



January 11, 2022

Parties to Application of Aggregate Industries – WCR, Inc., File No. M-2004-044

**RE:   *Draft Pre-hearing Order, File No. M-2004-044***  
***Application of Aggregate Industries for a 112 Construction Materials Reclamation***  
***Permit Amendment (AM-2)***

To Whom It May Concern:

The enclosed Draft Pre-hearing Order, prepared as a result of the Pre-hearing Conference held in this matter on January 7, 2022, is being sent to you pursuant to Construction Materials Rule 2.7.1(3).

If you have any questions, concerns, or objections regarding the provisions of the enclosed document, please direct them to the Mined Land Reclamation Board at the final hearing to be held in this matter. The Formal Public Hearing on this matter (unless noticed otherwise) will occur during the Board's regularly scheduled meeting on January 19-20, 2022, which will occur virtually through Zoom, beginning at 9:00 a.m. or as soon thereafter as the matter can be considered.

Sincerely,

Pre-Hearing Conference Officer

Enclosed: Draft Pre-Hearing Order

Ec:   Patrick Lennberg, Division  
      Jared Ebert, Division  
      Jeff Fugate, AGO  
      Charles Kooyman, AGO



BEFORE THE MINED LAND RECLAMATION BOARD  
STATE OF COLORADO

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**DRAFT PREHEARING ORDER**

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IN THE MATTER OF THE 112 CONSTRUCTION MATERIALS AMENDMENT (AM-2)  
APPLICATION OF AGGREGATE INDUSTRIES – WCR, INC., FILE M-2004-044

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The Mined Land Reclamation Board (“Board”), through prehearing officer Michael Cunningham (“PHO Cunningham”), and pursuant to Rules 2.6 and 2.7 of the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials (“Rules”), conducted a prehearing conference on January 7, 2022 virtually. The Board, having considered this order, as proposed by PHO Cunningham, and having considered any subsequent objections or comments from the parties, hereby enters the following Prehearing Order for the captioned proceeding:

**I. BACKGROUND**

On September 27, 2021, Aggregate Industries – WCR, Inc. (“Applicant”) filed an application with the Division of Reclamation, Mining and Safety (“Division”) for a 112 Construction Materials Reclamation Permit Amendment (AM-2), File number M-2004-044 (“Application”). During the required period of notice of the Application filing, the Division received three objections. On December 27, 2021, after issuing three adequacy reviews letters, the Division issued its rationale for recommendation to conditionally approve the Application.

**II. FORMAL PUBLIC HEARING**

The Formal Public Hearing on this matter (unless noticed otherwise) will occur during the Board’s regularly scheduled meeting on January 19-20, 2022, which will occur virtually through Zoom, beginning at 9:00 a.m. or as soon thereafter as the matter can be considered.

The Formal Public Hearing in this matter concerns whether or not the Board should grant or deny the Applicant’s Application in accordance with the Colorado Land Reclamation Act for the Extraction of Construction Materials (Article 32.5 of Title 34, C.R.S.; the “Act”) and the Rules. The Board’s resolution of this matter, including findings of facts and conclusions of law, will be based on the Board’s review of the Application, testimony presented by the parties and Division at the hearing, and exhibits the Board admits into the record at this hearing.

In this matter, the Applicant bears the burden of proving that the Application meets the requirements set forth in the Act and Rules. If the Applicant meets this burden, any denial by the Board must be based upon one of the grounds provided in section 34-32.5-115(4), C.R.S.

### **III. Parties**

The list of parties who maintain party status by appearing at the prehearing conference are as follows:

Applicant: Aggregate Industries – WCR, Inc.; Represented by Michelle Berger, Esq.

Objectors: B. Michl Lloyd

Wayne Muhler

Sherie Gould

The objectors are referred to herein as “Objectors”.

The Division is advisory staff to the Board in the matter, not a party. As used herein, “party” or “parties” shall mean the Applicant, Objectors, or both, as the context indicates.

### **IV. ISSUES**

Presentations to the Board by the parties and the Division shall be limited to the following issues:

1. Availability of Application – Whether the Application was available for public review.
2. Public Notice – Whether the Applicant followed the public notice procedures outlined in the Act and Rules.
3. Mining Plan Adequacy – Whether the Mining Plan limits the extent of construction materials extraction.
4. Permit Sign – Whether the Applicant has complied with permit sign requirements.
5. Permit Conditions – Whether the Applicant has complied with the conditions of permit approval.
6. Berms and Stockpile Management – Whether the Applicant has salvaged topsoil and complied with material handling procedures.
7. Concurrent Reclamation – Whether the Application adequately defines concurrent reclamation.
8. Reclamation Plan Adequacy – Whether reclamation has been performed on previously mined areas.
9. Noxious Weeds – Whether the Application adequately address the control of noxious weed species.
10. Hydrologic Balance – Whether impacts to the prevailing hydrologic balance have been minimized, including concerns about groundwater mounding and impacts to septic systems.
11. Wildlife – Whether the Application takes into account the safety and protection of wildlife.
12. Legal Right of Entry – Whether the Applicant has secured all of the required access agreements.
13. Geotechnical Stability – Whether the conveyor corridor will impact the stability of the Challenger Reservoir.

14. Rapid Drawdown Conditions – Whether the geotechnical stability analysis accounts for saturated conditions and the rapid drawdown of the reservoirs.

