



STATE MINING AND GEOLOGY BOARD

EXECUTIVE OFFICER'S REPORT



ARNOLD
SCHWARZENEGGER
GOVERNOR

For Meeting Date: September 11, 2008

Agenda Item No. 5: Issuance of an Order to Comply to Super Creek Quarry (formerly Painted Hills Mine), (CA Mine ID #91-33-0003), Whitewater Rock & Supply Company (Operator), Al Bankus (Agent), City of Desert Hot Springs, to Correct Violations of the Surface Mining and Reclamation Act (Public Resources Code Section 2710 et seq.) and the Approved Reclamation Plan.

INTRODUCTION: The State Mining and Geology Board (SMGB) is the lead agency pursuant to the Surface Mining and Reclamation Act of 1975 (SMARA, Public Resources Code Section 2710 et seq.) for all surface mine operations in the City of Desert Hot Springs. During conduct of a site inspection performed on November 27, 2007, several violations and corrective measures were identified. Such violations were deemed, in part, as substantial deviations from the approved reclamation plan. At its December 13, 2007, regular business meeting, the SMGB requested that an amended reclamation plan that adequately addressed long-outstanding issues be provided to the SMGB by January 31, 2008, and directed the Executive Officer to issue a Notice of Violation (NOV) should such submittal not be received. A Notice of Violation was issued by the Executive Officer on July 1, 2008. The SMGB is presently considering issuance of an Order to Comply.

STATUTORY AND REGULATORY AUTHORITY: In situations when a surface mine site does not have an adequate reclamation plan or financial assurance, PRC Section 2770(d) states:

“The lead agency's review of reclamation plans submitted pursuant to subdivision (b) or of financial assurances pursuant to subdivision (c) is limited to whether the plan or the financial assurances substantially meet the applicable requirements of Sections 2772, 2773, and 2773.1, and the lead agency surface mining ordinance adopted pursuant to subdivision (a) of Section 2774, but, in any event, the lead agency shall require that financial assurances for reclamation be sufficient to perform reclamation of lands remaining disturbed. Reclamation plans or financial assurances determined to substantially meet these requirements shall be approved by the lead agency for purposes of this chapter. Reclamation plans or financial assurances determined not to substantially meet these requirements shall be returned to the operator within 60 days. The operator has 60 days to revise the plan or financial assurances to address identified deficiencies, at



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which time the revised plan or financial assurances shall be returned to the lead agency for review and approval...

PRC Section 2774.1(a) further states:

“Except as provided in subdivision (i) of Section 2770, if the lead agency or the director determines, based upon an annual inspection pursuant to Section 2774, or otherwise confirmed by an inspection of the mining operation, that a surface mining operation is not in compliance with this chapter, the lead agency or the director may notify the operator of that violation by personal service or certified mail. If the violation extends beyond 30 days after the date of the lead agency's or the director's notification, the lead agency or the director may issue an order by personal service or certified mail requiring the operator to comply with this chapter or, if the operator does not have an approved reclamation plan or financial assurances, cease all further mining activities.”

Should site conditions prove that a site can not be reclaimed in a manner consistent with its respective approved reclamation plan, California Code of Regulations (CCR) Section 3502(e) requires that:

“An amended reclamation plan shall be filed if the lead agency determines, after an inspection, that the surface mining operation can no longer be reclaimed in accordance with its approved reclamation plan. Such amended plan shall incorporate current reclamation standards as described in Chapter 9 (commencing with Section 2710) and Title 14 of the California code of Regulations commencing with Section 3700.”

BACKGROUND: The Super Creek (formerly Painted Hills) Quarry is located in the City of Desert Hot Springs and has produced decorative rock with sand as a by-product since about 1954. Located along the eastern margin of San Gorgonio Pass, the site is surrounded by land managed by the Bureau of Land Management (BLM). Access to the site is via a BLM access/haul road, which runs along the ridge immediately east of the south-flowing Whitewater River. The meandering and intermittent southerly-flowing Super Creek borders the toe of the east-southeast facing tailings.

Existing cut slopes are approximately 130 feet in maximum height and nearly vertical. Final configuration of slopes are to be northeast-to-east to southeast facing cut slopes, approximately 150 feet in maximum height and as steep as 1H:1V. Existing pre-SMARA tailing slopes exist on the northeastern flank of the quarry, and immediately northeast of the access road to the quarry. Sheet 1 of 1 of the 1993 Revised Supplement to the Reclamation



Plan denotes Post-SMARA, Present and Future Tailings areas. These tailing slopes are approximately 300 feet in height, and are inclined as steep as 1.7H:1V (31 degrees from the horizontal). Field measurements of tailings slope gradients at time of the November 7, 2008, inspection ranged from approximately 30 to 34 degrees. A one- to three-foot high, approximately thirty foot wide, arcuate headscarp was also noted near the top of the existing pre-SMARA tailings slope just east of the eastern processing area.

