



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

1313 Sherman Street, Room 215
Denver, CO 80203

November 7, 2016

Jay Wagner
Wagner Construction, Inc.
1850 E 1st St
Craig, CO 81625

Re: Wagner Rock, Permit No. M-1999-018, Response to SI-2 Objection Letter

Dear Mr. Wagner,

We received your Financial Warrantee Increase Objection letter on October 14, 2016. This letter was in response to the Notice of Surety Increase (SI-2) that was issued on August 8, 2016. SI-2 was based on site conditions observed during the July 19, 216 inspection. SI-2 required an addition \$ 21,336 for a total bond amount of \$ 35,341 to be held. It was noted that making no changes to the 2010 SI-1 calculation resulted in a \$10,000 increase. The additional surety amount or a formal objection letter was not received by October 7, 2016. As a courtesy the Division is reviewing your objection letter even though it was received after the deadline in hopes of clarification and submittal of the required bond increase to avoid enforcement action. Below is the Division's responses to items in your letter:

- *Our reclamation of the pit will include grading the floor area leaving aggregate exposed for the storage of hay.*
 - ⇒ The approved mining plan calls for a maximum of 6 acres of disturbance. The approved reclamation plan says that 2.6 acres of pit slopes will be seeded with the floors left bare as stated above. While we now believe more than the full 9.74 acres have been affected the Division has bonded for reclaiming all areas outside of the pit up to the approved acreage.
- *The north slope will be mined leaving the pit open and exposed to the north. A small safety berm will be shaped with a 3 to 1 slope and revegetated. Quantities for this berm area in place at this time.*
 - ⇒ The approved reclamation plan makes no mention of daylighting to the north. It also does not appear that the permit boundary extends far enough to the north to daylight out at 40' deep. The approved reclamation plan calls for grading the north slope to a 3:1.
 - ⇒ The Division does not require MSHA berms to remain post reclamation unless explicitly stated in the reclamation plan which in this case it is not.
 - ⇒ The Division did not charge for importing material. If material must be moved on site a cost should be associated with it.



- *All other side slopes will be pulled down to a 2 to 1 slope and revegetated with top-soil that is piled on the South side of the pit. Adequate quantities currently exist for this efforts.*
 - ⇒ The Division's calculations correctly account for all slopes other than the north slope to be graded to a 2:1.
 - ⇒ The Division will use cut and fill methods where applicable but if disturbances are adjacent to the permit boundary it must be backfilled rather than slot dozed down into the pit.
 - ⇒ The Division did not charge for importing topsoil material. The bond calculation accounted for pushing the topsoil pile to the necessary locations.
- *Remaining stockpiled material currently stored outside of the excavations are marketable aggregated and will be sold.*
 - ⇒ The Division cannot give credit for stockpiled material, nor can the Division sell such materials to offset reclamation costs.
 - ⇒ Excess material stockpiled on site will need to be smoothed out to conform to the approved reclamation plan. In this case it would likely be pushed into the pit.
 - ⇒ The Division did not charge for the removal of stockpiled material but may do so in the future.
- *In conclusion, the fill as estimated by the division far exceeds the required needs for the current reclamation plan,*
 - ⇒ The numbers presented in SI-2 have not changed from what was presented in 2010 under SI-1 which you had no objection to. The Division will not revise these volumes unless site conditions warrant.
- *The use of a CAT D-9 exceeds the mechanical needs for reclamation, a CAT D-6T is more than enough at less than 40 hours.*
 - ⇒ The Division recalculated the bond with the use of a D-6 rather than a D-9. Based on those changes the bond will substantially increase.
 - ⇒ The Division picks the most appropriate size of equipment based on the job size. Upon final reclamation the Division contractor will use whatever piece of equipment they feel is most practical.
 - ⇒ Current grading with a D-9 is already more than 40 hrs. A smaller piece of equipment will take longer to move the same volume of material. The job task hours are generated by the computer system based on values from the CAT handbook. Job task hours are not an input variable, they are the result of other input values.
- *There is no expectation, according to the mining plan to backfill the pit.*
 - ⇒ This is correct the reclamation plan does not call for backfill it though it does call for regrading the pit slopes. In order to do this additional material or excavations must be



made. The Bond calculation does not call for a complete backfill rather a cut and fill to achieve the desired slope grade.

- *The scale house will not be demolished! It is a mobile office trailer and the scales area portable scales requiring little removal effort.*
 - ⇒ There was no change from the 2010 SI-1 calculation which called for the scale house to be demolished.
 - ⇒ The approved reclamation plan does not state that the scale or scale house shall remain post reclamation therefore the Division has to account for its removal whether that be hauled off site or demolished.
 - ⇒ Given that the items are portable the Division will bond for hauling it to the nearest dump rather than demolishing and pushing it into the pit.
- *No ripping is necessary of stockpile area as all material is loose and uncompacted.*
 - ⇒ It is standard reclamation practice to rip all ground within the stockpile's footprint as the ground beneath the stockpiles will become compacted.
- *A CAT D-6T is capable of transferring the material.*
 - ⇒ The Division has updated the bond calculation with a D-6 rather than a D-9.
- *At this time the disturbances does not exceed 4 acres.*
 - ⇒ Disturbances relates to all land affected by mining which includes stockpiles, roads, equipment storage, etc., not just the excavated pit itself. Based on satellite imagery approximately 4 acres make up the excavated pit while the total affected land is approximately 15.1 acres. The update currently accounts for 9.74 acres of affected lands only.
- *Revegetation and tospoiling unit cost should be adjusted down.*
 - ⇒ Division staff has no control over any of the unit costs. The system is updated periodically to keep up with inflation and market costs. Prices are derived from RS Means, CAT handbook and verified by the industry.

Based on the above statements the Division ran a revised reclamation cost estimate to address some of your concerns. The Division has:

1. Changed the equipment size from a D-9 to a D-6.
2. Changed that the scale house be hauled to the dump rather than demolished and pushed into the pit., and
3. All other volumes and tasks accepted by you in 2010 remained the same.



Based on those changes the reclamation cost estimate would be approximately \$59,965. This is \$24,624 more than the Division's estimate of \$35,341. Therefore, the Division suggests that the updated numbers in the increase notice are more practical and be accepted.

If you wish to continue to contest the financial warranty increase the Division has set an enforcement hearing for December 15, 2016. A Reason to Believe a Violation exist letter is forthcoming. At that time, you can present your arguments to the Mined Land Reclamation Board (MLRB). The Division will present its arguments as well to justify the increase. It is the Division's desire for the increase to be submitted to avoid a hearing and potential civil penalties. Wagner Construction has until December 9th to submit the increased financial warranty, otherwise it will be heard as scheduled before the MLRB.

If you require additional information, or have questions or concerns, please feel free to contact me. 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,



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1313 Sherman Street, Room 215
Denver, CO 80203

Ec: Russ Means, Senior Environmental Protection Specialist, GJFO

