



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

February 1, 2023

Rod Havens
McAtee Construction Company
6215 Clear Creek Parkway
Cheyenne, WY 82007

**RE: Timnath Pit, Permit No. M-1989-056, Incomplete Application for
Transfer of Permit and Succession of Operators—SO-1**

Dear Mr. Havens:

On January 26, 2023, the Division of Reclamation, Mining and Safety (DRMS/Division) received the Application Form for Transfer of Mineral Permit and Succession of Operators from Don Kehn Construction Inc. to McAtee Construction Company for the Timnath Pit, Permit M-1989-056. The following items are incomplete for the application to be processed:

1. A review of the Colorado Secretary of State website shows that Corporation Service Company is the registered agent for McAtee Construction Company not Trevor Tipotsch (Attachment 1). The Division requires the prospective Successor Operator to provide documentation giving the signer, Trevor Tipotsch, the authority to sign on behalf of McAtee Construction Company. The authorization document may be in the form of by-laws, resolution, affidavit signed by corporate secretary, certified secretary statement of a notarized statement on company letterhead.
2. Completed Affidavit of Authority (Attachment 2) is needed for Trevor Tipotsch for signing the Performance Warranty.
3. The Other Reclamation Permits held by the Prospective Successor, is incomplete. Missing from the list are the Harley Pit #1 (M1986-147), Green Bros Pit No. 2 (M1995-030) and Bollish Pit #2 (M2007-013). Please update and resubmit a list to be complete with all McAtee Construction Company permits.
4. No new structure agreements were provided. A review of the permit file indicates there are pipelines, fiber optic lines, and irrigation ditches that cross the property. There is a new building under construction in the southwestern portion of the permit area and assumed to be



a variety of fencing along the permit boundary that are within 200 feet of the affected land boundary. Structure agreements are required where the affected lands are within two hundred (200) feet of any significant, valuable and permanent man-made structure. The applicant shall:

(a) provide a notarized agreement between the Applicant and the Person(s) having an interest in the structure, that the Applicant is to provide compensation for any damage to the structure; or

(b) where such an agreement cannot be reached, the Applicant shall provide an appropriate engineering evaluation that demonstrates that such structure shall not be damaged by activities occurring at the mining operation; or

(c) where such structure is a utility, the applicant may supply a notarized letter, on utility letterhead, from the owner(s) of the utility that the mining and reclamation activities, as proposed, will have "no negative effect" on their utility.

A Structure Agreement template has been provided for your convenience in Attachment 3.

5. The Application did not contain a demonstration of the legal right to enter to perform reclamation activities at the site. All Permittees must provide a description of the basis for legal right of entry to the site and to conduct mining and reclamation pursuant to Rule 6.4.14. To comply with this requirement, the Prospective Successor must demonstrate that he/she/it has obtained a legal right of entry from any and all surface and mineral rights owners in the affected lands, independent of the current Permittee. Demonstration may be a copy of an access lease, deed, abstract of title, current tax receipt, or a signed and notarized statement by the property owners stating that the Prospective Successor has a legal right to enter. Please note a review of the Larimer County Assessor site indicates the approved 280 acre permit is on multiple parcels owned by differing individuals/entities.

Please respond to the items above by the decision date April 2, 2023. All completed permit documents are required to be submitted for consideration of your Request for Transfer of Mineral Permit and Succession of Operators Application. If additional time is needed to respond, an extension request must be received by our Office by the decision date. If on the decision date, outstanding items remain, and no extension request has been received, your application will be denied and the file terminated. The Division reserves the right to further supplement this document with additional items and details as necessary.

Please contact Patrick Lennberg (303) 866-3567 ext. 8114 or by email at patrick.lennberg@state.co.us if you have any questions.

Sincerely,



Patrick Lennberg
Environmental Protection Specialist

Attachments: 1 – Colorado Secretary of State Summary McAtee Construction Company
2 – Affidavit of Authority
3 – Structure Agreement Form

cc: Sara Stevenson-Benn, DRMS
Jared Ebert, DRMS

ec: Ron Havens, McAtee Construction Company, rhavens@simonteam.com

Attachment 1



For this Record...

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FAQs, Glossary and Information

Summary

Details			
Name	MCATEE CONSTRUCTION COMPANY		
Status	Good Standing	Formation date	04/01/2002
ID number	20021082039	Form	Corporation
Periodic report month	April	Jurisdiction	Colorado
Principal office street address	220 Edwards Street, P.O. Box 1908, Sterling, CO 80751, United States		
Principal office mailing address	220 Edwards Street, P.O. Box 1908, Sterling, CO 80751, United States		

Registered Agent	
Name	Corporation Service Company
Street address	1900 W. Littleton Boulevard, Littleton, CO 80120, United States
Mailing address	1900 W. Littleton Boulevard, Littleton, CO 80120, United States

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Attachment 2



COLORADO

**Division of Reclamation,
Mining and Safety**

Department of Natural Resources

1313 Sherman Street, Room 215
Denver, CO 80203

Documentation of Legal Authority to Execute Financial Warranty Documents

The Colorado Mined Land Reclamation Board (“Board”) has adopted the attached Affidavit of Authority to Execute Financial Warranty Documents pursuant to the Mined Land Reclamation Act (C.R.S. § 34-32-101 et. seq.) and the Land Reclamation Act for the Extraction of Construction Materials (C.R.S. § 34-32.5-101 et. seq.). The Board and the Division of Reclamation Mining and Safety (“Division”) have determined that, in order to carry out the financial warranty requirements set forth in C.R.S. §§ 34-32-117 and 34-32.5-117 with reasonable diligence, it is prudent to verify the legal authority of the individual signing all necessary documents.

