



Board of Environmental Review

Memo

TO: Sarah Clerget, Hearing Examiner
Board of Environmental Review

FROM: Lindsay Ford, Board Secretary
P.O. Box 200901
Helena, MT 59620-0901

DATE: December 26, 2017

SUBJECT: Board of Environmental Review Case No. BER 2017-08 OC

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

IN THE MATTER OF: THE NOTICE OF
APPEAL AND REQUEST FOR HEARING BY
CMG CONSTRUCTION, INC. REGARDING
NOTICE OF VIOLATION AND
ADMINISTRATIVE COMPLIANCE AND
PENALTY ORDER, DOCKET NO. OC-17-12

Case No. BER 2017-08 OC

The BER has received the attached request for hearing.

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

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

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

Attachments

Jacqueline R. Papez
Jack G. Connors
DONEY CROWLEY P.C.
Diamond Block, Suite 200
44 West 6th Avenue
P.O. Box 1185
Helena, MT 59624-1185
Telephone: (406) 443-2211
Facsimile: (406) 449-8443
Email: jpapez@doneylaw.com
jconnors@doneylaw.com

Filed with the
MONTANA BOARD OF
ENVIRONMENTAL REVIEW
This 26th day of December 2017
at 3:43 o'clock P.m.
By Andrew Scherer

Attorneys for Appellant CMG Construction, Inc.

**BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA**

IN THE MATTER OF:

THE NOTICE OF APPEAL AND REQUEST
FOR HEARING BY CMG CONSTRUCTION,
INC. REGARDING NOTICE OF VIOLATION
AND ADMINISTRATIVE COMPLIANCE
AND PENALTY ORDER, DOCKET
NO. OC-17-12

BER 2017-_____

**NOTICE OF APPEAL AND
REQUEST FOR HEARING**

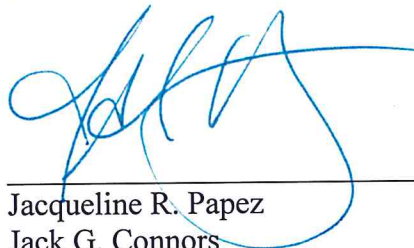
COMES NOW Appellant CMG Construction, Inc. ("CMG"), by and through its undersigned counsel, and appeals the Department of Environmental Quality, Air, Energy and Mining Division, Opencut Mining Program's ("Opencut") Notice of Violation and Administration Compliance and Penalty Order ("Order"), Docket No. OC-17-12, pursuant to § 82-4-441, Mont. Code Ann., as follows:

CMG appeals and requests that, following a period for discovery, the Board of Environmental Review set a hearing on the propriety of Opencut's Order to CMG. The basis for this appeal is that the alleged violations contained in Opencut's Order are factually and legally

baseless and an abuse of Opencut's discretion, if any; the proposed fines are excessive; and the actions Opencut would require in response to the alleged violations are without legal or factual basis, and a misapplication of the law applicable to Opencut and Opencut's enforcement actions and powers.

DATED this 26th day of December, 2017.

DONEY CROWLEY P.C.

A handwritten signature in blue ink, appearing to be 'Jack G. Connors', is written over a horizontal line.

Jacqueline R. Papez

Jack G. Connors

Attorneys for Appellant CMG Construction, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Notice of Appeal and Request for Hearing* was served via U.S. mail, first-class postage prepaid, on this 26th day of December, 2017, upon the following:

Mark L. Lucas
Montana Department of Environmental Quality
Air, Energy and Mining Division
1520 East Sixth Avenue
Helena, MT 59620
Attorney for Montana Department of Environmental Quality



Ruby Ann Love
Legal Assistant



November 21, 2017

CMG Construction, Inc.
c/o Kevin D. McGovern, Registered Agent
1713 Shady Grove Way
Billings, MT 59106

CERTIFIED MAIL #7017 0190 0001 0532 6167

Re: Notice of Violation and Administrative Compliance and Penalty Order, Docket No. OC-17-12, for violations of the Opencut Mining Act. [Opencut No. 2220; FID 2547]

By this letter, the Montana Department of Environmental Quality withdraws the proposed August 2017 Administrative Order on Consent and issues the enclosed Notice of Violation and Administrative Compliance and Penalty Order (Order) for the above-referenced enforcement action. The Order alleges that CMG Construction, Inc. (CMG) violated the Montana Opencut Mining Act at Dwight Thiessen Pit located in Richland County, Montana. Please refer to Sections II and III of the Order and the Penalty Calculation Worksheet for a description of the violations, required corrective actions and an explanation of the penalty.

