

BEFORE THE MINED LAND RECLAMATION BOARD
STATE OF COLORADO

DRAFT PREHEARING ORDER

IN THE MATTER OF THE 112c PERMIT APPLICATION OF W.W. CLYDE &
COMPANY - BERNHARDT SAND AND GRAVEL PIT; FILE NO. M-2023-025

The Mined Land Reclamation Board (“Board”), through prehearing officer Jason Musick (“PHO Musick”) and pursuant to Rule 2.7 of the Minerals Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials (“Rule”), conducted a prehearing conference on July 31, 2024 via Zoom Video Conferencing. The Board, having considered this order, as proposed by PHO Musick, and having considered any subsequent objections or comments from the parties, hereby enters the following Prehearing Order for the captioned proceeding:

I. BACKGROUND

W.W. Clyde & Company (“Applicant”) filed a 112c permit application with the Division of Reclamation, Mining and Safety (“Division”) on September 14, 2023, file number M-2023-025 (“Application”). During the required period of notice of the Application filing, the Division received written comments and objections to the Application. As part of its review, the Division generated four (4) adequacy review letters. The Applicant addressed all adequacy issues to the Division’s satisfaction. On July 11, 2024, the Division determined the Application to have satisfied the requirements of section 34-32.5-115(4), C.R.S. and issued its recommendation to approve the Application with conditions.

II. FORMAL PUBLIC HEARING

The Formal Public Hearing on this matter will occur on August 21-22, 2024, during the Board’s monthly August 2024 meeting. The Board’s meeting on August 21, 2024 (unless noticed otherwise) will begin at 9:00 a.m.

The Formal Public Hearing in this matter concerns whether the Board should approve the Application in accordance with the Colorado Land Reclamation Act for the Extraction of Construction Materials (Article 32.5 of Title 34, C.R.S.; the “Act”) and the Rules. The Board’s resolution of this matter, including findings of facts and conclusions of law, will be based on the Board’s review of the Application, testimony

presented by the parties and the Division at the hearing, and exhibits the Board admits into the record at this hearing.

In this matter, the Applicant bears the burden of proving that the Application meets the requirements set forth in the Act and Rules. If the Applicant meets this burden, any denial by the Board must be based upon one of the grounds provided in section 34-32.5-115(4), C.R.S.

III. PARTIES

Applicant:

W.W. Clyde & Company
10303 East Dry Creek Road #300
Englewood, CO 80112

Objectors:

Jim Grochis
Cheryl Kasten
Jerry Ladd

Three (3) objectors forfeited party status by failing to attend the prehearing conference in accordance with Rule 2.7.3:

The objectors are referred to herein as “Objectors.”

The Division is advisory staff to the Board in this matter, not a party. As used herein, “party” or “parties” shall mean the Applicant and Objectors, or both, as the context indicates.

IV. ISSUES

Presentations to the Board by the parties and the Division shall be limited to the following issues:

1. Notification Process. Whether the notification process was in compliance with all applicable requirements.
2. Impacts to Wildlife. Whether the Application adequately addresses concerns with potential adverse impacts to wildlife, wildlife habitat, and wildlife migration corridors.
3. Hydrologic Balance Issues.
 - a. Whether the Application adequately addresses concerns regarding flooding and potential flooding in and around the proposed operation.
 - b. Whether the Application adequately addresses concerns with potential adverse impacts to the groundwater regime, including mounding and impacts to existing wells.

V. WITNESSES AND EXHIBITS

Pursuant to Rule 2.6(2), all parties and the Division must exchange witness and exhibit lists at the prehearing conference. During the prehearing conference, the Applicant, Objectors, and the Division provided witness lists, exhibit lists, and exhibits that are not in the Division's file and is provided as follows:

Witnesses

For the Applicant:

W.W. Clyde & Company:

- J.C. York, P.E. – J&T Consulting
- Dennis McGrane, P.E., C.P.G – McGrane Water Engineering, LLC
- David J. Blauch – Ecological Resource Consultants, Inc.
- Tyler Worley – Ecological Resource Consultants, Inc
- Andy Carpenter – W.W. Clyde & Company
- Chris Hurley – Clyde Companies, Inc.

