



COLORADO

**Division of Reclamation,
Mining and Safety**

Department of Natural Resources

July 25, 2019

Jerry Schnabel
Castle Concrete/ Continental Materials
549 East Cucharas Street
Colorado Springs, CO 80903

Re: Findings of Fact, Conclusions of Law, and Order, Castle Concrete/ Continental Materials
File No. M-1977-211

On July 10, 2019 the Mined Land Reclamation Board signed the enclosed Board Order for the above captioned operation. We strongly advise that you read this document carefully since it may contain deadlines for corrective actions, civil penalties, cease and desist orders or other actions that may require your immediate attention to avoid future board actions.

Sincerely,



Camille Mbjar
Board Administrator

Enclosure(s)

Certified Mail

7018 2290 0001 8923 1557

cc:

Tim Cazier
Michael Cunningham
Jeff Fugate
Scott Schultz
Charles Kooyman
Scot Anderson, Esq.
Robert Clifford



BEFORE THE MINED LAND RECLAMATION BOARD
STATE OF COLORADO

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

**IN THE MATTER OF CONTINENTAL MATERIALS' APPEAL OF NOTICE OF
FINANCIAL WARRANTY INCREASE, File No. M-1977-211**

THIS MATTER came before the Mined Land Reclamation Board ("Board") on June 26, 2019 in Denver, Colorado to consider Continental Materials' ("Operator") request for an appeal of the Division of Reclamation, Mining and Safety's ("Division") notice of financial warranty increase for the Pikeview Quarry, file number M-1977-211. Tim Cazier, Michael Cunningham, and First Assistant Attorney General Jeff Fugate, Esq. appeared on behalf of the Division. Jerry Schnabel, Robert Clifford, and Scott, Anderson, Esq. appeared on behalf of the Operator.

The Board, having considered the parties' presentations and having been otherwise fully informed of the facts in the matter, hereby enters the following:

FINDINGS OF FACT

1. The Pikeview Quarry is a Section 112(c) operation that mines limestone. The site is located in Section 9, Township 13 South, Range 67 West, 6th Principal Meridian, in El Paso County, Colorado. The permit area is 246.46 acres. The site is located at the northwest limits of Colorado Springs, west of the intersection of Interstate 25 and Woodmen Road.

2. Subsequent to a slope failure and slide at the site in December 2008, Operator submitted an amendment application, AM-03, which contained a plan for a phased reclamation of the site and that was intended to address stability issues.

3. On January 8, 2019, the Division performed a monitoring inspection of the site. The inspection report, signed January 10, 2019, discussed the Division's review of the current bond amount (\$4,226,000.00) and stated that one of the inspection's primary purposes was to observe completed reclamation for consideration in the bond review.

4. On March 14, 2019, the Division sent Operator a notice of financial warranty increase ("SI-02") with a detailed cost estimate. The notice set the new bond amount at \$21,924,090.00, an increase of \$17,698,090.00.

5. The Division sent Operator a follow-up letter regarding SI-02 on April 30, 2019.

6. The Division received a request for an appeal of SI-02 from Operator on April 30, 2019. In that letter, Operator expressed its view that the new bond amount was excessive and that an alternative reclamation plan could protect the state for a much lower bond amount than under the current mine plan.

7. On May 29, 2019, the Division responded to Operator's request for an appeal and informed Operator that the appeal of SI-02 was set for consideration at the Board's June 26, 2019 meeting.

8. At the June 26, 2019 Board meeting, the Division presented testimony regarding the bond increase reflected in SI-02. In explaining the large increase, the Division stated that the current bond was set when AM-03 was approved and was posted to cover phases one and two of AM-03's reclamation plan, which dealt with approximately twenty-one acres on the site. The true liability of the entire site, however, had to be based on the full amount of reclamation to be done, which the Division testified was approximately 127 acres rather than the 21 acres under the current bond. The Division acknowledged that Operator had indicated that it intended to submit an amendment with an alternate reclamation plan but had not done so.

