



COLORADO

Department of Public
Health & Environment

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

April 26, 2017

City of Colorado Springs Planning Commission
City Hall
107 N Nevada Avenue
Colorado Springs, CO 80901

Re: Recommendation for Approval with Conditions: Closure Plan and Post-Closure Care and Maintenance Plan, Lots 1 and 2, Drennan Industrial Center, Colorado Springs, Colorado, dated January 27, 2017
File: sw/elp/oip/2.1

Dear Planning Commission Members:

On June 24, 2015, the Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division (the "Division") sent a letter to the Colorado Springs City Council recommending that the City of Colorado Springs approve, with several conditions, a Certificate of Designation ("CD") application for the subject property. The CD would allow the land to be used as a permanent repository for waste asphalt shingles that were previously stockpiled on-site. The Division understands that the CD was never approved by the City of Colorado Springs.

In April of 2016, the Division was contacted by a consultant for Olesky Investments (the "Applicant") regarding a new proposal, which would place the existing asphalt shingle pile mostly below the surrounding grade, rather than putting the shingle pile mostly above the surrounding grade, as planned in the original CD application. On June 22, 2016, the Division met with representatives of the Applicant to discuss the new proposal. Based on that meeting, the Division received a new CD application in the form of a document titled "*Closure Plan and Post-Closure Care and Maintenance Plan, Lots 1 and 2, Drennan Industrial Center, Colorado Springs, Colorado*", dated November 3, 2016. From review of the November 3, 2016 document, the Division sent technical comments to the Applicant in a letter dated December 21, 2016, and requested that the November 3, 2016 submittal be revised accordingly. The revised submittal, titled "*Closure Plan and Post-Closure Care and Maintenance Plan, Lots 1 and 2, Drennan Industrial Center, Colorado Springs, Colorado*" and dated January 27, 2017 (the "Revised CD Application"), was prepared by Souder, Miller & Associates, and was signed and sealed by a Professional Engineer registered in Colorado.

The Division has completed its detailed technical review of the Revised CD Application with respect to the procedures outlined in state statute, C.R.S. § 30-20-100.5 *et seq.*, (the "Solid Waste Act") and the corresponding solid waste regulations, 6 CCR, 1007-2, Part 1 (the "Solid Waste Regulations"). It is the determination of the Division that the Revised CD Application can comply with the technical, environmental, and public health standards in the Solid Waste Act and the Solid Waste Regulations if the plans described in the Revised CD Application are properly implemented. Based on this determination, the Division recommends approval of the Revised CD Application with the following conditions. Some of these conditions listed below are already part of the Revised CD Application but are included here for clarification and emphasis.

Condition 1: If the CD Application is approved, closure activities must be completed within 180 calendar days following the CD Application approval.

FIGURE 5 - Olesky Shingle



- Condition 2:** A Construction Quality Assurance/Quality Control Plan (“CQAQC Plan”) is included as Appendix D of the CD Application. If the CD Application is approved, a construction certification report must be prepared in accordance with the CQAQC Plan. The construction certification report must be submitted to the Division for review and approval within sixty (60) calendar days following completion of closure activities.
- Condition 3:** In 2001, the Colorado legislature passed SB 145, creating what is commonly referred to as the “environmental covenant statute”. An environmental covenant is a legal mechanism that creates institutional controls to enforce land use restrictions and to ensure continued protectiveness of land where waste remains. If the CD Application is approved, the Applicant must work with the Division in drafting, finalizing, and executing an environmental covenant.
- Condition 4:** If the CD Application is approved, the Applicant must submit a closure and post-closure financial assurance cost estimate to the Division for review and approval. A financial assurance cost estimate must be prepared pursuant to the requirements in Section 1.8 of the Solid Waste Regulations and must be submitted to the Division within thirty (30) calendar days following approval of the CD Application. Following the Division’s approval of the financial assurance cost estimate, the Applicant must establish the financial assurance mechanism within sixty (60) calendar days. Pursuant to Section 1.8.3 of the Solid Waste Regulations, the closure and post-closure cost estimate must be adjusted annually to account for inflation or deflation by using the implicit price deflator for the gross domestic product as published by the U.S. Department of Commerce. The Applicant must submit a new closure and post-closure cost estimate to the Division for review and approval at least every five (5) years unless otherwise required by the Division based on conditions at the site.
- Condition 5:** In addition to complying with the approved CD Application, Solid Waste Regulations, and CD conditions, the Applicant must comply with all relevant federal, state, and local regulations including, but not limited to, the requirements of the Division of Water Resources, the Water Quality Control Division, and the Air Pollution Control Division.
- Condition 6:** The attached Closure and Post Closure Plan specifies the technical conditions necessary to close the site in a way that will protect human health and the environment and comply with the requirements promulgated pursuant to Colorado Revised Statutes section 30-20-110. Compliance with this CD requires the Applicant to comply with the attached Closure and Post Closure Plan and any future Division-approved conditions, including both Division-approved amendments to the Closure and Post Closure Plan and Division-approved stand-alone plans necessary to comply with the Solid Waste Act and Regulations. Violation of the Closure and Post Closure Plan as so amended constitutes a violation of this CD. This CD need not be amended upon amendment of the Closure and Post Closure Plan unless required by the City of Colorado Springs. Furthermore, the Division reserves the right to make unilateral modifications to the Closure and Post Closure Plan language and conditions at any time, including during the post-closure care period. The Division will consult with the City of Colorado Springs prior to doing so.

