



Division's Response to be filed in Colorado Milling Company, LLC; Gold Hill Mill Permit No. M-1994-117

1 message

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Please find the attached filing: Division's Response To Colorado Milling Company, LLC's Motion To Postpone or Stay Enforcement Hearing, for Extension of Review and Decision Date, and for Exemption to Cease and Desist Order to Allow Pump Testing.

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Division's Response to Colorado Milling Company LLC's Motion to Postpone (002).pdf

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BEFORE THE MINED LAND RECLAMATION BOARD
STATE OF COLORADO

DIVISION'S RESPONSE TO COLORADO MILLING COMPANY, LLC'S MOTION TO POSTPONE OR STAY ENFORCEMENT HEARING, FOR EXTENSION OF REVIEW AND DECISION DATE, AND FOR EXEMPTION TO CEASE AND DESIST ORDER TO ALLOW PUMP TESTING

IN THE MATTER OF COLORADO MILLING COMPANY, LLC; GOLD HILL MILL; Permit No. M-1994-117

Consideration of a Violation of MV-2017-036, Civil Penalties, Cease and Desist Order, Permit Revocation, and Finding the Financial Warranty Subject to Forfeiture for Failure to Comply with the Conditions of Order MV-2017-036

The Division of Reclamation, Mining and Safety ("Division") submits its Response to Colorado Milling Company LLC's ("Colorado Milling" or "Operator") Motion to Postpone or Stay Enforcement Hearing, for Extension of Review and Decision Date, and for Exemption to Cease and Desist Order to Allow Pump Testing ("Motion") from Colorado Milling's attorneys received by the Division on June 22, 2019. The Division requests that the Mined Land Reclamation Board ("Board") deny Colorado Milling's Motion and states as follows:

I. Colorado Milling's Missed Deadlines Are the Result of Their Own Inaction and No Fault of the Division

- 1) The record provided by the Division illustrates that Colorado Milling has had ample time by which to comply with the required Corrective Actions contained within the Board's October 2017 Order (Violation No. MV-2017-036), specifically Corrective Action C:

Colorado Milling Company, LLC shall, within sixty days of the effective date of this Order, file with the Division a permit conversion or amendment application to ensure that all lands affected by the mining reclamation activities, including the Times Mine adit and all aspects of the water pipeline from Left Hand Creek to Gold Hill Mill, are located within an approved affected land boundary and addressed by a reclamation plan and appropriate performance and financial warranties. ***Operator shall diligently pursue and attain the Division's approval and issuance of the application within statutory deadlines.***

- 2) Colorado Milling submitted Amendment Application (“AM-1”) to the Division on December 19, 2017. The Division sent its 1st adequacy review on January 26, 2018.
- 3) From February 2018 to October 2018, Colorado Milling submitted to the Division 5 separate extension requests to respond to the Division’s 1st adequacy review.
- 4) On December 11, 2018, Colorado Milling submitted a response to the Division’s 1st adequacy review.
- 5) On December 21, 2018, the Division sent Colorado Milling a 2nd adequacy review.
- 6) On January 4, 2019, Colorado Milling submitted a response to the Division’s 2nd adequacy review.
- 7) On January 14, 2019, the Division sent Colorado Milling a 3rd adequacy review.
- 8) Colorado Milling did not meet the deadlines imposed by the Board’s October 2017 Order.
- 9) On January 5, 2019, Colorado Milling requested a 90-day extension of the decision date for AM-1.
- 10) As a result of outstanding adequacy issues remaining for AM-1 beyond 365 days from January 4, 2018, the date AM-1 was filed for review by Colorado Milling, the Division set AM-1 for a hearing before the Board in February 2019, in accordance with Rule 1.4.1(9).
- 11) At the Board's February 20, 2019, hearing, representatives of Colorado Milling indicated that a 90 day extension was an adequate amount of time by which to satisfy the Division’s outstanding adequacy issues.
- 12) At the Board's February 20, 2019, hearing, the Board extended the amendment application’s review time in order for Colorado Milling to satisfy the Division’s adequacy issues.
- 13) The Board’s March 6, 2019, Order from the February 20, 2019, hearing stated:

The deadline for a decision on AM-1 is hereby extended by 90 days to May 21, 2019. Colorado Milling Company, LLC shall submit all materials for AM-1 in an approvable form no later than one week prior to the decision date, by May 14, 2019, to allow the Division sufficient time to review the materials and calculate the required financial warranty.

- 14) On May 17, 2019, Colorado Milling submitted an inadequate and unapprovable response to the Division's 3rd adequacy review.
- 15) Colorado Milling did not meet the deadlines imposed by the Board's March 6, 2019, Order.

