



**COLORADO**  
Division of Reclamation,  
Mining and Safety  
Department of Natural Resources  
1313 Sherman Street, Room 215  
Denver, Colorado 80203

January 26, 2023

Greg Geras  
Asphalt Specialties Co., Inc.  
10100 Dallas St  
Henderson CO 80640

**Re: Second Review of a 112 Construction Materials Amendment Application Package, Asphalt Specialties – Chavers Mining Resource, AM2, DRMS Permit M2015-030**

Mr. Geras:

The Division of Reclamation, Mining, and Safety has completed its preliminary adequacy review of your 112 construction materials reclamation permit application for AM2. The application was called complete for review on February 3, 2023. All comment and review periods began on February 3, 2023. **The decision date for this application has been extended to February 3, 2024, which is the maximum allowed by statute. DRMS will place the Asphalt Specialties request for an additional extension of the decision date beyond 365 days onto the Consent Agenda for the February 2024 Mined Land Reclamation Board hearing to be held on February 21, 2024. Please be advised that if you are unable to satisfactorily address any concerns identified in this review before a MLRB extended decision date, or if the MLRB does not grant an extension beyond the statutory 365 day timeframe, the Division will deny this application. In order to allow the Division adequate time to review your responses to any adequacy issues, please submit your adequacy responses to the Division no later than one week prior to any extended decision date.**

Please note that any changes or additions to the application on file in our office must also be reflected in the public review copy, which has been placed with the Weld County Clerk and Recorder.

The review consisted of comparing the application content with specific requirements of Rule 6.1, 6.2, 6.4 and 6.5 of the Minerals Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials. As with most applications, there are items that will require clarification of the existing information. Any inadequacies are identified under the respective exhibit heading and numbered for ease of identification in a response.

#### **APPLICATION FORM:**

*Adequate as submitted*



## **6.2 GENERAL REQUIREMENTS OF EXHIBITS**

### **6.2.1 General Requirements**

(1) This Rule provides for the guidelines for, and information requirements of, each Exhibit required to be submitted with the permit application, as specified according to Section 6.1.

(2) Maps and Exhibits Maps, except the index map, must conform to the following criteria:

- (a) show name of Applicant;
- (b) must be prepared and signed by a registered land surveyor, professional engineer, or other qualified person;
- (c) give date prepared;
- (d) identify and outline the area which corresponds with the application;
- (e) with the exception of the map of the affected lands required in Section 34-32.5-112(2)(d), C.R.S. 1984, as amended, shall be prepared at a scale that is appropriate to clearly show all elements that are required to be delineated by the Act and these Rules. The acceptable range of map scales shall not be larger than 1 inch = 50 feet nor smaller than 1 inch = 660 feet. Also, that a map scale, appropriate legend, map title, date and a north arrow shall be included.

**EXHIBIT A - Legal Description (Rule 6.4.1):** The legal description must identify all affected land and be wholly adequate for field location of the property. It can be in the form of metes and bounds survey or a description by reference to township, range and section to at least the nearest quarter/quarter section. Where applicable, the street address or lot numbers may be used.

*Adequate as previously submitted*

**EXHIBIT B - Index Map (Rule 6.4.2):** An index map showing the regional location of all affected land and all roads and other access to the area. A standard U.S. Geological Survey topographic quadrangle or equivalent is acceptable. Scale criteria need not be followed for this map.

*Adequate as previously submitted*

**EXHIBIT C - Pre-mining and Mining Plan Map(s) of Affected Lands (Rule 6.4.3):** One or more maps may be necessary to legibly portray the following information:

- (a) all immediately adjacent surface owners of record;
- (b) the name and location of all creeks, roads, buildings, oil and gas wells and lines, and power and communication lines on the area of affected land and within two hundred (200) feet of all boundaries of such area
- (c) the existing topography of the area with contour lines of sufficient detail to portray the direction and rate of slope of the affected land;