Pursuant to Section 82-4-441, Montana Code Annotated, CMG is entitled to a hearing before the Board of Environmental Review if a written request, stating the reason for the 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 CMG does not request a hearing and submit testimony at the hearing, CMG 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 "D. Kenney", is written over a horizontal line.

Daniel R. Kenney
Enforcement Specialist
Enforcement Division
(406) 444-1453; fax (406) 444-1923

Enclosures

cc via email: Mark Lucas, DEQ Legal
Ed Coleman, DEQ COMB
DEQ Opencut Mining Section
Richland County Environmental Health

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY

OF THE STATE OF MONTANA

IN THE MATTER OF:
VIOLATIONS OF THE OPENCUT MINING
ACT BY CMG CONSTRUCTION, INC. AT
DWIGHT THIESSEN PIT, RICHLAND
COUNTY, MONTANA
(OPENCUT NO. 2220; FID 2547)

NOTICE OF VIOLATION
AND
ADMINISTRATIVE COMPLIANCE AND
PENALTY ORDER

Docket No. OC-17-12

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 CMG Construction, Inc. (CMG) of the following Findings of Fact and Conclusions of Law with respect to violations of the Opencut Mining Act (the Act), Title 82, chapter 4, part 4, MCA, and the Administrative Rules of Montana (ARM) adopted thereunder, Title 17, chapter 24, subchapter 2.

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 CMG 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. CMG is a "person" as defined in Section 82-4-403(10), MCA.
5. On May 31, 2013, the Department issued Opencut Mining Permit No. 2220, including a Plan of Operation (Plan) to CMG to operate an opencut mine on 17.1 acres, of which

1 13.8 acres were bonded, at the Dwight Thiessen Pit (Site) located in Township 21 North, Range
2 58 East, Section 18, in Richland County, Montana. CMG, therefore, is an “operator” within the
3 meaning of Section 82-4-403(8), MCA, and subject to the requirements of the Act and the rules
4 adopted thereunder.

5 6. Opencut operations include: site preparation; mining; processing materials;
6 transporting; depositing, staging, storing and stockpiling of overburden and materials; reclamation;
7 and parking or staging of vehicles, equipment, or supplies. Section 82-4-403(7), MCA.

8 7. Pursuant to Section 82-4-432(11), MCA, an operator may amend a permit by
9 submitting an amendment application to the Department. If the amendment application is
10 acceptable, the Department shall issue an amendment to the original permit.

11 8. The Department shall accept the Plan if the Department finds that the Plan
12 complies with the requirements of the Act and the affected land will be reclaimed to a productive
13 use after the opencut operation is completed. Once the Plan is accepted by the Department it
14 becomes part of the permit. Section 82-4-434(2), MCA.

15 9. Pursuant to ARM 17.24.222(3), revised March 2016, the Plan must include a
16 statement signed and dated by the operator certifying that... (c) the operator will follow and adhere to
17 the Plan and all other requirements of the operator described in the application and the permit.

18 10. ARM 17.24.225(1), revised March 2016, states in part that “An operator shall
19 comply with the provisions of its permit, this subchapter, and the Act.”

20 11. On August 9, 2016, the Department conducted a compliance inspection (August
21 2016 Inspection) at the Site and observed that opencut operations in violation of the Act, the
22 Permit and the Plan occurred at the Site.

