



COLORADO

Division of Reclamation, Mining and Safety

Department of Natural Resources

1313 Sherman Street, Room 215
Denver, CO 80203

September 13, 2019

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

Re: Wagner Rock Pit, Permit No. M-1999-018, Formal Objection to Surety Increase (SI-3), Response and Revised Bond Resolution

Dear Mr. Wagner,

The Colorado Division of Reclamation, Mining, and Safety (Division) issued SI-3 on July 2, 2019 based on site conditions observed during the June 12, 2019 monitoring inspection. Pursuant to 34-32.5-117(4)(c)(ii) a financial warrantor shall have sixty days after the date of notice of any adjustments to fulfill the new requirements, which was September 2, 2019. On July 8, 2019, the Division was made aware that you may wish to object to SI-3. On July 9, 2019, the Division responded with explicit directions of how to formally object and that the information must be received by the Division prior to the statutory 60-day deadline of September 2, 2019. The Division did not receive any follow-up correspondence until August 29, 2019 regarding the potential objection. A formal objection letter was received by the Division on September 6, 2019, which was after the due date.

Pursuant to C.R.S. 34-32.5-124(1) staff is directed to begin the enforcement procedures for whenever the Division has reason to believe that a violation has occurred. In the spirit of cooperation, the Division has taken the time to address your concerns and has delayed initiation of enforcement procedures. Below the Division has outlined each task item. Additionally a revised Notice of Surety Increase and reclamation cost estimate are also attached.

Task 01a-Demo:

The Division will remove the Demo task for the scale since they are mobile. Note that your CN-1 Exhibit L associated a cost for this removal, which is why the Division had a bonding task. Also in your letter, you state that the scales will remain upon final reclamation. Currently your reclamation plan states no structures to remain upon final reclamation so you would need to submit a TR if this still your desire later on.



Task 02a-Highwall Reduction:

Regarding highwall reduction, the Division can change the methods of how we calculate in that stockpiled material stored above the highwall can be used for backfill rather than using cut/fill methods. We can also update the material to shale rather than basalt if that is more accurate.

Regarding volumes however 400 LF of 60'H vertical highwall was more than generous as compared to current site conditions. That backfilled volume is 53,067 CY not the 16,000 CY as stated in your letter. Furthermore the Division has to bond for worst case scenario (permitting or site conditions) which would be all slopes going to a 2:1 as the north slope is not yet day lighted out. See the breakdown of highwall dimensions and associated yardages.

- Rec Plan states 2H: 1V to be constructed while mining, with 800 LF max area-requiring topsoil, current site conditions are worse than Rec Plan. Slopes are not being mined at a 2:1 and more than 800 LF w/o topsoil needing reclamation.
- South, East and West Highwalls to be backfilled with stockpiled shale located above cut, all slopes go to a 2H: 1V or less
- North Slope-to be day lighted, less grading to go to a 2:1 at this time, cut/fill with shale to a 2H: 1V
- Upper/East bench is approx. 450'L x 20'H x 30'W north, west and south face is sloped 1H: 1V
 - South and east side (30'+450' L) @ 20'H 1:1 to 2:1 backfill is 3,566 CY
 - North side 450'L x 20'H @ 1:1 to 2:1 cut/fill is 833 CY
- Middle bench is approx. 150'L x 40'H x 120'W north face sloped 0.5H: 1V, south face is 1H: 1 V
 - South side 150'L x 40'H @ 0.5:1 to 2:1 backfill is 6,667 CY
 - North side 150'L x 40'H @ 1:1 to 2:1 cut/fill is 1,111CY
- Lower/West bench is approx. 400'L x 60'H x 250'W north face is near vertical, east face is 1.5H:1 and south face is 1H: 1V
 - South side 400'L x 60'H @ vert to 2:1 backfill is 53,307 CY
 - West side 250'L x 60'H @ 1.5:1 to 2:1 backfill is 8,333 CY
 - North side 400'L x 60'H @ 1:1 to 2:1 cut/fill is 6,667 CY
- Total of 80,484 CY of material to be moved.
- Shale material, partially consolidated stockpile, no ripper needed

In general, the site is drastically under bonded with regards to highwall reductions. In SI-3 the Division accounted for 12,667 CY of material to be moved which was the cut/fill of a 400 LF x 60'H vertical highwall rather than the estimated 80,484 CY which are current site conditions shown above. The Division acknowledges that the values used in SI-3 though less than current site conditions are still closer than the previous estimates. The Division cannot reduce the current amount necessary for highwall reduction and for the time being will not revise this task.

