



STATE MINING AND GEOLOGY BOARD

EXECUTIVE OFFICER'S REPORT



ARNOLD
SCHWARZENEGGER
GOVERNOR

For Meeting Date: February 11, 2010

Agenda Item No. 4: Issuance of an Order to Comply to Lawyer Pit (CA Mine ID #91-09-0010), Archie's Trucking and Backhoe (Operator), Archie Lawyer (Agent), County of El Dorado, to Correct Violations of the Surface Mining and Reclamation Act (Public Resources Code Section 2710 et seq.).

INTRODUCTION: The State Mining and Geology Board (SMGB) acts as the lead agency pursuant to the Surface Mining and Reclamation Act of 1975 (SMARA, Public Resources Code (PRC) Section 2710 et seq.) for all surface mine operations in the County of El Dorado. At its May 14, 2009, regular business meeting, the SMGB approved an adjusted financial assurance cost estimate in the amount of \$54,842.00 for the Lawyer Pit. As of October 26, 2009, an adequate financial assurance in the above amount had not been received by the SMGB. A Notice of Violation was issued by the Executive Officer, and was subsequently received by the Operator on November 4, 2009. To date, an adequate financial assurance has not been received by the SMGB office. The SMGB is presently considering issuance of an Order to Comply.

STATUTORY AND REGULATORY AUTHORITY: In situations where 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 which time the revised plan or financial assurances shall be returned to the lead agency for review and approval..."



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In regards to financial assurances, PRC Section 2773.1(a)(2) also states:

“The financial assurances shall remain in effect for the duration of the surface mining operation and any additional period until reclamation is completed.”

PRC Section 2773.1(a)(3) further states:

“The amount of financial assurances required of a surface mining operation for any one year shall be adjusted annually to account for new lands disturbed by surface mining operations, inflation, and reclamation of lands accomplished in accordance with the approved reclamation plan.”

Finally, PRC Section 2774.1(a) 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.”

BACKGROUND:

Description of Surface Mining Operation: The Lawyer Pit is located immediately west of Marshall Grade Road and immediately north of State Highway 49, approximately one mile to the northwest of Coloma, California. The approved reclamation plan encompasses about 10.4 acres, of which about 9.6 acres are deemed disturbed. The pit measures approximately 1,200 feet long by 450 feet wide, with the longer axis oriented north-south. The pit floor elevation is noted to be on the order of 785 feet above mean sea level (msl).

The site is underlain by granodiorite, which outcrops on the quarry floor and on the western quarry cut slope. Material extraction operations include ripping and scraping of decomposed granitic rock (primarily sand and gravel, with a subordinate amount of boulders), processing, and subsequent loading of material for transport off-site via dump trucks and pickups. No waste material is generated, and topsoil is stockpiled on-site within the confines of the pit. Volume of topsoil stockpiled on the site is on the order of 10,000-15,000 cubic yards.

Product stockpiles, including screened fines and material with a preponderance of rock, are located in the central portion of the site. A relatively small boneyard containing scrap metal and old mining equipment is situated in the northeast corner of the site.

Chronology of Pertinent Events and Actions: A chronology of pertinent events and actions pertaining to recent activities is as follows:

August 14, 1997	Reclamation Plan approved by El Dorado County.
July 16, 2001	Operator submitted amended Reclamation Plan to SMGB for review and subsequent approval.
October 2001	Office of Mine Reclamation prepared an Initial Study – Environmental Checklist and Evaluation of Environmental Impact.
September 12, 2002	SMGB approved revised Financial Assurance cost estimate in the amount of \$64,081.
November 14, 2002	SMGB approved Mitigated Negative Declaration and Revised Reclamation Plan and revised Financial Assurance cost estimate.
May 14, 2009	SMGB approved revised financial assurance cost estimate in the amount of \$54,842.00.

Results of Annual Inspections: During the course of the annual inspection conducted by SMGB staff on December 14, 2007, it was noted that the existing financial assurance on file, in the amount of \$14,799.00, did not cover the approved September 12, 2002, financial assurance cost estimate amount of \$64,081.00. Following the 2007 annual inspection it was recommended that the financial assurance amount be re-evaluated and adjusted, as appropriate, to reflect recent grading activities, and to reflect current equipment, labor and fuel rates.

On August 4, 2008, the previously approved financial assurance in the amount of \$14,799 expired and was not renewed by the issuing bank. On November 17, 2008, the SMGB received a replacement financial assurance from the Operator in the form of a certificate of deposit in the amount of \$15,757.48. However, this replacement financial assurance was deemed inadequate.

On December 17, 2008, the SMGB's inspector conducted an annual inspection of the Lawyer Pit site and noted one violation for lack of an adequate financial assurance. Also on

December 17, 2008, the SMGB received a modified financial assurance cost estimate (FACE) for the site totaling \$48,078. SMGB staff conducted a preliminary review of the modified FACE and subsequently transmitted comments and suggested revisions to the operator's consultant on January 12, 2009. On March 9, 2009 the operator's consultant provided a revised financial assurance cost estimate in the amount of \$54,842.00. Such cost estimate was deemed adequate by SMGB staff and forwarded to the Office of Mine Reclamation (OMR) for review on March 16, 2009.

At its May 14, 2009 regular business meeting, the SMGB approved the revised financial assurance cost estimate amount of \$54,842.00 for the Lawyer Pit. The operator was subsequently notified by certified letter dated May 19, 2009, that an updated financial assurance instrument in the above amount was to be provided to the SMGB office on or about June 26, 2009.

Compliance Status: On July 9, 2009, the SMGB office received a request from the operator for an extension of the deadline for submittal of the subject financial assurance to November 1, 2009. As of October 26, 2009 no such financial assurance had been received by the SMGB, and the Executive Officer elected to issue a Notice of Violation (NOV) to the operator for failing to provide an adequate financial assurance. Such NOV was received by the operator via certified letter on November 4, 2009. The NOV specifically requested that the operator provide to the SMGB office a financial assurance in the amount of \$54,842.00 in an acceptable form not later than Tuesday, December 1, 2009. To date, the required financial assurance has not been received.

CONSIDERATION BEFORE THE SMGB: The SMGB must determine if the operator is in violation of SMARA and the SMGB's regulations for failure to provide an adequate financial assurance, and whether the operator 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, an adequate financial assurance mechanism has not been presented to the SMGB. The Executive Officer recommends that the SMGB issue an Order to Comply to Mr. Archie Lawyer, agent of record for Archie's Trucking and Backhoe, operator of the Lawyer Pit surface mine, to provide an adequate financial assurance in an acceptable format, no later than Friday, March 26, 2010. 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.

SUGGESTED MOTION LANGUAGE:

Motion No. 1 - 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. Archie Lawyer, agent of record for Archie's Trucking and Backhoe, operator of the Lawyer Pit (CA Mine ID #91-09-0010) an Order to Comply to provide the SMGB with an adequate financial assurance in the amount of \$54,842.00 in an acceptable form not later than Friday, March 26, 2010.

Motion No. 2 - To schedule a public hearing for upholding the Order to Comply:

Mr. Chairman, in light of the information before the State Mining and Geology Board today, I move that the Board, should an adequate adjusted financial assurance not be received by March 26, 2010, direct the Executive Officer to schedule a public hearing for the Order to Comply. This Order shall be heard at the Board's regular business meeting to be held on April 15, 2010.

Respectfully submitted:

Stephen M. Testa
Executive Officer