

STATE OF COLORADO

DIVISION OF RECLAMATION, MINING AND SAFETY

Department of Natural Resources

1313 Sherman St., Room 215

Denver, Colorado 80203

Phone: (303) 866-3567

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October 2, 2012

Emery Lynn Olin
Bridal Veil Construction
P.O. Box 1821
1796 N. Main Street
Ouray, CO 81427

John W. Hickenlooper
Governor

Mike King
Executive Director

Loretta E. Piñeda
Director

**RE: Disagreement with the Office's Decision to Deny TR-02,
Bridalveil Pit, Permit No. M-2001-054.**

Dear Mr. Olin:

On October 1, 2012, the Division received an email communication from Connie Wurst, manager of Bridal Veil Construction, sent on September 29, 2012, at 5:08 am. Copy of the email communication is enclosed. In the email communication, Bridal Veil Construction indicated disagreement with the Division's decision to deny TR-02.

Pursuant to Construction Materials Rule 1.9.2, Bridal Veil Construction may appeal the Division's decision to deny TR-02 to the Mined Land Reclamation Board for a final determination by submitting a petition for a hearing pursuant to the provisions of Rule 1.4.11. Copy of Rules 1.9.2 and 1.4.11 are enclosed for your reference. The Act and Rules may be reviewed in their entirety at the Division's web site at www.mining.state.co.us.

If Bridal Veil Construction desires to petition the Mined Land Reclamation Board for a formal hearing whereby a final determination may occur, please submit a petition in writing and which satisfies the specific requirements of Rule 1.4.11(1). Pursuant to Rule 1.4.11(1)(b), the deadline whereby the Division must receive the written petition is **October 28, 2012**.

Please contact me at the Division's office in Durango at 691 County Road 233, Suite A-2, Durango, CO 81301, phone (970) 247-5469, if you have any questions.

Sincerely,

Wallace H. Erickson

Environmental Protection Specialist

Enclosure: Email communication from Connie Wurst, sent 9/29/12 at 5:08 am, and copy of Rules 1.9.2 and 1.4.11

Ec w enclosure: Russ Means, DRMS GJFO

Erickson, Wally

From: Connie Wurst [conniewurst@yahoo.com]
Sent: Saturday, September 29, 2012 5:08 AM
To: Erickson, Wally
Cc: Means, Russ
Subject: Re: Denial of TR-02, Bridalveil, M-2001-054

Wally Erickson,

Okay, it is 5:00 AM now, and I have reviewed everything that I have received from your office. The only mail which I received from you, which was dated Sept. 12, was a letter saying attached was an inspection report. Actually, the inspection report and a cost summary worksheet was attached. There was not an attachment regarding our request for revision, nor was there a letter in the mail regarding our request for revision.

Consequently, I believe that your denial is unjustified. If you want us to respond to something, you need to tell us. I believe that you need to find your copy of what you thought you sent, and send it, amended with new dates for your request.

We thought you were going to get an engineer to look at our request. We are still waiting for your response. And, we are stunned at your denial.

Sincerely, Connie Wurst, Bridal Veil Construction
Lynn Olin, Bridal Veil Construction 970-729-1823

--- On Fri, 9/28/12, Erickson, Wally <Wally.Erickson@state.co.us> wrote:

From: Erickson, Wally <Wally.Erickson@state.co.us>
Subject: Denial of TR-02, Bridalveil, M-2001-054
To: "Connie Wurst" <conniewurst@yahoo.com>
Cc: "Means, Russ" <Russ.Means@state.co.us>
Date: Friday, September 28, 2012, 6:16 PM

Dear Bridal Veil Construction:

The attached file contains the Division's decision document for TR-02 at the Bridalveil Pit, M-2001-054. The Operator did not respond to the Division's adequacy issues and the Operator did not request an extension to the review period. Therefore, the Division had no choice on the decision day but deny TR-02. Hard copy has been mailed.

Wally Erickson

- (4) The decision rendered by the Board shall be considered final agency action for the purposes of the judicial review provisions of Section 24-4-106, C.R.S.

1.4.10 RESERVED

1.4.11 Administrative Appeal of an Office Decision

- (1) Any person who can demonstrate that he/she/it is directly and adversely affected or aggrieved by an action of the Office, including a decision to grant or deny a permit application, other than an application considered under the provisions of Paragraph 1.4.9, and whose interests are entitled to legal protection under the Act may petition for a hearing before the Board on such action within:

24-4-104(9)

- (a) sixty (60) days of the date of the Office decision if the Office decision was a denial, without a hearing, of an application for a permit or a Notice of Intent; or
 - (b) thirty(30) day for an appeal of any other Office decision.
 - (c) Such hearings before the Board shall comply with this Rule and Section 24-4-105, C.R.S.
 - (d) Such petitions for a hearing shall state how the petitioner is directly and adversely affected or aggrieved by the Office's decision, and how the petitioners interests are entitled to protection under the Act. The petitioners shall list and explain any issue the petitioner believes should be considered by the Board at the hearing on the matter. The petition for a hearing shall specify the application or file number assigned by the Office.
- (2) If no petition decision is made by the Board within sixty (60) days of the date the petition is submitted, the petition will be deemed denied. Such denial shall be considered final agency action for the purposes of the judicial review provisions of Section 24-4-106, C.R.S.