- (d) the total area to be involved in the operation, including the area to be mined and the area of affected lands (see definition of "Affected Land");
  - (e) the type of present vegetation covering the affected lands; and
  - (f) in conjunction with Exhibit G - Water Information, Subsection 6.4.7, if required by the Office, further water resources information will be presented on a map in this section.
  - (g) Show the owner's name, type of structures, and location of all permanent or man-made structures contained on the area of affected land and within two hundred (200) feet of the affected land.
  - (h) In conjunction with Exhibit I - Soils Information, Subsection 6.4.9, soils information may be presented on a map in this section;
  - (i) Aerial photos, if available, may be included in this section.
- 1) *Please show proposed area(s) for the staging/storage of backfill to be utilized for reclamation on the mining plan map. Keep in mind the rule requires that topsoil and overburden be managed separately.*
  - 2) *Please show how the proposed 20 acre area to be excavated and concurrently backfilled for the remainder of the operation will be configured (approximate dimensions - See Exhibit D(d) below).*
  - 3) *Please show how the 20 acre working area will progress through the remaining unmined area shown on the Mining Plan Map (direction of mining - See Exhibit D(e)(iii) below).*

**EXHIBIT D - Mining Plan (Rule 6.4.4):** The mining plan shall supply the following information, correlated with the affected lands, map(s) and timetables:

- (a) description of the method(s) of mining to be employed in each stage of the operation as related to any surface disturbance on affected lands;
- (b) earthmoving;
- (c) all water diversions and impoundments; and
- (d) the size of area(s) to be worked at any one time.
- (e) An approximate timetable to describe the mining operation. The timetable is for the purpose of establishing the relationship between mining and reclamation during the different phases of a mining operation. You will not be required to meet specific dates for initiation, or completion of mining in a phase as may be identified in the timetable. This does not exempt you from complying with the performance standards of Section 3.1. Such timetable should include:
  - (i) an estimate of the periods of time which will be required for the various stages or phases of the operation;
  - (ii) a description of the size and location of each area to be worked during each phase; and
  - (iii) outlining the sequence in which each stage or phase of the operation will be carried out.(Timetables need not be separate and distinct from the mining plan, but may be incorporated therein.)
- (f) A map (in Exhibit C - Pre-Mining and Mining Plan Maps(s) of Affected Lands, Subsection 6.4.3) may be used along with a narrative to present the following information:

- (i) nature, depth and thickness of the ore body or deposit to be mined and the thickness and type of overburden to be removed (may be marked "CONFIDENTIAL," as per Paragraph 1.3(3)); and
  - (ii) nature of the stratum immediately beneath the material to be mined in sedimentary deposits.
- (g) Identify the primary and secondary commodities to be mined/extracted and describe the intended use; and
- (h) name and describe the intended use of all expected incidental products to be mined/extracted by the proposed operation.
- (i) Specify if explosives will be used in conjunction with the mining (or reclamation). In consultation with the Office, the Applicant must demonstrate pursuant to Rule 6.5(4), Geotechnical Stability Exhibit, that off-site areas will not be adversely affected by blasting.
- (j) Specify the dimensions of any existing or proposed roads that will be used for the mining operation. Describe any improvements necessary on existing roads and the specifications to be used in the construction of new roads. New or improved roads must be included as part of the affected lands and permitted acreage. Affected land shall not include off-site roads which existed prior to the date on which notice was given or permit application was made to the office and which were constructed for purposes unrelated to the proposed mining operation and which will not be substantially upgraded to support the mining operation. Describe any associated drainage and runoff conveyance structures to include sufficient information to evaluate structure sizing.
- 4) *The mining plan should be modified to incorporate appropriate descriptions for answers provided in the first three items in this review.*
- 5) *The mining plan will need to provide a detailed description for how much backfill material will be required to eliminate exposed groundwater as currently proposed, and how much backfill material is available on-site.*
- 6) *If sufficient backfill material is not available from the site, detail will need to be provided as to when and how the required material will be obtained, stockpiled, and maintained on-site for use eliminate groundwater exposure and reclaim to rangeland as currently proposed in the reclamation plan.*

