



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

December 3, 2021

Wayne Muhler
12310 East 168th Avenue
Brighton, CO 80602

Re: Notice of Formal Board Hearing, Pre-hearing Conference and Recommendation Date for an 112c Amendment Application (AM-2) with Objections; Aggregate Industries – WCR, Inc.; Tucson South Resource; File No. M-2004-044

Dear Party and/or Interested Person:

The Division of Reclamation, Mining and Safety (Division/DRMS) appreciates you taking time to participate in the review process of the above referenced amendment application. The amendment application for the Tucson South Resource (M2004-044) was submitted by Aggregate Industries – WCR, Inc. on September 9, 2021. The amendment application was considered filed for review on September 27, 2021. The public comment period for the amendment application closed on November 16, 2021. The review period for the amendment application will close on December 27, 2021.

An explanation of the Division's review process, your rights and responsibilities as either a party or a non-party, and the jurisdiction of the Mined Land Reclamation Board (Board), is provided in an 8-page memorandum, "Guide to Citizen Participation in the 112 Reclamation Permit Application Process for Construction Materials and Hard Rock/Metal Mining Operation", dated October 2, 2001, revised October 7, 2021. This memo is enclosed. You are strongly encouraged to read this guide to understand your responsibilities to participate in the amendment application process. As noted in the citizen's guide memo, in these proceedings the Division's authority is limited to enforcement of the Colorado Land Reclamation Act for the Extraction of Construction Materials, 34-32.5-101 et seq., C.R.S. (Act) and the Mineral Rules and Regulation of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials (Rules). The amendment application and the Act and the Rules can be accessed through the Division's website at <https://drms.colorado.gov/>.

The Division received three (3) timely objection to the amendment application. Therefore, pursuant to Rules 1.4.9(2)(a) and 1.7.4(2), the Division scheduled the amendment application for a Formal Board Hearing for consideration. The hearing is scheduled for the January 19-20, 2022 Board meeting, which will begin at 9:00 a.m. on January 19 or as soon thereafter as the matter can be considered. During the hearing, the Board will consider the amendment application with objections and may decide to approve, approve with conditions, or deny the amendment application. Due to the impacts of the COVID-19 virus on availability of State facilities and Division resources, notice is hereby given the Board hearing will be by a virtual ZOOM hearing. You must provide an email of all parties to the MLRB Administrator, Camie Mojar at: Camille.mojar@state.co.us, no later than 5:00 PM, January 7, 2022 in order to receive an authorization



code to attend the hearing. **Please note that only Parties and those who will be testifying may attend by ZOOM.** All other interested persons may attend the hearing via the MLRB YouTube Channel: <https://www.youtube.com/channel/UCDrrAO8bIPFIOWce-yH1fWA>

Pursuant to Rule 2.7, the Division has scheduled a Pre-hearing Conference for Friday January 7, 2021 beginning at 11:00 a.m. and will end no later than 12:00 p.m. The Pre-hearing Conference will be held to describe the Division's review process, to explain the rights and responsibilities of parties, to discuss and resolve issues to the extent possible, to describe the Board Hearing processes, to propose a list of issues under the Board's jurisdiction, to simplify the list and to identify parties. The Pre-hearing Conference will be held online via Zoom and attendees will also have the option of joining the meeting via telephone. The meeting details, including call-in telephone numbers and a link to the virtual meeting will be provided as soon as they are determined. In accordance with Rule 2.7.3(4), any party who does not attend the Pre-hearing Conference forfeits their party status and all associated rights and privileges, unless such party provides a fully executed proxy authorization form to the Pre-hearing Conference Officer and the party's authorized representative is present at the Pre-hearing Conference. The proxy authorization form is included in the citizen's guide.

In preparation for the Pre-hearing Conference, all parties are strongly recommended to review Rules 2.6 and 2.7. At the Pre-hearing Conference all parties must provide the Division with a copy of a written list of potential witnesses and exhibits for the Board hearing. Pursuant to Rule 2.6(2)(a), the list must include each witness name, current address, and phone number, area of expertise (if expert witness) and the subject matter of the testimony. Pursuant to Rule 2.6(2)(b)(i), for any materials not already in the Division's public files, all parties must provide complete copies of any exhibits for the Board hearing. Pursuant to Rule 2.6(2)(b)(ii), for any materials that are already in the Division's public files, all parties must provide copies of the list of materials to be used with sufficient specificity to describe the exhibit, including but not limited to the specific title or description of each exhibit. The list must also specify where other parties may review and obtain a copy of each exhibit.

Pursuant to Rule 1.4.9(2)(c), on or before December 27, 2021, the Division shall issue its recommendation to the Board for approval, approval with conditions, or denial of the application. A copy of the Division's recommendation will be forwarded to all parties and interested persons.

