



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Colorado River Valley Field Office
2300 River Frontage Road
Silt, CO 81652



March 6, 2023

In Reply Refer To:
3809 (COG020)
COC-074205

RECEIVED

March 4 2023

RECLAMATION
MINING AND SAFETY

CERTIFIED MAIL – 7021 1970 0001 3799 5308
RETURN RECEIPT REQUESTED

DECISION

Rocky Mountain Industrials
RMR Aggregates, Inc.
Attention: Mr. Brian Fallin, CEO
6200 S. Syracuse Way, Suite 450
Greenwood Village, CO 80111

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Surface Management

AMENDED NONCOMPLIANCE ORDER

On August 30, 2022, the Bureau of Land Management (BLM) issued a noncompliance order to Rocky Mountain Industrials (RMI) related to its existing operations in the Mid-Continent Quarry, T6S, R89W, Section 4, T5S, R89W, Sections 25 and 36, T5S, R88W, Sections 30 and 31, 6th P.M., Garfield County, Colorado (August Order). The August Order required RMI, within 30 days from receipt, to submit a proposed modification of its existing plan of operations (COC 074205) or a reclamation plan for all surface disturbance and facilities not authorized under RMI's approved plan of operations.

In response to the August Order, RMI timely submitted a proposed Plan Modification to the BLM on October 10, 2022. On November 9, 2022, the BLM informed RMI that its submitted Plan Modification was not complete and requested that RMI provide additional information, which RMI provided on January 6, 2023.

On February 3, 2023, the BLM informed RMI that because of changed conditions resulting from a large rockslide incident that occurred on January 18, 2023,¹ it did not have sufficient information to

¹ The BLM is aware that the U.S. Mine Safety and Health Administration (MSHA) has issued a section 103(k) Control Order to RMI, and that RMI has been working with MSHA to resolve that order. The BLM is also aware that the Colorado Division of Reclamation, Mining, and Safety (DRMS) has issued a Notice of Board Hearing for the Reason to Believe a Violation Exists under Rule 3.1.5(3), C.R.S. 34-32.5-116(4)(i), and C.R.S. 34-32.5-124 to RMI. The BLM's regulations at 43 CFR § 3809.415(a) require operators to remain in compliance with all Federal and State laws related to environmental protection and protection of cultural resources. Should MSHA or DRMS issue a notice of violation to RMI, the BLM will address that noncompliance in a separate enforcement order.

review or potentially approve RMI's Plan Modification as submitted.² This Amended Noncompliance Order clarifies that the requirement in the August Order to "[s]ubmit a proposed modification under 43 CFR § 3809.431 to update RMI's approved Plan of Operations to reflect the operation's current conditions" extends up to and including the conditions existing on the date that the BLM determines that the plan of operations is complete under 43 CFR § 3809.411.

Additionally, based on these changes to the operation's current conditions resulting from the January 18, 2023 rockslide incident, the BLM's determination on page 2 of the August Order is amended to add the bolded language below:

Based on our inspections and records, BLM has determined that portions of RMI's operations are outside the scope of its approved plan of operations and causing unnecessary or undue degradation, which are a prohibited act under 43 CFR § 3809.605(a) and 43 CFR 3809.605(c). **Because the operation's current conditions substantially deviate from the approved plan of operations, BLM has determined that this is a significant violation of its surface management regulations.**

Should RMI fail to comply with this Amended Noncompliance Order, the BLM may take further action pursuant to 43 CFR § 3809.601(b) and issue a Suspension Order for all or part of the Mid-Continent Quarry operation. Additionally, action could be taken under 43 CFR § 3809.604 or § 3809.700.

Appeal of the Decision

If you are adversely affected by this decision, you may request that the BLM Colorado State Director review this decision. If you request a State Director Review, the request must be received in the BLM Colorado State Office at P.O. Box 151029, Lakewood, CO 80215 or in the Denver Federal Center, Building 40, Lakewood, CO 80225 no later than 30 calendar days after you receive this decision. The request for State Director Review must be filed in accordance with the provisions in 43 CFR § 3809.805. This decision will remain in effect while the State Director Review is pending, unless a stay is granted by the State Director. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

If the State Director does not make a decision on your request for review of this decision within 21 days of receipt of the request, you should consider the request declined and you may appeal this decision to the Interior Board of Land Appeals (IBLA). You may contact the BLM Colorado State Office to determine when the BLM received the request for State Director Review. You have 30 days from the end of the 21-day period in which to file your Notice of Appeal with this office at 2300 River Frontage Road, Silt, Colorado 81652. We will forward your notice of appeal to the IBLA.

If you wish to bypass State Director Review, this decision may be appealed directly to the IBLA in accordance with the regulations at 43 CFR § 3809.801(a)(1). Your Notice of Appeal must be filed in this office at 2300 River Frontage Road, Silt, Colorado 81652 within 30 days from receipt of this

² The BLM will provide more details regarding the additional information needed for the proposed Plan Modification to be complete under 43 CFR § 3809.401 in a separate notice.

decision. As the appellant, you have the burden of showing that the decision appealed from is in error. Enclosed is BLM Form 1842-1, which contains information on taking appeals to the IBLA.

This decision will remain in effect while the IBLA reviews the case unless a stay is granted by the IBLA.

Request for a Stay

If you wish to file a petition pursuant to the regulations at 43 CFR § 4.21 for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the IBLA, the petition for a stay must accompany your notice of appeal. Copies of this notice of appeal and petition for a stay must also be submitted to each party named in the decision and to the IBLA and to the appropriate Office of the Solicitor (see 43 CFR § 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted based on the standards listed below.

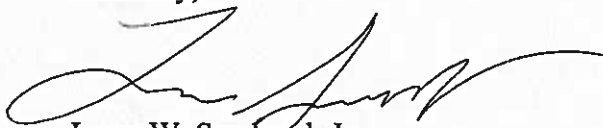
Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal must show sufficient justification based on the following standards:

1. The relative harm to parties if the stay is granted or denied.
2. The likelihood of the appellant's success on the merits.
3. The likelihood of immediate and irreparable harm if the stay is not granted.
4. Whether the public interest favors granting the stay.

If you have any questions concerning this letter, please contact Brittany Cocina, Geologist, at (970) 876-9053 or bcocina@blm.gov.

Sincerely,



Larry W. Sandoval, Jr.
Field Manager

Enclosures:

Form 1842-1, Information on Taking Appeals to the Interior Board of Land Appeals

cc: Amy Stillings, Colorado State Office, BLM
Nicolas Sandoval, Colorado State Office, BLM
Greg Larson, Upper Colorado River District, BLM
Amy Yeldell, Colorado Division of Reclamation, Mining and Safety
Gary Polson, U.S. Mine Safety and Health Administration