## **V. WITNESSES AND EXHIBITS**

Pursuant to Rule 2.6(2), all parties and the Division must exchange witness and exhibit lists at the prehearing conference. The Applicant, some Objectors, and the Division provided witness and exhibit lists on the day of the prehearing conference as follows:

### Witnesses

For Aggregate Industries – WCR, Inc.:

- Chance Allen, Aggregate Industries – WCR, Inc.;
- Gary Linden, P.G., Civil Resources, LLC;
- Roger Wingate, Matrix Design Group, Inc.;
- Neil Whitmer, Aggregate Industries – WCR, Inc.;
- Trey Poulson, Aggregate Industries – WCR, Inc.;
- Trulane Vanatta, LaFarge Holcim;
- Any other witness necessary for rebuttal or authentication.

For Objector Wayne Muhler:

- Sherie Gould
- Cristofer Muhler
- James A. Hood
- B. Michl Lloyd

For Objector B. Michl Llyod:

- Dr. Wayne Muhler
- Sherie Gould
- Cristofer Muhler
- James A. Hood

For Division:

- Russ Means, Division;
- Patrick Lennberg, Division;
- Jared Ebert, Division;
- Peter Hays, Division;
- Any witness identified by any other party, whether called or not called by that party;
- Any witness necessary for impeachment or rebuttal.

## Exhibits

For Aggregate Industries – WCR, Inc.:

1. DRMS 112 Permit Amendment Submittal M-2004-044-AAM02 and associated attachments.
2. Pre-Mining and Mining Plan Map (Exhibit C-1 to Application).
3. Tucson South Underdrain Plans (Attachment to Original Application).
4. Preliminary Adequacy Review.
5. Preliminary Adequacy Response.
6. Adequacy Review No. 2.
7. Adequacy Review No. 2 Response.
8. Adequacy Review No. 3.
9. Adequacy Review No. 3 Response.
10. Weld County DPS Letter – Right-of-Way (December 22, 2021).
11. Adams County EPS Letter – Right-of-Way (December 23, 2021).
12. Recommendation to Approve Rationale Packet.
13. Inspection Report – September 25, 2021.
14. Inspection Report – December 8, 2021.
15. Weld County Recorder USR.
16. Weld County DPS Letter – No USR Amendment Required (October 23, 2020).
17. Adams County Board of County Commissioners Decision Letter.
18. Adams County Board of County Commissioners Resolution.
19. Letters of Support.
20. Project Site Drone Photographs.
21. DRMS Application Comments.
22. Communications with Objectors.
23. Any other exhibit necessary for rebuttal.

For Division:

1. Public Record for Division File No. M-2004-044 available on Laserfishe at <http://mining.state.co.us>

Parties must file any PowerPoint presentations intended for use at the hearing with the Board no later than 5:00pm on January 14, 2022.

All documents and other materials admitted into evidence by the Board at the Formal Public Hearing will become part of the administrative record. Upon request, a party may recover any evidence introduced by that party.

## **VI. PROCEDURE**

The Division, parties and members of the public shall make presentations in the following order for issues identified in section IV. The time limits set out below are maximum time limits; however, the Board, in its discretion, may allow additional time. The Board has the authority to limit any duplicative or irrelevant testimony. Objectors requested individual allotments of time as described below.

All parties will be afforded an opportunity to conduct cross-examination of any witness that testifies during each presentation. Time used for cross-examination of a witness shall count against the time limit of the cross-examining party or Division. At the discretion of the Board, time used to respond to questions by members of the Board may not count against the time limit of the responding party or Division.

PHO Cunningham solicited and considered input from the parties and the Division at the prehearing conference regarding the time requested to make presentations at the hearing, and recommends the following procedures for approval by the Board:

### **A. Board Consideration and Adoption of the Prehearing Order**

The Board shall consider this draft Prehearing Order for adoption. The Board will hear any objections to the proposed Order at that time, and will make any necessary amendments prior to adopting the Order.

### **B. Introduction – Division**

The Division shall have 10 minutes in which to present an overview of the Application.

### **C. Presentation – Division**

The Division shall have 35 minutes in which to make a presentation to the Board.

### **D. Presentation – Applicant**

The Applicant shall have 45 minutes in which to make a presentation to the Board.

### **E. Presentation – Objectors**

The Objectors shall have 60 minutes in which to make a presentation to the Board.

### **F. Rebuttal – Objectors**

The Objectors shall have 20 minutes in which to make a rebuttal, and shall be limited to responding to the issues addressed in the presentations of the Applicant and the Division.

**G. Rebuttal – Applicant**

The Applicant shall have 15 minutes in which to make a rebuttal, and shall be limited to responding to the issues addressed in the presentations of the Division and Objectors.

**H. Rebuttal – Division**

The Division shall have 10 minutes in which to make a rebuttal, and shall be limited to responding to the issues addressed in the presentations of the Objectors and Applicant.

**I. Closing Statement – Objectors**

The Objectors shall have 10 minutes in which to make a closing statement.

**J. Closing Statement – Division**

The Division shall have 5 minutes in which to make a closing statement.

**K. Closing Statement – Applicant**

The Applicant shall have 5 minutes in which to make a closing statement.

Dated this \_\_\_\_ day of January 2022.

BY: \_\_\_\_\_, Chairperson Mined Land Reclamation Board