

February 5, 2016

Peter Babin
CalX Minerals, LLC
5501 Lakeshore Drive
Littleton, CO 80123-1544



COLORADO
Division of Reclamation,
Mining and Safety
Department of Natural Resources

1313 Sherman Street, Room 215
Denver, CO 80203

**Re: Mid-Continent LST, Permit No. M-1982-121, Objections to Surety Increase (SI-2)
Response-1**

Dear Mr. Babin,

The Division of Reclamation Mining and Safety (Division) issued a Notice of Surety Increase (SI-2) on November 19, 2015. The additional financial warranty amount of \$49,583 for a total bond amount of \$172,376 was due January 18, 2016. This reclamation cost update was in response to the technical revision request (TR-4) which was later withdrawn and the corresponding site inspection conducted on October 26, 2015.

Beginning on December 1, 2015 several requests were made by you via email for additional information regarding the surety increase and copies of bonding calculations. On December 7, 2015 Division staff sent links to the requested documents. On December 8, 2015 Division staff sent a letter summarizing input values that had been updated, itemizing changes by task. It was noted that this table did not account for changes resulting from inflation or other RS Means cost changes. Staff also outlined the requirements to officially object to the noticed increase. After mailing, staff noticed administrative errors in the date's references in this letter, however verbally in subsequent discussions the due date for objections, January 18, 2016, was confirmed with you.

On January 14, 2016 an objection was received via email from you. As indicated in the explanation letter you were advised that materials must be received by the Divisions Denver office prior to the surety due date. On January 21, 2016 the Division received your objection letter in Denver.

Per your letter you note the Division is "demanding" or has "demanded" an increase to the Financial Warranty. For clarification per the Act and Rules, it is the staff's responsibility to ensure that the Division holds adequate Financial Warranty. Recalculations shall be done as frequently as necessary to ensure an adequate bond is maintained. Please read the Act citations and Rule 4.2.1 below carefully.

Pursuant to CRS 34-32.5-117(4)(b)(II): The Office **shall** take reasonable measures to assure the continued adequacy of the financial warranty and; 117 (4)(c)(I)(A): from time to time and for good cause shown, increase or decrease the amount and duration of a required financial warranty.

Per Rule 4.2.1

- (1) All Financial Warranties shall be set and maintained at a level which reflects the actual current cost of fulfilling the requirements of the Reclamation Plan.
- (2) Financial Warranty Review - the Office or Board may, in its discretion, review any Financial Warranty for adequacy at any time. In the event the Office or Board determine that the Financial Warranty is insufficient to perform reclamation, the Permittee shall



have up to sixty (60) days to post additional Financial Warranty from the date of written notice from the Office or Board of such insufficiency. If the Permittee disagrees with the Office Notice to Increase the Financial Warranty, the Office shall schedule the matter for a hearing before the Board. The Permittee may be scheduled for a Formal Board Hearing for possible revocation of the permit after sixty (60) days, from the date of notice of any such adjustments, if the amount of any increased Financial Warranty has not been provided.

Surety Increase (SI-1) issued on November 2, 2011 by staff was not a demand but based on field conditions observed on the October 12, 2011 inspection. As was SI-2 issued on November 19, 2015 based on field conditions observed on the October 26, 2015 inspection. Clearly, the increases were done by the Division in accordance with the requirements of the Act and Rules.

It was mentioned that three specific documents comprise the entirety of the approved reclamation plan. Please keep in mind that any amendments or revisions may supersede other previously approved provisions of the permit. Division staff searched on laserfiche for the previously mentioned documents.