23 12. On September 22, 2016, the Department sent CMG a Violation Letter (September
24 2016 Violation Letter) for conducting opencut operations in violation of the Act. The September

1 2016 Violation Letter identified the violations observed during the August 2016 Inspection, as
2 described in Paragraphs 19, 24, 29 and 34 the actions necessary to correct the violations. The
3 Department informed CMG that the violations could be corrected by amending the Permit and
4 provided CMG with 45 days to submit a complete application to the Department to amend the
5 Permit. The August 2016 Violation Letter further informed CMG that the matter would be referred
6 to the Department's Enforcement Division, if CMG failed to comply with the requirements within
7 the timelines in the letter. A copy of the August 2016 Inspection report was provided to CMG.

8 13. On January 6, 2017, the Department sent CMG a second Violation Letter (January
9 2017 Violation Letter). The January 2017 Violation Letter clarified violations observed during
10 the August 2016 Inspection and reiterated that the violations could be resolved by amending the
11 Permit. The January 2017 Violation Letter further informed CMG that it failed to submit a
12 complete amendment application within the 45 day time line established in the September 2016
13 violation letter and provided CMG an extension until February 6, 2017 to submit a complete
14 amendment application to the Department. The January 2017 Violation Letter stated "If a
15 complete amendment application is not received by that date, you can expect the DEQ to forward
16 this matter to its Enforcement Division, which has the authority to issue administrative orders
17 requiring corrective action and/or assessing administrative penalties, and to file judicial actions
18 for injunctions or civil penalties."

19 14. As of the effective date of this Order, CMG has not corrected the violations by
20 submitting a complete application to amend the Permit to the Department as required by the
21 Department.

22 ***Violation 1: Failure to maintain 10-foot buffer of stripped soil from crest of the highwall***

23 15. In Section D4.1.f. of the Plan, CMG committed to maintain a minimum 10-foot
24 buffer stripped of soil along the edge of the highwall to ensure that soil would not be lost to mining.

1 16. During the August 2016 Inspection, the Department observed areas where mining
2 occurred into unstripped soil and a portion of the soil had not been stripped, and where soil was
3 being lost due to mining activity along the highwall. The Department further observed that
4 mining operations had advanced the highwall up to the Site boundary and as a result, CMG
5 would now be unable to reclaim the Site in accordance with the Plan.

6 17. The September 2016 Violation Letter informed CMG that the failure to maintain a
7 10-foot buffer stripped of soil from the crest of the highwall and mining into soil was a violation
8 of the Act.

9 18. By failing to maintain a 10-foot buffer of strip soils from the edge of the highwall
10 and advancing the highwall to the Site boundary, CMG failed to comply with the Plan.

11 19. CMG violated the Permit and therefore ARM 17.24.225(1) by failing to comply
12 with the requirements in the Plan.

13 ***Violation 2: Failure to protect soil stockpiles***

14 20. In Section D4.1.c. of the Plan, CMG committed to protecting stockpiled soil and
15 overburden from erosion, contamination, compaction, and unnecessary disturbance.

16 21. During the August 2016 Inspection, the Department observed that a channel was
17 carved along the south side of the stockpiled soil on the inside of the pit. The Department also
18 observed what appeared to be significant soil loss from stockpiled soils located 20-52 feet from
19 Crane Creek due to high water flow events.

20 22. The September 2016 Violation Letter informed CMG that the failure to protect
21 soil stockpiles from erosion, contamination, compaction, and unnecessary disturbance was a
22 violation of the Act.

23 23. By failing to protect soil stockpiles from erosion, contamination, compaction, and
24 unnecessary disturbance, CMG failed to comply with the Plan.

24. CMG violated the Permit and therefore ARM 17.24.225(1) by failing to comply with the requirements in the Plan.

Violation 3: Unpermitted storage of concrete

25. In Section D5.2. of the Plan, CMG stated “No” when asked if hardened concrete would be stored at the Site.

26. During the August 2016 Inspection, the Department observed a concrete stockpile at the Site.

27. The September 2016 Violation Letter informed CMG that the non-permitted storage of concrete was a violation of the Act.