For the Objector(s):

- Jim Gochis - Objector
- Cheryl Kasten – Objector
- Jerry Ladd - Objector

For the Division:

- Rob Zuber – DRMS, Environmental Protection Specialist III
- Patrick Lennberg – DRMS, Environmental Protection Specialist III
- Amy Eschberger– DRMS, Senior Environmental Protection Specialist
- Russ Means – DRMS, Mineral Program Director

Exhibits

For the Applicant:

W.W. Clyde & Company:

- Files from the Public Record for DRMS File No. M-2023-025 as identified in W.W. Clyde & Company's exhibit list.
- Email correspondence between J.C. York and Cheryl Kasten
- Email correspondence between J.C. York and Jim Gochis
- Email correspondence between J.C. York and Jim Gochis and Katie Kelley
- Email correspondence between J.C. York and Jerry Ladd
- Email correspondence between J.C. York and Michael Janeczko

For the Objectors:

No Exhibits Submitted

For the Division:

- Public Record for Division File No. M-2023-025, available on Laserfiche at <http://mining.state.co.us>

VI. PROCEDURE

The Division, parties, and members of the public shall make presentations in the following order. The time limits set out below are maximum limits; however the Board, in its discretion, may allow additional time. The Board has the right to limit any duplicative or irrelevant testimony.

All parties and the Division will be afforded an opportunity to conduct cross-examination of any witnesses that testifies during each presentation. Time used for cross-examination of a witness shall count against the time limit of the cross-examining party or the Division. Time used to respond to questions by members of the Board shall not count against the time limit of the responding party or the Division.

PHO Musick solicited and considered input from the parties and the Division at the prehearing conference regarding the time requested to make presentations at the hearing, and recommends that following procedure for approval by the Board:

A. Board Consideration and Adoption of the Prehearing Order

The Board shall consider this draft Prehearing Order for adoption. The Board, in its discretion, will hear any objections to the proposed Prehearing Order at that time and make any necessary amendments prior to adopting the Prehearing Order.

B. Introduction – Division:

The Division shall have ten (10) minutes in which to present an overview of the Application.

C. Presentation – Division:

The Division shall have thirty (30) minutes in which to make a presentation to the Board regarding all issues outlined above.

D. Presentation – Applicant:

The Applicant shall have fifteen (15) minutes in which to make a presentation to the Board regarding all issues outlined above.

E. Presentation – Objectors:

The Objectors shall have forty-five (45) minutes in which to make a presentation to the Board regarding all issues outlined above.

F. Rebuttal Statement – Division:

The Division shall have ten (10) minutes to make a rebuttal statement and shall be limited to responding to issues addressed in the presentations of the other parties or the Division.

G. Rebuttal Statement – Objectors:

The Objectors shall have thirty (30) minutes to make a rebuttal statement and shall be limited to responding to issues addressed in the presentations of the parties or the Division.

H. Rebuttal Statement – Applicant:

The Applicant shall have ten (10) minutes to make a rebuttal statement and shall be limited to responding to issues addressed in the presentations of the parties.

I. Closing Statement – Division:

The Division shall have five (5) minutes to make a closing statement.

J. Closing Statement – Objector:

The Objectors shall have ten (10) minutes to make a closing statement.

K. Closing Statement – Applicant:

The Applicant shall have five (5) minutes to make a closing statement.

Dated this _____ day of August 2024

BY: _____, Chairperson
Mined Land Reclamation Board

CERTIFICATE OF SERVICE

I, Jason Musick, hereby certify that on this 6th day of August, 2024, I served a copy of the foregoing Draft Prehearing Order via email, addressed to the following:

Andy Carpenter
W.W. Clyde & Company
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J.C. York
J&T Consulting, Inc.
Representing W.W. Clyde & Company
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August 6, 2024