

TO: Ben Reed, Hearing Examiner,
Board of Environmental Review

FROM: Hillary Houle, Board Secretary
P.O. Box 200901
Helena, MT 59620-0901

DATE: August 11, 2016

SUBJECT: Board of Environmental Review Case No. BER 2016-07 SM

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

IN THE MATTER OF: APPEAL AMENDMENT
APPLICATION AM3, SIGNAL PEAK ENERGY
LLC'S BULL MOUNTAIN COAL MINE #1,
PERMIT NO. C1993017

Case No. BER 2016-07 SM

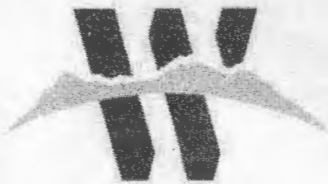
The BER has received the attached request for hearing. Also attached is DEQ's administrative document(s) relating to this request.

Please serve copies of pleadings and correspondence on me and on the following DEQ representatives in this case.

Rebecca Convery
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901
John Dilliard Bureau Chief

Ed Colman
Coal & Opencut Mining Bureau
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Attachments



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Helena, Montana 59601
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Defending the West www.westernlaw.org

Western Environmental Law Center

August 11, 2016

Board of Environmental Review
Department of Environmental Quality
Metcalf Building
1520 East Sixth Avenue
PO Box 200901
Helena, Montana 59620-0901

Filed with the
MONTANA BOARD OF
ENVIRONMENTAL REVIEW
This 11 day of August 2016
at 3:18 o'clock P.m.
By: Hillary Houle

Re: Appeal Amendment Application AM3, Signal Peak Energy LLC's Bull Mountain Coal Mine #1, Permit No. C1993017

NOTICE OF APPEAL AND REQUEST FOR HEARING

The Montana Environmental Information Center (MEIC), pursuant Montana Code Annotated § 82-4-206(1)-(2), and Administrative Rule of Montana 17.24.425(1), hereby files this notice of appeal and request for a hearing regarding Montana Department of Environmental Quality's (DEQ) July 12, 2016, approval of Amendment Application AM3 to Signal Peak Energy LLC's Permit No. C1993017 for the Bull Mountain Coal Mine #1, in Roundup, Montana. MEIC further requests that the Board of Environmental Review or its appointed hearing examiner hold a hearing on this appeal, pursuant to Administrative Rule of Montana 17.24.425(2).

DEQ's approval of the AM3 Application Amendment was unlawful. The grounds of DEQ's error include, but are not limited to, the following:

1. The Surface Mining Control and Reclamation Act (SMCRA) and the Montana Strip and Underground Mine Reclamation Act (MSUMRA) prohibit DEQ from issuing a coal-

mining permit unless and until the applicant affirmatively demonstrates and DEQ confirms in writing based on record evidence that reclamation can be accomplished. ARM 17.24.405(6)(a).

2. SMCRA and MSUMRA further prohibit DEQ from issuing a coal-mining permit unless DEQ confirms in writing based on evidence submitted by the applicant and other information compiled by DEQ that the applicant has complied with all requirements of MSUMRA and its implementing rules. ARM 17.24.405(6)(a).

3. SMCRA and MSUMRA require an applicant for a coal mining permit to prepare a detailed hydrologic reclamation plan including measures that provide for the protection of the quality and quantity of surface and ground water in the mine plan area and adjacent areas. ARM 17.24.314(1).

4. SMCRA and MSUMRA require DEQ to establish a bond for any coal-mining operation that it approves. § 82-4-223(1), MCA. At a minimum, the bond established must equal the total cost to the state of completing all work described in the reclamation plan. § 82-4-223(2), MCA.

5. Here, the application materials and DEQ's cumulative hydrologic impact assessment do not affirmatively demonstrate that reclamation of water resources can be accomplished. Among other things, the information in SPE's application and the cumulative hydrologic impact assessment do not affirmatively demonstrate that there is sufficient high quality water available to replace spring and stream reaches that may be dewatered due to subsidence-related impacts from additional longwall mining under the Bull Mountains. Indeed, SPE's application materials indicate significant uncertainty about what quantity of replacement water is available, whether the proposed replacement water is legally available for the proposed replacement uses, and whether use of the proposed replacement water for mitigation purposes

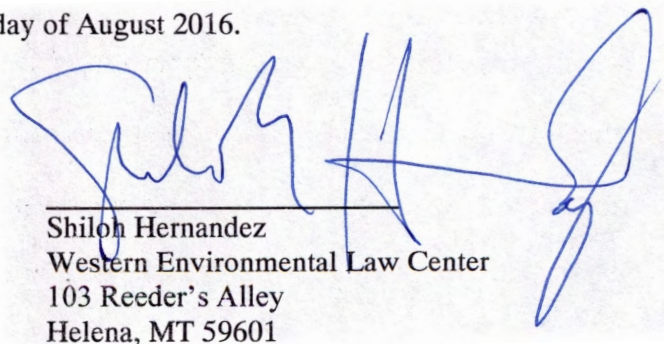
will adversely impact people who currently use the proposed replacement water source for domestic and agricultural purposes.

6. Second, the reclamation plan presented by SPE does not contain detailed provisions that provide for the protection of surface and ground water in the mine area and adjacent areas. Indeed, the reclamation plan provides that it will not develop specific hydrologic reclamation plans for spring and stream reaches until specific water resources are impacted by longwall mining activities. This failure to include specific and detailed measures designed to protect potentially impacted water resources is directly contrary to the letter and spirit of SMCRA and MSUMRA, which require the regulatory authority to assure that there are adequate measures to protect water resources *before* approving a mining application, rather than *after* mining impacts have already occurred. Further, even though DEQ has identified arsenic levels in the proposed replacement water source that exceed human health standards and that will require treatment, there are no provisions in the reclamation plan that provide for treatment of the replacement water. As a result, the people who stand to lose their water are left without essential information about exactly how SPE proposes to treat its purported replacement water to remove dangerous toxins. Equally important, since the reclamation bond must be keyed to the reclamation plan, the omission of information about water treatment from the reclamation plan prevents DEQ from establishing a bond that accurately reflects all the costs that will be required to reclaim water resources impacted by SPE's longwall mining operation. This increases the expense that the public will have to assume if SPE closes its mine or goes out of business. The provisions of SMCRA and MSUMRA are intended to prevent coal companies, like SPE, from socializing their costs in this manner.