A summary of pertinent actions is provided below:

Pre-1975	Site operated by the Whitewater Rock and Supply Company for many years prior to 1975. Operations in the area commenced prior to 1954.
July 1978	Reclamation Plan submitted and subsequently approved. Area encompassed by the Reclamation Plan is triangular in shape and totals about 80 acres at an elevation between 2200 and 2500 feet above mean sea level.
July 1992	Supplement to 1978 Reclamation Plan (RP 108) submitted and subsequently approved.
September 1993	1992 Supplement to the 1978 Reclamation Plan was revised and subsequently approved. Continuing excavations occurred from about 2350 to 2220 feet elevation above mean sea level.
April 4, 2004	NOV issued for failure to provide an adjusted financial assurance.
April 26, 2004	Super Creek Quarry Expansion – BLM Plan of Operations and Reclamation Plan submitted by operator, reviewed by SMGB and OMR staff, with comments forwarded to the operator.
January 19, 2005	NOV issued for inadequate revegetation program and erosion control resulting in encroachment onto adjacent land.
February 22, 2007	September 2006 revision of Super Creek Quarry Expansion – BLM Plan of Operations and



Reclamation Plan, as submitted by operator,
reviewed by SMGB and OMR staff, with comments
forwarded to the operator.

When the site was inspected by the SMGB staff on November 27, 2007, three violations were noted at time of inspection:

- The revegetation program has not been maintained in a manner set forth in the approved 1992 Revised Supplement to the Reclamation Plan.
- A landslide headscarp noted near the top of the eastern tailings slope indicates ongoing instability.
- Soil erosion control measures have not been fully implemented at the toe of the tailings slopes.

The following corrective measures were offered:

- Further efforts were required to implement and maintain the revegetation test plot program in accordance with the approved Reclamation Plan, or revise such program.
- Tailings slopes should be reviewed and periodically monitored by a licensed geotechnical engineer or certified engineering geologist, and corrective measures implemented as appropriate.
- Continued soil erosion control efforts should be implemented on the tailings slopes, such as additional rip-rap placement and slope contouring.

The following recommendation was also offered:

- The financial assurance amount should be reviewed and updated following SMGB and OMR review and comment upon the forthcoming revised amended reclamation plan for the Super Creek Quarry expansion.

During its December 13, 2007 Regular Business Meeting the SMGB requested that an amended reclamation plan that adequately addresses the issues noted above, and in our earlier correspondence dated April 25, 2006 and February 22, 2007, be provided to the SMGB by January 31, 2008. The 2007 SMARA Mine Inspection report also recommended



that the financial assurance amount should be re-evaluated and adjusted “...*following SMGB and OMR review and comment upon the forthcoming revised amended reclamation plan for the Super Creek Quarry expansion.*”

On March 10, 2008, the SMGB received an Addendum to the 1992 Reclamation Plan dated February 2008, in lieu of providing an amended reclamation plan as requested. Upon review by OMR and SMGB staff, the submittal was deemed grossly inadequate, and a reiteration of outstanding issues and comments were provided to the operator in correspondence dated May 13, 2008. At the time this Executive Officer Report was prepared an Amended Reclamation Plan has not yet been completed and submitted to the SMGB.

On July 1, 2008, the operator was sent a Notice of Violation by Certified Mail, which was received by the operator on July 7, 2008. According to that Notice, the operator was to provide to the SMGB office a draft amended reclamation plan that addressed the violations, or provide documentation that the physical conditions at the site had been corrected. This information was to be provided to the SMGB office not later than January 31, 2008. The operator has not provided an adequate response to the Notice of Violation.

CONSIDERATIONS OF THE SMGB: The SMGB must determine if the operator is in violation of the approved reclamation plan, and whether he has shown good faith in complying with the SMGB’s NOV.

EXECUTIVE OFFICER’S RECOMMENDATION: As of the date of the preparation of this Executive Officer’s Report, no amended reclamation plan or revised financial assurance cost estimate, that addresses the substantial deviations and violations noted, have been prepared and presented to the SMGB. The Executive Officer recommends that the SMGB issue an Order to Comply to Alan Bankus, owner and operator of the Super Creek Quarry, to provide an amended reclamation plan describing the current conditions at the surface mine site and to take corrective actions to bring the mine site into accordance with the amended reclamation plan, and adjusted financial assurance cost estimate. These actions must be taken by November 13, 2008 at which time the Order to Comply will be heard by the SMGB at its regularly scheduled business meeting. Failure to comply with the requirements of the Order may subject the operator to Administrative Penalties in an amount up to \$5,000 per day for each violation.



SUGGESTED MOTION LANGUAGE:

To consider issuance of an Order to Comply:

Mr. Chairman, in light of the information before the State Mining and Geology Board today, I move that the Board issue to Mr. Al Bankus, owner and operator of the Super Creek Quarry, CA Mine ID #91-33-0003, an Order to Comply to provide the SMGB with an amended reclamation plan that describes the current conditions at the Super Creek Quarry surface mine site, and adjusted financial assurance cost estimate, and commences corrective actions to bring the site into accordance with the amended reclamation plan. This order shall be heard at the Board's regular business meeting on November 13, 2008.

Respectfully submitted:

Stephen M. Testa
Executive Officer