If you need additional information or have any questions, please contact me at Division of Reclamation, Mining and Safety, 1313 Sherman Street, Room 215, Denver, CO 80203, by telephone at **303-866-3567 x8114**, or by email at patrick.lennberg@state.co.us.

Sincerely,



Patrick Lennberg
Environmental Protection Specialist

Enclosures: Guide to Citizen Participation

cc: Jared Ebert; Division of Reclamation, Mining & Safety

ec: Wayne Muhler, wmuhler@yahoo.com

Gary Linden, P.E., Civil Resources, LLC., gary@civilresources.com

Enclosure



MEMORANDUM

To: Whom it May Concern

From: Division of Reclamation, Mining and Safety, Minerals Program

Date: October 2, 2001; Revised on October 19, 2001, August 2, 2004, January 12, 2006, and October 7, 2021

Re: **Guide to Public Participation in the 112 Reclamation Permit Application Process for Construction Materials and Hard Rock/Metal Mining Operations**

Thank you for taking the time to be involved in the State of Colorado's process of reviewing applications for new mining operations or amendments to existing permits. The purpose of this memorandum is to explain the 112 reclamation permit application process for construction materials and hard rock/metal mining operations, your rights as either a party or a non-party, and the jurisdiction of the Mined Land Reclamation Board (MLRB or the Board).

Background

Colorado's general assembly codified Colorado's Mined Land Reclamation Act (§ 34-32-101, C.R.S., *et seq.*) and the Land Reclamation Act for the Extraction of Construction Materials (§ 34-32.5-101, C.R.S., *et seq.*; together "Acts") to regulate mining operations in the state. The corresponding Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for Hard Rock, Metal, and Designated Mining Operations ("Hard Rock/Metal Mining") and Extraction of Construction Materials ("Construction Materials") were subsequently promulgated by the Mined Land Reclamation Board (2 C.C.R. 407-1 and 2 C.C.R. 407-4; together "Rules"). The Acts and Rules are available at: <https://drms.colorado.gov/rules-and-regulations>.

The Minerals Program of the Division of Reclamation, Mining and Safety (Division or DRMS) issues various types of mining permits, including for: 110 Limited Impact Operations, 110 Limited Impact Designated Mining Operations, 111 Special Operations, 112 Regular Operations, and 112 Regular Designated Mining Operations. All permit applications are available at: <https://drms.colorado.gov/forms/minerals-program-forms>. This document is focused solely on the application review process for 112 reclamation permit applications.

The Role of the Mined Land Reclamation Board

Pursuant to the Acts, the Board has exclusive jurisdiction over the reclamation of a mining operation's affected lands. A reclamation permit establishes a post-mining land use for the affected lands. The post-mining land use may be for forest, rangeland, cropland, general agriculture, residential, recreational, industrial/commercial, developed water resources, or other "uses". Although the Board does not have jurisdiction over local land use decisions (e.g., visual impacts, economic impacts, noise, traffic), a permit Applicant must obtain all required permits, licenses, and approvals prior to conducting any mining operations. Local governmental entities have jurisdiction over their land use, zoning, and permitting processes. A reclamation permit Applicant may not be required to have all necessary approvals or permits from other agencies in place, including city and county zoning and land use permits, before a reclamation permit is issued.

The Board is a multi-interest citizen board which establishes the regulations, standards, and policies that guide the Division. Colorado's governor appoints five Board members from nominations submitted by each of the various constituencies represented, resulting in two members with substantial experience in the mining industry, two with substantial experience in conservation and environmental resources, and one with substantial experience in agriculture. A sixth Board member is the Executive Director of the Department of Natural Resources, or his/her appointee, and the seventh is a member of the State Soil Conservation Board. (§ 34-32-105, C.R.S.). The Board typically meets for one to two days every month. Some of the Board's responsibilities include: promulgating Rules that implement the Acts; issuing violations, civil penalties, and cease and desist orders; determining corrective actions for operators found in violation of the Acts and Rules; and conducting hearings regarding reclamation permit applications.

The Role of the Division

Division staff specialize in numerous areas including geology, biology, wildlife management, range and soil science, engineering, hydrology, and chemistry. During the reclamation permit application process, the Division is responsible for ensuring that the contents of the application adequately address the requirements of the Acts and Rules. To monitor compliance with permit requirements, the Division conducts periodic inspections of all permitted mining, exploration, and prospecting operations in Colorado. If an operator fails to timely correct any compliance issues identified during an inspection, the Division may present the possible violations to the Board. The Division calculates the reclamation bond required for a proposed mining operation based on the operator's proposed reclamation plan. The bond is reassessed periodically throughout the life of mine to ensure it is sufficient for reclaiming the site in accordance with the approved plan. Where there is a written objection to a permit application or a request for reconsideration of a Board decision, the Division serves as staff to the Board. For 112 applications that receive no timely objections, or for which, all objecting parties withdraw prior to the scheduled Board Hearing, the Division is authorized to approve or deny the application without a hearing before the Board.