7. Third, the bond established by DEQ omits funding for multiple reclamation measures that the reclamation plan—insufficient though it be—identifies. The reclamation plan identifies 31 springs scattered over 7,000 acres that may be dewatered by subsidence-related impacts from longwall operations. The reclamation plan also identifies replacement vertical wells as the default means of replacing springs that are dewatered by longwall mining. The reclamation plan further recognizes that using vertical wells to replace lost springs will require energy costs and ongoing operations and maintenance costs that are not required for natural springs. The bond, however, only provides funding for the construction of one solitary vertical replacement well. The bond provides no funding for supplying energy to replacement wells and no funding for ongoing operations and maintenance costs of replacement wells. DEQ's failure to require bonding for these acknowledged expenses of hydrologic reclamation further increases the likelihood that the public, rather than SPE, will be forced to pay the cost of reclaiming water resources harmed by SPE's coal-mining operation.

8. For the foregoing reasons, DEQ's approval of SPE's AM3 Application Amendment was unlawful. MEIC requests that this approval be deemed void *ab initio*, vacated, and the matter remanded to DEQ for further review in conformance with the requirements of SMCRA and MSUMRA.

Respectfully submitted this 11th day of August 2016.



Shilon Hernandez
Western Environmental Law Center
103 Reeder's Alley
Helena, MT 59601

Attorney for MEIC

TO: Ben Reed, Hearing Examiner,
Board of Environmental Review

FROM: Hillary Houle, Board Secretary
P.O. Box 200901
Helena, MT 59620-0901

DATE: September 6, 2016

SUBJECT: Board of Environmental Review Case No. BER 2016-08 WQ

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

IN THE MATTER OF: APPEAL OF SECTION
401 WATER QUALITY CERTIFICATION
ISSUED FOR DEQ APPLICATION NUMBER
MT4011012, THE CLARK HYDROELECTRIC
PROJECT, BEAVERHEAD COUNTY,
MONTANA.

Case No. BER 2016-08 WQ

The BER has received the attached request for hearing. Also attached is DEQ's administrative document(s) relating to this request.

Please serve copies of pleadings and correspondence on me and on the following DEQ representatives in this case.

Kurt Moser
Legal Counsel
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

John Kenning, Bureau Chief
Water Protection Bureau
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Attachments



Filed with the
MONTANA BOARD OF
ENVIRONMENTAL REVIEW
This 2 day of September 2016
at 3:05 o'clock P.m.
By: Hillary Hulse

September 1, 2016

Board of Environmental Review
Department of Environmental Quality
Metcalf Building
1520 East Sixth Avenue
PO Box 200901
Helena, Montana 59620-0901

Re: Appeal of Section 401 Water Quality Certification Issued for DEQ Application Number MT4011012, the Clark Canyon Hydroelectric Project

NOTICE OF APPEAL AND REQUEST FOR HEARING

Upper Missouri Waterkeeper (Waterkeeper), pursuant to Montana Code Annotated § 2-4-101 *et seq.*, and Administrative Rule of Montana 17.30.109, hereby files this notice of appeal and request for a hearing regarding the Montana Department of Environmental Quality's (DEQ) August 3, 2016 issuance of a final Section 401 Water Quality Certification to Clark Canyon Hydroelectric, for the Clark Canyon Hydroelectric Project sited on the Beaverhead River. Waterkeeper further requests that the Board of Environmental Review or its appointed hearing examiner hold a hearing on this appeal, pursuant to Administrative Rule of Montana 17.30.109(1)(b).

DEQ's final 401 Water Quality Certification for the Clark Canyon Hydroelectric Project is arbitrary and capricious, and not in accordance with law. The grounds of DEQ's error include, but are not limited to, the following:

1. The federal Clean Water Act (CWA), 33 U.S.C. §§ 1251 *et seq.*, was passed in 1972 to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a).

2. Section 401(a) of the CWA provides, in relevant part, that any applicant for a federal license or permit to conduct any activity that may result in discharge into navigable waters must provide the licensing or permitting agency with a water quality certification (401 Certification) from the State in which the discharge originates. 33 U.S.C. § 1341(a). The §401 certification must ensure that all discharges from the activity will comply with the Act, including all applicable state water quality standards and requirements. *Id.* See also ARM 17.30.101(1)-(2).
3. Specifically, any §401 Certification “*shall set forth any effluent limitations or other limitations, and monitoring requirements necessary to assure*” that the applicant’s discharges and other activities will comply with all applicable state water quality standards and requirements set forth in the Certification. 33 U.S.C. § 1341(d) (emphasis added). Each of these requirements “shall become a condition on any Federal license or permit subject to [§401 Certification].” *Id.*
4. Water quality standards establish the water quality goals for a waterbody. 40 C.F.R. § 131.2. Irrespective of implementation methods, water quality standards apply to both point and nonpoint sources of pollution. See, e.g., Pronsolino v. Nastri, 291 F.3d 1123, 1127 (9th Cir. 2002) (“[S]tates are required to set water quality standards for *all* waters within their boundaries regardless of the sources of pollution entering waters.”) (emphasis in original).
5. The Beaverhead River is a Montana B-1 waterway and must be maintained suitable for drinking, culinary, and food processing purposes, after conventional treatment; bathing, swimming, and recreation; growth and propagation of salmonid fishes and associated aquatic life, waterfowl and furbearers; and agricultural and industrial water supply. ARM 17.30.623.
6. Here, DEQ’s §401 Certification does not ensure that the activity as a whole will not violate the Beaverhead’s water quality standards. Among other things, the application materials and DEQ’s final §401 Certification do not assure the Project will not violate water quality

standards for the downstream Beaverhead River by virtue of ignoring the potential of the Project and/or Project components to cause or contribute to unnatural algal growth, unnatural turbidity events, and unnaturally low river flows, all of which individually and/or cumulatively impact the ‘fishing’ and ‘recreation’ designated uses among others. Indeed, the Department’s §401 Certification takes an unnatural and arbitrarily narrow scope of the Project by only considering the action and impacts of retrofitting Clark Canyon Dam with hydroelectric turbines and impacts potentially arising from operation thereof. The Clark Canyon Hydroelectric Project, however, includes more than the addition and use of turbines; it necessarily entails the use and benefits related to Clark Canyon Dam & operation of Clark Canyon Reservoir. As a necessary component of the Project, Clark Canyon Dam and the operation and management of the Reservoir – and their effect(s) on the downstream Beaverhead River – must also be addressed by DEQ’s 401 Certification. DEQ may not cherry-pick pollution issues related to installation and operation of turbine-based hydroelectric generation, but then ignore pollution issues related to the activity as a whole. Doing so violates the legal mandate set forth by CWA § 401(d), and conflicts with the broader goals of the Clean Water Act “to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate *pollution*,” *id.* § 1251(b) (emphasis added), as well as the guarantee to a clean and healthful environment provided by the Montana Constitution. DEQ must ensure that the Project “will comply” with water quality standards. DEQ’s 401 Certification fails this legal test by failing to consider and appropriately condition the *entire* activity, including connected Project features, so that any impacts do not violate water quality standards.

