



## COLORADO

Division of Reclamation,  
Mining and Safety


Department of Natural Resources

### MINERALS PROGRAM INSPECTION REPORT

PHONE: (303) 866-3567

The Division of Reclamation, Mining and Safety has conducted an inspection of the mining operation noted below. This report documents observations concerning compliance with the terms of the permit and applicable rules and regulations of the Mined Land Reclamation Board.

<b>MINE NAME:</b> Bijou Clay Mine	<b>MINE/PROSPECTING ID#:</b> M-1997-007	<b>MINERAL:</b> Clay (general)	<b>COUNTY:</b> Elbert
<b>INSPECTION TYPE:</b> Surety Release Inspection	<b>WEATHER:</b> Windy	<b>INSP. DATE:</b> February 13, 2025	<b>INSP. TIME:</b> 09:50
<b>OPERATOR:</b> The Denver Brick Company	<b>OPERATOR REPRESENTATIVE:</b> Richard Murphy	<b>TYPE OF OPERATION:</b> 112c - Construction Regular Operation	

<b>REASON FOR INSPECTION:</b> Surety Release Requested	<b>BOND CALCULATION TYPE:</b> Complete Bond	<b>BOND AMOUNT:</b> \$196,124.37
<b>DATE OF COMPLAINT:</b> NA	<b>POST INSP. CONTACTS:</b> None	<b>JOINT INSP. AGENCY:</b> None
<b>INSPECTOR(S):</b> Ursula Armstrong Amy Eschberger	<b>INSPECTOR'S SIGNATURE:</b> 	<b>SIGNATURE DATE:</b> March 3, 2025

**The following inspection topics were identified as having Problems or Possible Violations. OPERATORS SHOULD READ THE FOLLOWING PAGES CAREFULLY IN ORDER TO ASSURE COMPLIANCE WITH THE TERMS OF THE PERMIT AND APPLICABLE RULES AND REGULATIONS. If a Possible Violation is indicated, you will be notified under separate cover as to when the Mined Land Reclamation Board will consider possible enforcement action.**

#### INSPECTION TOPIC: Sediment Control

**PROBLEM #1:** Erosion gullies and rills were observed along the western edge of the site and across slopes leading to the pit floors. There is a significant erosion feature along the eastern permit boundary in the Phase 3 area, which is associated with a detention basin that remains on the pit floor. This is a problem at this time for failure to protect the affected land from erosion pursuant to C.R.S. 34-32.5-116(4)(j) and Rule 3.1.6(3).

**CORRECTIVE ACTIONS:** By the corrective action due date, the operator shall submit a Technical Revision, with the associated fee of \$216.00, to revise the reclamation plan and map to include an appropriate stormwater management plan for the site. This plan shall include details for reconstructing the pond in Phase 3 so that it is appropriately sized to manage stormwater in the area with an outlet structure designed to safely discharge flows into the adjacent natural drainage without causing significant erosion and/or offsite damage. Additionally, the plan shall describe how the existing erosion gullies and ruts observed throughout the site will be repaired and the land reconstructed and stabilized to prevent future erosion damage. A detailed timeline for completion must be included with the plan.

**CORRECTIVE ACTION DUE DATE:** 4/30/25

#### INSPECTION TOPIC: Revegetation

**PROBLEM #2:** There are state-listed noxious weeds present on site. This is a problem for failure to employ weed control methods for state listed noxious weed species within the permitted area, and to reduce the spread of weeds to nearby areas as required by Rule 3.1.10(6).

**CORRECTIVE ACTIONS:** By the corrective action due date, the operator shall implement the approved weed control plan and provide proof to the Division that this has been done. Proof shall be in the form of an invoice for service, receipt of chemical purchase, and/or images of sprayed plants. If the weed control plan needs to be revised, the operator shall develop a new plan in consultation with the county extension agency or weed control district office and submit this revised plan in

the form of a Technical Revision, with the associated fee of \$216.00, by the corrective action due date. This revision should include specific control measures to be applied, a schedule for when control measures will be applied, and a post-treatment monitoring plan.

**CORRECTIVE ACTION DUE DATE: 5/30/25**

## **OBSERVATIONS**

The Bijou Clay Mine was inspected by Ursula Armstrong and Amy Eschberger with the Division of Reclamation, Mining and Safety (Division/DRMS) as a surety release inspection. The operator's final release request (SL-2) was filed with the Division on January 30, 2025. During the inspection, the Division received a written objection to SL-2 from the landowners, Cevey and Ashley Pennington (see enclosed), which was within the public comment period that closed on February 14, 2025. This site was previously inspected by the Division on August 3, 2023 for the operator's first release request (SL-1); this request was denied. Richard Murphy with The Denver Brick Company, as well as Clay and Leighton Pennington, representing the landowners, were present during the inspection. The site is located approximately 11.5 miles northeast of Kiowa, CO. This site is accessed from the west via Co Rd 73. The approved post-mining land use is rangeland. **Photos 1-24** taken during the inspection are included with this report.