FIGURE 5 - Olesky Shingle



Also, please note that §30-20-104 of the Solid Waste Act states the following:

“(3)(a) Prior to the issuance of a certificate of designation, the governing body having jurisdiction shall require that the report, which shall be submitted by the applicant under section 30-20-103, be reviewed and a recommendation as to approval or disapproval be made by the department and shall be satisfied that the proposed solid wastes disposal site and facility conforms to the local government's comprehensive land use plan and zoning restrictions, if any. Any technical conditions of approval made by the department in its final report shall be incorporated as requirements in the certificate of designation. The application, report of the department, comprehensive land use plan, relevant zoning ordinances, and other pertinent information shall be presented to the governing body having jurisdiction at a public hearing to be held after notice. Such notice shall contain the time and place of the hearing, shall state that the matter to be considered is the applicant's proposal for a solid wastes disposal site and facility, shall provide a description of such proposed site and facility, and shall provide a description of the geographic area that is within three miles of such proposed site and facility. The notice shall be published in a newspaper having general circulation in the county or municipality in which the proposed solid wastes disposal site and facility is located at least ten but no more than thirty days prior to the date of the hearing. In addition, the notice of such public hearing shall be posted at a conspicuous point in at least one location at the offices of the governing body having jurisdiction and in at least one location at the proposed site. Such notice shall be posted for a period beginning at least thirty days before the public hearing and continuing through the date of such hearing.

(b) At the public hearing held pursuant to the provisions of this subsection (3), the governing body shall hear any written or oral testimony presented by governmental entities and residents concerning such proposed site or facility. All such testimony shall be considered by the governing body having jurisdiction in making a decision concerning such application. For the purposes of this subsection (3), “residents” means all individuals who reside within the geographic area controlled by the governing body having jurisdiction or within three miles of the proposed site and facility or who own property which lies within three miles of such proposed site and facility without regard to which county or municipality such individuals reside within.”

If the CD Application is approved by the Colorado Springs Planning Commission, the Division requests that the City of Colorado Springs send a copy of the CD resolution to the Division. Alternatively, if the CD Application is denied, the Applicant will be required to remove all asphalt shingle materials and other solid waste from the property and dispose that material at an approved solid waste landfill or a registered recycling facility capable of processing the material within 180 calendar days of the CD Application denial, pursuant to Compliance Order on Consent Number 17-02-23-01.

In closing, the Division is authorized to bill for its review of technical documents at \$125 per hour, pursuant to Section 1.7 of the Colorado Solid Waste Regulations, 6 CCR 1007-2. An invoice for the Division's review of the above referenced document will be sent to the Applicant under separate cover.

FIGURE 5 - Olesky Shingle

Thank you for your attention to this important matter.

Sincerely,



Lawrence J. Bruskin, P.E.
Solid Waste Permitting Unit
Solid Waste and Materials Management Program
Hazardous Materials and Waste Management Division

cc: Mark Gebhart, El Paso County Development Services

ec: Neil Olesky, Olesky Investments
Michael Pretti, P.E., Souder, Miller & Associates
Michael Schultz, Colorado Springs Planning and Development Department
Lukas Staks, AGO
Jerry Henderson, HMWMD
Ed Smith, HMWMD
Brian Long, HMWMD
Randy Perila, HMWMD

FIGURE 5 - Olesky Shingle