7. DEQ’s 401 Certification is also arbitrary, capricious, and not in accordance with law because it relies on the promise of voluntary, future action to address known and anticipated pollution impacts of the Project. Condition 10 of the 401 Certification explicitly reserves the right of

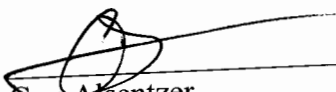
the Department to require, in the future, an adaptive management plan that may include corrective actions and monitoring necessary to correct water quality violations. DEQ's implicit recognition of the probability of water quality violations by the Project cannot be remedied by simply reserving the right to later require adaptive management planning where, as here, DEQ has a body of scientific data indicating components of the Project presently cause or contribute to water quality violations. DEQ must affirmatively address known and/or reasonably foreseeable pollution impacts of the 'activity as a whole' in its 401 Certification to satisfy its duty of ensuring the Project will comply with water quality standards.

8. Second, DEQ's 401 Certification does not contain monitoring requirements sufficient to ensure that the activity as a whole will not violate water quality standards. For example, the 401 Certification requires the *future* submission of a monitoring plan for the Reservoir and Beaverhead River for turbidity, total dissolved gas, dissolved oxygen, and temperature, but does not disclose details thereof to the public. The failure to provide specific and detailed monitoring terms, up-front, in the 401 Certification is contrary to the letter and spirit of CWA §401's monitoring requirement. In addition to an unknown monitoring frequency, after Project construction the 401 Certification only requires three (3x) years of monitoring, for a reduced set of pollutants, after which time the 401 Certification suggests monitoring will either cease or be as limited as once-per-year in the form of an annual report. This language is deceptive in that it cloaks a significant reduction in monitoring parameters and monitoring time-frame with the suggestion of agency expertise and discretion, when the opposite is true. The proposed monitoring presented by 401 Certification conditions numbers 1-3 is unlawful because it fails to satisfy the applicable standard: monitoring must be sufficient to assure that the Project will not violate water quality standards. Insofar as the Project could have several different types of impacts (biological, chemical, physical), several of which are seasonal in

nature, the 401 Certification's limited monitoring requirements are unable to provide reasonable assurance that sufficient, representative monitoring data will be collected to allow identification, let alone action, on any violations of water quality standards. The 401 Certification's inadequate monitoring requirements are especially glaring in light of the fact that the Project could foreseeably endure for at least the typical thirty-year (30) lifespan of a FERC hydropower license. The state of Montana is replete with examples of adverse water quality pollution as a result of long-term hydrologic modification via dams and/or hydropower, yet monitoring for the Project is abbreviated at best. DEQ's 401 Certification fails to require specific and detailed monitoring that properly encompasses the scope, life, and significance of reasonably foreseeable adverse impacts of the Project, and therefore is unlawful.

9. The Montana Constitution Article IX Section 3 (3) places all waters of the state in trusteeship. It incorporates and expands the traditional Public Trust Doctrine. The Constitution requires that state agencies protect water resources for current and future generations. This mandate includes water quality as well as quantity. Water quality must be protected by a precautionary approach. Protection of water is further mandated under Article II section 3 and Article IX Section 1. For the reasons set forth herein, DEQ's myopic interpretation of its responsibilities under Section 401 is not precautionary and does not fulfill its constitutionally mandated role of trustee for Montana's waters.
10. For the foregoing reasons, DEQ's issuance of its 401 Certification for the Clark Canyon Hydroelectric Project was unlawful. Waterkeeper requests that this 401 Certification be deemed void *ab initio*, vacated, and the matter remanded to DEQ for further review in conformance with the requirements of the CWA and Montana law.

Respectfully submitted this 1st day of September 2016.


Guy Alsentzer
Upper Missouri Waterkeeper
24 S. Wilson Ave., Ste 6-7
Bozeman, MT 59715

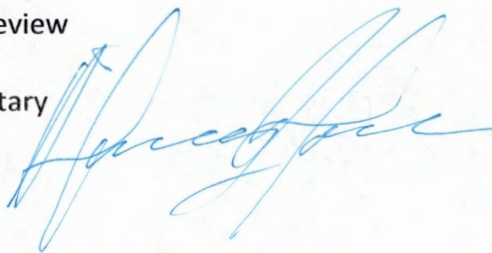
Guy Alsentzer
for
JACK TUHOLSKA
Jack Tuholske
Tuholske Law Office PC
PO Box 7458
Missoula, MT 59807

Attorneys for Waterkeeper



Memo

TO: Ben Reed, Hearing Examiner,
Board of Environmental Review

FROM: Hillary Houle, Board Secretary
P.O. Box 200901
Helena, MT 59620-0901 

DATE: September 8, 2016

SUBJECT: Board of Environmental Review Case No. BER 2016-09 OC

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

IN THE MATTER OF: VIOLATION OF THE
OPENCUT MINING ACT BY GORAN, LLC AT
THE GORAN UNPERMITTED GRAVEL PIT,
STILLWATER COUNTY, MONTANA (OPENCUT
NO. 2790; FID 2500)

Case No. BER 2016-09 OC

The BER has received the attached request for hearing. Also attached is DEQ's administrative document(s) relating to this request.

Please serve copies of pleadings and correspondence on me and on the following DEQ representatives in this case.

Rebecca Convery
Legal Counsel
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Ed Coleman, Bureau Chief
Coal & Opencut Mining Bureau
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Attachments

HOLLAND & HART LLP



W. Scott Mitchell
Phone (406) 252-2166
Fax (406) 252-1669
smitchell@hollandhart.com

September 1, 2016

Filed with the

MONTANA BOARD OF

ENVIRONMENTAL REVIEW

This 6 day of September, 2016

at 4:27 o'clock P.m.

By: Hillary Hale

Board Secretary
Board of Environmental Review
P.O. Box 200901
Helena, MT 59620-0901

Re: Notice of Violation and Administrative Compliance Penalty Order
Docket No. OC-16-08

Board Secretary:

Holland & Hart LLP represents Goran, LLC in connection with the above-identified Notice of Violation dated August 3, 2016. Pursuant to Mont. Code Ann. Section 82-4-441, Goran submits this written request for a hearing before the Board of Environmental Review.

Sincerely,

W. Scott Mitchell
of Holland & Hart LLP

WSM:lds

cc: Daniel R. Kenney (via facsimile)

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Holland & Hart LLP

Phone [406] 252-2166 Fax [406] 252-1669 www.hollandhart.com

401 North 31st Street Suite 150 Billings, MT 59101 Mailing Address P.O. Box 639 Billings, MT 59103-0639

Aspen Boulder Carson City Colorado Springs Denver Denver Tech Center Billings Boise Cheyenne Jackson Hole Las Vegas Reno Salt Lake City Santa Fe Washington, D.C. ☎



August 3, 2016

Goran, LLC
c/o Corporation Service Company, Registered Agent
P.O. Box 1691
Helena, MT 59624-1691

CERTIFIED MAIL #7009 1680 0002 1393 4267
Return Receipt Requested

Re: Notice of Violation and Administrative Compliance and Penalty Order, Docket No. OC-16-08, for violation of the Opencut Mining Act. [Opencut No. 2790; FID 2500]

Enclosed is a Notice of Violation and Administrative Compliance and Penalty Order (Order) for the above-referenced enforcement action. The Order alleges that Goran, LLC (Goran) violated the Montana Opencut Mining Act at the Goran Unpermitted Gravel Pit in Stillwater County, Montana. Please refer to Sections II and III of the Order and the Penalty Calculation Worksheet for a description of the violation, required corrective actions and an explanation of the penalty.

