



January 31, 2020

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Dear Director Pfaltzgraff:

The Colorado Mining Association (CMA) would like to bring to your attention a few significant issues that CMA members have been experiencing through the Colorado Discharge Permit System (CDPS) process. CMA acknowledges and appreciates the Water Quality Control Division's (WQCD) continued willingness to provide annual updates and discuss permitting issues with CMA members. These meetings have been informative and at a minimum, have left us with a mutual understanding of each other's position on several of CMA's priority topics. CMA and members also continue to participate in the Water Quality Forum workgroups and value the WQCD presence in those meetings as well. However, CMA and WQCD appear to be at an impasse on several of the priority issues, so CMA thought it would be appropriate to bring them to your attention at this time.

Resolution of these issues offers benefits for both the mining industry and the WQCD. Many of these issues have triggered extensive comment submittals on behalf of both the permittee and CMA. They are also increasingly leading to litigation over individual permit issuances. Resolution of these issues should result in considerable cost savings for the WQCD and workable and environmentally protective permit requirements for the industry. The following provides a summary of the issues and offers some potential solutions for your consideration.

**Stormwater:** Recent CDPS permits for mining operations have been changing the implementation of stormwater and point-source requirements at existing outfalls. This has resulted in changing requirements to outfalls, where outfall that were traditionally considered stormwater now have numeric effluent limits and outfalls that were previously considered point source discharges sometimes have both numeric effluent limits and stormwater requirements imposed.

Additionally, the WQCD interpretation of stormwater applicability has resulted in the addition of numerous "new" outfalls to existing operations' CDPS permits, even though there haven't been any significant operational changes to the facility. In one recent case, this approach to stormwater permitting added seventy-five "new" outfalls to

the permit, even though these areas have always been present at the facility but never regulated by the CDPS permit. Furthermore, these new stormwater requirements are being imposed even though mining regulations already have extensive requirements for stormwater control within the mine permit area, resulting in significant duplication and overlap with WQCD requirements.

Point of Compliance: The WQCD's interpretations and application of policies regarding points of compliance, "State Waters", and CDPS termination is resulting in significant practical problems for permittees, including: 1) situations where compliance with water discharge permit effluent limitations is difficult or impossible, and 2) cases where final bond release can be achieved under the SCMRA or MLRA but the associated CDPS permit cannot be terminated. In some recent permits WQCD has considered all waters within the mine permit area to be "State Waters" and has applied this interpretation as the basis for moving the point of compliance for applicable effluent standards to the source of the waters or to some internal surface water control point, ignoring the fact that treatment facilities exist downstream of these sources to address water quality concerns.

For mining operations, a more practical and realistic approach is that contained within the mining regulations which require operations to minimize onsite disturbances to the hydrologic balance, prevent offsite material damage to the hydrologic balance, and not cause exceedances of water quality standards in the receiving stream.

Another consequence of these interpretations involves WQCD policies regarding CDPS permit termination. Water quality policies 1 and 5 address CDPS permit termination at mining operations. These policies also require monitoring prior to the water treatment systems. Given that sedimentation ponds and associated passive treatment systems may be retained as permanent impoundments to provide demonstrated long-term water quality benefits and to support the approved postmining land use(s), these policies ignore the practical benefits of natural treatment systems and create an unworkable and impractical threshold for permit termination.

Flow Limits: WQCD has been including numeric flow limitations in recent mining permits and cites to Regulation 61 language as the basis for this requirement. The mining industry relies on sediment basins as the primary treatment method prior to discharge. Unlike other treatment processes, sediment basins do not have a "valve" that can be turned on and off to regulate discharges. Sediment basin discharges are primarily driven by short-term precipitation and snowmelt events as well as longer term climatic cycles. As a result, the flow rate, duration, and frequency of discharges from sediment basins is difficult to predict and often impossible to effectively control.

CMA understands that flow limits are intended to protect water quality in receiving streams. However, for mining facilities a numerical flow limit is not an achievable solution to this problem and CMA has offered alternative forms of ensuring compliance through other permit mechanisms, but without success to-date. More recently, the "design" flows that are submitted by mining operations during the permit application or renewal process are being considered in the reasonable potential analysis and defining what water quality standards are being applied to the outfalls. This has created an additional effect of the "design flow" and flow limit calculation that mining operations must account for.

Potential Solutions: Many CMA member operations have been operating in Colorado for decades, but this recent evolution in CDPS permitting approaches is resulting in substantial changes to longstanding permits. The issues previously outlined have resulted from a changes in regulatory interpretation, internal permitting policies, and permitting procedures without any corresponding change in the State permitting regulations. CMA would like to request that WQCD open a dialogue with DRMS and the mining industry on these issues with the intent of gaining a common understanding of these issues as they apply to mining operations and developing a path forward that maintains the necessary level of environmental protections and results in achievable permit requirements for the operations. CMA believes this could significantly reduce the resources currently being wasted by the WQCD and the mining industry through permit comment development, WQCD response, and in some cases, litigation.

If you have any questions or would like to discuss these topics in more detail, please don't hesitate to contact me.

Sincerely:

A handwritten signature in black ink that reads "Stan Dempsey, Jr." in a cursive style.

Stan Dempsey, Jr.  
President