This is a 112c operation permitted for 33.75 total acres. The site was mined for clay and the clay product was used in the production of bricks. This site was initially mined in three phases moving from south to north, AM-1 added a fourth phase to the south to mine 12 acres. According to the operator, mining ended in November 2018 and the site has been in final reclamation since then. According to the 2023 inspection report, slopes throughout the site have been graded to 3H:1V and the site has been seeded. The Division recommended in the previous inspection report that the operator reseed any bare areas as soon as practicable and closely monitor the growth of desired vegetation to ensure the affected lands are revegetated in accordance with Rule 3.1.10(1).

At the time of the inspection, the weather was cold and clear, and the site had a snow covering. During the inspection, erosion in the form of rills and gullies were observed throughout the site. Erosion ruts and gullies were observed along the western edge of the site, mainly along the access road and across graded slopes leading to the pit floors. In the northeastern portion of the permit area, a significant erosional feature was observed along the eastern edge of the Phase 3 mining area. The pond that lies on the pit floor receives all water runoff from the slopes in that area of the site. The water from this pond leaves the affected land and enters a natural ephemeral drainage that runs off site. The drainage from this pond has created a large erosion gully. The Division cited a problem for the erosion damage in its September 18, 2023 inspection report. On December 14, 2023, the Division abated this problem after the operator provided evidence the erosion had been repaired, and the disturbed areas reseeded. However, after conducting this inspection, it is clear the work completed to address this issue is not effectively managing stormwater at the site, and there is a high risk of off-site damage occurring. Pursuant to C.R.S. 34-32.5-116(4)(j) and Rule 3.1.6(3), all surface areas of the affected land, including spoil piles, shall be stabilized and protected so as to effectively control erosion. Additionally, Rule 3.1.5(3) requires all grading be done in a manner to control erosion and siltation of the affected lands, to protect areas outside the affected land from slides and other damage. **The erosion damage is cited as a problem in this report (see Problem #1). The operator will need to submit a Technical Revision (see enclosed form) to revise the reclamation plan and map to include an appropriate stormwater management plan for the site.** This plan shall include details for reconstructing the pond in Phase 3 so that it is appropriately sized to manage stormwater in the area with an outlet structure designed to safely discharge flows into the adjacent natural drainage without causing significant erosion and/or offsite damage. Additionally, the plan shall describe how the existing erosion gullies and ruts observed throughout the site will be repaired and the land reconstructed and stabilized to prevent future erosion damage. A detailed timeline for completion must be included with the plan. Refer to photos 14-17, 19, 20, 23, and 24 for images of some of the observed erosion features.

Vegetation at the site includes grasses found in the approved seed mixture. Dense stands of established grasses were observed in some areas, particularly in the earlier reclaimed phase 2 and phase 3 areas. However, scattered bare patches were observed throughout the site, particularly at the top of graded slopes. These bare patches appear to be contributing to the erosion issues observed at the site. The Division would like to remind the operator of Rule 3.1.10(1), which states in those areas where revegetation is part of the Reclamation Plan, land shall be revegetated in such a way as to establish a diverse, effective, and long-lasting vegetative cover that is capable of self-regeneration without continued dependence on irrigation, soil amendments or fertilizer, and is at least equal in extent of cover to the natural vegetation of the surrounding area. During the inspection, the landowner recommended planting in late May to June for ideal growth. The Division again recommends that the operator reseed any bare areas as soon as practicable and closely monitor the growth of desired vegetation to ensure the affected lands are revegetated in accordance with Rule 3.1.10(1).

State-listed noxious weed species were observed during the inspection, including Canada Thistle and Diffuse Knapweed. **The weeds are cited as a problem in this report (see Problem #2). The operator will need to submit evidence that noxious weeds are being treated in accordance with the approved weed management plan.** Evidence includes, but is not limited to, an invoice for service, receipt of chemical purchase, and/or images of sprayed plants. If the weed control plan needs to be revised, the operator shall develop a new plan in consultation with the county extension agency or weed control district office and submit this revised plan in the form of a Technical Revision. This revision should include specific control measures to be applied, a schedule for when control measures will be applied, and a post-treatment monitoring plan.

The Bijou Clay Mine will not be approved for full release at this time due to the problems cited with erosion and noxious weeds, in addition to the unsuccessful revegetation. The operator representative may withdraw their release request (SL-2); otherwise, the Division will deny SL-2 on March 17, 2025. Please note, even if SL-2 is withdrawn, the problem citations in this report remain active and the operator will need to resolve them by the corrective action due date.

This concludes the report.