Pursuant to Section 82-4-441, Montana Code Annotated, Goran is entitled to a hearing before the Board of Environmental Review if a written request is submitted to the Board within 30 days of the date the Order is served. Section IV of the Order provides information on the appeal process and rights. Service of the Order by mail is complete three business days after mailing. Any written request for a hearing must be sent to:

Board Secretary
Board of Environmental Review
P.O. Box 200901
Helena, MT 59620-0901

If Goran does not request a hearing and submit testimony at the hearing, Goran will forfeit its right to seek judicial review of the Montana Department of Environmental Quality's violation and penalty determination. If you have questions related to this matter, please contact me at either dkenney@mt.gov or the telephone number listed below.

Sincerely,

A handwritten signature in blue ink, appearing to read "DKenney", is written over a horizontal line.

Daniel R. Kenney
Environmental Enforcement Specialist
DEQ Enforcement Division
406-444-1453; Fax 406-444-1923

Enclosures

cc w/enc via email: Rebecca Convery, DEQ Legal
Ed Coleman, DEQ COMB
DEQ Opencut Mining Program
Todd Cusick, Goran, LLC

cc via email: Stillwater County Environmental Health

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

IN THE MATTER OF:
VIOLATION OF THE OPENCUT MINING
ACT BY GORAN, LLC AT THE GORAN
UNPERMITTED GRAVEL PIT,
STILLWATER COUNTY, MONTANA
(OPENCUT NO. 2790; FID 2500)

NOTICE OF VIOLATION
AND
ADMINISTRATIVE COMPLIANCE
AND
PENALTY ORDER

Docket No. OC-16-08

I. NOTICE OF VIOLATION

Pursuant to the authority of Section 82-4-441, Montana Code Annotated (MCA), the Department of Environmental Quality (Department) hereby gives notice to Goran, LLC (Goran) of the following Findings of Fact and Conclusions of Law with respect to a violation of the Opencut Mining Act (Act), Title 82, chapter 4, part 4, MCA, and the Administrative Rules of Montana (ARM) adopted thereunder.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Department makes the following Findings of Fact and Conclusions of Law:

1. The Department is an agency of the executive branch of government of the State of Montana, created and existing under the authority of Section 2-15-3501, MCA.
2. The Department administers the Act.
3. The Department is authorized under Section 82-4-441, MCA, to issue this Notice of Violation and Administrative Compliance and Penalty Order (Order) to Goran to address alleged violations of the Act, the administrative rules implementing the Act, to obtain corrective actions, and to assess penalties for the alleged violations.
4. An "Operator" includes any person conducting opencut operations on affected land that is not covered by a permit. See Section 82-4-403(8), MCA.
5. Goran is a "person" as defined in Section 82-4-403(10), MCA.

1 6. On April 23, 2015, the Department received an application to assign Riverside
2 Contracting, Inc.'s (Riverside), Opencut Permit No. 1924 (Permit) for the Gaustad Pit in
3 Stillwater County, to Johnson Lane Materials, Inc. (Johnson).

4 7. In a September 9, 2015 email, Johnson's consultant, MGC Consultants Limited,
5 informed the Department that Goran had "mined gravel about 240 feet into" the Gaustad Pit.

6 8. On October 8, 2015, Johnson submitted a Request for Pre-Application Meeting
7 (Request) to the Department.

8 9. In response to the Request, the Department conducted an inspection on October
9 19, 2015 (October 2015 Inspection) at the Gaustad Pit. The Department observed that opencut
10 operations from an adjacent unpermitted gravel pit conducted by Goran had encroached into the
11 non-bonded portion of the Gaustad Pit.

12 10. The unpermitted gravel pit (Site) is located in Section 13, Township 4 South,
13 Range 18 East, latitude 45.483799, longitude -109.439229, in Stillwater County, Montana. The
14 Site is located on property owned by Karl O. Gaustad (Landowner).

15 11. On January 4, 2016, the Department was provided with a copy of a September 30,
16 2014 lease agreement (Lease) between the Landowner and Goran for the purpose of mining and
17 removing approximately 30,000 cubic yards of sand, gravel, rock from the Landowner's
18 property. The Lease was for a "term of until September 30, 2014 to January 1, 2015."

19 12. On January 15, 2016, the Department sent Goran a violation letter (January 2016
20 Violation Letter) for violations of the Act as described in Paragraphs 18 and 21. The Department
21 provided Goran with a copy of the October 2015 Inspection report.

22 13. On July 7, 2016, the Department received information from the Montana
23 Department of Transportation that Goran removed approximately 46,898 cubic yards of
24 "unclassified borrow" from the Site.

Violation 1 – Conducting non-permitted opencut operations

14. A permit is required for an operator who conducts an opencut operation that results in the removal of more than 10,000 cubic yards of materials and overburden. See Section 82-4-431(1), MCA.

15. Opencut operations are defined as activities conducted for the primary purpose of sale or utilization of materials, including: mine site preparation; removing the overburden and mining directly from the exposed natural deposits or mining directly from natural deposits; processing of mined materials; transporting, depositing, staging, and stockpiling of overburden and materials; reclamation of affected land and parking or staging of vehicles, equipment. See Section 82-4-403(7), MCA.

16. During the October 2015 Inspection, the Department observed that approximately 3.25 acres had been disturbed by Goran's non-permitted opencut mining operations, of which 1.7 acres occurred at the Site. The Department noted that the "disturbance consisted of a pit area with slopes that have been graded and two soil stockpiles." During the inspection, representatives from Johnson informed the Department that Goran was not authorized to access or conduct opencut operations at the Gaustad Pit.

17. The January 2016 Violation Letter informed Goran that conducting non-permitted opencut activities that disturbed the 3.25 acres were a violation of the Act and required Goran to submit a reclamation plan meeting the requirements of the Act and administrative rules to the Department, within 45 days. The Department further informed Goran that the failure to submit the reclamation plan would result in the matter being forwarded to the Department's Enforcement Division.

18. Goran failed to submit the reclamation plan to the Department.

19. Goran violated Section 82-4-431(1), MCA, by conducting opencut operations at the Site without a permit.

1 ***Violation 2 – Failure to submit annual production reports and fees***

2 20. A person who mines materials without a permit shall submit an annual report and
3 fee to the Department. See Section 82-4-437, MCA.