28. By storing concrete at the Site, CMG failed to comply with the Plan.

29. CMG violated the Permit and therefore ARM 17.24.225(1) by failing to comply with the requirements in the Plan.

Violation 4: Exceedance of highwall length specified in the Plan

30. In Section D3.6. of the Plan, CMG informed the Department that the maximum length of the highwall on site at any given time would be 300 linear feet.

31. During the August 2016 Inspection, the Department measured approximately 520 linear feet of highwall present at the Site.

32. The September 2016 Violation Letter informed CMG that exceeding the permitted 300 linear feet of highwall was a violation of the Act.

33. By exceeding the permitted 300 linear feet of highwall by 220 linear feet, CMG failed to comply with the Plan.

34. CMG violated the Permit and therefore ARM 17.24.225(1) by failing to comply with the requirements in the Plan.

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1 ***Violation 5: Failure to prevent, minimize or mitigate adverse impacts to surface water***

2 35. In Section D1.1. of the Plan, CMG agreed to: (a) Protect on-site and off-site surface
3 water and ground water from adverse changes in quality and quantity that could be caused by
4 opencut operations, and (b) Prevent, minimize, or mitigate adverse impacts to on-site and off-site
5 surface and ground water systems and structures that could be caused by opencut operations.

6 36. In Section D1.4. of the Plan, CMG informed the Department that “We will build a
7 berm 50 feet from the southside of crane creek. No Mining will be done on the north side of
8 crane creek at this time.”

9 37. In Section D.3.4. of the Plan, CMG informed the Department that “We will mine
10 the pit from east to west staying 50 feet away from the southside of the creek. No mining will be
11 done on the north side of that berm at this time”, that “topsoil and the overburden will be on the
12 southside of the creek 50 feet from the creek bed (crane creek).”

13 38. During the August 2016 Inspection, the Department observed: a) stockpiled soil
14 located within 20-30 feet from Crane Creek; b) opencut disturbance occurred between 20-52 feet
15 of the main channel along the northern edge of the disturbance (south of Crane Creek); c) Crane
16 Creek has flowed through the site and filled the mined depression during high streamflow
17 event(s); and that approximately only 620 linear feet of bermed stockpiled material remained
18 along the 1600-foot disturbance boundary along Crane Creek.

19 39. The September 2016 Violation Letter informed CMG that the failure to maintain a
20 50 foot buffer between opencut operations and Crane Creek was a violation of the Act.

21 40. By failing to maintain permitted 50 foot buffer between opencut operations and
22 Crane Creek, CMG failed to comply with the Plan.

23 41. CMG violated the Permit and therefore ARM 17.24.225(1), revised March 2016,
24 by failing to comply with the requirements in the Plan.

1 ***Administrative penalty***

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

5 43. The Department calculated an administrative penalty in the amount of \$12,600 for
6 violations cited herein. Section 82-4-1001, MCA, and ARM 17.4.301 through 17.4.308. The
7 Penalty Calculation Worksheet is enclosed and incorporated by reference herein.

8 44. In the event that CMG exercises its right to administrative appeal as explained in
9 Part IV. Notice of Appeal Rights, no later than the date given for exchange of exhibits contained
10 within the approved Scheduling Order, the Department shall notify CMG whether it will seek to
11 prove, based on information obtained from CMG or through discovery or subsequent inspections
12 of the Site, an increase or decrease in the number of days of any violation described in the
13 Penalty Calculation Worksheet.

14 **III. ADMINISTRATIVE ORDER**

15 This Order is issued to CMG pursuant to the authority vested in the State of Montana,
16 acting by and through the Department under the Act and administrative rules adopted thereunder,
17 ARM Title 17, chapter 24, subchapter 2. Based on the foregoing Findings of Fact and
18 Conclusions of Law and the authority cited above, the Department hereby ORDERS CMG to:

19 45. Within 15 days from the effective date of this Order, CMG shall demonstrate to
20 the Department in writing that it has employed or otherwise secured the services of a qualified
21 consultant or licensed professional engineer for the purposes of applying for a permit amendment
22 and/or preparation of an operations plan for reclamation that meets the requirements of the
23 Opencut Mining Act and applicable rules. This information shall be sent to the address listed in
24 Paragraph 49 of this Order.