The Role of the Applicant

During the reclamation permit application process, the Applicant has the burden of proving the application submitted to the Division meets all requirements of the Acts and Rules, including providing sufficient evidence that all required notices have been posted or delivered within the required timeframes.

Applicants for 112 Reclamation Permits or Amendments must place a copy of the application at the County Clerk or Recorder's office in the county containing the land to be affected by mining. The Applicant must notify the local Board of County Commissioners, the Board of Supervisors of the local Soil Conservation District, all surface and mineral rights owners of the affected lands, and all surface owners within 200 feet of the affected lands. The Applicant must also post signs at the proposed mine site and publish a public notice in a local newspaper of general circulation once a week for four consecutive weeks.

The Role of the Public Participant

A person may participate in the Board Hearing process regarding a contested reclamation permit application as a party or a non-party. Pursuant to the Acts and Rules, a person may participate as a "party" if they:

- (1) Submit a written comment or objection to the Division not more than 20 calendar days after the last date for the newspaper publication of notice of the application. The comment or objection letter must include the person's: name, mailing address, telephone number, and an explanation of how they are directly and adversely affected or aggrieved by the proposed mining operation [see "party" definition in Construction Materials Rule 1.1(38) and Hard Rock/Metal Mining Rule 1.1(50)]. To ensure timely receipt, any comments or objections on an application should be submitted via our website at: https://dnrlaserfiche.state.co.us/Forms/DRMS_Comment; and
- (2) Attend the Pre-hearing Conference *or* provide a proxy authorization form (see attached Authorization to Appear on Behalf of a Party) to the Board's Pre-hearing Conference Officer on or before the date of the Pre-hearing Conference and the Party's authorized representative is present at the conference [pursuant to Rule 2.7.3(4)]. Any party may be represented by an attorney; and
- (3) Attend the Board Hearing.

A party may present evidence, call witnesses, and cross-examine witnesses during the Board Hearing on the application. A party also has the right to sue or be sued in district court on matters regarding the Board's decision on the application. For additional information regarding a party's rights and responsibilities, please refer to Rules 1.7, 2.6, 2.7, 2.8, and 2.9.

Per Rule 2.7.3(3), any person who is a party to a matter before the Board, and who wishes to withdraw as a party, must do so in writing prior to the commencement of, or on the record during, the Formal Board Hearing on the matter (see attached Party Status Withdrawal Form).

If you choose not to be a party, or to withdraw your party status, as a non-party, you may still address the Board on matters of concern during the public comment portion of the Board meeting. However, in this case, you will not preserve or be entitled to the rights of a party. In the event that all objecting parties withdraw prior to the Board Hearing, the Division is authorized to approve or deny the application without consideration by the Board. Thus, in this instance, there would be no opportunity for a non-party to provide public comment at a Board Hearing.

The Role of Other Governmental Agencies

Once a reclamation permit application is received by the Division and considered “filed” (or “complete”), the Division sends a notice of the application to various local, state, and federal agencies. These governmental agencies may include: county commissioners, county planning and zoning departments, Colorado Parks and Wildlife, Colorado Department of Public Health and Environment, Colorado Division of Water Resources/Office of the State Engineer, local Conservation District(s), Colorado State Land Board, State Historic Preservation Office, U.S. Army Corps of Engineers, Colorado Oil and Gas Conservation Commission (for sites that overlap oil and gas facilities or are surrounded by oil and gas activity), Urban Drainage (for sites located within the 100 year floodplain in Adams, Arapahoe, Boulder, Denver, Douglas, or Jefferson County), U.S. Bureau of Land Management and/or U.S. Forest Service (for sites located on federal lands), and any municipalities located within 2 miles of the proposed affected lands. The Division’s review of the application may be coordinated with these and/or other governmental agencies as appropriate.

The 112 Reclamation Permit Application Process

Completeness Review: Upon receipt of an application, the Division first determines whether it contains sufficient information for it to be considered “filed” (or “complete”), as defined by Construction Materials Rule 1.1(23) and Hard Rock/Metal Mining Rule 1.1(27).