II. Colorado Milling's Attempts to Blame the Division for Failing to Concur with Extension Requests Are Irrelevant to the Issue Now Before the Board

- 16) Under Rule 1.4.1(9), an applicant, including for an amendment to a permit, may request an extension of time for the Division to review the application to allow the applicant an opportunity to provide information necessary to meet the adequacy requirements of the Division, not to exceed 365 days from the date the application was filed. If adequacy issues remain after 365 days and there have been timely filed objections, the Division may issue a rationale recommending approval or denial of the application and shall set the matter for a Board hearing. At the hearing, ***the Board may***, extend the review time and decision date at the request of the applicant, deny the application, or approve the application with or without conditions. *Id.*
- 17) Only the Board may extend the Order's deadlines for a decision on AM-1.
- 18) Colorado Milling did not meet the deadlines imposed by the Board's March 6, 2019, Order.
- 19) Colorado Milling's Motion randomly cites the legislative declaration for the Colorado Mined Land Reclamation Act, C.R.S. § 34-32-102, yet neglected to include, "It is the further intent of the general assembly by the enactment of this article to conserve natural resources, to aid in the protection of wildlife and aquatic resources... and to protect and promote the health, safety, and general welfare of the people of this state."

- 20) Gold Hill Mill and Violation No. MV-2017-036 involve the failure to protect areas outside of the affected land. AM-1 involves a bulkhead that must be managed and operated so that hundreds of thousands of gallons of impounded mine influenced water do not impact down gradient landowners and Left Hand Creek.
- 21) MV-2017-036 began as a complaint from Boulder County. In addition, numerous local citizens filed objection letters to AM-1 and are concerned about the Gold Hill Mill and the site's direct impact to their health, safety, and general welfare.

III. Gold Hill Mill's Operations Have Been Suspended by BLM Since April 2013

- 22) No current Plan of Operation ("POO") has been filed with the Bureau of Land Management ("BLM") for the Gold Hill Mill.
- 23) On June 13, 2017, BLM received a POO for the Gold Hill Mill, submitted by Colorado Milling. On July 13, 2017, BLM responded to Colorado Milling that additional information was still needed. Colorado Milling has yet to submit the required information to BLM and therefore operation of the site Gold Hill Mill is under "suspension" pursuant to 43 C.F.R. 3809.601(b)(2) until BLM approves a POO.
- 24) Colorado Milling's request for an exemption to the cease and desist order to allow pump testing is without merit. No pump testing "in order to prepare a mine pool drawdown plan in support of its Application for Amendment" is allowed at Gold Hill Mill until, at a minimum, BLM approves a POO and a plan is submitted and approved by the Division.

IV. The Only Issue Relevant to this Hearing is Whether Colorado Milling is in violation of the Board's Order

- 25) The Division's decision on June 12, 2019, to deny Colorado Milling's Permit Amendment Application (AM-1) has not been appealed and is not relevant to this enforcement proceeding.
- 26) Colorado Milling's June 24th, 2019, response to the 4th adequacy review is not relevant to this enforcement proceeding.
- 27) Despite ample time (approximately 20 months) and multiple deadline extensions, Colorado Milling is in violation of the Board's Order as it has

not diligently pursued the Division's approval and issuance of the amendment application within the statutory deadlines.

- 28) Despite ample time and multiple deadline extensions, Colorado Milling is in violation of the Board's Order as it has not attained the Division's approval and issuance of the amendment application within the statutory deadlines.

V. Conclusion

Colorado Milling is in violation of the Board's Order of Violation No. MV-2017-036 as Colorado Milling has not diligently pursued and attained the Division's approval and issuance of the amendment application within the statutory deadlines. The Division respectfully requests that the Board deny Colorado Milling's Motion to Postpone or Stay Enforcement Hearing, for Extension of Review and Decision Date, and for Exemption to Cease and Desist Order to Allow Pump Testing.

Respectfully submitted to the Colorado Mined Land Reclamation Board on June 25, 2019.

/s/Scott Schultz
Scott Schultz #38666
Assistant Attorney General
Attorney for the Division of Reclamation,
Mining and Safety

Certificate of Service

I, Linda Miller, hereby certify that on this 25th day of June, 2019, I served **via electronic mail or regular mail** a true copy of the foregoing DIVISION'S RESPONSE TO COLORADO MILLING COMPANY, LLC'S MOTION TO POSTPONE OR STAY ENFORCEMENT HEARING, FOR EXTENSION OF REVIEW AND DECISION DATE, AND FOR EXEMPTION TO CEASE AND DESIST ORDER TO ALLOW PUMP TESTING, addressed to the following:

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/s/ Linda Miller June 25, 2019
Signature and date