



Garfield County

COUNTY ATTORNEY'S OFFICE

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May 24, 2023

David McConaughy, Esq.
Garfield & Hecht, P.C.

RE: RMI Garfield County SUP Amendment

Sent via email to: dmcconaughy@garfieldhecht.com

Dear David,

The purpose of this letter is to inform you and your client, RMR Aggregates, Inc. doing business under the trade name of Rocky Mountain Industrials ("RMI"), of the County's expectations regarding the amendment requirements for RMI's Special Use Permit approved in 1982 and the Land Use Change Permit issued in 2009 ("County Permit"). As you are aware, the litigation has ended in case 19CV30087 and 21CA1208 and Judge Norrdin's ruling that the County's Permit was not preempted by federal or state law stands.

It is the County's understanding that the U.S. Mine Safety and Health Administration ("MSHA") issued a 103(k) Control Order that required RMI to cease mining activities on the production bench but was allowed to continue processing material staged on the mill bench. We are unaware whether this Order is still in place or not.

Further, the County is aware that RMI has been issued three separate notices of noncompliance by the Bureau of Land Management ("BLM") since August 2022. The last letter sent to you by the BLM on March 6, 2023, includes the language "[b]ecause the operation's current condition substantially deviates from the approved plan of operations, the BLM has determined that this is a significant violation of its surface management regulations." We are unaware where RMI is at in the process of submitting your amended plan of operations to the BLM.

We understand the Colorado Division of Reclamation, Mining, and Safety ("DRMS") has entered into a Stipulated Agreement ("Stipulated Agreement") on April 19, 2023 regarding RMI's failure to protect the permit area from slides or erosion. It appears from the Stipulated Agreement that RMI agrees that it needs a Technical Revision to its DRMS permit to address site stability issues and propose a suitable plan moving forward to minimize future stability issues and potential off-site impacts. The Stipulated Agreement also indicates that RMI agreed that it will submit an Amendment Application to its DRMS permit, if there are any contemplated disturbances outside the DRMS Permit area and RMI will need to gain "all other jurisdictional approvals prior to submission to ensure the Operator's legal right of entry is clearly defined." It

appears the timeframe required for submitted of the Technical Revision Application is within 60 days of the completion of the engineering technical analysis and final report. Pursuant to C.R.S. § 34-32-115(4)(c) DRMS may not grant a permit if the operation "is or may be contrary to the laws or regulations of this state...including local permits, licenses, and approvals."

As you are aware, the litigation referenced above included specific violations that RMI's operation exceeded its approved acreage, was operating during the seasonally restricted winter months, and was in violation of its Road Maintenance Agreement.

Specifically, the approved acreage is 16.30 acres and RMI's current operation includes 20.8 disturbed acres (as noted in the Court's January 31, 2021, Order this fact was not disputed by RMI).

The DRMS requires mining operators to comply with "other applicable statutes and rules and regulations." C.R.S. § 34-32-109(1), (5)(a). The operation is "subject to zoning and land use authority and regulation by political subdivisions" such as the County "as provided by law." C.R.S. § 34-32-109(6). Therefore, it remains the County's position that RMI is required to submit an application to amend its current County Permit to bring it into compliance with its current operating/disturbed area of 20.8 acres as RMI is still not compliant with its current permit as stated by the NOV issued on March 25, 2019. The first step is for you and your client to reach out to the Community Development Department for a pre-application conference.

Other conditions of approval included that RMI is required to notify the County when it is in violation of other agencies' permits within ten days. See County Permit Condition 6. However, RMI has not notified the County of any of the noticed violations by the BLM, MSHA, or the DRMS. We request RMI complies with its current County Permit and notifies the County when it is required.

We look forward to working with you and your client through this process. Please don't hesitate to reach out with questions. Thank you.

Sincerely,



Heather Beattie
Garfield County Attorney

CC: Larry Sandoval, Jr., Field Manager, Colorado River Valley Office, BLM
Amy Yeldell, Colorado Division of Reclamation, Mining and Safety
Gary Polson, U.S. Mine Safety and Health Administration
Sheryl Bower, Community Development Department Director