4 21. The January 2016 Violation Letter informed Goran that the failure to submit the
5 annual reports and fees for the years it conducted non-permitted opencut operations at the Site
6 was a violation of the Act.

7 22. Goran violated Section 82-4-437, MCA, by failing to submit annual reports for
8 the years it conducted non-permitted opencut operations and fees for materials mined during
9 calendar years 2014 and 2015.

10 ***Administrative penalty***

11 23. Pursuant to Section 82-4-441(2), MCA, the Department may assess an
12 administrative penalty not to exceed \$1,000 for a violation of the Act and no more than \$1,000
13 for each day during which a violation continues.

14 24. The Department calculated and is assessing an administrative penalty in the amount
15 of \$49,060 for the violations cited herein. Section 82-4-1001, MCA, and ARM 17.4.301 through
16 17.4.308. The Penalty Calculation Worksheet is enclosed and incorporated by reference herein.

17 **III. ADMINISTRATIVE ORDER**

18 This Order is issued to Goran pursuant to the authority vested in the State of Montana,
19 acting by and through the Department under the Act and administrative rules adopted thereunder,
20 ARM Title 17, chapter 24, sub-chapter 2. Based on the foregoing Findings of Fact and
21 Conclusions of Law and the authority cited above, the Department hereby ORDERS Goran to do
22 the following:

23 25. Within 45 days from the effective date of this Order, Goran shall complete and
24 submit to the Department an Annual Progress Report form(s), attached to this Order, for each

1 year Goran conducted non-permitted opencut operations at the Site and fees for materials mined
2 during those years. The annual progress report(s), fees and reclamation plan shall be sent to:

3 Opencut Mining Program
4 Department of Environmental Quality
5 P.O. Box 200901
6 Helena, MT 59620-0901

6 26. By November 30, 2016, Goran shall complete reclamation of the Site as follows:

7 a. Grade the Site to 3:1 or flatter slopes, blend the graded land into the
8 surrounding topography, replace an appropriate amount of overburden and all soil, and reclaim
9 the Site to conditions present prior to conducting the non-permitted opencut operations; and

10 b. Reseed the Site with vegetative species that meet the requirements of Section
11 82-4-434, MCA.

12 27. Within 15 days of completing reclamation required in Paragraph 26 or no later
13 than December 15, 2016, Goran shall provide photographic documentation, with written
14 description, conclusively showing that reclamation, including completion of all dirt work and
15 reseedling of the Site, is complete. The photographic documentation shall be sent to:

16 John Arrigo, Administrator
17 Enforcement Division
18 Department of Environmental Quality
19 P.O. Box 200901
20 Helena, MT 59620-0901

19 28. No later than December 31, 2018, Goran shall inspect the Site to determine
20 effectiveness of revegetation and ensure noxious weeds are controlled.

21 29. Upon Goran's determination that reclamation is complete and revegetation is
22 successful, Goran shall submit to the Department a *Release Request* form. A copy of the *Release*
23 *Request* form is attached and incorporated by reference herein. The *Release Request* form must be
24 sent to the address in Paragraph 25.

1 30. Within 60 days after service of this Order, Goran shall pay to the Department the
2 administrative penalty in the amount of \$49,060 to resolve the violations. The penalty must be
3 paid by check or money order, made payable to the "Montana Department of Environmental
4 Quality" and sent to the address in Paragraph 27.

5 31. In the event that Goran exercises its right to administrative review as explained in Part
6 IV. Notice of Appeal Rights, no later than the date given for exchange of exhibits or another date
7 ordered by the Board, the Department shall notify Goran whether it will seek to prove, based on
8 information obtained from Goran or through discovery or subsequent inspections of the Site, an increase
9 or decrease in the number of days of any violation described in the Penalty Calculation Worksheet.

10 32. Failure to comply with the requirements of this Order by the specified deadlines, as
11 ordered herein, may result in the Department seeking a court order assessing civil penalties of not
12 more than \$5,000 for each day the violation continues pursuant to Section 82-4-441(3), MCA.

13 33. None of the requirements in this Order are intended to relieve Goran from complying
14 with all applicable state, federal, and local statutes, rules, ordinances, orders, and permit conditions.

15 34. The Department may take additional enforcement action against Goran, including
16 the right to seek injunctive relief, civil penalties, and other available relief, for any violation of,
17 or failure or refusal to comply with, this Order.

18 35. The terms of this Order are satisfied when the Department acknowledges in
19 writing that all corrective actions required under this Order have been completed.

20 IV. NOTICE OF APPEAL RIGHTS

21 36. Goran may appeal this Order pursuant to Section 82-4-441, MCA, by having its
22 attorney file a written request for a hearing before the Montana Board of Environmental Review
23 no later than 30 days after service of this Order. Any request for a hearing must be in writing
24 and sent to:

1 Board Secretary
2 Board of Environmental Review
3 1520 East Sixth Avenue
4 P.O. Box 200901
5 Helena, MT 59620-0901

6 37. Hearings are conducted as provided in the Montana Administrative Procedure
7 Act, Title 2, chapter 4, part 6, MCA. Hearings are normally conducted in a manner similar to
8 court proceedings, with witnesses being sworn and subject to cross-examination. Proceedings
9 prior to the hearing may include formal discovery procedures, including interrogatories, requests
10 for production of documents, and depositions. Because Goran is not an individual, Goran may
11 not appear on its own behalf through an agent other than an attorney. ARM 1.3.231(2) and
12 Section 37-61-201, MCA.

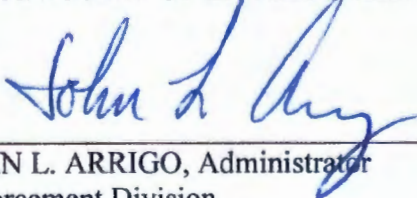
13 38. If a hearing is not requested within 30 days after service of this Order, the
14 opportunity for a contested case appeal is waived.

15 39. This Order becomes effective on the date of service. Service by mail is complete
16 three business days after mailing.

17 IT IS SO ORDERED:

18 DATED this 2nd day of August, 2016.

19 STATE OF MONTANA
20 DEPARTMENT OF ENVIRONMENTAL QUALITY

21 
22 _____
23 JOHN L. ARRIGO, Administrator
24 Enforcement Division

**Department of Environmental Quality - Enforcement Division
Settlement Penalty Calculation Worksheet**

Responsible Party Name:	Goran, LLC (Goran) at Goran Unpermitted Gravel Pit (Site).		
FID:	2500	Opencut No. 2790	
Statute:	Opencut Mining Act (Act)		
Maximum Penalty Authority:			\$1,000.00
Date:	8/1/2016		
Name of Employee Calculating Penalty:	Daniel R. Kenney		

Penalty Calculation #1	
Description of Violation:	
Goran violated Section 82-4-431(1), MCA, by conducting opencut operations without a Department-issued permit. During an October 19, 2015 inspection, the Department observed that opencut operations conducted by Goran had disturbed 3.5 acres of land. Goran did not have an Opencut Mining Permit issued by the Department.	