Adequacy Review: Once a 112 reclamation permit application is considered filed, the Division has 90 days to complete its adequacy review of the application and to make its decision to approve, approve with conditions, or deny the application. During the adequacy review process, the Division evaluates each exhibit in the application to verify that it meets all applicable requirements of the Acts and Rules (exhibit requirements are outlined in Rule 6). If the Division determines an exhibit is inadequate, it will send an adequacy review letter to the Applicant identifying the deficiencies. The Applicant must address all deficiencies in the application to the satisfaction of the Division in order for the application to be approved. The 90-day application review period may be extended at the request of the Applicant, not to exceed 365 days from the date the application was filed, in order to provide the necessary information to meet the adequacy requirements. The 90-day application review period may also be extended by the Division in accordance with Rule 1.4.1(7) in the case of “complex” applications, serious unforeseen circumstances, or significant snow cover on the affected land that

prevents a necessary on-site inspection, or Rule 1.4.1(13) where the Applicant failed to publish the public notice pursuant to Rule 1.6.2(1)(d). If the Division's review period is extended, the decision date on the application is reset.

If no timely objections are received on a 112 reclamation permit application, the Division will make the decision to approve, approve with conditions, or deny an application on or before the decision date.

If timely objections are received on a 112 reclamation permit application, the Division will schedule the matter for a formal Board Hearing, during which, the Board will make the final decision on the application. In this case, on or before the application decision date, the Division will make a recommendation to the Board on whether to approve or deny the application. Such recommendation shall identify the issues raised by the Division or by timely objectors. The Division's recommendation and rationale for approval or denial shall be sent to all parties at least 3 working days prior to the Pre-hearing Conference.

While a reclamation permit application may be *approved* by the Division or the Board, the permit is not issued until the required performance and financial warranties are received.

Pre-hearing Conference: A Pre-hearing Conference is held after the Division has issued its recommendation and rationale on the application, and at least 10 calendar days prior to the Board Hearing. Persons seeking to participate in the hearing process are encouraged to review Rules 2.6, 2.7, and 2.8 prior to the Pre-hearing Conference. The purpose of the Pre-hearing Conference, which is held by a Pre-hearing Conference Officer ("PHCO") delegated by the Board, is to explain the Division's application review and Board Hearing processes, identify issues raised that are within and outside of the Board's jurisdiction, and recognize the parties. Following the Pre-hearing Conference, the PHCO drafts a proposed Pre-hearing Order for the Board to consider at the hearing. The PHCO's proposed Order recommends a list of parties, identifies issues within the Board's jurisdiction to be considered at the Board Hearing, and proposes a hearing schedule with time allotments (the Board may adopt this Order as drafted or amend it). *Please note that parties are required to present their list of all potential witnesses and exhibits at the Pre-hearing Conference in accordance with Rule 2.6(2).*

Board Hearing: The Division shall provide all parties to an application at least 30 days written notice of the Board Hearing date. During the hearing, the Board will consider all of the evidence presented, deliberate on the issues, and vote on whether to approve the reclamation permit application. Subsequently, the Board's written decision, in the form of a Board Order, will be sent to all parties that participated in the hearing. Any decision by the Board is considered final agency action for purposes of appeal.

Helpful Weblinks:

Colorado Division of Reclamation, Mining and Safety homepage: <https://drms.colorado.gov>

The Acts and Rules for Construction Materials and Hard Rock/Metal Mining operations are available at: <https://drms.colorado.gov/rules-and-regulations>.

A list of permitting actions currently under review is available at:
<https://drms.colorado.gov/information/permitting-actions-currently-under-review>.

Comments or objections on an application under review can be submitted at:
https://dnrlaserfiche.state.co.us/Forms/DRMS_Comment.

All (non-confidential) permit files are available for public review through our online imaged document system (called Laserfiche) at: <https://dnrweblink.state.co.us/drms/search.aspx>. A Laserfiche User Guide is available at: https://drive.google.com/file/d/1l8OUdf_Mpjo3kxIHkP5hMH-w7MeBtxX7/view.

This guidance document as well as the attached Proxy Authorization and Party Status Withdrawal forms are available on our website (under the section labeled “Information”) at:
<https://drms.colorado.gov/forms/minerals-program-forms>.

AUTHORIZATION TO APPEAR ON BEHALF OF A PARTY

(Please Type or Print the Requested Information)

SIGNATURES MUST BE IN BLUE INK

I _____,
(person's name) (title, if applicable)

of _____ (name of company, association, organization,
etc., if applicable)

hereby delegate to _____,
(person or entity's name)

the right to appear on behalf of _____
(person, company, association, organization, etc.)
at the Pre-hearing Conference.

SIGNED AND DATED THIS _____ DAY OF _____, _____.

_____ If corporate attest (seal)
Authorized Signature (must be signed in blue ink)

Title: _____

State of _____)

)

County of _____)

The forgoing instrument was acknowledged before me this _____ day of _____, _____
_____ by _____ as _____ of _____.

Notary Public

My commission expires: _____

SIGNATURES MUST BE IN BLUE INK

PARTY STATUS WITHDRAWAL FORM

Signature _____