

MARYLAND DEPARTMENT OF THE ENVIRONMENT

MDE

1800 Washington Boulevard • Baltimore MD 21230

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Martin O'Malley
Governor

Shari T. Wilson
Secretary

Anthony G. Brown
Lieutenant Governor

Robert M. Summers, Ph.D.
Deputy Secretary

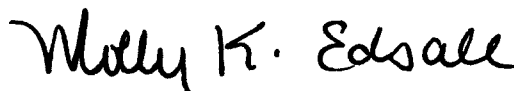
September 3, 2008

Dear Sir or Madam:

You attended the public informational hearing for BBSS, Inc. on July 17, 2008. Due to an oversight you were not added to the interested persons list for the site. Enclosed please find the hearing decision and summary of issues. Due to the oversight you are being afforded an additional 14 days to request a contested case hearing. Request for a hearing must be received in writing as outlined in the hearing decision nom later than close of business September 17, 2008.

I apologize for any inconvenience. If you have questions I can be reached at (410) 537-3557.

Sincerely;



Molly K. Edsall, C.P.G.
Minerals, Oil & Gas Division

Enclosures

cc: Rob Scrivener



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PERMIT DECISION

IN THE MATTER OF: BBSS, Inc.
1 Churchview Road
Millersville, Maryland 21008-2299

Surface Mining Permit No. 77-SP-0096

HEARING DATE: July 17, 2008

After examination of all documents and evidence in the application file and consideration of statements made at the informational hearing conducted in the above referenced matter, I recommend the issuance of the above referenced permit modification by the Maryland Department of the Environment.

Permit 77-SP-0096 will be modified to authorize the surface mining of an additional 19.9 acres of land located on property known as the Waugh Chapel operation located between Waugh Chapel and Brickhead Roads, Anne Arundel County, Maryland.

In support of this decision, I have prepared a summary of activities for the surface mining permit, which provides an overview of the application and addresses some of the concerns raised at the public informational hearing.

The surface mining application provides for the beneficial use of the State's mineral resources and protection of the environment. The application meets criteria set forth in Title 15 Subtitle 8 of the Environment Article and Code of Maryland Regulations (COMAR) 26.21.01 governing surface mining.

Any person aggrieved by this decision may request a formal contested case hearing by submitting a written request within 14 days. The request must include:

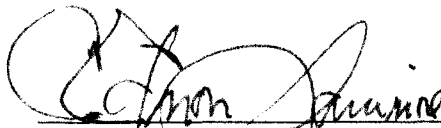
1. The name, address and day time telephone number of the requestor and any attorney that may represent the requestor;

2. A detailed description of the grounds for the request including the specific legal right, duty, privilege or interest of the requestor which may be adversely affected by the permit decision, and which is different from those interests held by the general public;
3. A statement of the specific relief desired as a result of the contested case hearing;
4. A general outline of the evidence to be presented in support of the desired relief, including the names and addresses of all witnesses to be called by the requestor.

The letter requesting the contested case hearing shall be addressed to Mr. Jay Sakai, Director, Water Management Administration, Maryland Department of the Environment, 1800 Washington Blvd., Baltimore, Maryland 21230.

A party to a contested case hearing may request a temporary stay of activity under the permit pending final decision in the contested case, provided that:

1. The person requesting the temporary stay shows that there is a substantial likelihood of prevailing on the merits of the final determination of the contested case proceeding;
2. The temporary stay will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air, or water resources; and
3. The conditions and criteria for granting a temporary stay as provided in regulations for contested case hearings have been met.


C. Edmon Larrimore, Program Manager
Mining Program


DATE

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Governor

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Secretary

Anthony G. Brown
Lieutenant Governor

SUMMARY OF ISSUES AND RESPONSE

Robert M. Summers, Ph.D.
Deputy Secretary

SURFACE MINING PERMIT APPLICATION 77-SP-0096

INTRODUCTION

Title 15, Subtitle 8 of the Environment Article, Annotated Code of Maryland establish the Department of the Environment (MDE) as trustee of the State's mineral resources. The statute also recognizes that the extraction of minerals is a basic and essential activity and that it is not practical to extract minerals without disturbing the surface of the earth and producing waste materials. It is, however, possible to conduct mining in a manner that will minimize its effects on the surrounding environment. Subtitle 8 also provides for adequate reclamation to enable the subsequent use of the land for beneficial purposes.

