



COLORADO
**Division of Reclamation,
Mining and Safety**
Department of Natural Resources
1313 Sherman Street, Room 215
Denver, CO 80203

June 20, 2019

Steve O'Brian
Environment, Inc.
7985 Vance Dr. #205A
Arvada, Colorado 80003

Re: AFS – Bennett Pit, M-2001-038
Amendment No. 1 Application (AM01), Adequacy Review No. 2

Dear Mr. O'Brian,

As you are aware the Colorado Division of Reclamation, Mining and Safety (DRMS) has received timely objections to this application and have set this application for consideration before the Mined Land Reclamation Board ("Board") during the August 21 and 22, 2019 meeting. The Division is currently required to issue a decision on the application by July 26, 2019. DRMS had reviewed the application and identified a number of adequacy items listed in the April 12, 2019 review letter. The Division received your response to the first adequacy review letter on June 17, 2019. The adequacy review items originally identified are listed below along with the response you provided. If an item identified is considered resolved, it has been removed. If additional information or clarification is needed for an item it is listed under the applicable issue. Also, several additional items have been identified.

Rule 6.4.5, Exhibit F – Reclamation Plan

7. Albert Frei and Sons (AFS) is proposing to continue to import inert fill into the site for use in backfilling the pit slopes and mine floor as stated on Page 6 of the reclamation plan as originally approved with Technical Revision No. 1 (TR01). TR01 specified a phased approach to backfilling and estimated the void volume to be filled. It does not appear mining and reclamation will be conducted in a phased approach based on the revised mining and reclamation plan. Please describe any revision to the timing and duration of the inert fill operation.
 - a. **AFS Response:** We took the phasing plan out because Albert Frei and Sons will mine the area faster than the original permit holder and staging is not conducive with their operating practices. The inert material will be piled, as it is delivered, along the final perimeters of the mine where the 3:1 slopes will be built. The plan is to follow mining on lope areas with placement of the inert material until enough is available to complete the final slope. Fill material will be accepted during the life of the mine until the volume needed to reclaim the slopes has been received or mining ends. Once sufficient fill, is in place along any section of slope it will be graded 3h to 1v, covered with finer material, re-soiled and seeded. How fast this happens depends on how much material is available and



this mine is not operated as an inert fill facility.

- b. **DRMS Response:** Please clarify your statement that the mine is not operated as an inert fill facility? The Division assumes you mean the primary purpose of the operation is not to be an inert fill facility, and that this will be secondary to the mining operation.

Rule 6.4.8, Exhibit H – Wildlife Information

16. The reclamation plan indicates that temporary displacement of wildlife will result from the mining operation. In accordance with Rule 3.1.8, all aspects of the mining and reclamation plan shall take into account the safety and protection of wildlife on the mine site, at processing sites, and along all access roads to the mine site with special attention given to critical periods in the life cycle of those species which require special consideration (e.g., elk calving, migration routes, peregrine falcon nesting, grouse strutting grounds). Please discuss the measures the operator will use to protect wildlife during the mining and reclamation operation.

- a. **AFS Response:** (See Adequacy Response Letter)
- b. **DRMS Response:** The Division received a comment letter from Colorado Parks and Wildlife (CPW) on April 16, 2019. Their comment letter indicates a prairie dog colony was discovered within the project area with the potential for presence of burrowing owls. CPW stated that if any earthmoving will begin between March 15th and October 31st, a burrowing owl survey should be performed. As these raptors are classified as a State Threatened species, please commit to conducting a burrowing owls survey if earthwork will occur between the dates noted by CPW and commit to retaining copies of the results of these surveys. If burrowing owls are found please indicate what protective actions will be taken.

Rule 6.4.12, Exhibit L – Reclamation Costs

17. The cost estimate submitted with the application covers 30 acres of affected land. Based on the proposed mining plan, no phasing of the mining is planned and page 4 indicates a maximum disturbance scenario will be used to allow flexibility for the mine to be developed from both ends of the deposit. If the applicant would like to use a phased 30-acre bonding approach, please revise the mining plan to accommodate this and define the phases accordingly, or provide an estimate for the maximum disturbance scenario.

- a. **AFS Response:** An updated cost estimate was submitted.
- b. **DRMS Response:** Will AFS retain enough native material either in a bank or stockpiled state to grade the mined slopes to the proposed 3H:1V ratio? Or, will AFS rely on the importation of fill to provide for the volume of material needed to backfill the mine slopes? If so, please include an estimate of the volume of material the Division would have to import at the point of worst case disturbance to backfill and grade the proposed 3300 foot highwall. Also please include a cost the Division would incur from purchasing this material.

