STATE OF COLORADO

Ebert - DNR, Jared <jared.ebert@state.co.us>

COMPLAINT - Re: Concerns - Wattenberg Phase 2 / Pond 1 South Highwall

mcsfh157@aol.com <mcsfh157@aol.com> Wed, Feb 22, 2023 at 11:11 AM
Reply-To: mcsfh157@aol.com
To: "peter.hays@state.co.us" <peter.hays@state.co.us>
Cc: "jared.ebert@state.co.us" <jared.ebert@state.co.us>

Hello Peter,

I have reviewed and researched, more than several times, your response to my concerns regarding the setbacks of the SOUTH SHORELINE (or South Highwall) of the Phase 2 / Pond 1 Mining area, in the Wattenberg Permit. (I am troubled - did you even look at the photographs?) To be clear, I was NOT referring to the EAST boundary and as you well know, County Rd 23 3/4 runs along both the southern and eastern boundaries of this particular pond.

Below you stated that "the **closest** offset measured 46' in the **Southwest** corner of the phase" (which in my mind would mean that you are implying that everything else on that south boundary is at minimum 46' in an offset from the County Rd) - and that the closest area/distance WAS the southwest portion of this particular pond. You further support this claim by stating that the Division **verified this** during the April 22, 2022 inspection referring to the attached inspection report for validity. In that report it states:

"**Additional measurements** were conducted **along the south shoreline** of Phase 2 / Pond 1 Mining Area (46 feet) and along the northeast section of the Phase 1 / Pond 2 Mining Area (54 feet). The offset in these locations were in compliance with the approved Mining Plan. The perimeter of site was observed to verify the boundary markers were installed as required by Rule 3.1.12(2). **No other areas of potential offset compliance issues were observed during the inspection."** [bold for emphasis]

Below is one of the pictures you provided for that inspection.

View of the backfilled slope from the southwest corner of Phase 2 / Pond 1 Mining Area looking north

HOWEVER, . . . your picture is NOT of the southwest corner of the Phase 2 / Pond 1 Mining Area - it is of the **southeast** corner (looking north) and County Road 23 3/4 is visible behind (to the right) running up north.

If "additional measurements" were actually ever conducted **along the south shoreline** (as stated), it is troubling to comprehend HOW someone inspecting and measuring this south shoreline could have missed the fact that obvious areas of the South Highwall are NOT setback a minimum of 40' from County Rd 23 3/4.

The picture below demonstrates a little more pointedly the truth of the matter. It was taken on the south boundary (from the gas/oil easement) looking east towards the true SE corner of this pond, and is bordered by County Rd 23 3/4 on the right (south side). The east highwall is visible to the left in the background. Some Wattenberg townsfolk were kind enough to verify measurements - at 3 different locations - to confirm what (in my opinion) appears obvious in the photographs below and in the ones I previously provided. See their measurements below.

Location 1

Highwall edge to the fence is 14’ 2”

From the Highwall edge to the road is 21’

Location 2

Highwall edge to the fence is 9’ 4”

From the highwall edge to the road is 16’

(Note: image 2 looks less than 9’ but I am sharing the measurements I was given)

Location 3

Highwall edge to the fence is 10’ 2”

From the highwall edge to the road is 16’

(larger measurement pics viewable in the attached pdf)

The average distance from the road to the fence appears to be 6' (+/-) but it is unclear if the visible edge of the road is actually where the legal edge is, (meaning Weld County's Charter and County Code - Sec. 8-8-10 appears to suggest that the minimum right of way width for County Roads shall be 60' - 30' from either side of the center of the road) - therefore maybe the fence line is the edge of the road - or not even that. I believe(?) there are ditch requirements as well.

The Wattenberg townfolks who assisted in getting these measurements would like it to be known that they were simply able to toss the tape measure to the edge of the highwall (as it was so close) and it did not necessitate them crossing beyond Westminster's fenceline.

