developments with the Pikeview owner. Please, don't leave the State open to any reclamation liability at Pikeview.

Warren Dean

Sent from my iPad