



COLORADO
**Division of Reclamation,
Mining and Safety**
Department of Natural Resources

1313 Sherman Street, Room 215
Denver, CO 80203

DATE: July 26, 2019

RE: Rationale for Recommendation for Approval of a 112c Amendment Application (AM01) with Public Objections, Albert Frei & Sons, Inc., AFS – Bennett Pit, File No. M-2001-038

Introduction

Herein, all references to the Act and Rules refer to the Colorado Land Reclamation Act for the Extraction of Construction Materials, 34-32.5-101 et seq., C.R.S. (the Act), and to the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials (the Rules or Rule). Copy of the Act and Rules are available through the Division's web site at <http://mining.state.co.us>.

On July 26, 2019, the Division of Reclamation, Mining and Safety (DRMS, Division or Office) issued its recommendation to approve the permit amendment application (AM01) for the AFS-Bennett Pit, File No. M-2001-038, over public objections. This document is intended to explain the process by which the Division arrived at its recommendation for approval over public objections, and respond to the issues raised by the objecting parties. The Division reserves the right to further supplement, amend, modify, or clarify this document and recommendation with additional details as necessary.

Permit History

On August 6, 2001, a 112c permit was issued for the Bennett Sand and Gravel Pit #2, permit No. M-2001-038 to Mr. David A Lincoln. The permit approved the mining and reclamation on 47.75 acres of land. Mr. Lincoln conducted mining operations at the site until he transferred the permit to Albert Frei & Sons, Inc. The permit transfer was approved and issued on June 6, 2017 in accordance with the provisions of Rule 1.12. The current permittee changed the name of the site to "AFS – Bennett Pit".

Summary of the Review Process for the Amendment Application

Albert Frei & Sons, Inc. (AFS or Applicant) filed the amendment application with the Division on February 13, 2019. The application was deemed complete for the purposes of filing and review on February 21, 2019. The application describes a construction materials mining operation with on-site processing of mined materials to include crushing, screening and washing of aggregate products. The AM01 application seeks to add 60.13 acres to the current 47.75-acre permit area for a total permit area of 107.88 acres. Of the total proposed permit area, the mining operation is anticipated to affect the majority of the area with the exception of some areas within the proposed mining set-backs shown on the Exhibit C-1, Mining Plan Map. Portions of the area within the proposed setbacks may be used for topsoil and overburden storage placed in berms to provide a visual barrier. Affected lands will be reclaimed to support a rangeland post-mining land use. The Applicant initially failed to publish the required public notice in accordance with Rule 1.6.2(1)(d), and the Division required the Applicant to initiate the publication. The Applicant subsequently published the required public notice once a week for four consecutive weeks beginning on April 19, 2019 with the last date of publication on May 10, 2019. The public comment period closed on May 30, 2019. The public notice was run in the Eastern Colorado News, a publication in general



circulation in the vicinity of the mine. During the public comment period the Division received written comments from the following individuals and agencies:

Timely Letters of Objection:

Person or Entity	Date Objection Received
Victoria Katchen	April 10, 2019
Mark Faber	April 10, 2019
Alethea Copeland	April 5, 2019
Jennifer Curtis	April 10, 2019
Kimberly Chainhalt	April 10, 2019
Kelsey Magnuson	April 10, 2019
Nancy Donaldson	April 12, 2019
Elva Munoz	April 12, 2019
Joe Munoz	April 12, 2019

Timely Commenting Agency:

Agency	Date Comment Received
Colorado Division of Water Resources	March 18, 2019
Army Corps of Engineers	March 18, 2019
Colorado Parks and Wildlife	April 16, 2019
History Colorado, Office of Archaeology and Historic Preservation	March 11, 2019

The Division received the following comments and objections after the close of the public comment period:

Un-timely Commenting Agency:

Agency	Date Comment Received
Adams County	June 4, 2019

Un-timely Objections:

Person or Entity	Date Received
David Murphy	May 31, 2019

The Division forwarded copies of all comments to the Applicant and scheduled the application for a hearing before the Colorado Mined Land Reclamation Board (Board) and a Pre-hearing Conference. The Division provided notice of the scheduled Board hearing and Pre-hearing Conference to all parties and interested persons. Due to the timely objections, on the decision date the Division cannot not make a decision on the application, but rather a recommendation to the Board.