Surface mining licensing and permit specifications are further described in the Code of Maryland Regulations (COMAR 26.21.01). These regulations detail the requirements and procedures for obtaining a surface mining license, surface mining permit and review procedures and time tables, sediment and erosion control practices, reclamation requirements, setback requirements, roads, impoundment, blasting restrictions, fees and bonding. The evaluation of a surface mining permit application is conducted to insure that three integral components of Maryland's surface mining program were incorporated into the mining operation: public safety, environmentally responsible operations and land reclamation.

The public informational hearing is a vital step in MDE's decision-making process, which enables MDE to explain applicable statutes, regulations, and the permit application review process. It also gives the applicant an opportunity to explain the project to interested persons and gives interested persons an opportunity to ask questions, voice their opinions and present expert testimony on the application.

On June 5, 2008 the Department of the Environment received an application from BBSS, Inc. for a 19.9-acre expansion to the Waugh Chapel operation in Anne Arundel County.

A public informational hearing was held July 17, 2008. The purpose of the public hearing and the focus of this decision was to hear and receive comment on the proposed addition of 19.9 acres to the Waugh Chapel permit. The Department is aware of community concerns related to the ongoing Waugh Chapel pit and other operations at the site. The discussion was expanded to include the renewal of the Waugh Chapel surface mine permit and the use of Coal Combustion By-products at the site. The decision before us however, is the application to modify surface mine permit 77-SP-0096 by adding 19.9 acres.

During the course of the hearing, those in attendance discussed a number of issues. The following issues were of general concern and merit explanation.

Questions 21 and 26e from the application regarding the use of Coal Combustion By-products in the future

Concerns were raised regarding the wording in the answer to these 2 questions that appeared to leave the option open for future flyash fill. The answer to both questions has been revised by the permittee to state "No additional coal ash is planned for reclamation on this site". In addition a special condition has been added to the permit to prohibit additional CCB from the site. Any disturbance of existing CCB at the site will conform to the approved Consent Agreement.

A request that all reference to flyash be removed from the application was received

The application covers both the permit modification for an additional 19.9 acres and the renewal of the existing 77.8 acre permit area. The answers in the application must reflect historic and current/future activities at the site therefore, discussions of past use of flyash are appropriate.

Fugitive Dust Control and Burning of Materials

To aid in dust control and screen the site the existing wooded buffer will remain on the north and east sides of phase 3. An additional vegetated berm will be built to the south of the existing berm on the north end of phase 3. The berm will be built and vegetated prior to the start of mining. The permittee has committed to planting trees along a 300 foot section between the existing landscaping berm and the School of the Incarnation property line to further screen the operation.

Due to previous excavation in phase 3 the site is lower on the south end than surrounding properties; which will both screen the operation from site and muffle noise and will also help to contain dust. Mining will start on the south and progress to the north. The material being mined is primarily sand which does not generally generate dust as it is excavated. The company has an employee dedicated full time to using the water truck on the property.

Particulate matter monitoring of any type alone would not provide conclusive evidence that the dust was solely coming from the BBSS site. Other construction and land disturbance areas as well as traffic on the nearby highways also contribute particulate matter that would affect sampling results.

The permittee has removed the response in 22(b) regarding burning. The option of burning applied to previous permit actions when clearing and burning were done on-site. There will be no further burning at this site.

Condition with respect to Counties General Development Plan

Standard condition 1 of the permit requires that the site remain in compliance with all applicable permits and authorizations which include county zoning. Any future redevelopment will be required to comply with all local requirements in effect at that time.

Question 22i, does this answer apply to the movement of flyash?

Question 22i refers to in situ overburden material found on site and moved to access the material to be excavated. This question and its answer do not refer to flyash. Flyash movement at the Turner pit is subject to the Deed of Restrictive Covenants as approved by Maryland Department of the Environment. No flyash redisturbance has been proposed at Waugh Chapel.

Application completeness for Wetlands and Floodplains

The answer to question 15 has been corrected by the permittee to reflect the previously approved applications that the site is located within 200 feet of non-tidal wetlands and the one hundred year floodplain of non-tidal streams. No impacts to non-tidal wetlands or the 100 year floodplain are proposed in this application.

Failed to address water flow into fly ash

Sediment Control Approval and Impact

Sediment control review and approval is based upon Standards and Specifications used across the State. The sediment control plan based upon those standards was approved by the Anne Arundel Soil Conservation District on June 3, 2008.

Reclamation of Modification Area

Phase III of the site (the subject of this modification) will be reclaimed using both onsite overburden and offsite clean earthen material. The mining plan states that "No additional coal ash is planned for reclamation of this site". Some of the acreage will be mined to reclamation grade and stabilized.