1 46. No later than 60 days from the effective date of this Order, CMG shall submit a
2 complete application to amend the Permit's Reclamation Plan. The application to amend the
3 Reclamation Plan must address the following Site Specific information:

4 a. A description of the methods that have been used to conduct reclamation work
5 performed to date and the long term stability of those reclaimed locations;

6 b. A description of the method(s) used to reclaim the highwall along the south
7 side of the Site (e.g. backfilled, sloped beyond permit boundary, etc.). If the highwalls were
8 backfilled, the engineering design report must describe the materials used, the source of backfill
9 materials, compaction methods, testing, etc.;

10 c. The Reclamation Plan shall explain where and how additional reclamation
11 work needed will be conducted, including but not limited to the replacement of 10 inches of soil
12 across the mine floor, where this soil will come from, etc. The Reclamation Plan shall also
13 demonstrate that such work will remain stable once the site is returned to the approved post
14 mining land use;

15 d. Provide an engineering design report to support the Reclamation Only
16 amendment application. The report will need to provide hydrologic and engineering data,
17 calculations, and designs as necessary to substantiate the following:

18 i. Whether the stream would stay in its bank during high-flow events, or leave
19 its existing channel and re-enter or otherwise disrupt the reclaimed portions
20 of the Site. If so, describe the flow path of the channel into, across, and out
21 of the reclaimed portions of the Site;

22 ii. Whether any segments of the existing streambank, or the reclaimed site,
23 would need to be armored or otherwise fortified to handle occasional high-
24 flow events or standing water;

1 iii. Whether a seasonal pond or wetland will exist at the site. If so, the
2 additional post-mining land uses must be identified and the landowner must
3 approve the changes by signing a new Landowner Consultation form; and
4 iv. If a seasonal pond or wetland will exist at the site, the engineering report
5 will need to document that the reclaimed slope would remain stable even
6 when subjected to saturated conditions, water erosion, and wave action.

7 47. No later than 180 days from the effective date of this Order, CMG shall obtain an
8 amendment to the Permit's Reclamation Plan from the Department.

9 48. CMG is assessed an administrative penalty in the amount of \$12,600 for the
10 violations cited in this Order.

11 49. No later than 60 days after service of this Order, CMG shall pay to the
12 Department the administrative penalty in the amount of \$12,600 to resolve the violations cited
13 herein. The penalty may be paid by credit/debit card or by check or money order. To pay by
14 credit/debit card, please contact the Enforcement Division Fiscal Manager at 406-444-0379. To
15 pay by check or money order, make payment payable to the "Montana Department of
16 Environmental Quality" and send to:

17 Chad Anderson, Program Manager
18 Enforcement Division
19 Department of Environmental Quality
 P.O. Box 200901
 Helena, MT 59620-0901

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

23 51. None of the requirements in this Order are intended to relieve CMG from complying
24 with all applicable state, federal, and local statutes, rules, ordinances, orders, and permit conditions.

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

IV. NOTICE OF APPEAL RIGHTS

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

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

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

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

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

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1 57. This Order becomes effective on the date of service. Service by mail is complete
2 three business days after mailing.

3 IT IS SO ORDERED:

4 DATED this 21st day of November, 2017.

5 STATE OF MONTANA
6 DEPARTMENT OF ENVIRONMENTAL QUALITY

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8 _____
9 CHAD ANDERSON, Program Manager
10 Enforcement Unit
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Department of Environmental Quality - Enforcement Division
Penalty Calculation Worksheet

Responsible Party Name:	CMG Construction, Inc.(CMG) at Dwight Thiessen Pit (Site)	
FID:	2547	Opencut No. 2220
Statute:	Opencut Mining Act	
Maximum Penalty Authority:		\$1,000.00
Date:	11/15/2017	
Name of Employee Calculating Penalty:	Daniel R. Kenney	

Penalty Calculation #1	
Description of Violation:	
CMG violated Section 82-4-434(2), MCA, and ARM 17.24.225 by failing to comply with the Permit and Plan of Operation (Plan). During its August 9, 2016 inspection, the Department observed the following five (5) violations of the Plan: 1) Failure to maintain a 10-foot buffer stripped of soil from the crest of the highwall; 2) Failure to protect soil stockpiles; 3) Unpermitted storage of concrete; 4) Exceedance of highwall length specified in the Plan; and 5) Failure to prevent, minimize or mitigate adverse impacts to surface water.	