I. BASE PENALTY

Nature

Explanation:	
Opencut operations that result in the removal more than 10,000 cubic yards of materials and overburden prior to obtaining a permit creates the potential to harm human health or the environment. Unless the Department has reviewed and approved an application for a permit, the public has no assurance that an opencut operation will be conducted in compliance with state law or that it will mitigate impacts to the environment and/or human health. Opencut operations conducted prior to completing the permitting process also circumvents the public's opportunity to provide input into the permitting process and to have any concerns addressed. Finally, if an adequate bond has not been posted, resources may not be available to reclaim the disturbance.	
Potential to Harm Human Health or the Environment	X
Potential to Impact Administration	

Gravity and Extent

Gravity Explanation:	
Pursuant to ARM 17.4.303(5)(a), the Department has determined that operating without a permit has Major gravity.	
Extent Explanation:	
Pursuant to ARM 17.4.303(4), the Department's expectation is that entities conducting opencut operations in the State of Montana will obtain the required permit prior to commencing opencut operations without first obtaining the required opencut mining permit and posting the required reclamation bond. The Department has determined that Goran's non-permitted opencut operations that disturbed approximately 3.5 acres constitutes a moderate deviation from the regulatory requirement. Therefore,	

Harm to Human Health or the Environment

Extent	Gravity			
	Major	Moderate	Minor	
Major	0.85	0.70	0.55	
Moderate	0.70	0.55	0.40	
Minor	0.55	0.40	0.25	
Gravity and Extent Factor:				0.70

Impact to Administration

Gravity			
Major	Moderate	Minor	
0.50	0.40	0.30	
Gravity Factor:			

BASE PENALTY (Maximum Penalty Authority x Gravity and Extent Factor):

\$700.00

II. ADJUSTED BASE PENALTY

A. Circumstances (up to 30% added to Base Penalty)

Explanation:

Goran had control over the circumstances surrounding the violation and should have foreseen that conducting an opencut operation without a permit would result in a violation. Further, in January 2014, Goran submitted to the Department an *Application for Assignment of Opencut Mining Permit* for the Aadlan/Fisher gravel pit (Permit No. 1226) demonstrating that Goran had knowledge of the Act and administrative rules. Therefore, an upward adjustment of 20% for circumstances is appropriate.

Circumstances Percent:	0.20
Circumstances Adjustment (Base Penalty x Circumstances Percent)	\$140.00

B. Good Faith and Cooperation (up to 10% subtracted from Base Penalty)

Explanation:

Goran was made aware of the violation on January 15, 2016 and was provided the opportunity to correct the violation by submitting a reclamation plan prior to the matter being referred for formal enforcement. As of August 1, 2016, Goran has not submitted the reclamation plan or otherwise contacted the department. Therefore, no reduction in the Base Penalty is calculated for Good Faith and Cooperation.

Good Faith & Coop. Percent:	0.00
Good Faith & Coop Adjustment (Base Penalty x G F & Coop. Percent)	\$0.00

C. Amounts Voluntarily Expended (AVE) (up to 10% subtracted from Base Penalty)

Explanation:

The Department is not aware of any amounts voluntarily expended by Goran to mitigate the violation or its impact beyond what was necessary to come into compliance; therefore, no reduction is being allowed.

AVE Percent:	0.00
Amounts Voluntarily Expended Adjustment (Base Penalty x AVE Percent)	\$0.00

ADJUSTED BASE PENALTY SUMMARY

Base Penalty	\$700.00
Circumstances	\$140.00
Good Faith & Cooperation	\$0.00
Amt. Voluntarily Expended	\$0.00
ADJUSTED BASE PENALTY	\$840.00

III. DAYS OF VIOLATION

Explanation:

The Department conducted a site inspection on October 19, 2015 and observed that Goran conducted opencut operations that disturbed approximately 3.25 acres of the Site. The violation was documented in the Department's January 15, 2016 Violation Letter, in which Goran was requested to submit a reclamation plan to the Department within 45 days. As to the date of this penalty calculation, Goran has not submitted the reclamation plan to the Department.

Since Goran has still not submitted the reclamation plan, the Department believes it is appropriate to calculate this penalty from January 15, 2016 to August 1, 2016 (the date of this penalty calculation) or a total of 199 days.

The Department believes that using 199 days to calculate the penalty results in a penalty amount of \$167,160 which is greater than the amount needed to provide deterrence. Therefore, the Department will collapse the days of violation to two days of violation for each of the 28 weeks that Goran failed to submit the reclamation plan to the Department for a total of 56 days of violation, which results in a penalty of \$47,040 (56 x \$840 = \$47,040).

Number of Days:	56
ADJUSTED BASE PENALTY x NUMBER OF DAYS:	\$47,040.00

IV. OTHER MATTERS AS JUSTICE MAY REQUIRE

Explanation:

OTHER MATTERS AS JUSTICE MAY REQUIRE TOTAL:	\$0.00
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V. ECONOMIC BENEFIT

Explanation:

If Goran had submitted a reclamation bond for the 3.5 acre disturbance, the Department estimates that Goran would have been required to post an estimated bond in the amount of \$19,621. The Department calculates that at the market rate of 2% per year, such a bond would have cost Hunter \$392 per year. Using the ten (10) month period from the time the Department observed that Goran conducted operations without a permit on October 19, 2015 to August 1, 2016, the date of this penalty calculation, the cost to obtain a bond for the 3.5 acres would have been \$327. The Department is adding the \$327 economic benefit realized by

ECONOMIC BENEFIT REALIZED:	\$327.00
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Responsible Party Name:	Goran, LLC (Goran) at Goran Unpermitted Gravel Pit		
FID:	2500	Opencut No. 2790	
Statute:	Opencut Mining Act (Act)		
Maximum Penalty Authority:	\$1,000.00		

Penalty Calculation #2	
Description of Violation:	
Goran violated Section 82-4-437, MCA, by not submitting an annual production report and severance fees for calendar years 2014 and 2015 to the Department by March 31, 2015 and 2016, respectively.	

I. BASE PENALTY

Nature

Explanation:	
The Department relies on operators to self-report on the progress of their mining operations. The Department uses the information to determine whether the operator is in compliance with its reclamation permit. The annual report also provides the Department with a method to update ownership and contact information. The failure to submit an annual progress report impacts administration of the Act because it impairs the Department's ability to identify and promptly deal with violations.	
Potential to Harm Human Health or the Environment	
Potential to Impact Administration	X

Gravity and Extent

Gravity Explanation:	
ARM 17.4.303(5)(b)(ii) provides that the gravity for the violation, "a failure to monitor, report, or make records," is Moderate.	
Extent Explanation:	
Extent is not applicable when the violation only impacts Administration.	