During the review period the Division generated three adequacy letters. The Applicant addressed all adequacy issues to the Division's satisfaction. Therefore, on July 26, 2019, the Division determined the application satisfied the requirements of Section 34-32.5-115(4) C.R.S. and issued its recommendation to approve the amendment application over objections.

Issues Raised by the Objecting Parties and Commenting Agencies

The timely objections and comments received by the Division have been categorized as issues pertaining to the mining plan, geotechnical stability, reclamation plan, hydrology, wildlife and non-jurisdictional issues. These categories are listed below and titled with bold font. Under each category the specific issues are listed in bold and italic font. The number of objectors which raised the issue is indicated in parenthesis.

1. Mining Plan Issues

a. Concerns regarding if a new mining plan has been submitted, if explosives will be used during the operation and if processing will occur at the site? (5)

The AM01 application included a revised and updated Mining Plan (Exhibit D). The Applicant will use conventional mining methods and equipment (scrapers, loaders, track hoes, off road trucks, etc.) to continue mining to the north and to the south of the current pit excavation. Mining is projected to occur over the next seven to ten years. The Applicant will excavate alluvial sand and gravel to a maximum depth of 45 feet and the pit floor will be maintained at least two feet above the water table. Groundwater will not be exposed during the mining operation. Explosives will not be used. Mined material will be crushed, screened and washed onsite. Acidic and toxic materials will not be mined at the site and chemicals will not be used to process the mined material. The Division finds the revised Mining Plan submitted by AFS satisfies the requirements of Rule 6.4.4.

2. Geotechnical Stability Issues

a. Concerns regarding if a geotechnical stability exhibit exists. (6)

The Applicant has proposed a minimum 25-foot mining setback around the property line. Given the uniform nature of the deposit and the conventional nature of the mining methods used at the site, the Division has determined there are no geologic hazards that have the potential to affect any proposed slopes, embankments, highwalls or waste piles within the affected area. The Applicant was able to obtain structure damage agreements as required by Rule 6.4.19 for all structures within 200 feet of the proposed affected land with the exception of the structures owned by the Robert and Alethea Copeland Revocable Living Trust (Copeland). To address the requirements of Rule 6.4.19(b) for the structures owned by Copeland, the Applicant included a geotechnical stability exhibit demonstrating these structures will not be impacted by the proposed mining and reclamation operation. The geotechnical analysis demonstrated the mining and reclaimed slopes adjacent to the Copeland structures will meet or exceed the minimum Factors of Safety approved by the Board.

All mined slopes will be backfilled and graded to a 3H:1V (horizontal to vertical ratio) slope during reclamation. The Division has found slopes at this angle are stable and are commensurate with the proposed post-mining land use of rangeland. Also, the Applicant has stated that explosives will not be used during the operation. The Division finds the applicant has complied with the applicable requirements of Rule 6.4.19 and Rule 6.5.

3. Reclamation Plan Issues

a. Concerns regarding if a new reclamation plan has been submitted? (6)

The Applicant submitted a revised and updated Reclamation Plan (Exhibit E) and Reclamation Plan Map (Exhibit F) with the AM01 application. The Reclamation Plan includes a backfilling, grading, re-soiling and revegetation plan. The Reclamation Plan Map depicts the post-mine configuration of the site. The Division finds the Reclamation Plan and Reclamation Plan Map submitted with AM01 satisfy the requirements of Rule 6.4.5 and 6.4.6.

b. Concerns that the reclamation plan does not restore the land to the pre-mining condition. (1)