Task 03 a & b- Topsoil Transportation and Grading:

The reclamation plan calls for 6" of topsoil to be applied to the regraded 2H: 1 V slopes. Assuming that the North Slope is day lighted out the Operator estimated this to be 4.6ac, which is 3,710 CY. If the North Slope will not be day lighted as described in the previous task the additional 2H: 1 V slope would also require topsoil. The Division estimated that there would be approximately 3,120 LF of highwall graded to a 2: 1V with 135'L slope, which is 9.67 acres. That would result in 7,800 CY of topsoil needing to be transported. The LCY volume of transported topsoil would need to be graded. The Division would assume a max haul of 450' for placement and a downhill push of 135' slope.

At this time, the Division is not revising the Highwall Reduction task so the area to be topsoiled will also not be revised at this time.

Task 04a- Rip Compacted areas:

The reclamation plan calls for the footprint of the topsoil stockpile to be revegetated on the south side of the excavation. The plan states that the footprint is estimated to be 3.98 ac and to be ripped 18-24". The Division has no issues with this assumption.

Task 05a- Revegetation:

The reclamation plan calls for revegetating all topsoiled areas. Carrying the increase topsoil acreage through from previous tasks, this would increase the areas to be revegetated from 8.58 ac (topsoil footprint and highwalls) to 13.65 ac (topsoil footprint and increased graded slopes). The Division also believes the herbicide needs previously added in SI-3 remain necessary. At this time, the Division will not revise this task for the increased topsoil acreage.

Task 06a- Hay Storage Area (pit floor):

The permit calls for a flat area with a 1-2% grade sloping to the south that is stabilized with gravel. Currently the pit floor consists of three benches with an approximate 40-foot elevation difference and material of various sizes yet to be removed from the excavation. The current site conditions do not reflect that of the approved reclamation plan and therefore the Division has to bond for this task. Grading of the 8 ac proposed floor 4" deep (4,302 CY) is likely significantly cheaper than the actual cost of achieving the final reclamation configuration. Additionally job hours are calculated based on the work being performed; the Division cannot arbitrarily change this figure without having the input figures to support such a change. The Division cannot decrease hours associated with this task and for the time being will not revise this task.

Task 07a- Gravel Storage Area (stockpile area):

The final reclamation plan and Exhibit L both describe minor grading in this area to result in a flat graveled surface area. The Division acknowledges that once gravel reserves are removed minimal

grading would be necessary to make this site meet the final reclamation conditions. The Division will remove this task.

Task 08a and 08b- Mobilization:

Mobilization is based on the quantity of equipment used in all tasks and the distance that piece equipment must travel to the mine site. Mobilization costs do not include hours that the equipment is used. That cost is included within the specific task utilizing the piece of equipment. The Division cannot adjust mobilization cost unless different equipment type/sizes are used. The Division cannot decrease the hours associated with this task and for the time being will not revise this task.

Indirect Costs:

Indirect costs are calculated based on percentages of the total direct costs of all task or are fixed values. Specifically superintendent cost are directly related to the number of total job/task hours. The Division generally assigns a superintendent for 50% of the total task hours for an 112c site. With that being said CIRCES will automatically adjust this figure to reflect the direct costs and the Division will not manually update this figure.

Summary:

The Division has attempted to address each of your areas of concern identified in your SI-3 objection letter. Pursuant to Rule 4.2 the Division has an obligation to bond based on the worst-case scenario, be it permit or site conditions. The attached revised reclamation cost estimate attempts to give concessions where warranted in your objection letter while not reducing the required bond in other areas where the site may actually be under bonded.

Additionally you have stated that several areas of your pit are mined out. To date there appears to be little to no interim reclamation completed so far. The Division encourages you to practice contemporaneous reclamation wherever practical. Decreasing the overall site liability (completing reclamation) is the only other way to decrease the required financial warranty.

Please review this document and the Revised Notice of Surety Increase SI-3. Given that the statutory 60-day deadline for SI-3 has already passed, the Division will grant an additional 30-days to post the revised total bond amount of \$71,428. The additional bond amount of \$23,121 will be due Monday, October 14, 2019. If the additional financial warranty is not posted by the October 14, 2019, deadline the Division, will issue an Reason to Believe a Violation Exists and Notice of Board Hearing for the December 11, 2019 MLRB meeting.

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 303-866-3567 Ext 8183 or via email at amy.yeldell@ state.co.us

Sincerely,



Amy Yeldell

Enclosures:

Revised Notice of Surety Increase SI-3
Reclamation cost estimate Summary 2019-v2
Jay Wagner's formal objection to SI-3

Ec:

Travis Marshall, Senior EPS, Grand Junction DRMS