Harm to Human Health or the Environment

Gravity

Extent	Major	Moderate	Minor	
Major	0.85	0.70	0.55	
Moderate	0.70	0.55	0.40	
Minor	0.55	0.40	0.25	Gravity and Extent Factor:

Impact to Administration

Gravity

Major	Moderate	Minor	
0.50	0.40	0.30	Gravity Factor: 0.40

BASE PENALTY (Maximum Penalty Authority x Gravity Factor):

\$400.00

II. ADJUSTED BASE PENALTY

A. Circumstances (up to 30% added to Base Penalty)

Explanation:		
Goran had control over the circumstances surrounding the violation and failed to submit the report after the Department notified it in writing of the violation and what it needed to do to return to compliance. Therefore, the Department is adding 20% to the base penalty for Circumstances.		
	Circumstances Percent:	0.20
Circumstances Adjustment (Base Penalty x Circumstances Percent)		\$80.00

B. Good Faith and Cooperation (up to 10% subtracted from Base Penalty)

Explanation:		
The Department is not aware of any actions completed to correct the violation.		
	Good Faith & Coop. Percent:	0.00
Good Faith & Coop Adjustment (Base Penalty x G F & Coop. Percent)		\$0.00

C. Amounts Voluntarily Expended (AVE) (up to 10% subtracted from Base Penalty)

Explanation:		
The Department is not aware of any amounts voluntarily expended by Goran to mitigate the violation or its impact beyond what was required to come into compliance; therefore, no reduction is being allowed.		
	AVE Percent:	0.00
Amounts Voluntarily Expended Adjustment (Base Penalty x AVE Percent)		\$0.00

ADJUSTED BASE PENALTY SUMMARY

Base Penalty	\$400.00
Circumstances	\$80.00
Good Faith & Cooperation	\$0.00
Amt. Voluntarily Expended	\$0.00
ADJUSTED BASE PENALTY	\$480.00

III. DAYS OF VIOLATION

Explanation:		
Goran failed to submit the annual progress report and severance fees for calendar years 2014 and 2015 by March 31, 2015 and 2016, respectively. Therefore, the Department is calculating this penalty based on two days of violation.		
	Number of Days:	2
ADJUSTED BASE PENALTY x NUMBER OF DAYS:		\$960.00

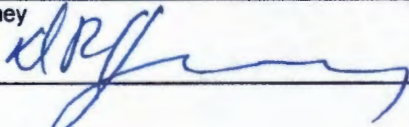
IV. OTHER MATTERS AS JUSTICE MAY REQUIRE

Explanation:		
Not applicable.		
OTHER MATTERS AS JUSTICE MAY REQUIRE TOTAL:		\$0.00

V. ECONOMIC BENEFIT

Explanation:		
The Department believes Goran removed 46,898 cubic yards of material for use on Montana Highway project JCT 419 South, MDOT Project: STPP-MT=HSIP 78-2(28)27 sometime between September 2014 and June 2016. The APR and fee are due by March 31 of each subsequent year. Therefore, Goran should have submitted the APR and fees no later than March 31, 2015 and March 31, 2016, respectively. Based on the 46,898 cubic yards of materials removed, Goran should have submitted fees in the amount of \$1,172 (46,898 x \$0.025/yard) for the mined materials in 2014 and 2015. Using the Enforcement Division Rule-of-Thumb Worksheet for Calculating Economic Benefit, the Department calculates that Goran enjoyed a delayed economic benefit of \$733 by not paying the fee for the 46,898 cubic yards of materials mined in 2014 and 2015.		
ECONOMIC BENEFIT REALIZED:		\$733.00

**Department of Environmental Quality - Enforcement Division
Settlement Penalty Calculation Summary**

Responsible Party Name:	Goran, LLC (Goran) at Goran Unpermitted Gravel Pit (Site).	
FID:	2500	Opencut No. 2790
Statute:	Opencut Mining Act (Act)	
Maximum Penalty Authority:		\$1,000.00
Date:	8/2/16	
Signature of Employee Calculating Penalty:	Daniel R. Kenney 	

Penalty #1 Penalty #2

I. Base Penalty (Maximum Penalty Authority x Matrix Factor)				
Maximum Penalty Authority:	\$1,000.00	\$1,000.00		
Percent Harm - Gravity and Extent:	0.70	0.00		
Percent Impact - Gravity:	0.00	0.40		
Base Penalty:	\$700.00	\$400.00		
II. Adjusted Base Penalty				
Base Penalty:	\$700.00	\$400.00		
Circumstances:	\$140.00	\$80.00		
Good Faith and Cooperation:	\$0.00	\$0.00		
Amount Voluntarily Expended:	\$0.00	\$0.00		
Adjusted Base Penalty:	\$840.00	\$480.00		
III. Days of Violation or				
Number of Occurrences	56	2		
Total Adjusted Penalty:	\$47,040.00	\$960.00		\$48,000.00
IV. Other Matters as Justice				
May Require	\$0.00	\$0.00		
V. Economic Benefit				
	\$327.00	\$733.00		
VI. History*				
Subtotal(s)	\$47,367.00	\$1,693.00		\$0.00
				\$49,060.00
Total calculated penalty:				\$49,060.00

*Goran does not have a prior history of violations of the Opencut Mining Act (Act) documented in either an administrative order, judicial order, or judgment within the last three years.

UNPERMITTED SITE ANNUAL PRODUCTION REPORT AND FEE CALCULATION

INSTRUCTIONS:

1. Print the operator name and address on the lines indicated below.
2. Indicate the current phone number and email address for the operator.
3. For each site mined, print or type the information requested.
4. Complete the fee calculation and certification sections at the end of the report.
5. Operators should retain a copy of the completed form for their records as it will not be available online.

Operator Name: _____

Phone: _____

Street Address: _____

Email: * _____

City, ST, Zip: _____

* I consent to receiving future Opencut rule-making notices via email. Yes ☐ No ☐

<u>Site Name</u>	<u>County</u>	Number of Cubic Yards Mined
<u>Fee Calculation</u>	Total Cubic Yards Mined:	
		x \$0.025
	Total Fee Due:	

BY SIGNING BELOW, I CERTIFY THE INFORMATION PROVIDED ON THIS REPORT AND THE FEE CALCULATION ARE COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE.

Operator Representative: _____

Title : _____

Operator Name: _____

Date : _____

UNPERMITTED SITE ANNUAL PRODUCTION REPORT AND FEE CALCULATION

INSTRUCTIONS:

1. Print the operator name and address on the lines indicated below.
2. Indicate the current phone number and email address for the operator.
3. For each site mined, print or type the information requested.
4. Complete the fee calculation and certification sections at the end of the report.
5. Operators should retain a copy of the completed form for their records as it will not be available online.

