



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

September 2, 2020

Jerald Schnabel  
Continental Materials Corporation  
549 E Cucharas Street  
Colorado Springs, CO 80903

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

On August 24, 2020 the Mined Land Reclamation Board signed the enclosed Board Order for the above captioned operation. Because this document is the final order of the Board, it is legally binding on and affects the above-captioned operation, and we strongly advise that you read this document carefully.

Sincerely,



Camille Mojar  
Board Administrator

Enclosure(s)

Certified Mail  
7018 2290 0001 8923 1182

cc:  
Tim Cazier  
Michael Cunningham  
Jeff Fugate  
Scott Schultz  
Charles Kooyman  
Warren Dean  
Scot Anderson  
Steve Mulliken



BEFORE THE MINED LAND RECLAMATION BOARD  
STATE OF COLORADO

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**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

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**IN THE MATTER OF THE APPLICATION FOR 112C AMENDMENT OF  
CONTINENTAL MATERIALS CORPORATION; FILE NO. M-1977-211**

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THIS MATTER came before the Mined Land Reclamation Board ("Board") on June 24, 2020 in Denver, Colorado and via videoconference for a hearing to consider the application of Continental Materials Corporation ("Applicant") for a 112c Amendment, file number M-1977-211.

Tim Cazier, Michael Cunningham, Zach Trujillo, and First Assistant Attorney General Jeff Fugate appeared on behalf of the Division of Reclamation, Mining and Safety ("Division").<sup>1</sup> Jerry Schnabel and Scot Anderson, Esq., appeared on behalf of Applicant. Steve Milliken, Esq. appeared on behalf of Objector Dean Warren.

The Board, having considered the parties' presentations and testimony, having reviewed the extensive written materials submitted prior to the hearing, and being otherwise fully informed of the facts in the matter, enters the following:

**FINDINGS OF FACT**

1. On August 26, 2019, Applicant submitted an application with the Division for an amendment to a 112c reclamation permit for a site known as the Pikeview Quarry in El Paso County, Colorado ("AM4"), which was filed for review on September 20, 2019. Located in Section 9, Township 13 South, Range 67 West, 6<sup>th</sup> Principal Meridian, the Pikeview Quarry is a limestone, granite, granite gneiss, and dolomite mine. The permitted area consists of 240.5 acres, 160 of which have been affected. Active mining at the site has ceased though materials from stockpiled material is still being sold.

2. AM4 proposes to change the reclamation plan to reclaim the site by backfilling the pit area and placing an engineered backfilled slope in tiers from the bottom up to cover and buttress areas where previous landslides occurred. The Amendment's reclamation plan calls for an overall slope of 2H:1V. The current permit and AM4 designate post-mining uses of wildlife habitat and recreation.

3. During the public comment period, as mandated by Rule 1.7.1 of the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for

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<sup>1</sup> The Division was advisory staff to the Board, not a party, in this proceeding.

the Extraction of Construction Materials, 2 CCR 407-4 ("Rules"), the Division received one timely letter of objection and agency comments from the Colorado Division of Water Resources and History Colorado.

4. During the review period, the Division generated four adequacy review letters. Over the course of the approximately six months of adequacy review, the Applicant addressed all of the Division's adequacy issues to the Division's satisfaction.

5. On March 6, 2020, based on the applicable requirements of the Colorado Land Reclamation Act for the Extraction of Construction Materials, Article 32.5 of Title 34, C.R.S. ("Act") and the Rules, the Division issued and served on all parties both a written recommendation for approval of AM4 over objection and a written rationale for that recommendation.

6. Pursuant to Rule 1.8 the Applicant submitted a technical revision to the permit application to the Division on May 13, 2020 to add recreation as an additional post-mining land use.

7. The Division recommended approval of the additional post-mining land use and issued a supplemental recommendation for approval of the Amendment Application over objection on June 5, 2020.

8. On March 12, 2020, the Board, through a prehearing officer, conducted a prehearing conference in Denver, Colorado. The prehearing officer issued a draft prehearing order and revised draft prehearing order. Among other things, the draft prehearing order identified five issues for the parties to present to the Board for consideration, geotechnical concerns, the reclamation plan, hydrology, reclamation cost estimate concerns, and general clarification comments. The revised prehearing order also included time allocations for presentations at the hearing.

9. Applicant filed a motion requesting amendments to the revised prehearing order, including that the time allotments be truncated.

10. On April 15, 2020, Applicant filed a petition for declaratory order that Objector did not have standing to be a party to the proceedings. Objector filed an objection to the petition.

11. At the June 24, 2020 hearing, the Board considered the revised draft prehearing order and considered the motion to amend filed by the Applicant. The Board adopted the draft prehearing order with reductions to presentation times.

