

From: [JESS MINIUM](#)
To: [Kaldenbach, Tom](#)
Subject: APACHE TAILINGS
Date: Monday, June 11, 2012 1:50:53 PM
Attachments: [OU7 Letter to MTAA LTD 2012-05-29 \(1\).pdf](#)

TOM KALDENBACH: ATTACHED, A LETTER FROM HELL FOR YOUR
INFORMATION. JESS E. MINIUM, JR.

STATE OF COLORADO

John W. Hickenlooper, Governor
Christopher E. Urbina, MD, MPH
Executive Director and Chief Medical Officer

Dedicated to protecting and improving the health and environment of the people of Colorado

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<http://www.cdphe.state.co.us>



Colorado Department
of Public Health
and Environment

May 29, 2012

CERTIFIED MAIL # 7011 3500 0002 0627 2752
Return Receipt Requested

MTAA LTD
c/o John Lassalette, Attorney
1280 Ute Avenue #10
Aspen CO 81611-2259

**RE: Operable Unit Number Seven (Apache Tailings Impoundment) of the California Gulch
Superfund Site Located in Lake County, Colorado**

Dear Sir:

This letter is in response to MTAA LTD's request for Department approval to excavate waste tailings from within the completed engineered remedy of Operable Unit Number Seven (OU7) and to construct and operate an on-site plant to make bricks from the waste tailings.

In order for the Colorado Department of Health and the Environment (CDPHE) to effectively and properly review and evaluate MTAA LTD's plans to excavate material from, and/or construct a building on OU7, please submit the following documents to Craig Gander at CDPHE:

1. A copy of your completed "Is It Mining?" questionnaire, which you must submit to the Colorado Division of Reclamation, Mining and Safety (DRMS), and the DRMS response to your questionnaire. The Questionnaire can be located online at:
<http://mining.state.co.us/Forms/MineralForms/IsItMining.pdf>;
2. A Beneficial Re-Use of Waste Determination application addressed to the CDPHE Solid Waste and Materials Management Program prior to using the waste tailings to make bricks C.R.S. § 30-20-102(5); 6 C.C.R. 1007-2, §8.6. The Colorado Solid Waste Regulations (6 C.C.R. 1007-2, §8.6) establish the requirements that must be met to beneficially use a solid waste. Your application must demonstrate that your activities will achieve the following criteria:

- (A) Adherence to established engineering or other appropriate specifications;
- (B) Adherence to established product, end user specifications or customer conditions of acceptance;
- (C) Environmental impacts relative to those expected from available commercial products;
- (D) Demonstrated benefit associated with the use; and
- (E) Actual use as a substitute for, or in conjunction with, a commercial product or raw material.

Section 8.6.1 of the Colorado Solid Waste Regulations (6 C.C.R. 1007-2) lists specific testing and documentation criteria to evaluate whether the use of the waste constitutes recycling, in addition to protecting the human health and the environment. Testing requirements include:

(a) tailings analytical results for all analytes shown in the column marked "Other" on Table 1A (located online at:

<http://www.cdphe.state.co.us/hm/sw/section8/butable1a.pdf>), and

(b) brick analytical results for the toxicity characteristic leaching procedure (TCLP) for all analytes shown in the column marked "Other" on Table 1B (located online at:

<http://www.cdphe.state.co.us/hm/sw/section8/butable1b.pdf>); C.R.S. § 30-20-102(5); 6 C.C.R. 1007-2, §8.6.

- 3. Property legal description, ownership information, and legal basis for your Right-to-Enter if not the owner;
- 4. A scaled plat showing the entire property and the location of all existing engineered controls and remedial components, along with all locations of all proposed facilities including roads, buildings, utilities and equipment;
- 5. A complete description of all proposed excavation methods, the excavation sequence, a geotechnical stability exhibit, and an excavation operating plan. This plan should identify associated operating procedures including dust control, storm water control and materials management and containment;
- 6. Facility Construction Plan including proposed procedures for storm water management and dust control during construction;
- 7. Facility Operating Plan that includes a complete process description, showing general arrangements and process flow, chemical use and waste generation estimates. This plan should include material safety data sheets for all chemicals to be used at the facility;
- 8. Plant Closure, Decommissioning, Removal, and Reclamation Plan and an **Engineering Cost Estimate of Plant Closure, Decommissioning, Removal, and Reclamation;**
- 9. Excavation Closure and Remedy Re-establishment Plan (Reclamation Plan) and **Engineering Cost Estimate for Reclamation;**

The **Engineering Cost Estimates** will be used as the basis for setting a bond amount to ensure that adequate funding exists for proper reclamation and re-establishment of the site remedial components.

MTAA LTD

c/o John Lassalette, Attorney

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CDPHE makes no representation with respect to approvals of any other permits that may be required by any other federal, state or local laws or regulations of any other governmental agencies.

CDPHE reserves the right to request additional and/or follow-up information or documents that it determines necessary. If you have any questions regarding this letter, please contact Mr. Craig Gander at (303) 692-3449 or via email at craig.gander@state.co.us. If there are any legal questions please contact Mr. Scott Schultz at (303) 866-5068 or via email at scott.schultz@state.co.us.

Sincerely,



Craig R. Gander
Environmental Protection Specialist
Hazardous Materials and Waste Management Division
Colorado Department of Public Health and Environment

cc: Scott Schultz, Colorado Assistant Attorney General, Natural Resources and Environment
Linda Kiefer, California Gulch Remedial Project Manager, EPA Region 8
Lake County Building and Land Use Department, P.O. Box 513, Leadville CO 80461
City of Leadville Planning & Zoning Commission, 800 Harrison Avenue, Leadville, CO 80461
Roger Doak, CDPHE Solid Waste and Materials Management – Permitting Unit
Steve Shuey, Colorado Department of Natural Resources, Division of Reclamation, Mining and Safety