Additionally, regarding the April 22, 2022 inspection report of the east shoreline offset issues, it states that *"The Operator stated the east shoreline was mined to the required 40 foot offset, however the area was allowed to fill with groundwater and has been dormant for several years, which has allowed the east shoreline to erode to the east into the required offset area."*

The Wattenberg townfolks contradict that synopsis and say (in my best summary) that the truth of the matter is that when Adams County turned down the Tucson Pit project in late 2019, Aggregate Industries ran out of material and mined everywhere - and that AI was okay getting fined over it as it was worth more (than any potential fines), . . . that they (the Wattenberg folks) had talked with/to Joel Bolduc (a previous Aggregate Industries employee) who said that it was not supposed to be mined like that - that it was mined too far to the east and south, and too steeply, as there were/are setback distances for roads, boundaries, and slurry wall requirements - they further suggested the DRMS could contact Joel for verification of this as they said they believed Joel still works in the industry.

--- While I can't speak for all of the above, I can verify (and it is recorded on a County video of one of the BoCC hearings) that Aggregate Industries was out of material. The fact came up in a hearing (a contentious memorable moment) when they argued that they needed immediate approval FOR that very reason - while a commissioner snapped back that they were not responsible for AI's poor planning or business management.

Truly, it is not my intention to waste the time of anyone at the DRMS (or my time for that matter - I have plenty of better things to do) so if for some reason setback distances have somehow changed, or the south shoreline is excluded from the noted setbacks in this permit, or really nobody cares, please kindly let me know, I'll apologize for the bother, and I'll be on my merry way. BUT, if these setbacks do apply, please consider taking an hour or so out of your day, grabbing a tape measure, and inspecting this south shoreline for yourself.

Thank you for looking further into this matter!

Sherie Gould

Sherie Gould, GRI
Broker Associate
Sterling Real Estate Group, Inc
303.919.1703 Cell

-----Original Message-----
From: Hays - DNR, Peter <peter.hays@state.co.us>
To: mcsfh157@aol.com
Cc: jared.ebert@state.co.us <jared.ebert@state.co.us>; Neil Whitmer <neil.whitmer@holcim.com>
Sent: Tue, Feb 14, 2023 9:28 am
Subject: Re: Concerns - Wattenberg Phase 2 / Pond 1 South Highwall

Sheri,

The required 40' offset between the south boundary of Phase 2 / Pond 1 and the permit boundary along CR23 3/4 was verified by the Division during the April 22, 2022 inspection. The closest offset measured 46 feet in the southwest corner of the phase. Please see the second paragraph on Page 4 of the attached inspection report from April 22, 2022.

The boundary is not required to be fenced by the Division.

The requirements of the Baurer Pit would supersede the requirements of the Wattenberg Lakes permit.

Please address any questions regarding the plans for the Bauer Pit to the Operator. Mr. Neil Whitmer with Holcim is copied on this email.

Peter S. Hays
Environmental Protection Specialist

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

I am working remotely and can be reached at 970.703.3767.

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On Wed, Feb 8, 2023 at 6:00 PM <mcsfh157@aol.com> wrote:

> Hello Peter,
>
> I wanted to touch base with you about some concerns with the current mining boundaries that exist in the Wattenberg Permit. The approved Wattenberg Mining Plan calls for at least a 40 foot offset from the permit boundary from county roads. However, the highwall on the SOUTH side of Phase 2 / Pond 1 Mining Area appears to have been mined extremely close to the road (County Rd 23 3/4 - the portion that runs east and west). Please see attached PDF of pictures for a visual of how close this highwall appears to be in relationship to the road.
>
> Question - When the Baurer permit was approved (though not at the county), it would have overlapped some of this area. In the event setbacks or other details conflict (in overlapping permits), which permit, would govern? Per proposed plans posted on the Wattenberg site, it appears that this pond will no longer become part of the Baurer Pit. Is that correct? Are there new plans for the Baurer Pit?
>
> Also, could you clarify if operators are required to have fencing around these operations or near highwalls? (note it is missing some fencing in one of the pictures -- see attached pdf)
>
> Thank you for your time in this!
>
> Sherie Gould
>
> ***Sherie Gould, GRI***
> *Broker Associate*
> *Sterling Real Estate Group, Inc*
> *303.919.1703 Cell*

Highwall measurement pics Wattenberg Pond.pdf
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