

# STATE OF COLORADO

## DIVISION OF RECLAMATION, MINING AND SAFETY

Department of Natural Resources

1313 Sherman St., Room 215

Denver, Colorado 80203

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February 28, 2013

Nienhueser Construction & Excavating Co  
1243 RD 113  
P.O. Box 173  
Sidney, NE 69162

John W. Hickenlooper  
Governor

Mike King  
Executive Director

Loretta Piñeda  
Director

**Re: Review of Current Permit Status Regarding Temporary Cessation  
DRMS FileM2001018, Schumacher II;**

Dear Keith Nienhueser:

In conducting recent site inspections and reviews of Annual Reports, the Division of Reclamation, Mining, and Safety ("Division") has observed that many sites are not in compliance with the permit status requirements of the Colorado Land Reclamation Act for the Extraction of Construction Materials ("Act") and the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials ("Rules"). Specifically, if your operation is not active or has limited mining activity please read the following information carefully, as action on your part may be required.

The Act and the Rules require that operators who are not continuously engaged in the extraction of construction materials must either file a notice of Temporary Cessation ("TC") or apply for Intermittent Status ("IS") as explained below. Operators must file a notice of TC whenever they intend to, or do, temporarily cease production for more than a one year period. C.R.S. § 34-32.5-103(11)(b); Rule 1.13.5(1). The notice of TC must be filed in writing by separate cover to the Division and include the following:

1. A revision fee in the amount of \$144.00.
2. A statement of when the initial five-year period of TC will commence.
3. Reason for non-production.
4. A general plan for the resumption of mining.
5. Measures to be taken to comply with reclamation requirements related to Rule 3.1 including weed control, storm water control, and general site upkeep.
6. Demonstration that the existing Financial Warranty is adequate to cover current reclamation liabilities.
7. File the required annual report and fee when due.

As an alternative to TC, operators may qualify for IS, but only if they comply with the following requirements:

1. Operators must apply for IS in a permit, amendment, or technical revision: The Act provides that intermittent operations must include, in their permit applications, “a statement that the affected lands are to be used for less than one hundred eighty days per year.” C.R.S. § 34-32.5-103(11)(b); Rule 1.13.5(1). The Rules provide that this statement may also be made in an application for an amendment or technical revision, and that the statement must include the information otherwise required when filing a notice of TC. Rule 1.13.7. Please verify that your operation has been granted IS through the process noted below. If not, please contact the Division to discuss your options.
2. The Act provides that intermittent operations must “resume operating within one year.” C.R.S. § 34-32.5-103(11)(b). In order to fulfill this requirement, operators must demonstrate that active mining occurs every year that they remain in IS. Active mining operations require the development or extraction of a construction material from its natural occurrences, which may include; open mining, surface operations, transportation operations, processing operations such as crushing and sorting, as well as stockpile removal. Please note regular onsite maintenance activities such as weed control, site maintenance, and storm water control maintenance do not constitute mining activities. In order for your operation to maintain IS status, you must have been granted the status and provide a description of the active mining operation activities (consistent with the definitions above) that have occurred at the site during the past year in your Annual Report.
3. Specific information required in Annual Reports: IS and TC operations must report their status to the Board through their Annual Reports. The most recent Annual Report for your operation may or may not be sufficient to satisfy these reporting requirements. **Accordingly, you must provide the following information to the Division during the 2013 reporting year:**
  - a) A description of the condition of the operation at the time it entered IS; along with a description of the current condition of the operation, supplemented with maps.
  - b) A description of the measures that have been and will be implemented to comply with reclamation and performance standards.
  - c) A description of your plans for resumption of mining.

If you have any questions, please contact the Division Specialist with oversight of your permit. If you do not know that person, please contact the Main Office Operator at 303.866.3567 and request the specialist for your county or visit our website at [www.mining.state.co.us](http://www.mining.state.co.us).