- (3) The Office shall give notice of any Formal Board Hearing to consider an appeal according to the provisions of Subparagraph 1.6.1(4).
- (4) The Office may determine whether to hold a pre-hearing conference dependent upon the number of parties to the Formal Board Hearing and/or complexity of the issues, or the Board may so direct the Office as the Board sees fit.

1.4.12 Appeal of a 112 Reclamation Permit Application Denial

If the Office issues a decision to deny an application for a 112 Reclamation Permit, it shall schedule the application for a hearing before the Board unless the Applicant decides to withdraw the application. Such hearing shall be scheduled prior to the deadline for a final decision on the application pursuant to Section 34-32.5-115(2), C.R.S., and Subparagraph 1.4.9(3) or 1.4.8(2) above, and shall be conducted in conformance with the provisions of Section 24-4-105, C.R.S.

- (a) Within ten (10) days of receipt of the letter of denial, the Applicant shall file a statement of issues to be considered by the Board at the hearing. The statement shall include an explanation of the grounds for seeking a reversal of the Office's decision.
- (b) If there are no other parties to the proceedings on the application the Applicant may waive the statutory deadline for a final decision. In that event, the Applicant shall file the statement of issues to be considered by the Board at the hearing within sixty (60) days of the receipt of the letter of denial.

1.4.13 Automatic Application Approval

- (1) If the Office or the Board fail to make a decision on a permit application by the deadlines set forth in Paragraphs 1.4.6, 1.4.7, 1.4.8, and 1.4.9, or as extended by Rule 1.8, the application shall be deemed approved and the permit shall be granted upon

Proof of notice shall be submitted with the amendment or technical revision to the application. An amendment to an application must be submitted on a form approved by the Board.

- (2) Within three (3) working days of the filing of an amendment or a technical revision to an application with the Office, the Office shall set a new date for the consideration of the application. A new date shall be set only as necessary to afford an adequate opportunity for a review of the amendment or technical revision to the application by the Office and by any interested members of the public.

1.8.4 Technical Revisions to 112 Reclamation Permit Applications

- (1) Written objections to the application:

The Office shall not set a new date for consideration of an application for a 112 Reclamation Permit for which it has received written objections, any earlier than twenty (20) days after the date of filing a technical revision to the application, unless the Applicant and all parties agree on an earlier date.

- (2) No written objection to the application:

The Office shall set a new date for the consideration of an application to which no objection has been submitted only as necessary to afford the Office an adequate opportunity to review the technical revision.

1.9 TECHNICAL REVISION TO A PERMIT

1.9.1 Filing and Review Process

An application for Technical Revision shall be filed in writing with the Office. The Office shall act on a Technical Revision application within thirty (30) days after the Technical Revision has been filed with the Office. A Technical Revision is considered filed when the submittal includes the appropriate fee. A Technical Revision shall be considered automatically approved within thirty (30) days after filing unless the application is denied. Notice of Technical

Revisions shall be acknowledged in the monthly activity report attached to the monthly Board agenda.

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1.9.2 Denial and Appeal Process

In the event that the Office decides to deny an application for Technical Revision, the Office will notify the Applicant in writing within ten (10) days after the decision deadline. The Applicant may appeal the decision to the Board for a final determination by submitting a petition for a hearing pursuant to the provisions of Paragraph 1.4.11.

1.10 AMENDMENT TO A PERMIT

1.10.1 112 Reclamation Permit and 110 Limited Impact Permit Amendments

112(7)(a)

- (1) Where applicable, there shall be filed with any application for a 112 Reclamation Permit amendment, attachment(s) map(s) and one (1) original and four (4) copies of the application with the same content as required for an original application, except that the Applicant will not be required to submit any information which duplicates applicable previous submittals. However, the Applicant shall clearly describe where in the original application and supporting documents the information not included in the amendment application, but necessary to render the amendment technically adequate, may be found.
- (2) A 110 Limited Impact permit amendment submittal shall include attachment(s), map(s), and one (1) original and two (2) copies of the application with the same content as required for an original application, except the Applicant will not be required to submit any information which duplicates applicable previous submittals. However, the applicant shall clearly describe where, in the original application and supporting documents, the information not included in the amendment application, but necessary to render the amendment technically adequate, may be found.
- (3) The amendment application shall be accompanied by a basic fee as specified in Section 34-32.5-125, C.R.S.