

STATE OF
COLORADO

Eschberger - DNR, Amy <amy.eschberger@state.co.us>

Buffalo No 1 (M-1978-011) / Inspection Problem Letter

Eschberger - DNR, Amy <amy.eschberger@state.co.us>

Thu, May 1, 2025 at 12:20 PM

To: Jason McGraw <jason.mcgraw@generalshale.com>

Cc: "Armstrong - DNR, Ursula" <ursula.armstrong@state.co.us>

Hi Jason,

We reviewed the 4 access agreements you provided on 4/30 and they do not address the right of entry problem that was identified in Ursula's 4/30 letter. The access agreements appear to be for the private road exiting south off Co Rd 150, which is used to access the Phase IV portion of the permit area. None of the agreements provided demonstrate General Shale Brick, Inc.'s (GSB's) legal right to enter the approved permit area for Phase IV. According to the parcel map available on the Elbert County website (<https://geohub-elbertcounty.hub.arcgis.com/>), Phase III of the permit area is owned by Victoria A. Whitman, and Phase IV of the permit area is owned by Nickolas Karpinecz, Robinson Brick Company, and Alecia A. Fortune (in care of Gene Fortune). I'm attaching screen captures of each of these parcels. Since at least one of these landowners (and likely others, including adjacent landowners) has changed, we need updated right of entry documentation proving that GSB has the legal right to enter to conduct mining and reclamation, as required by Rule 6.4.14.

Additionally, we will need an updated Exhibit C map showing all current owners of record for the permit area and all adjoining surface owners, and an updated Exhibit O including a complete list of all current owners of record. Since problem #2 cited in Ursula's 4/30 letter requires the submittal of a Technical Revision, you can submit the updated Exhibit C map, etc. with this same revision. If you let Ursula know you'd like to address both corrective actions through the same TR, she could extend the deadline for problem #1 to match the deadline for problem #2. Then you can submit the updated exhibits/maps and right of entry documentation at the same time.

I just want to remind you that Rule 1.16(2) requires an operator to "promptly notify the Office" when there are substantial changes that affect right of legal entry upon the lands to be mined. This means when the ownership of any portion of the approved permit area changes, we need to be promptly notified of this change with updated right-of-entry documentation. I realize GSB no longer wishes to mine portions of Phase IV (per our discussion on site), but until those portions of the permit area have been fully released from our jurisdiction (via the release request process), the permittee must comply with all requirements for the permit, including maintaining legal right of entry. We will not be able to release any disturbed lands until they have been reclaimed in accordance with an approved reclamation plan. Because we do not currently have an approved reclamation plan on file for Phase IV of the permit area, we need to get a plan in place so GSB can reclaim the approximately 7 acres of disturbance in that area then request release of that parcel. Our corrective action was written the way it was based on you telling us that GSB has no interest in keeping that parcel in the permit area. If, on the other hand, GSB decides to hang on to that parcel, then we will need mining and reclamation plans and maps for Phase IV to be submitted with the Technical Revision.

Something else to consider, if the eastern parcel in Phase IV is eventually released from the permit area, but access through that parcel is not maintained by GSB (to access the remaining Phase IV permit area), an Amendment will likely be needed, since the Phase IV area could only be accessed by constructing a new road. This is not something that could come later when GSB is ready to mine the area, as the Division must be able to access the full permit area for inspections.

In your email, you asked why we are not pursuing enforcement on Randy DiCamillo, since he was the one that created the disturbance in Phase IV. As you'll see in the Memorandum that Ursula forwarded you, we did investigate the matter and confirmed that Mr. DiCamillo did create the disturbance. According to him, he was hired to dig two ponds for the previous landowner and to use some of the excess material for improving the landowner's land and roads. We have no evidence that any of the excavated material was sold or hauled off site. Therefore, we do not have enough evidence to pursue enforcement actions against Mr. DiCamillo for illegal mining. Furthermore, the "affected lands" are already included in an approved permit held by GSB. And ultimately, it is GSB's responsibility to ensure all activities occurring within their permit area are in compliance with our regulations. It is our understanding that GSB was aware of the excavation activities in Phase IV while they were occurring, possibly a few years ago. It would have been helpful if GSB had brought this to our attention around that time, rather than during the recent 2/13 inspection (long after the activities occurred).

On a side note, we did talk with Ben Teschner of the State Land Board (SLB) and informed him of the new road that Mr. DiCamillo constructed to connect parcel 8204400128 to the SLB parcel 8202300002, southeast of GSB's Phase IV permit area. According to Mr. DiCamillo, he constructed this road with permission from the (previous?) landowner, Dick Pritchard for moving cattle, but also had an agreement with Mr. Pritchard to use the road for access to the Dawson Mine to bring rock to parcel 8204400128 for the pond construction project, if he was able to get permission from GSB. Ben did confirm that Mr. DiCamillo had contacted the SLB and GSB some time back, asking about mining on the SLB lands, and you both told him no. According to Ben, there was no mention of constructing a new road at that time, so the SLB will be meeting internally to figure

out how to proceed with that. If you have any questions about the road, you can reach out to Ben at benjamin.teschner@state.co.us.

We realize this is an unfortunate situation and are willing to work with GSB to find a reasonable solution. If this means that GSB is only able to obtain a temporary access agreement from the new landowner for reclamation only, we can work with that. So please keep me and Ursula in the loop and let us know if you want to meet to discuss this further.

Best Regards,

Amy Eschberger
Senior Environmental Protection Specialist



COLORADO
Division of Reclamation,
Mining and Safety
Department of Natural Resources

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On Wed, Apr 30, 2025 at 11:23 AM Armstrong - DNR, Ursula <ursula.armstrong@state.co.us> wrote:
Hey Jason,

I will look over those documents you sent and let you know if there's any questions.

As stated in the documents I sent you, we decided to not pursue enforcement on Randy because we have no evidence that the material mined onsite was sold or taken off of the property. Would you like to schedule a call with Amy and I to discuss this further?

Ursula Armstrong
Environmental Protection Specialist
Active Mines Program



COLORADO
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On Wed, Apr 30, 2025 at 11:02 AM Jason McGraw <jason.mcgraw@generalshale.com> wrote:

Ursula,

Attached are the easements we have on file for access to the Section 4 property Phase IV. This should remedy the first issue cited.

Why isn't the state pursuing action and forcing Randy to reclaim the site? He is the person who created the disturbance with no approval from us.

Best Regards,

Jason E. McGraw
Mine Supervisor

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From: Armstrong - DNR, Ursula <ursula.armstrong@state.co.us>

Sent: Wednesday, April 30, 2025 10:01 AM

To: Jason McGraw <jason.mcgraw@generalshale.com>; Amy Eschberger - DNR <amy.eschberger@state.co.us>

Subject: Buffalo No 1 (M-1978-011) / Inspection Problem Letter

*** E-mail from an external source ***

Good morning,

After further investigation into the unauthorized mining disturbance in the Phase IV area of Buffalo No 1 mine, the Division has decided to not pursue enforcement on NTRS Earthworks LLC. Attached is the memorandum outlining the investigation and decision.


Also attached is an inspection problem letter for the Buffalo No 1. Due to the mining disturbance being within the active permit area, these fall under General Shale Brick, Inc.'s responsibility.

Please let me know if you would like to set up a call with Amy and I to discuss this further.

Ursula Armstrong

Environmental Protection Specialist

Active Mines Program


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4 attachments



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