Rule 6.4.19, Exhibit S – Permanent Man-made Structures

18. For each of the permanent man-made structures within 200 feet of the affected land, please either provide:
- a. provide a notarized agreement between the applicant and the person(s) having an interest in the structure, that the applicant is to provide compensation for any damage to the structure; or
 - b. where such an agreement cannot be reached, the applicant shall provide an appropriate engineering evaluation that demonstrates that such structure shall not be damaged by activities occurring at the mining operation; or.
 - c. where such structure is a utility, the Applicant may supply a notarized letter, on utility letterhead, from the owner(s) of the utility that the mining and reclamation activities, as proposed, will have "no negative effect" on their utility.
 - i. **AFS Response:** Copies of executed structure agreements were submitted and an engineering evaluation was provided (See adequacy response submittal for details)
 - ii. **DRMS Response:** The structure agreement for David A and Joyce E Lincoln did not include their three-strand barbed wire fence. Please submit a revised and properly executed structure agreement for this structure or provide an appropriate engineering evaluation demonstrating the mining operation will not affect this structure.

The Division is currently reviewing the engineering evaluation submitted for the structures owned by The Robert and Alethea Copeland Revocable Living Trust. Any adequacy issues identified will be forwarded to you as soon as possible.

Additional Adequacy Review Issues

1. A detailed inert fill plan was submitted and approved with TR01. However, it is unclear how the applicant insures the off-site material backfilled into the pits is clean and inert as defined by Rule 1.1(20). Please explain how the applicant will monitor, document and verify the material brought to the site meets the definition of inert material as defined by Rule 1.1(20). Please include the following:
 - a. A monitoring plan describing how each load of inert material will be inspected to verify it is inert.
 - b. A load log/tracking plan that documents:
 - i. the type and amount of material backfilled into the pit
 - ii. the source of this material
 - iii. date, time and location of backfilling activity
 - iv. Signed certification statement that the material is clean and inert as defined by Rule 1.1(20)
 - c. Record keeping plan

- i. The applicant will need to document they have inspected every load brought to the site and commit to retaining the load logs discussed above.
 - ii. Please commit to submitting these records for the Division's review with the annual report.
2. The adequacy response letter alludes that on occasion, fill material brought to the mine is found not to meet the definition of inert material and that AFS isolates this material and if the entity that brought the material returns to the facility they are required to remove it (AFS adequacy response letter June 17, 2019, page 12). Please explain what happens to this material in the event the entity does not return to the facility, how has/does AFS dispose of this material?
3. The applicant is now proposing a 60 acre affected land limit in lieu of conducting a phased mining plan approach or for bonding for the maximum area to be mined at the site. Please explain how AFS will monitor their total affected land acreage? AFS will need to submit and receive approval of the proposed technical revision to increase the bond coverage area and submit any necessary bond increase prior to affecting land in excess of 60 acres.
4. Page 7 of your adequacy response letter and revised page 15 of Exhibit G discusses a water monitoring plan to be implemented to collect baseline water level and quality data should AFS desire to excavate into the groundwater table in the future with the possibility of lining portions of the pit excavation. AFS will need to submit and receive approval of an amendment application, not a Technical Revision to revise the reclamation plan for a portion of the site to be reclaimed as a lined water reservoir. Regarding the baseline water monitoring plan, AFS will need to submit well completions records for each of the monitoring wells. For baseline water quality sampling, DRMS typically requires five quarters of water quality data prior to disturbance below the groundwater table. The applicant is encouraged to work with the Division in advance to establish which water quality parameters should be collected.

June 19, 2019

This concludes the Division's review of the AM01 application and the response to the first adequacy review letter for the AFS-Bennett Pit. The Division is required to issue a recommendation to the Board for approval, approval with conditions or denial of the application by July 26, 2019. If you need additional time to address these issues, please request an extension of the decision date and a request to reschedule the MLRB hearing for a later date. The Division will hold a Pre-hearing conference prior to the MLRB hearing likely during the week of August 5th, 2019. The exact date, time and location of the Pre-hearing conference will be forwarded to you as soon as it is determined. If you have any questions please feel free to contact me at jared.ebert@state.co.us or at (303)-866-3567 ext. 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

Ec: Ben Frei, Albert Frei and Sons, Inc. BFrei@albertfreiandsons.com