I. BASE PENALTY

Nature

Explanation:	
The Department requires operators to submit a Plan, which details how they intend to conduct opencut mining operations and complete reclamation in accordance with the Opencut Mining Act and be protective of public health and the environment. The above-listed violations observed by the Department on March 27, 2016, have the potential to or did harm to the environment. Therefore, the nature of the violations is Harm.	
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)(b), the failure to construct or operate in accordance with a permit or approval has a Moderate gravity.	
Extent Explanation:	
Pursuant to ARM 17.4.303(4), the Department has determined that five or more violations of the Plan is a major deviation from the requirements. Therefore extent is Major	

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: 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:		
CMG had control over the circumstances surrounding the violation and should have foreseen that not following the Plan would result in a violation. As a permitted entity, CMG should be knowledgeable about the requirements of the Act, its Permit and the Plan. The Department sent Violation Lettesr to CMG informing them of the actions required to correct the violations. Therefore, an upward adjustment of 20% to the Base penalty 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:		
Despite being granted an extension, CMG has not corrected the violations as of the date of this penalty calculation. 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 CMG 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	\$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 has determined that CMG violated the Permit and the Plan in five (5) distinct ways based on the Department's observations during the August 9, 2016 inspection. The Department is calculating the penalty based on three (3) days of violation for each of the five (5) distinct violations of the Plan, the day before, the day of, and the day after the Department's August 9, 2016 inspection. Therefore, the Department is calculating a penalty based on fifteen (15) days of violation.		
	Number of Days:	15
ADJUSTED BASE PENALTY x NUMBER OF DAYS:		\$12,600.00

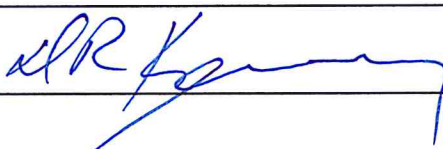
IV. OTHER MATTERS AS JUSTICE MAY REQUIRE

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

V. ECONOMIC BENEFIT

Explanation:		
As there was an adequate reclamation bond in place and the violations can be corrected by using CMG's equipment, the Department has determined that CMG did not gain any economic benefit for the delayed costs of failing to follow the Plan on the five (5) occasions.		
ECONOMIC BENEFIT REALIZED:		\$0.00

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

Responsible Party Name:	CMG Construction, Inc.(CMG) at Dwight Thiessen Pit (Site)	
FID:	2532	Opencut No. 2220
Statute:	Opencut Mining Act	
Maximum Penalty Authority:		\$1,000.00
Date:	11/21/17	
Signature of Employee Calculating Penalty:	Daniel R. Kenney 	

Penalty #1

I. Base Penalty (Maximum Penalty Authority x Matrix Factor)

Maximum Penalty Authority: \$1,000.00
Percent Harm - Gravity and Extent: 0.70
Percent Impact - Gravity: 0.00
Base Penalty: \$700.00

II. Adjusted Base Penalty

Base Penalty: \$700.00
Circumstances: \$140.00
Good Faith and Cooperation: \$0.00
Amount Voluntarily Expended: \$0.00
Adjusted Base Penalty: \$840.00

III. Days of Violation or

Number of Occurrences 15
Total Adjusted Penalty: \$12,600.00

\$12,600.00

IV. Other Matters as Justice

May Require \$0.00

V. Economic Benefit \$0.00

VI. History*

Subtotal(s) \$12,600.00

\$0.00

\$12,600.00

Total calculated penalty: \$12,600.00

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