

February 28, 2020

Re: Objection to Untimely Comments Submitted by Mr. Warren Dean
Permit Amendment 4, Pikeview Quarry, M-1977-211

Dear Mr. Cazier:

I write in response to your email to Paul Kos and me dated Thursday, February 27, 2020. Continental Materials Corporation (“CMC”) hereby objects to the untimely comments submitted to the Division of Reclamation, Mining and Safety (the “Division”) by Mr. Warren Dean¹ on January 14, 2020, February 19, 2020,² and February 26, 2020. CMC requests that the Division wholly disregard these submissions for all purposes and strike them from the permit file of the above-referenced amendment application in accordance with the terms of Section 114 (C.R.S. § 34-32.5-114) of the Colorado Land Reclamation Act for the Extraction of Construction Materials (the “Act”) and Rule 1.7.1(2)(a) (2 CCR 407-4:1.7.1(2)(a)) of the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials (the “Rules”).

CMC acknowledges that citizen participation is a vitally important part of the Division’s permit and amendment review process. To facilitate this participation, both the Act and the Rules prescribe very clear timelines for interested persons to submit comments or objections with respect to Section 112 Reclamation Permit amendment applications like the one at issue here. Pursuant to Section 114 of the Act (emphasis added):

An aggrieved person³ has the right to file written objections to and any person has the right to file written statements in support of an application for a permit and to petition for a hearing. Such protests or petitions for a hearing shall be filed with the board or office not more

¹ Mr. Dean’s submissions to the Division include memoranda prepared by Mr. Carl Mount and addressed to Mr. Dean. However, Mr. Mount is not—and has never purported to be—a party to the present proceedings. For the sake of clarity, CMC objects to the entirety of Mr. Dean’s untimely submissions, including the portions apparently prepared by Mr. Mount.

² Mr. Dean’s email to you dated February 26, 2020 (included as part of the conversation thread that you forwarded in your February 27, 2020 email to Paul Kos and me) references that Mr. Dean submitted “comments on CMC’s response to your Adequacy Review letter #3” on February 19, 2020. CMC has not been provided a copy of these comments, and these comments do not appear to have been filed in the Division’s online laserfiche system. For the sake of transparency of the communications between Mr. Dean and the Division, please provide CMC with a copy of Mr. Dean’s February 19, 2020 comments as soon as possible.

³ CMC does not concede that Mr. Dean meets the definitions of an “aggrieved person” or a “party” set forth in the Act and the Rules.

than twenty days after the date of last publication of notice made pursuant to section 34-32.5-112 (9).

Rule 1.7.1(2)(a) repeats the same deadline (emphasis added):

In order for statements supporting or objecting to an application, petitions for a hearing, and/or submissions to become a party to be considered timely, the following deadlines shall apply: . . . In the case of a 112 Reclamation Permit Application,⁴ such written comments, protests, and petitions for a hearing must be received by the Office not more than twenty (20) calendar days after the last date for the newspaper publication of notice of the application provided for in Rules 1.6.2(1)(d) and 1.6.5(1).

In this case, CMC's fourth and final newspaper notice was published in the Colorado Springs Gazette on October 19, 2019. Therefore, the deadline for objections to be received was Friday, November 8, 2019. Mr. Dean timely submitted an objection prior to this deadline on October 30, 2019. However, his later objections submitted on January 14, 2020 (87 days after publication of final newspaper notice), February 19, 2020 (123 days after publication), and February 26, 2020 (130 days after publication) are each indisputably untimely.

CMC is mindful of the importance of citizenship participation, as demonstrated by its decision to not immediately object when Mr. Dean issued his first set of untimely comments on January 14, 2020. However, Mr. Dean has now twice chosen to submit untimely objections less than ten days prior to the date on which the Division's final recommendation on CMC's application is required to be submitted to the Mined Land Reclamation Board. In the case of Mr. Dean's January 14, 2020 comments, this late submission led to a delay in the adequacy review process that pushed consideration of CMC's application back by a full month. Mr. Dean's most recent February 26, 2020 comments come *nineteen days* after CMC's submission of the document to which Mr. Dean purports to respond, and only nine days prior to the Division's current recommendation deadline. If the Division accepts Mr. Dean's untimely comments in this matter—in clear contravention of its enabling Act and governing Rules—it will set a dangerous precedent allowing public commenters in all permit reviews to submit new rounds of purported objections shortly before each applicable determination deadline, causing indefinite delays as the applicant is forced to request repeated extensions in order to allow the Division time to review and respond to such late-filed comments.

⁴ The rules governing applications for Section 112 Reclamation Permits are also used to govern applications for amendments to such permits, as is applicable here. See C.R.S. § 34-32.5-112(7)(a); Rule 1.10.1(4).

Please respond with confirmation that the Division will disregard for all purposes Mr. Dean's untimely comments dated January 14, 2020, February 19, 2020, and February 26, 2020, and will likewise strike such untimely comments from the permit file of the above-referenced amendment application.

We look forward to addressing the objections raised by Mr. Dean in his October 30, 2019 submission before the Mined Land Reclamation Board at its upcoming hearing on March 25-26, 2020.

Sincerely,



Jerald Schnabel
Continental Materials Corporation