- No documents recorded in 1983 reference specific reclamation requirements. The original application dated 9/14/1982 includes a reclamation plan and figures. This permit was approved in 1982 and issued in 1983. The majority of the plan was revised in 1989 through amendment (AM-1).
- Several documents were found in laserfiche during 1989, resulting from AM-1. General reclamation requirements were: remove culverts, slopes no steeper than 2:1, benches will be in sloped or have a berm, topsoil will be tested for quality. 1 planting area per 1000 sq. ft. of bench, each planting area will be at least 3 ft. deep and 10 cu. yds. of topsoil, they shall be placed over cracks or cracks will be created through blasting. Each planning area will have 10 spruce and 10 fir trees in addition to the grass seed mix, additionally 100 oak and service berry seedlings per acre. Site conditions have changed in 26 years which makes these plans outdated and ineffective for calculating the current cost of reclamation liabilities.
- TR-3 was about the installation of the rock dust mill on the fines storage bench. In addition to building description and bench reclamation, staff requested a revised map. It is noted in the approval letter that staff did not receive the requested map but was able to approve the technical revision without it and that the future submittal would include more information. Also in the January 15, 2010 submittal it was indicated that you were working on a larger TR or amendment for this site. No such submittal was ever received.

As you mentioned previous permit provisions were largely qualitative rather than quantitative. This has required the Division's staff to largely estimate quantitative figure based on field observations in order to calculate the reclamation bond estimate. Sources for figures are included in the bond calculation to support staffs estimates. Also being that this site is on Federal lands it is imperative that the reclamation within the permitted boundary also meet BLM standards and permit requirements. The burden of proof to provide verified figures resides with the operator not the Division.

In response to your objection Cal-X may choose to resolve this matter with the Division in one of three ways:

- Option one, accept the Notice of Surety Increase (SI-2) issued on November 19, 2015. The additional bond amount of \$49,583 for a total bond amount of \$172,376 must be accepted by the Division by March 7th, 2016
- Option two, submit a technical revision to Exhibit-L providing updated quantitative figures for all input values. Please provide sources or an explanation of how figures were derived. Attached is the bond calculation worksheets with all input values highlighted to guide you as to what information is necessary. Also staff is requesting information on the quantity, length and dimension of road culverts that will need to be removed upon final reclamation. Upon approval of the technical revision the financial warranty cost estimate will be updated using figures provided in Exhibit-L. The technical revision must be submitted to the Division by April 1st, 2016
- Option three, submit an amendment as indicated by the operator on numerous occasions. Major changes to the permit have been anticipated since as early as 2010. Following the succession of operator from Pitkin Iron Corporation to Calx Minerals, LLC an increase in production resulted. During the 2015 inspection an impending amendment was once again mentioned. To date the Division has yet to receive any significant updates to the permit although minor changes have occurred since AM-1 approved in 1989. This has resulted in both the reclamation and mining plans and maps being largely outdated. The amendment must be submitted to the Division by May 2nd, 2016.

The Division request that by March 1st, 2016 we are notified in writing of which option Cal-X will use to resolve this matter. Failure to notify the Division will result in issuing a Reason to Believe a Violation Exists letter and the matter being scheduled before the Mined Land Reclamation Board as an enforcement matter. The Division has put off citing the outdated plans and maps several times in anticipation of an amendment. As mentioned, to date the Division has no record of an amendment being filed therefore it is imperative that the permit be updated and the financial warranty reflect the current cost for reclamation liabilities.

The Division has been made aware that the current plans on file with the BLM are also out of date. Staff recommend that the operator consider option three to address all outstanding issues, bring the site's plans up to today's standards, and to satisfy both agencies concerns. Concurrent submittal will save Cal-X time and resources and per a Memo of Understanding both agencies must agree on the required financial warranty.

Finally, in your objection letter you state you are entitled to a refund or a rebate of the excess surety. Surety reductions must be processed per Rule 4.17 and 4.18. Therefore at this time we cannot consider your request until properly submitted and the above issues are resolved.

Please feel free to contact me with any further questions. Amy Yeldell at the Division of Reclamation, Mining and Safety, 1313 Sherman St., Room 215, Denver, CO 80203. Direct contact can be made by phone at 970-254-8511 or via email at amy.yeldell@ state.co.us

Sincerely,



Amy Yeldell

Environmental Protection Specialist
Department of Natural Resources
Division of Reclamation, Mining and Safety

Ec: Russ Means, Senior EPS / Field Office Supervisor, Grand Junction DRMS
Jessica Lopez Pearce, Colorado River Valley BLM Field Office