12. The Board also heard arguments regarding Applicant's petition for declaratory order regarding Objector's party status. Applicant stated that Objector did not meet the standard for party status because his objections were not

particularized to him and instead were simply generalized to the public. Objector argued that the definition of an aggrieved party was broad and that Objector met that test because he lived in Colorado Springs and owned property near the mine as well as serving on the board of the local chapter of the Nature Conservancy.

13. At the hearing, Applicant presented evidence through testimony by Jerry Schnabel; Paul Kos, P.E. of Stantec Consulting Services, Inc.; Britt Haley, of the City of Colorado Springs; Justin Spring of The Conservation Fund; and Bruce Humphries of Regulatory Permits Management, Inc. regarding the issues identified in the prehearing order.

14. Objector presented evidence through testimony by Craig Vaughn, P.E. of Cesare, Inc.; Carl B. Mount; and Dan Bare, P.E. of Matrix Design Group regarding the issues identified in the prehearing order.

15. Applicant presented testimony regarding AM4, specifically, that it is intended to provide a safer, speedier, and more efficient reclamation plan than the previous reclamation plan, AM3.

16. Regarding geotechnical concerns with the changes to the reclamation plan, Applicant presented testimony that AM4's reclamation plan contemplates moving fill materials from the bottom of the permitted area rather than pushing them down from the top of the pit. This process would allow Applicant's work crews to work full time on moving and compacting fill on the tiers of the reclaimed slope, resulting in a speedier reclamation than under the previous plan. Fill material from the permitted area will be moved to the sloped area and then spread and compacted in layers to achieve the required slope and to buttress the face of the pit. AM4's plan does not require recommencement of mining, while the AM3 plan contemplates and allows for further mining to occur. The new reclamation plan would leave 100 vertical feet of remaining highwall while the AM3 plan authorizes a 470 vertical foot highwall.

17. The site has been monitored for stability since a landslide in 2008, and monitoring will continue during reclamation under AM4. As the reclamation work proceeds, AM4 calls for 750 tests to ensure compaction of fill material used in the reclamation plan. Should any test fail, the fill material on that tier would be recompacted.

18. Objector presented testimony asserting that AM4's reclamation plan was less safe than the AM3 plan and would leave unstable highwalls behind the fill material used to buttressing those slopes. Objector also presented testimony that AM4's plan would result in a lower factor of safety than the previous reclamation plan based on calculations made by Objector's witnesses and assumptions regarding the nature of fill material to be used and, according to Objector's witnesses, a lack of detail on the compaction and nature of fill materials to be used.

19. The Division presented testimony that AM4's slopes and reclamation plan are commensurate with other larger quarries on the Front Range and that AM4 had been thoroughly reviewed by the Division. Through the adequacy review process, the Division confirmed that AM4's factor of safety meets the Division and Board's requirements.

20. Regarding hydrologic balance, Applicant presented testimony that the stormwater plan follows industry standards, with water redirected outside of the landslide areas by directing it into armored channels to prevent water from infiltrating the slope. Applicant also presented testimony that the energy of storm water is dissipated as it flows downhill and that storm water flows into sediment pond to reduce discharge of sediment and protect downstream water quality.

21. The Division also presented testimony that the AM4 complied with the requirements for stormwater control outlined in Rule 3.1.6.

22. Applicant presented testimony regarding the estimated cost of reclamation, including that its figures of the cost of conducting the reclamation in accordance with AM4 were based on industry standards and were close to the bond proposed by the Division. Applicant's calculation was based on the work to be done at the site, particularly that fill materials will be moved relatively short distances within the permitted area. Applicant estimated needing 3.7 million cubic yards of material to complete AM4's reclamation plan and testified that all of the necessary fill material is on site, though Applicant can and may accept fill material from offsite after ensuring its suitability. With all, or the majority of, fill material being onsite, the costs of completing reclamation under AM4 does not include high costs from importing fill material.

23. Objector presented testimony that the cost of reclamation under AM4 was much higher than calculated by either the Division or Applicant. Objector's calculations were based on costs for large projects done by contractors in the area of the site and assumed an additional \$1.00 per yard cost for importing and processing fill materials. Objector's expert, Dan Bare, also testified that he had evaluated the potential costs using civil engineering projects rather than mining industry standards or the federal Office of Surface Mining's handbook on calculating reclamation costs.

24. The Division also presented testimony regarding its bond calculation, explaining that the estimated costs of reclamation were covered. The Division also presented testimony regarding the costs of reclamation related to bringing fill material for reclamation from offsite. Through the adequacy review process, the Division was satisfied that fill material to conduct reclamation under AM4 was present on the site and that the ability to source fill material from the site significantly reduced the cost of reclamation.

25. Applicant presented testimony regarding AM4's reclamation plan regarding vegetation. Though AM4 does not include any major changes for revegetation from the previous plan, it includes a seed mix with species of plants adapted to the climate at the site and known to grow there. Applicant has approximately half of the topsoil for reclamation on site and will generate the remaining half by adding amendments to materials already on the site to create a growth medium for revegetation. AM4's bond includes an increase to compensate and account for vegetation failures. AM4's revegetation plan does call for trees and shrubs to be planted.