Accordingly, you must provide confirmation of the legal authority of the individual signing all Financial Warranty Documents to the Division. You may do so either by submitting a resolution of the decision-making body of your company that authorizes an individual to sign the Financial Warranty Documents on the company’s behalf, or by completing and notarizing the attached affidavit. The Division reserves the right to require the attached affidavit in all circumstances. Please note that if you are a sole proprietor who is executing documents on your own behalf, documentation of legal authority is unnecessary.



Affidavit of Authority to Execute Financial Warranty Documents

Before me this day, the undersigned _____ [name of authorized person], in his/her capacity as _____ [title of authorized person] ("Affiant"), personally appeared and, being first duly sworn upon oath said:

1. This affidavit is being executed and submitted on behalf of _____ [name of business organization], a(n) _____ [legal form of business organization, *e.g.*, corporation, partnership, limited liability company, etc.], in good standing in the State of Colorado (the "Company").
2. It is in the interest of the Company to execute certain financial warranty documents associated with file number _____ (DRMS file number), which are required by the Colorado Mined Land Reclamation Board and Division of Reclamation Mining and Safety pursuant to Colorado law ("Financial Warranty Documents").
3. Affiant is duly authorized to sign such Financial Warranty Documents on behalf of the Company and to bind the Company to the same.
4. Affiant is not prohibited or limited by the Company's governing documents or by any applicable law from executing the Financial Warranty Documents.
5. Affiant will inform the Division of Reclamation Mining and Safety within thirty (30) days in the event that his/her authorization to execute Financial Warranty Documents on the Company's behalf is terminated.

Further, Affiant sayeth not.

Affiant's Name

Signature

STATE OF _____)
_____) ss.:
COUNTY OF _____)

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

Notary Public _____

My Commission Expires _____

Attachment 3

An example Structure Agreement which meets the requirements of the Statutes is shown below.

Structure Agreement

This letter has been provided to you as the owner of a structure on or within two hundred (200) feet of a proposed mine site. The State of Colorado, Division of Reclamation, Mining and Safety (“Division”) requires that where a mining operation will adversely affect the stability of any significant, valuable and permanent man-made structure located within two hundred (200) feet of the affected land, the Applicant shall either:

- a) Provide a notarized agreement between the Applicant and the Person(s) having an interest in the structure, that the Applicant is to provide compensation for any damage to the structure; or
- b) Where such an agreement cannot be reached, the Applicant shall provide an appropriate engineering evaluation that demonstrates that such structure shall not be damaged by activities occurring at the mining operation; or
- c) Where such structure is a utility, the Applicant may supply a notarized letter, on utility letterhead, from the owner(s) of the utility that the mining and reclamation activities, as proposed, will have “no negative effect” on their utility. (*Construction Materials Rule 6.3.12 and Rule 6.4.19 & Hard Rock/Metal Mining Rule 6.3.12 and Rule 6.4.20*)

The Colorado Mined Land Reclamation Board (“Board”) has determined that this form, if properly executed, represents an agreement that complies with Construction Materials Rule 6.3.12(a), Rule 6.4.19(a), and C.R.S. § 34-32.5-115(4)(e) and with Hard Rock/Metal Mining Rule 6.3.12(a), Rule 6.4.20(a), and C.R.S. § 34-32-115(4)(d). This form is for the sole purpose of ensuring compliance with the Rules and Regulations and shall not make the Board or Division a necessary party to any private civil lawsuit to enforce the terms of the agreement or create any enforcement obligations in the Board or the Division.

The following structures are located on or within 200 feet of the proposed affected area:

- 1. _____
- 2. _____
- 3. _____
- 4. _____
- 5. _____

(Please list additional structures on a separate page)

CERTIFICATION

The Applicant, _____ (print applicant/company name),
by _____ (print representative's name), as _____ (print
representative's title), does hereby certify that _____ (structure owner) shall
be compensated for any damage from the proposed mining operation to the above listed structure(s)
located on or within 200 feet of the proposed affected area described within Exhibit A, of the Reclamation
Permit Application for _____ (operation name),
File Number M-____-____.

This form has been approved by the Colorado Mined Land Reclamation Board pursuant to its authority under the Colorado Land Reclamation Act for the Extraction of Construction Materials and the Colorado Mined Land Reclamation Act for Hard Rock, Metal, and Designated Mining Operations. Any alteration or modification to this form shall result in voiding this form.

NOTARY FOR PERMIT APPLICANT

ACKNOWLEDGED BY:

Applicant _____ Representative Name _____

Date _____ Title _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing was acknowledged before me this ____ day of _____, 20____, by _____ as _____ of _____.

Notary Public

NOTARY FOR STRUCTURE OWNER

ACKNOWLEDGED BY:

Structure Owner _____ Name _____

Date _____ Title _____

STATE OF _____)

) ss.

COUNTY OF _____)

The foregoing was acknowledged before me this ____ day of _____, 20____, by
_____ as _____ of _____.

_____ My Commission Expires: _____

Notary Public