**EXHIBIT E - Reclamation Plan (Rule 6.4.5):**

- (1) In preparing the Reclamation Plan, you should be specific in terms of addressing such items as final grading (including drainage), seeding, fertilizing, revegetation (trees, shrubs, etc.), and topsoiling. You are encouraged to allow flexibility in your plans by committing to ranges of numbers (e.g., 6"-12" of topsoil) rather than specific figures.
- (2) The Reclamation Plan shall include provisions for, or satisfactory explanation of, all general requirements for the type of reclamation proposed to be implemented by you. Reclamation shall be required on all the affected land. The Reclamation Plans shall include:
- (a) A description of the type(s) of reclamation you propose to achieve in the reclamation of the affected land, why each was chosen, the amount of acreage accorded to each, and a general discussion of methods of reclamation as related to the mechanics of earthmoving;

- (b) A comparison of the proposed post-mining land use to other land uses in the vicinity and to adopted state and local land use plans and programs. In those instances where the post-mining land use is for industrial, residential, or commercial purposes and such use is not reasonably assured, a plan for revegetation shall be submitted. Appropriate evidence supporting such reasonable assurance shall be submitted;
- (c) A description of how the Reclamation Plan will be implemented to meet each applicable requirement of Section 3.1;
- (d) Where applicable, plans for topsoil segregation, preservation, and replacement; for stabilization, compaction, and grading of spoil; and for revegetation. The revegetation plan shall contain a list of the preferred species of grass, legumes, forbs, shrubs or trees to be planted, the method and rates of seeding and planting, the estimated availability of viable seeds in sufficient quantities of the species proposed to be used, and the proposed time of seeding and planting;
- (e) A plan or schedule indicating how and when reclamation will be implemented. Such plan or schedule shall not be tied to any specific date but shall be tied to implementation or completion of different stages of the mining operation as described in Subparagraph 6.4.4(1)(e). The plan or schedule shall include:
  - (i) An estimate of the periods of time which will be required for the various stages or phases of reclamation;
  - (ii) A description of the size and location of each area to be reclaimed during each phase; and
  - (iii) An outline of the sequence in which each stage or phase of reclamation will be carried out. (The schedule need not be separate and distinct from the Reclamation Plan, but may be incorporated therein.)
- (f) A description of each of the following:
  - (i) Final grading - specify maximum anticipated slope gradient or expected ranges thereof;
  - (ii) Seeding - specify types, mixtures, quantities, and expected time(s) of seeding and planting;
  - (iii) Fertilization - if applicable, specify types, mixtures, quantities and time of application;
  - (iv) Revegetation - specify types of trees, shrubs, etc., quantities, size and location; and
  - (v) Topsoiling - specify anticipated minimum depth or range of depths for those areas where topsoil will be replaced.

- 7) *The current reclamation plan proposes gradually backfilling the approximately 20 acres of currently exposed groundwater, while moving forward with site operations utilizing a concurrently mined and backfilled working area with a maximum exposed groundwater area not to exceed 20 acres. This 20 acre working area will then progress through the remaining unmined area by being concurrently excavated and backfilled to approximate original grade for final reclamation as rangeland. The remaining excavation activity is projected to last another 6-8 years.*

**DRMS has no objection to this plan as long as it can be properly bonded for reclamation, and executed within the allowable statutory timeframe. Pursuant to Rule 3.1.3, all reclamation shall be carried to completion by the Operator with all reasonable diligence, and each phase of reclamation shall be**

*completed within five years from the date the Operator informs the Division that such phase has commenced. The five year period may be applied separately to each phase as it is commenced throughout the life of the mine. Please acknowledge that backfilling to approximate original grade will be completed within 5 years of the date the extraction of material and stockpile removal is complete.*

**EXHIBIT F - Reclamation Plan Map (Rule 6.4.6):** The map(s) of the proposed affected land, by all phases of the total scope of the mining operation, shall indicate the following:

- (a) The expected physical appearance of the area of the affected land, correlated to the proposed mining and reclamation timetables. The map must show proposed topography of the area with contour lines of sufficient detail to portray the direction and rate of slope of all reclaimed lands; and
- (b) Portrayal of the proposed final land use for each portion of the affected lands.