26. The Division also presented testimony regarding AM4's vegetation plan, including that Applicant has a noxious weed plan for the site, which it has followed consistently. Regarding the mix of plants for revegetation, the Division explained that AM4 called for a diverse group of plants across the elevations of the site and did include trees to be planted and watered during reclamation.

27. The Division presented testimony regarding AM4 and its review. The Division conducted a thorough review process and has authority to inspect and enforce permit conditions and regulations after approval. The Applicant satisfied all of the Division's adequacy review requests, and the Application satisfied the requirements of the Act and the Rules.

28. The Division recommended approving the permit Application over objections.

### CONCLUSIONS OF LAW

29. The Board has jurisdiction over Applicant and this matter pursuant to the Act.

30. Under Rule 2.5.1, "[a]ny person who is or may be directly or adversely affected ... may petition the Board for declaratory order to terminate controversies or to remove uncertainties as to the applicability to the Petitioner of any statutory provision or any rule or order of the Board ..."

31. Section 34-32.5-114 provides that any "aggrieved person has the right to file written objections to ... an application for a permit and to petition for a hearing."

32. Rule 1.7.1 further states that a person may become a party to a proceeding if they meet the definition of a party under the Rules. Party is defined by Rule 1.1.(38) as "a person who demonstrates that they are directly and adversely affected or aggrieved by the conduct of a mining operation ... or an order of the Board and whose interest is entitled to legal protection under the Act." "Aggrieved" includes any actual or potential loss or injury to legitimate interests, which includes

“business, economic, aesthetic, governmental, recreational, or conservational interests.” § 34-32.5-103(1.5), C.R.S. (2019). Mr. Dean is aggrieved under section 34-32.5-103(1.5), C.R.S and Rule 1.1(38). based on his aesthetic and conservational interests that could be affected by AM4. Accordingly, Mr. Dean is a proper party to this proceeding.

33. Under section 34-32.5-115(4), C.R.S., “the applicant must comply with the requirements of this article and section 24-4-105(7), C.R.S.”

34. Under Rule 1.4.1(10), the Applicant “has the burden of demonstrating that the application meets the minimum requirements of the Act, Rules, and Regulations.”

35. Under Rule 2.8.1(1) and section 24-4-105(7), C.R.S., “the proponent of an order shall have the burden of proof.” As the party initiating this matter by filing AM4, Applicant was the “proponent of an order” at the hearing and, therefore, has the burden to prove that the Application is consistent with applicable laws and rules, and should be approved by the Board.

36. In considering whether to grant a permit to an applicant, the Board “shall not deny a permit except on one or more of the following grounds,” as relevant:

(a) The application is incomplete and the performance and financial warranties have not been provided.

...

(c) Any part of the proposed mining operation, the reclamation program, or the proposed future use is contrary to the laws or regulations of this article.

(d) The proposed mining operation, the reclamation program, or the proposed future use is contrary to the laws or regulations of this state or the United States, including but not limited to all federal, state, and local permits, license, and approvals, as applicable to the specific operation.

...

(g) The proposed reclamation plan does not conform to the requirements of section 34-32.5-116.

C.R.S. § 34-32.5-115(4) (2019).

37. Reclamation plans for mining sites must provide that disturbances to the prevailing hydrologic balance of the affected land and surrounding areas, and to the quality and quantity of water in surface water and groundwater systems, will be minimized. § 34-32.5-116(4)(h), C.R.S.; Rule 3.1.6. In consideration of AM4,

information from Applicant, and other information presented at the hearing, Applicant met its burden to prove compliance with section 34-32.5-116(4)(h), C.R.S. and Rule 3.1.6.

38. Reclamation plans must also comply with other provisions of section 34-32.5-116(4), C.R.S., including, among other things, appropriate grading of reclaimed slopes, proper topsoil management, adequate revegetation that is compatible with the post-mining use. Here, Applicant has complied with the requirements of sections 34-32.5-112 and 34-32.5-116(4) regarding reclamation and Rules 3.1.5 and 6.4.5. There is no cause to deny the Application under section 34-32.5-115(4)(c) or (g), C.R.S.

39. Under the Act, the Division and the Board shall grant a permit to an applicant who complies with section 34-32.5-115(4), C.R.S. AM4 complies with section 34-32-115(4), C.R.S.

### **ORDER**

Based on the foregoing findings of fact and conclusions of law, the Board hereby denies the petition for declaratory order regarding Mr. Dean's party status and approves AM4, over objection.

DONE AND ORDERED this 24 day of August 2020.

FOR THE COLORADO MINED LAND  
RECLAMATION BOARD



Nell Wareham-Morris, Chair

### **NOTICE OF JUDICIAL REVIEW 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. (2019) 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 2<sup>nd</sup> day of September 2020 addressed as follows:

*By certified mail:*

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Camille Mojar, Board Administrator