*Any questions or comments regarding this inspection report should be forwarded to Ursula Armstrong at the Colorado Division of Reclamation, Mining, and Safety, 1313 Sherman Street, Room 215, Denver, CO 80203, via telephone at (720)- 793-3031, or email at [ursula.armstrong@state.co.us](mailto:ursula.armstrong@state.co.us).*



## PHOTOGRAPHS



**Photo 1:** Area just beyond the entrance of the mine, looking east. Rows of clumps of grass are seen.



**Photo 2:** Looking south at the southwestern boundary of the site.





**Photo 3:** Looking south at the reclaimed Phase 1 area of the site. Note the bare ground (in the foreground).



**Photo 4:** In the central area of the site, looking east. None of planted vegetation has spread to this area.





**Photo 5:** Looking north towards the phase 4 pit. Bare ground is seen along the graded slopes.



**Photo 6:** Looking north in phase 4 pit, the slopes have erosion and lack of vegetation.





**Photo 7:** Looking west at the central area of the site.



**Photo 8:** Canada thistle located near the mine entrance.





**Photo 9:** Looking east at one of the graded slopes that is lacking vegetation.



**Photo 10:** Standing at the eastern mine permit fence looking south, a large area of bare ground is seen.





**Photo 11:** Looking north along the eastern permit boundary, identified by the fence.



**Photo 12:** Area just beyond the permit area, looking east.





**Photo 13:** View looking north across phase 3 mining area. Note small pond on pit floor.



**Photo 14:** Looking southeast along eastern boundary at one of the several large paths of water runoff. This is just south of the significant gully.





**Photo 15:** The same water runoff path seen in Photo 14, looking north towards the pond and gully. Straw wattles are seen.



**Photo 16:** Looking directly down at the large gully along the eastern boundary, where the pond discharges into the natural drainage.





**Photo 17:** Looking northeast at the large gully along the eastern boundary. Canada thistle can be seen in the bottom left corner of the photo.



**Photo 18:** Looking east at natural drainage area just beyond the large gully on the eastern boundary.





**Photo 19:** Looking down at erosion between the pond and the large gully on the eastern boundary.



**Photo 20:** Looking west at the pond that contributes to drainage at the large gully on the eastern boundary. Canada thistle is seen in the bottom left corner of the photo.





**Photo 21:** The pond at the bottom of the phase 3 pit, looking west.



**Photo 22:** Looking east at one of the graded slopes.





**Photo 23:** Looking north at large rills on one of the slopes draining to the pond.



**Photo 24:** Erosion along the access road on the western boundary of the site, looking south.

### GENERAL INSPECTION TOPICS

The following list identifies the environmental and permit parameters inspected and gives a categorical evaluation of each

(AR) RECORDS----- <u>N</u>	(FN) FINANCIAL WARRANTY----- <u>Y</u>	(RD) ROADS----- <u>N</u>
(HB) HYDROLOGIC BALANCE----- <u>N</u>	(BG) BACKFILL & GRADING----- <u>Y</u>	(EX) EXPLOSIVES----- <u>N</u>
(PW) PROCESSING WASTE/TAILING---- <u>N</u>	(SF) PROCESSING FACILITIES----- <u>N</u>	(TS) TOPSOIL----- <u>Y</u>
(MP) GENL MINE PLAN COMPLIANCE- <u>Y</u>	(FW) FISH & WILDLIFE----- <u>N</u>	(RV) REVEGETATION---- <b><u>PB</u></b>
(SM) SIGNS AND MARKERS----- <u>Y</u>	(SP) STORM WATER MGT PLAN---- <u>N</u>	(RS) RECL PLAN/COMP-- <u>Y</u>
(ES) OVERBURDEN/DEV. WASTE----- <u>N</u>	(SC) EROSION/SEDIMENTATION--- <b><u>PB</u></b>	(ST) STIPULATIONS----- <u>N</u>
(AT) ACID OR TOXIC MATERIALS----- <u>N</u>	(OD) OFF-SITE DAMAGE----- <u>N</u>	

Y = Inspected / N = Not inspected / NA = Not applicable to this operation / PB = Problem cited / PV = Possible violation cited

#### Inspection Contact Address

Richard Murphy  
The Denver Brick Company  
210 Acme St  
Denton, TX 76205

Encl(s): Objection from landowners, received on February 13, 2025  
Technical Revision form

CC: Cevey and Ashley Pennington  
35205 Comanche Creek Road  
Kiowa, CO 80117

Amy Eschberger, DRMS



Abbott Ranch

Cevey and Ashley Pennington

35205 Comanche Creek Road

Kiowa, CO 80117

February 12, 2025

RE: Consideration of Construction Materials Reclamation Permit Surety Release Request

This letter is in response to the afore mention release request by The Denver Brick Company in re, the Bijou Mine # M1997007. The Denver Brick Company should not be released from their fiscal responsibility for the surety bond for the following reasons: to wit.