*Adequate as submitted unless modifications to the reclamation plan are made.*

**EXHIBIT G - Water Information (Rule 6.4.7):**

- (1) If the operation is not expected to directly affect surface or groundwater systems, a statement of that expectation shall be submitted.
- (2) If the operation is expected to directly affect surface or groundwater systems, you shall:
  - (a) Locate on the map (in Exhibit C) tributary water courses, wells, springs, stock water ponds, reservoirs, and ditches on the affected land and on adjacent lands where such structures may be affected by the proposed mining operations;
  - (b) Identify all known aquifers; and
  - (c) Submit a brief statement or plan showing how water from dewatering operations or from runoff from disturbed areas, piled material and operating surfaces will be managed to protect against pollution of either surface or groundwater (and, where applicable, control pollution in a manner that is consistent with water quality discharge permits), both during and after the operation.
- (3) You must provide an estimate of the project water requirements including flow rates and annual volumes for the development, mining and reclamation phases of the project.
- (4) You must indicate the projected amount from each of the sources of water to supply the project water requirements for the mining operation and reclamation.
- (5) You must affirmatively state that the Operator/Applicant has acquired (or has applied for) a National Pollutant Discharge Elimination System (NPDES) permit from the Water Quality Control Division at the Colorado Department of Health, if necessary.

*Adequate as submitted*

**EXHIBIT H - Wildlife Information (Rule 6.4.8):**

(1) In developing the wildlife information, you may wish to contact the local wildlife conservation officer. You must include in this Exhibit, a description of the game and non-game resources on and in the vicinity of the application area, including:

- (a) a description of the significant wildlife resources on the affected land;
- (b) seasonal use of the area;
- (c) the presence and estimated population of threatened or endangered species from either federal or state lists; and
- (d) a description of the general effect during and after the proposed operation on the existing wildlife of the area, including but not limited to temporary and permanent loss of food and habitat, interference with migratory routes, and the general effect on the wildlife from increased human activity, including noise.

*Adequate as previously submitted*

**EXHIBIT I - Soils Information (Rule 6.4.9):** In consultation with the Soil Conservation Service or other qualified person, you must indicate on a map (in Exhibit C) or by a statement, the general type, thickness and distribution of soil over the affected land. Such description will address suitability of topsoil (or other material) for establishment and maintenance of plant growth. The above information shall satisfy "completeness" requirements for purposes of determination of date of filing.

*Adequate as previously submitted*

**EXHIBIT J - Vegetation Information (Rule 6.4.10):**

(1) You must include in this Exhibit a narrative of the following items:

- (a) descriptions of present vegetation types, which include quantitative estimates of cover and height for the principal species in each life-form represented (i.e., trees, tall shrubs, low shrubs, grasses, forbs);
- (b) the relationship of present vegetation types to soil types, or alternatively, the information may be presented on a map; and
- (c) estimates of average annual production for hay meadows and croplands, and carrying capacity for range lands on or in the vicinity of the affected land, if the choice of reclamation is for range or agriculture.

(2) You must show the relation of the types of vegetation to existing topography on a map in Exhibit C. In providing such information, you may want to contact the local Soil Conservation District.

*Adequate as previously submitted*

**EXHIBIT K - Climate (Rule 6.4.11):** Provide a description of the significant climatological factors for the locality.

*Adequate as previously submitted*

**EXHIBIT L - Reclamation Costs (Rule 6.4.12):** All information necessary to calculate the costs of reclamation must be submitted and broken down into the various major phases of reclamation. You must provide sufficient information to calculate the cost of reclamation that would be incurred by the state.

- 8) *The mining of the unlined excavation(s) currently present on site, and as described in the AM2 application, has and will continue to result in exposed groundwater. The SEO requires DRMS to bond to eliminate the liability for exposed groundwater area(s) that have not been addressed as part of a permanent approved augmentation plan. This issue is currently addressed with a reclamation bond to install a clay liner in the mined cells after mining, which would remain open to support the currently approved post mining land use of developed water storage.*

*At this time, no post-mining lined water storage is proposed in the AM2 reclamation plan. In fact, the proposed change to the reclamation plan and post mining land use is the most significant change to the approved permit contained in AM2. The reclamation plan proposed in AM2 requires backfilling all excavated areas and grading of the site to approximate original contour for final post mining land use as rangeland. However, the provided bond calculation is still for a clay liner, for an undefined area, not to exceed 20 acres of groundwater exposure.*