Operator Name: _____

Phone: _____

Street Address: _____

Email: * _____

City, ST, Zip: _____

* I consent to receiving future Opencut rule-making notices via email. Yes ☐ No ☐

<u>Site Name</u>	<u>County</u>	<u>Number of Cubic Yards Mined</u>
<u>Fee Calculation</u>	Total Cubic Yards Mined:	
		x \$0.025
	Total Fee Due:	

BY SIGNING BELOW, I CERTIFY THE INFORMATION PROVIDED ON THIS REPORT AND THE FEE CALCULATION ARE COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE.

Operator Representative: _____

Title : _____

Operator Name: _____

Date : _____

PHASE II RELEASE REQUEST

(ARM 17.24.203)

Operators must complete this form to request release of an Opencut Mining Permit. **Governmental Operators** are eligible for reclamation liability Phase II release of the entire permit boundary only and must use this form.

Phase II: In addition to completing all Phase I requirements for reclamation, vegetation has established that is capable of sustaining the postmining land use. Areas where Phase II reclamation has been completed would be eligible for full release.

Fill in all applicable boxes and blanks; write "none" if that is the correct response.

By completing this form in the field, Operators can assess site conditions relative to the release criteria the DEQ uses for most sites. If a question does not apply to the reclamation requirements described in the Plan of Operation (Plan), provide an explanation in the appropriate section of this form.

Operator: GORAN LLC [OPENCUT NO. 2790; FID 2500]

Site Name: GORAN UNPERMITTED GRAVEL PIT **County:** STILLWATER

Mailing Address: _____

City: _____ **State:** _____ **Zip:** _____

Office Phone: _____ **Cell Phone:** _____

Contact Person Name: _____ **Email:** _____

Landowner: _____ **Phone:** _____

Mailing Address: _____

City: _____ **State:** _____ **Zip:** _____

Before requesting a Phase II release, the **Operator** must inspect the site and confirm reclamation work was conducted in accordance with the Plan.

The Release Request Area was inspected on (mm/dd/yyyy): _____ by (name): _____

(Must be inspected within 12 months of submitting this form)

Permit #: _____ **Permitted Acreage:** _____

PHASE II RELEASE – ALL OPERATORS

☐ **PHASE II RELEASE** is requested for ☐ Entire Permitted Site or ☐ _____ acres.

Note: If "Entire Permitted Site" is checked, the Operator is requesting permit termination.

Permitted postmining land uses as described in Plan of Operation (check all that apply):

- ☐ Cropland and/or Hayland*
- ☐ Permitted Access Road(s) ☐ Internal Road(s): Length: _____ & Width: _____
- ☐ Rangeland and/or Pasture
- ☐ Year-round Pond: ☐ Fishery ☐ Livestock ☐ Recreation ☐ Wildlife ☐ Other:
- ☐ Seasonal Pond: Purpose- _____ ☐ Wetland ☐ Seasonal Wetland
- ☐ Landowner Equipment Storage Area ☐ Landowner Material Stockpile Area
- ☐ Industrial/Commercial ☐ Residential ☐ Vegetative Screens ☐ Other:

The following items have been completed to meet Phase II release requirements:

1. Reclaimed slopes were measured and were found equal to, or flatter than, the slopes specified in the Plan.
☐ Yes ☐ No - Explain: _____
2. Soil and Overburden (if applicable) were spread across the area to the depths specified in the permit.
☐ Yes ☐ No - Explain: _____
3. Area was seeded with seed mix specified in the permit.
☐ Yes (date seeded – mm/dd/yyyy): _____ ☐ No – Explain: _____
Site must have two years of vegetative growth from date seeded for rangeland/pasture
4. Release Request Area is free of trash, metal scrap, other wastes, and asphalt or concrete debris.

☐ Yes ☐ No - Explain: _____

5. An internal road remains at final reclamation. ☐ Yes ☐ No (if "No" skip to #6)

a. Is the internal road permitted to remain and is it displayed on the Reclamation Map?
☐ Yes ☐ No - Explain: _____

6. A mineral stockpile remains for the landowner. ☐ Yes ☐ No (if "No" skip to #7)

a. Is the mineral stockpile permitted to remain, accessible by a road, and have a shaped and seeded soil stockpile located within 100 feet? Stockpile area and road must be displayed on the Reclamation Map.
☐ Yes ☐ No - Explain: _____

7. Noxious and annual weeds in the Release Request Area are under control.

☐ Yes ☐ No - Explain: _____

8. All permit boundary markers are in place for **both** the remaining permit boundary and areas to be released.

☐ Yes ☐ No - Explain: _____

☐ Exemption: Entire permitted acreage requested for Phase II release

9. A Boundary Coordinate Table (BCT) and map are provided displaying the following:

a. Proposed Phase II release area ☐ Yes ☐ No - Explain: _____

b. Remaining Permit Boundary ☐ Yes ☐ No - Explain: _____

c. ☐ Exemption: Entire permitted acreage requested for Phase II release

10. The following required photographs of each release request area have been provided:

- a. At least four photographs taken from the north, south, east and west corners of each release request area.
- b. At least three photographs, taken at three different locations in each release area showing typical vegetation (approximately five feet wide and including an object to define scale).

☐ Yes ☐ No - This application cannot be approved until the required photos are provided.

11. Area requested for Phase II release has been successfully reclaimed to the postmining land use(s) checked above.

☐ Yes ☐ No - Explain: _____

If Yes, and the entire permitted area requested for release is cropland/hayland and the below is completed; the Department can release the site without a site inspection.

***Cropland and/or Hayland only (optional) - Landowner has certified the following:**

- Cropland and/or Hayland area has been reclaimed in accordance with ARM 17.24.219(1)(h)(ii)(L & M)
- The Phase II release area has been reclaimed to the requirements of the Opencut Mining Permit.
- A crop has been harvested from the entire area and the yield is comparable to those of crops grown on similar sites under similar growing conditions.
- The Landowner acknowledges that the crop yield is acceptable.
- The acreage identified in this form, when released, would no longer be permitted for any Opencut operations and if the entire permit is approved for Phase II release, the permit would be terminated and no Opencut operations could occur unless another Opencut permit is issued for the site.

Landowner Name: _____ Landowner Signature: _____

Address: _____ City: _____

State: _____ Zip: _____ Email (optional): _____

The DEQ will approve Phase II release on areas it finds it has been 100% reclaimed in accordance with the permit.

If approved, Phase II released acreage is no longer permitted for any Opencut operations. If the entire permit is approved for Phase II release, the permit is terminated and no Opencut operations can occur unless another permit is issued for the site.

Operator attests the information provided for this Release Request is complete and accurate to the best of their knowledge:

Name (print or type): _____

Title: _____

Signature: _____ Date: _____