9. At the hearing, Operator proposed that the bond amount issue be remanded to the Division to allow Operator to submit a new reclamation plan. Operator testified that the current reclamation plan was based on over-engineering to address stability issues that resulted in the 2008 slide. Since AM-03's approval, Operator has worked to address stability issues and, based on those experiences, has developed a less invasive reclamation plan that disturbs less land but still ensures safety. Operator expressed its view that the alternative reclamation plan would also be completed more quickly than AM-03's plan.

10. At the hearing, the Division and Operator agreed to continue consideration of the appeal of SI-02 until the Board's August 2019 meeting and that Operator would post a \$15,000,000.00 bond by July 12, 2019 and submit an amendment application within 60 days of June 26, 2019.

CONCLUSIONS OF LAW

11. The Board has jurisdiction over this matter pursuant to the Colorado Land Reclamation Act for the Extraction of Construction Materials, §§ 34-32.5-101 through 125, C.R.S. ("Act").

12. Under section 34-32.5-117(4)(b)(I), C.R.S. and Rule 4.2.1(1) and (4) of the Mineral Rules and Regulations of the Board ("Rules"), every operator must maintain a financial warranty sufficient to assure completion of reclamation of all

affected lands, both those to be affected in the coming year and all lands affected in previous years but not yet reclaimed.

13. Under 34-32.5-117(4)(c)(I), C.R.S. and Rule 4.2.1(2) the Board and the Division may increase the amount of a financial warranty if the financial warranty is determined to be insufficient to perform reclamation. If an operator disagrees with the notice to increase the financial warranty, the matter is scheduled for a hearing before the Board. Rule 4.2.1(2).

ORDER

Based on the foregoing findings of fact and conclusions of law, the Board hereby ORDERS the following:

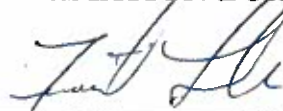
Operator shall, by July 12, 2019, submit a bond increase of \$10,774,000 for a total of \$15,000,000.00.

Operator shall submit a complete amendment application to the Division within 60 days of June 26, 2019.

This matter is hereby CONTINUED until the Board's August 21, 2019 meeting.

DONE AND ORDERED this 18th day of July 2019.

FOR THE COLORADO MINED LAND
RECLAMATION BOARD



Forrest Luke, Chair

NOTICE OF APPEAL RIGHTS

This order becomes effective and final upon mailing. Any party adversely affected or aggrieved by agency action may commence an action for judicial review by filing a complaint with the district court within thirty-five (35) days after the effective date of this order, pursuant to section 24-4-106, C.R.S. (2017) and the Colorado Rules of Civil Procedure. In the event that a complaint for judicial review is filed, designations of record made in accordance with section 24-4-106(6), C.R.S. should be served on the Board at: 1313 Sherman Street, Room 215, Denver, CO 80203, Attention: Camie Mojar.

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER upon all parties herein by depositing copies of same in the United States mail, first-class postage prepaid, at Denver, Colorado, this 25th day of July 2019 addressed as follows:

By certified mail:

7018 2290 0001 8923 1557

Jerry Schnabel
Castle Concrete/ Continental Materials
549 East Cucharras Street
Colorado Springs, CO 80903

Scot Anderson, Esq.
Hogan Lovells
1601 Wewatta St.
Suite 900
Denver, CO 80202

robert.clifford@stantec.com

By electronic mail to:

Tim Cazier
Division of Reclamation, Mining & Safety
1313 Sherman Street, Room 215
Denver, CO 80203

Michael Cunningham
Division of Reclamation, Mining & Safety
1313 Sherman Street, Room 215
Denver, CO 80203

Charles J. Kooyman
Senior Assistant Attorney General
Department of Law
Business and Licensing Section
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 10th floor
Denver, CO 80203

Jeff Fugate
First Assistant Attorney General
Department of Law
Natural Resources Section
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 10th floor
Denver, CO 80203

Scott Schultz
Assistant Attorney General
Department of Law
Natural Resources Section
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 10th floor
Denver, CO 80203



Camille Mojar, Board Administrator