1, The reclamation initiated by the Denver Brick Company or their contractors/representatives was executed poorly. Specifically.

a). The ground preparation was conducted during a period of drought (can be validated by the National Weather Service record). With no follow up as to the progress of the said ground preparation.

B. As per your agency's and guidelines as outlined by the Natural Resource Conservation Service, a division of the USDA, native grasses are supposed to be integrated with an appropriate cover crop in reclamation efforts, The Denver Brick Company instead planted wheat, which is not a recognized cover drop, and of which also injects a toxin into the ground, thus inhibiting any other plant growth . This is a cheap and inappropriate solution. Buffalo grass, Gramma grass and/or a combination of both should have been utilized with a cover crop. Consequently this portion of the supposed reclamation effort failed.

c). Erosion mitigation efforts that were executed have completely failed. There are numerous deep washout ruts in the roads leading to and around the mine, consequently any equipment has to go around the washouts and onto the defunct reclamation grassed area, further degrading the effort to establish reclamation roots in seeded areas.

D)/ Because of the failure to reclaim the area with native grasses, the area has reverted to a breeding ground for noxious weeds, specifically; Scotch thistles, Prairie poppy, Canadian Thistle and Mullen, among others. These noxious weeds do not contribute to the natural environment and in fact deprive native wildlife, (Mule deer, Pronghorn, Prairie Dogs and other animals of their natural food source,

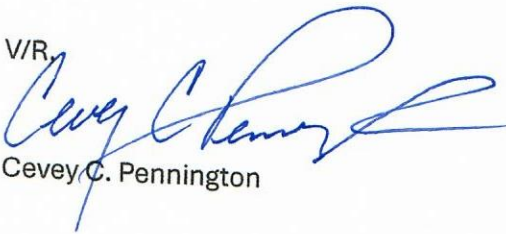
e). The catch basin pond erected initially was washed out in the spring floods of 2023 and was never addressed, this further deprived native wildlife of a vital source of water since there are no natural streams or any water source from which they can derive nourishment.

2. The fencing around the property was poorly executed when established. The fence is washed out in several areas, the use of existing and deteriorated wire was used, the gates were not made to any level of ranching standard (square [posts used for a gate post]), the electrical fence was not properly installed and has never worked,

The company has been out and made some cosmetic improvements to the erosion issues, but did not address them all. Essentially, they put a band aid on the problems. The ruts re-established themselves with the next rain after being filled in,

The Colorado Division of Reclamation, Mining and Safety should send an inspection team or representative to the property to see the reclamation efforts, or lack thereof, firsthand,

V/R,



Cevey C. Pennington



## COLORADO DIVISION OF RECLAMATION, MINING AND SAFETY

1313 Sherman Street, Room 215, Denver, Colorado 80203 ph(303) 866-3567

### REQUEST FOR TECHNICAL REVISION (TR) COVER SHEET

File No.: M- \_\_\_\_\_ Site Name: \_\_\_\_\_

County \_\_\_\_\_ TR# \_\_\_\_\_ (DRMS Use only)

Permittee: \_\_\_\_\_

Operator (If Other than Permittee): \_\_\_\_\_

Permittee Representative: \_\_\_\_\_

Please provide a brief description of the proposed revision: \_\_\_\_\_

As defined by the Minerals Rules, a Technical Revision (TR) is: “a change in the permit or application which does not have more than a minor effect upon the approved or proposed Reclamation or Environmental Protection Plan.” The Division is charged with determining if the revision as submitted meets this definition. If the Division determines that the proposed revision is beyond the scope of a TR, the Division may require the submittal of a permit amendment to make the required or desired changes to the permit.

The request for a TR is not considered “filed for review” until the appropriate fee is received by the Division (as listed below by permit type). Please submit the appropriate fee with your request to expedite the review process. After the TR is submitted with the appropriate fee, the Division will determine if it is approvable within 30 days. If the Division requires additional information to approve a TR, you will be notified of specific deficiencies that will need to be addressed. If at the end of the 30 day review period there are still outstanding deficiencies, the Division must deny the TR unless the permittee requests additional time, in writing, to provide the required information.

There is no pre-defined format for the submittal of a TR; however, it is up to the permittee to provide sufficient information to the Division to approve the TR request, including updated mining and reclamation plan maps that accurately depict the changes proposed in the requested TR.

Required Fees for Technical Revision by Permit Type - Please mark the correct fee and submit it with your request for a Technical Revision.

<u>Permit Type</u>	<u>Required TR Fee</u>	<u>Submitted</u> (mark only one)
110c, 111, 112 construction materials, and 112 quarries	\$216	<input type="checkbox"/>
112 hard rock (not DMO)	\$175	<input type="checkbox"/>
110d, 112d(1, 2 or 3)	\$1006	<input type="checkbox"/>