C.R.S. 34-32.5-103(19) defines reclamation as the employment, during and after an operation, of procedures reasonably designed to minimize as much as practicable the disruption from an operation and provide for the establishment of plant cover, stabilization of soil, protection of water resources or other measures appropriate to the subsequent beneficial use of the affected lands. Reclamation does not mean the restoration of the land to the pre-mine condition. The Division determined the reclamation plan demonstrated compliance with the performance standards of Rule 3 and adequate to reclaim the site to the post-mining land use of rangeland.

c. Concerns regarding nature and use of imported fill used to backfill the pit excavation and stability of backfilled material? (6)

The Applicant is proposing to continue to import inert fill into the site in accordance with Rule 3.1.5(9) and the approved permit. The Applicant has adhered to the approved plan for importing inert materials and has stated that “unknown liquids and solids” have not been backfilled into the site; as several objectors have asserted. AFS is currently allowed to import inert fill into the site as approved by Technical Revision No. 1 (TR01), approved on October 9, 2015. TR01 was originally approved by DRMS upon finding the inert fill plan complied with Rule 3.1.5(9). As part of an Appendix to AM01, the Applicant provided a copy of the plan approved with TR01. AFS submitted an updated signed affidavit certifying that the material imported into the site is clean and inert as defined by Rule. 1.1(20). Specifically, the plan allows for the importation of earth, dirt, soil, rock, gravel, brick, hardened asphalt or asphalt fragments, road base material, utility trench materials, concrete and concrete fragments (unstained), concrete masonry units (construction block or decorative block) and fragments, daylight muds (uncontaminated water and earth materials) and directional utility boring muds (uncontaminated water and earthen materials). The Applicant has affirmatively stated that “drilling mud” associated with oil and gas drilling is not accepted at the site. Other materials not accepted are organic materials (wood, branches, grass clippings compost), materials impacted by sewage, gasoline or diesel, mixtures of pipe, material with significant iron or oily stains, construction debris comprised of non-earthen materials, garbage/trash, potash, fly ash or bottom ash. Inert material placement and backfilling will leave 3H:1V slopes and inert material will be compacted during the filling process. The Applicant has provided a detailed inspection, monitoring and control plan with AM01 to ensure only inert material is used as backfill material at the site. Each load will be inspected by AFS and a load log will be retained for each load brought to the site. The load log will document the nature, type and volume of inert material brought to the site and these logs will be available upon request. Each load log will include an inert fill certification statement from the entity which produced the inert fill. Also, AFS has committed to submitting copies of these logs with the annual report due each year. The annual report is available for public review.

The Division finds the plan for the importation of inert fill complies with Rule 3.1.5(9), Rule 6.4.5(2)(c) which requires the operator to describe how they will implement the reclamation plan in accordance with the applicable performance standards and Rule 6.4.5(2)(f)(i) regarding the requirement for the applicant to specify the maximum anticipated gradient of the final slopes.

d. *Concerns regarding if a noxious weed control plan has been developed for the site? (6)*

The applicant included a weed control plan with the AM01 application. Further the applicant will be required through the life of the mine to control weeds in accordance with Rule 3.1.10(6). The Division conducts routine inspections of the site and will evaluate AFS's implementation of the noxious weed plan. During recent site inspections, noxious weeds were not found to be prevalent.

4. Hydrology Issues

a. *Concerns regarding the impacts to the ground water quantity and negative impacts to adjacent well levels and groundwater flow? (8)*

The Applicant does not propose to mine below the groundwater table and they will not expose groundwater. No dewatering is proposed for this operation. There are four wells within six hundred feet of the proposed affected land. These wells are completed at depths of 300 feet or greater (approximately 270 feet below the mine floor). The quantity of water available for adjacent wells will not be impacted, given the depth and nature of the adjacent wells and the significant vertical separation between the mine floor and the wells. In addition, the Operator will not exposed groundwater during mining operations and there will be no evaporative loss of groundwater to the atmosphere. The Division finds impacts to groundwater quantity in and adjacent to the affected land will be minimized in accordance with Rule 3.1.6. The Division finds the applicant has provided the information required for Exhibit G – Water Information, in accordance with Rule 6.4.7.

b. *Concerns regarding impacts to water quality. (8)*

Runoff from the affected area will be contained within the pit area. Temporary berms and/or ditches will be used to divert surface runoff away from the affected area. Any surface water discharges from the site will be done under an approved discharge permit from the Colorado Department of Public Health and the Environment, and will be required to comply with applicable surface water quality standards. The Applicant has committed to revising the currently approved Storm Water Management Plan for the site to ensure compliance with applicable federal and Colorado water quality laws and regulations.

This applicant is proposing to continue to conduct a conventional dry surface mining operation above the alluvial groundwater table. Acidic and toxic materials will not be mined or used in the processing of the mined material. Groundwater wells within 600 feet of the affected land are significantly deeper than the proposed pit floor and should not be impacted by the mining operation. AFS is not allowed nor is proposing to backfill the pit with non-inert material. The Division inspects all aspects of the operation during routine monitoring inspection, including the importation of inert fill. The Division has found the Applicant has adhered to the approved plan for importing inert fill and has only observed inert material used as backfill material at the site. The Applicant has proposed a rigorous monitoring, inspection, control and reporting plan for the importation of inert material. The Division has determined the importation of inert material will not impact the surface or groundwater quality.

The Division finds the applicant has provided the information required for Exhibit G – Water Information in accordance with Rule 6.4.7. Further, the mining and reclamation plan as proposed should minimize disturbances to the hydrologic balance of the groundwater system in accordance with Rule 3.1.6.

c. *Concerns regarding impacts to wetlands. (1)*

The applicant hired a consulting firm to conduct a wetland survey. No jurisdictional wetlands were identified within the proposed affected land. Kiowa Creek, adjacent to the site would likely be considered a jurisdictional wetland, however, no land within 100 feet of the Kiowa Creek will be affected by the mining operation. Runoff control and Storm Water Management conducted by AFS will protect offsite areas from impacts including the

wetlands of Kiowa Creek. Given the fact that wetlands will not be impacted by the proposed operation, and dredge or fill material will not be placed within wetland areas, the Applicant states a Section 404 permit will not be required by the U.S. Army Corp of Engineers (USACE). DRMS received a comment letter regarding the AM01 application from the USACE indicating the operation is not located within lands owned or controlled by the USACE. Therefore, the Division finds the Applicant has supplied the information required by Rule 6.4.13 regarding the applicability of a Section 404 Permit. Further, the Division finds the applicant has provided the information required for Exhibit G – Water Information in accordance with Rule 6.4.7.

d. *Concerns regarding the use of water for processing the mined material. (6)*

The Operator will use water for washing the mined material and dust control. The Applicant has committed to either purchasing the water for operations from a legal source or obtaining a well permit approved for these uses. If AFS obtains a well permit through the Colorado Division of Water Resources (DWR), the DWR is responsible for ensuring the surrounding water rights are protected. The Division finds the applicant has provided the information required for Exhibit G – Water Information in accordance with Rule 6.4.7.

5. Wildlife Issues

a. *Concerns regarding the impact the operation will have on area wildlife. (7)*

The Applicant provided a wildlife statement prepared by the Colorado Division of Wildlife and included it in Exhibit H of the AM01 application. In addition, the Applicant retained a consultant to evaluate the presence of Threatened and Endangered Species at the site. The consultants did not find habitat for any Threatened or Endangered Species within the proposed affected land. The proposed operation is a continuation and expansion of a previously excavated areas. During mining, wildlife using the site may be temporarily displaced. However, the Applicant's proposed reclamation plan includes a revegetation plan utilizing native grass species and the site will be reclaimed to rangeland conducive to wildlife utilization. On April 16, 2019, the Division received a comment letter from Colorado Parks and Wildlife (CPW) regarding the AM01 application. This letter included several suggestions to mitigate wildlife impacts at the site that the Applicant has incorporated into their plan. The Applicant has committed to conducting a raptor nest survey prior to affecting any new areas during the breeding season and will not affect the vegetation where raptors are found. In addition there are very few trees located within the proposed affected area. The Applicant has committed to maintain a 10 miles per hour speed limit on site. AFS also committed to monitoring for burrowing owls if prairie dog colonies are observed at the site in accordance with the CPW comment letter. The Division finds the applicant has submitted the information required by Rule 6.4.8, Exhibit H – Wildlife Information and that the Applicant has taken into account the safety and protection of wildlife on the mine site in accordance with Rule 3.1.8.

6. Non-Jurisdictional Items

In these proceedings, the Division's jurisdiction is limited to enforcement of the specific requirements of the Act and Rules. The Division considers all timely submitted objections and comments in its review, but can address only the issues that directly relate to the specific requirements of an application as stated in the Act and Rules.

a. *Concerns regarding traffic, traffic safety, noise pollution, hours of operation, aesthetic impact and quality of life. (9)*

The Act and Rules do not specifically address traffic, traffic safety and road impacts for roads located outside of a permitted mining operation. Such issues are under the jurisdiction of Adams County and the Colorado Department of Transportation. These issues should be addressed through the permitting processes of Adams County and Colorado Department of Transportation.

The Act and Rules do not specifically address impacts to visually appealing landscapes, aesthetics, hours and/or days of operation, noise and sight pollution, and quality of life. Such issues are typically addressed at the local government level and not at the State government level. These issues should be addressed through the Adams County permitting process. On June 4, 2019 the Division received correspondence from Adams County that the Applicant will be required to obtain additional Conditional Use Permits and/or amend their existing Conditional Use Permit for the proposed operation. This requirement was communicated to AFS and they affirmatively stated in Exhibit M of the AM01 application that they will obtain any necessary amendments to the County Conditional Use Permit.

b. Concerns for devaluation of nearby property. (1)

The Act and Rules do not specifically address issues regarding devaluation of nearby property. Such issues are typically addressed at the local government level and not at the State government level. These issues should be addressed through the Adams County permitting process.

c. Concerns regarding dust and air pollution. (8)

The Act and Rules do not specifically address air quality issues. Such issues are under the jurisdiction of Adams County and the Air Pollution Control Division (APCD) of the Colorado Department of Public Health and Environment (CDPHE). The Applicant has affirmatively stated in Exhibit M of the AM01 application that an Air Pollution Permit has been issued for this site.

The Act and Rules do not authorize the Division to regulate dust or air pollution issues. However, the protection and preservation of stockpiled topsoil is addressed under the performance standards of Rule 3.1.9. Pursuant to Rule 3.1.9(1), where it is necessary to remove overburden in order to expose the mineable materials, topsoil shall be removed and segregated from other spoil. If such topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, vegetative cover or other means shall be employed so that the topsoil is protected from erosion, remains free of any contamination by toxic or acid-forming material, and is in a usable condition for reclamation. The Division has determined one year to be an appropriate time frame for the establishment of a protective vegetative cover for stockpiled topsoil, and requires the same for all mining operations throughout Colorado. The Applicant has committed to establish vegetation on the topsoil stockpiles and committed to taking appropriate erosion control measures to stabilize topsoil stockpiles and berms. The Applicant has indicated that water will be used for dust control at the site.

d. Wildfire Mitigation Plan. (6)

The Act and Rules do not specifically require an applicant to submit a wildfire mitigation plan.

Conclusion

Therefore, on July 26, 2019, the Office determined the application satisfied the requirements of C.R.S. § 34-32.5-115(4), and issued its recommendation to approve the Construction Materials 112 amendment application for the AFS – Bennett Pit, M-2001-038, AM01.