*Rule 4.2.1(1) of the construction materials rule states: “All Financial Warranties shall be set and maintained at a level which reflects the actual current cost of fulfilling the requirements of the Reclamation Plan.” DRMS interprets this to mean the reclamation plan as proposed and approved in the reclamation permit.*

*Therefore, DRMS is required to bond for the cost of the State to dewater and backfill the existing 20 acres of groundwater exposure/proposed 20 acre working area, to at least an elevation sufficient to eliminate the existing groundwater exposure. (Although the proposed reclamation plan calls for backfill to approximate original grade prior to final grading, topsoil replacement and seeding.)*

*A bond for the State’s cost to dewater and backfill the total excavated area to eliminate groundwater exposure, finish slope and grade, replace topsoil, revegetate, and reclaim the site as rangeland will need to be determined. Please note that this bond will need to include the cost to import any fill required that is not present on site.*

*If the bond amount for the reclamation proposed in AM2 cannot be agreed upon, the Division will be required to deny AM2, and the post mining land use for the site will remain open, clay lined reservoirs as a developed water resource as approved in the current permit.*

**EXHIBIT M - Other Permits and Licenses (Rule 6.4.13):** A statement identifying which of the following permits, licenses and approvals the Operator/Applicant holds or will be seeking in order to conduct the proposed mining and reclamation operations: effluent discharge permits, air quality emissions permits, radioactive source material licenses, the State Historic Preservation Office clearance, disposal of dredge and fill material (404)



permits, permit to construct a dam, well permits, highway access permits, U.S. Forest Service permits, Bureau of Land Management permits, county zoning and land use permits, and city zoning and land use permits.

*Adequate as submitted*

**EXHIBIT N - Source of Legal Right to Enter (Rule 6.4.14):** You must provide the source of your legal right to enter and initiate a mining operation on the affected land.

*Adequate as previously submitted*

**EXHIBIT O - Owner(s) of Record of Affected Land (Surface Area) and Owners of Substance to be Mined (Rule 6.4.15):** Please submit a complete list of all owners or show the owners on your map in Exhibit C.

*Adequate as previously submitted*

**EXHIBIT P - Municipalities Within Two Miles (Rule 6.4.16):** Please list any municipality(s) within two miles of the proposed mining operation and address of the general office of each municipality.

*Adequate as previously submitted*

**EXHIBIT Q - Proof of Mailing of Notices to County Commissioners and Soil Conservation District (Rule 6.4.17):** Please submit proof of actual delivery or proof of mailing by Certified Mail, return receipt requested, of Notice of the Application to the local Board of County Commissioners and, if the mining operation is within the boundaries of a Soil Conservation District, to the Board of Supervisors of the Soil Conservation District.

*Adequate as submitted*

**EXHIBIT R - Proof of Filing with County Clerk and Recorder (Rule 6.4.18):** You must submit an affidavit or receipt indicating the date on which the application was placed with the local County Clerk and Recorder.

*16) Adequate as submitted – note you must also provide proof that all adequacy responses are also placed with the application for public review*

**EXHIBIT S - Permanent Man-Made Structures (Rule 6.4.19):** Please note that roadways and above-ground or underground utilities (if present) within 200 feet of the proposed affected area are considered permanent man-made structures. In accordance with Rule 6.4.19, when mining operations will adversely affect the stability of any significant, valuable and permanent man-made structure located within 200 feet of the affected area, the applicant may 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.

*Adequate as submitted*

This concludes the Division's preliminary adequacy review of this application. This letter shall not be construed to mean that there are no other technical deficiencies in your application. Other issues may arise as additional information is supplied. Please remember that the decision date for this amendment is currently February 3, 2024, however an extension may be granted at the February 21, 2024 MLRB hearing. As previously mentioned, if you are unable to provide satisfactory responses to any inadequacies prior to the extended decision date, or if the MLRB does not grant an extension beyond the 365 day statutory deadline for approval, the application will be denied. If you have any questions, please contact me at (303) 229-9414.

Sincerely,

A handwritten signature in blue ink, appearing to read "Eric Scott", with a stylized flourish at the end.

Eric Scott – Environmental Protection Specialist

CC: