



A Tradition of Stewardship
A Commitment to Service

February 24, 2011

Don Wesner
1525 Skellenger Lane
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Jerry Marino
19419 Marina Lane
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Conservation, Development and Planning

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Hillary Gitelman
Director

CERTIFIED MAIL

NOTICE OF NONCOMPLIANCE

RE: Pope Creek Quarry: CA Mine ID #91-28-0007
Surface Mining Permit #97420-SMP (APN 018-080-023)

Dear Messrs Wesner and Marino:

We would like to thank you for accommodating the County during our December 3, 2010, site inspection for the referenced mine site. Enclosed you will find the County's 2009-2010 Surface Mining and Reclamation Act (SMARA) Annual Inspection Report for the site.

This letter serves as a **Notice of Noncompliance** regarding the issues identified below and detailed in the enclosed annual inspection report. Dates to achieve compliance have been specified for each item; failure to bring these items into compliance, or otherwise adequately address them within the specified time frames could lead to issuance of a notice of violation and/or further enforcement actions. This Notice of Noncompliance may be appealed pursuant to Napa County Code (NCC) Section 16.12.610(D).

- **Financial Assurance Cost Estimate (FACE):** The County was not able to conclude the FACE update provided on December 17, 2010, was adequate pursuant to Public Resources Code (PRC) Sections 2773.1(a) and the California Code of Regulation (CCR) Title 14 Section 3804(a): see Section VI of the attached inspection report for details. Therefore, a revised FACE update addressing the identified deficiencies will need to be submitted for review within 30 days of receipt of this notice (i.e. by **March 28, 2011**). Failure to submit an annually updated FACE is a violation of PRC Section 2773.1(a)(3), CCR Section 3804(c), Section 16.12.415 of the Napa County Code (NCC), and permit Condition of Approval No. 74.
- **Equipment Removal:** Pursuant to Condition of Approval No. 7 and Mitigation Measure No. 12 (specific to the Hard Rock Quarry), all trash, spoils piles, and abandoned/unused equipment, buildings and installations in the Rock Quarry and Batch/Wash Plant areas are required to be removed. Furthermore, Condition of Approval No. 56 and Mitigation Measure No. 12 require these areas be maintained in a clean neat state at all times with solid waste and other debris being removed at least once a month. Therefore, all such equipment, debris, installations, and spoils plies will need to be removed from the site within 3 months (i.e. by **May 31, 2011**): failure to remove said materials is a violation of the conditions of approval, mitigation measures associated with this operation, and the reclamation plan approved pursuant to NCC Section 16.12.300 and PRC Section 2770.

- **Reclamation:** Batch/Wash Plant area operations have not been witnessed by the County since 2007, and it appears this portion of the operation has been inactive for many years. Pursuant to Condition of Approval No. 66, once the Batch/Wash Plant operations have permanently ceased, all equipment (including the Batch Plant), vehicles, buildings, roads and access ways, pavement, debris, and spoils piles shall be removed and reclamation shall be commenced. Therefore, you are required to immediately commence reclamation of the Batch/Wash area in accordance with the approved reclamation plan and conditions of approval. Reclamation activities will need to include the removal of all equipment (as described above and in the inspection report), re-grading and re-contouring of the area, and re-vegetation with invasive species control (see the annual report for details regarding invasive species control). Failure to immediately initiate reclamation of the Batch/Wash Plant area (which includes equipment and debris removal described above) within 3 months (i.e. by **May 31, 2011**) will constitute a violation of the conditions of approval and mitigation measures associated with this operation and the reclamation plan approved pursuant to NCC Section 16.12.300 and PRC Section 2770.

It is the County's desire that the operation and site be maintained in compliance with the permit, County regulations, and SMARA. As such, it is imperative that the issues identified above and in the Annual Inspection Report be addressed immediately. Please be reminded that failure to address these issues within the identified timeframe and/or failure to comply with all conditions of permit #97420-SMP may result in the issuance of violation notices and/or further enforcement actions.

Lastly, as identified in our January 29, 2009 and October 22, 2010 letters the inspection fee of \$1,766.00 for the 2008/2009 inspection is still outstanding and the \$2,117.39 fee for the 2009/2010 inspection is due. Please submit both of these amounts within 30 days of receipt of this notice (i.e. **March 28, 2011**) to cover the cost of your annual inspections. Failure to provide payment for annual inspections is a violation of Condition of Approval No. 79 and NCC Section 16.12.500(C).

Should you wish to discuss the contents of this notice, the conditions of approval or mitigation measures, local and state regulations pertaining to surface mining, or arrange a meeting please contact Donald Barrella at 707-299-1338 or donald.barrella@countyofnapa.org

Regards,



Hillary Gitelman
Director

Attachments:

Surface Mining Inspection Report 2009/2010, with supplement
Invoice/Statement #58819 and #81561

Cc:

Diane Dillon, Supervisor District 3
Laura Anderson, Deputy County Counsel
Donald Barrella, Planner III
Dennis O'Bryant, Office of Mine Reclamation, 801 K Street, MS 09-06, Sacramento, CA 95814-3529
Don Wesner Incorporated, P.O. Box 317 Rutherford CA 94573
Joe Nichelini, P.O. Box 5156, Napa, CA 94581
Joe Nichelini, 2300 Lower Chiles Valley Road, St. Helena, CA 94574
Mike Nichelini, 5410 Highway 128, Napa, CA 94558
Mike Nichelini, 8641 Paradise Valley Blvd. Lucerne, CA 95458

DEPARTMENT OF CONSERVATION

OFFICE OF MINE RECLAMATION

MRRC-1 Page 1 of 3 (Rev. 09/05)

SURFACE MINING INSPECTION REPORT

Instructions for completing this form are on the reverse side. Attach notice(s) of violation(s) and order(s) to comply for all observed non-compliance.

I. Mine Name as reported by Operator on Mining Operation Annual Report Pope Creek Quarry	Inspection Date: 3/30 and 12/3, 2010	CA MINE ID#: 91 - 28-0007
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II. SMARA Lead Agency Name (City or County <u>only</u>) County of Napa		
Inspector Donald Barrella	Telephone (707) 299-1338	
Title Planner III	Organization Napa County Conservation Development & Planning Dept.	
Mailing Address 1195 Third Street #210		
City Napa	State CA	ZIP Code 94559
E-mail Address (Optional) donald.barrella@countyofnapa.org		

III. Mine Operator Don Wesner Incorporated		
Contact Person Don Wesner	Telephone (707) 963-2008 cell (707) 320-7105	
Mailing Address 1525 Skellinger Lane (P.O. Box 452, Rutherford CA 94573)		
City Napa	State CA	ZIP Code 94558
E-mail Address (Optional) kujala2008@aol.com		

IV. Does the operation have:	P	NR	No	Yes
A permit to mine?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Permit # 97420-SMP / Partial Revision-Extension Pending
An approved Reclamation Plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	RP # 97420-SMP Reclamation Plan
Has the operator filed a Mining Operation Annual Report (form MRRC-2)? Check one: <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Unknown				
Is this operation on Federal Land? Check one: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
If "Yes", provide one or both of the Federal Mine Land Identification Numbers below:				
California Mining Claim Number (CAMC#):				
U.S. Forest Service Identification Number (USFS ID#):				

DISTRIBUTION: Original to Operator. Copies to: State (by Lead Agency), Lead Agency, State (by Operator), and BLM or USFS (if required).

SURFACE MINING INSPECTION REPORT

V. Does the Operator currently have a Lead Agency approved Financial Assurance? Check one: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "Yes", complete section below. If "No", refer to instructions on the reverse of this page and complete Section VI.		Inspection Date: 3/30 and 12/3, 2010	CA MINE ID#: 91 - 28-0007
Type of Financial Assurance Mechanism(s)	Financial Assurance Mechanism Number(s)	Current Amount on File	Date of Expiration
<input checked="" type="checkbox"/> Surety Bond	111827	\$ 63,039.00	none
<input type="checkbox"/> Certificate of Deposit		\$	
<input type="checkbox"/> Letter of Credit		\$	
<input type="checkbox"/> Trust Fund		\$	
<input type="checkbox"/> Pledge of Revenue		\$	
<input type="checkbox"/> Budget Set Aside		\$	
<input type="checkbox"/>		\$	
The Financial Assurance Amount must be adjusted annually. Attach a copy of the revised Financial Assurance Amount calculation with this report.		Date of Financial Assurance Amount Calculation: August 2007	
Does the current mechanism(s) on file cover the new annual calculation? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		If "No", date operator was notified that a new mechanism is required: See Section VI	

VI. Financial Assurance comments.

The current assurance mechanism covers the last approved cost estimate (\$63,039: August 2007). An updated cost estimate has not been approved (see below); therefore, a new/updated mechanism has not been requested. Once an updated cost estimate has been approved a new/updated mechanism will be requested.

In October 2008 a cost estimated was provided by the operator that the County could not conclude was adequate. In January of 2009 and October of 2010 the operator was notified that an updated cost estimate was still necessary. On November 19, 2010, a Notice of Violation was issued and on December 17, 2010, an updated cost estimate was provided by the operator. Review of the 12/17/10 cost estimate has identified several items that need to be addressed and/or included (see attached memo for details), therefore, the FACE will need to be revised and resubmitted for review and comment. If the revised FACE is adequate, the County will preliminary approve and forward to OMR for review and comment prior to formally acting on the FACE.

A revised cost estimate that includes all the areas subject to the reclamation plan and that address the issues and shortcomings identified in the attached supplemental document and Notice of Non-Compliance (February 24, 2011) will need to be provided within 30 days (i.e. by March 28, 2011) for the county's review. Failure to submit a revised FACE could result in the issuance of a notice of violation and/or further enforcement actions.

SURFACE MINING INSPECTION REPORT

VII. Is the operation in compliance with provisions of the approved Reclamation Plan with respect to:	OK	VN	NI	NA	CA MINE ID # 91 - 28-0007
Wildlife Habitat	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Inspection Date: March 30 and December 3, 2010
Revegetation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Agricultural Land	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Weather Code(s): CL/RN
Stream Protection	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Duration of Inspection: 5 hours
Tailings and Mine Waste Management	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Approximate Disturbed Acreage: 11
Closure of Surface Openings	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Building, Structure, and Equipment Removal	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Status of Operation Code(s): AD
Topsoil Salvage, Maintenance, and Redistribution	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Backfilling, Regrading, Slope Stability, and Recontouring	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Status of Reclamation Code(s): RN
Drainage, Diversion Structures, Waterways, and Erosion	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Other (list or explain below)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

<p>VIII. Comments/Description of Violation(s) and Corrective Measure(s) Required (NOTE: please indicate if you have attached notice(s) of violation(s) and correction order(s), in lieu of description on this form):</p> <p>See Notice of Noncompliance dated February 24, 2011, and supplemental document (attached), which includes details of:</p> <ul style="list-style-type: none"> - Reclamation activities that have commenced - Reclamation activities and conditions that need to be commenced and/or implemented - Discharge and runoff issues - Boundary Issue - Equipment Removal - Fuel Tank Containment <p>The attached supplement also includes a listing and schedule of activities that the operator/owner will need to initiate and/or continue as part of ongoing reclamation of the operation (i.e. the Batch/Wash Plant area and the Hard Rock Quarry area) in accordance with #97420-SMP. Failure to meet any of the time frames specified in the attached supplemental document and Notice of Non-Compliance (February 24, 2011) may result in the issuance of an notice of violation and/or additional enforcement actions.</p>
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IX. Number of Violations: <div style="text-align: center;">0</div>	Inspector's Signature: 	Date Signed: February 24, 2011
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DISTRIBUTION: Original to Operator. Copies to: State (by Lead Agency), Lead Agency, State (by Operator), and BLM or USFS (if required).



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Hillary Gitelman
Director

To:	File #P10-00385	From:	Donald Barrella Conservation Division
Date:	February 24, 2011	Re:	Pope Creek Quarry, Mine ID#91-28-0007 APN 018-080-023 Supplement to the 2009-2010 Annual SMARA Inspection Report

Section VI – Inspection Report - Financial Assurance Estimate and Mechanism:

The December 17, 2010, cost estimate work sheets will need to be revised and re-submitted within 30 days (i.e. by **March 28, 2011**) for review. Pursuant to Public Resources Code (PRC) Section 2773.1(a)(3), California Code of Regulations (CCR) Section 3804(c) financial assurance calculations shall be adjusted annually. The revised FACE update will need to include the following information and address the following shortcomings (also see the attached State Mining and Geology Board Financial Assurance Guidelines:

- Task descriptions and methods will need to be clearly outlined and expanded to ensure all reclamation activities are covered such as: re-contouring; de-compaction of compacted areas; removal of concrete pads; removal of equipment; structures and debris; installation of erosion control measures; seeding and mulching, extent of monitoring activities;. Also see comments below for details.
- Overall, reclamation costs will need to include the entire operation (i.e. reclamation of the Quarry and Batch Wash/Plant areas); the reclamation plan and original cost estimate have these areas listed as approximately 6-acres and 5.5-acres respectively:
 - Section I (Primary Reclamation Activities) indicates 6-acres of earthwork.
 - Section II (Re-vegetation) indicates 6-acres of re-vegetation area.
- The Salvage estimate (Alco Iron & Metal) needs to include following: Statement of Qualifications; Mine ID#; description of work; cost of work; net salvage value of equipment/materials; the effective time period of the estimate; and, that the estimate would be extended to the County.
- The equipment and labor rates provided by third parties (James Creek Vineyards and Harold Smith & Sons Inc) will need to include: the mine location and ID#; the effective period of the rates; and, that the rates would be extended to the County.
- Equipment rental rates and labor rates should be based on known acceptable sources (see the attached *Estimating Resources for Financial Assurance Cost Estimate preparation* Memo from OMR). Furthermore, it is recommended these sources be consulted as some of the rates from these sources appear to be lower than those provided by a third party. Use of rates not included in quotes will need to identify a source. Please note that third party providers are subject to prevailing wage rules, which will need to be taken into consideration when utilizing them for a cost estimate.
- The make and model of equipment utilized in the cost estimate will need to be clearly identified to ensure appropriate rates are utilized.
- Section I - Primary Reclamation Activities:

- Please clarify and/or confirm the rates utilized; the 621 Scraper rate is indicated to be \$106 per hour, the quote indicates \$180 per hour, the CalTrans rate for a Caterpillar 621 scraper is \$139.64 per hour; the D7 rate is indicated to be \$86 per hour, the quote provided does not include this piece of equipment, the CalTrans rate for a Caterpillar D7 tractor ranges from \$101.13 to \$117.55 per hour depending on model.
- The number of hours associated with the D7 is not indicated.
- Materials costs will need to include necessary erosion control materials and measures (straw mulch, straw wattles, silt fencing, etc.) and labor for installation.
- Section II – Re-vegetation:
 - Please clarify and/or confirm the rates utilized; the Backhoe rate is indicated to be \$26 per hour, the quote provided indicates \$100 per hour, the CalTrans rate for Caterpillar backhoe tractors ranges from \$32.04 to \$421.64 per hour depending on model; the trencher rate is indicated to be \$20 per hour, the quote provided does not include this piece of equipment.
 - Seed mix for re-vegetation and erosion control is not included for the entire operation.
 - Costs associated collection and propagation of trees collected on-site, or a unit cost per tree, will need to be included.
 - A detailed listing of the irrigation materials, including quantities and unit costs will need to be included.
- Section III – Plant and Structures and Equipment Removal:
 - A detailed listing of equipment, structures, and debris, including non-metal materials, remaining to be removed from the entire operation will need to be included (also see salvage estimate comment).
 - Please clarify and/or confirm the rates utilized; the dump truck rate is indicated to be \$25 per hour, the quote provided does not include this piece of equipment, the CalTrans rate for dump trucks range from \$41.38 to \$68.95 per hour depending on number of axles.
 - Subsection C (Demolition), quantity/hours and costs of equipment and labor necessary for demolition and removal will need to be included.
- Section IV – Miscellaneous Costs: the tasks are unclear, quantities and rates are not identified - please clarify.
- Section V – Monitoring: Confirm monitoring reports are included with this task – if not adjust accordingly.
- The Total Estimated Cost of Reclamation will need to include a Lead Agency Administrative Cost, which is 4% of the total indirect and direct costs.

Section VIII – Inspection Report - Reclamation

Batch/Wash Plant area:

- Within the eastern portion of this area, several pieces of large equipment (scraper, dump trucks, flat bed trailer) and other miscellaneous debris (equipment parts, axels, hopper, water tank, conveyor arms, and other metal scrap) have been removed (see attached photos).
- Within the eastern portion of this area, there still remains a conveyor arm, several metal pipes, a couple miscellaneous pieces of metal scrap, and a concrete pad that need to be removed.
- Within the western portion of this area, several pieces non-mining related debris (car, van, pickup truck, tires, pallets, boats, snow mobile trailer, fire wood, bricks) and some miscellaneous scrap have been removed (see attached photos).
- Within the western portion of this area, there still remains several large pieces of equipment, scrap and debris (scrapers, dump truck, cube van, large trailers, drill rig, earth movers),

structures (batch plant, shop, shed) and miscellaneous pieces of scrap and other debris, that need to be removed.

- It appears that a few pieces of equipment may have been moved from the eastern portion of the site to the western; however overall there is less equipment, scrap and debris at the Batch/Wash Plant area than in the previous inspection.
- Efforts to remove equipment, structures, scrap, and debris will need to continue and all such materials need to be removed within 3 months (i.e. by **May 31, 2011**).
- Pursuant to Condition of Approval No. 13 in Surface Mining Permit No. 97420-SMP, a program/plan for controlling the star thistle infestation in and adjacent to the Batch/Wash Plant area was to be submitted approximately 75 days after approval: the County has no record that this plan was ever submitted. Please, submit a plan to the county to control the star thistle infestation within 75 days (i.e. by **May 11, 2011**) or submit a schedule for compliance with this condition for review by the county.

Rock Quarry Area:

- There has been some limited removal of scrap and other debris from this area (tires, hopper, and miscellaneous scrap). It appears that some pieces of equipment (tanker trailers) have been moved to this area from the Batch/Wash Plant area.
- Generally, non-operational large equipment and scrap has not been removed from this area on a regular basis (see attached photos) – equipment, scrap and debris not associated with the operation needs to be removed within 3 months (i.e. by **May 31, 2011**).

Discharge and Runoff – Hard Rock Quarry area:

The runoff basin/area located within the southwestern portion of the Hard Rock Quarry (i.e. southwest of the quarry pit and crushing plant) was inspected on March 30, 2010 (a day after a rain events) and on December 3, 2011 (after several days of rain). The basin appears to have adequate capacity at the current level of filling and no evidence was discovered that indicated this basin had overtopped and discharged into Pope Creek (see attached photos). However, a large conveyer arm has recently been placed within this area. This piece of equipment shall be removed from this area within 30 days (i.e. by **March 28, 2011**) so that it does not interfere with the functioning of the basin or adversely affect water quality.

Boundary Issue – Hard Rock Quarry area:

Based on site inspections, review of County GIS information, and the reclamation plan, it appears that mining activities have occurred within prescribed mining boundaries; however, existing mining limits are close to the extent of these boundaries. Prior to any earthmoving activities to the north or east of existing mining activities a survey will need to be completed of the northern and eastern boundaries to determine accurate locations of the property lines and reclamation plan boundaries. Furthermore, should the operator/owner wish to deviate from the prescribed boundaries, a survey will be required along with a proposed reclamation plan amendment and new surface mining permit application (also see Condition of Approval #1).

Fuel Tank Containment –Batch/Wash Plant area:

The 550 gallon above ground fuel storage tank has been placed within a containment unit (i.e. grape gondola) with an anticipated capacity of 1,500 gallons (see photo). This containment approach should be considered a temporary measure and the operator will need to work with the County Department of Environmental Management (DEM) to properly maintain and contain the fuel tank. The operator has a permit from the DEM to store hazardous material; CDP will request that DEM inspect the site within the next 6 months to ensure compliance with that permit and State laws pertaining to petroleum storage.



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Hillary Gitelman
Director

To: File #P10-00385

From: Donald Barrella
Conservation Division

Date: February 24, 2011

Re: Pope Creek Quarry, Mine ID#91-28-0007
APN 018-080-023
Photo Supplement 09/10 Inspection Report

Batch/Wash Plant area:

Eastern Portion

May 2008

December 2010



Western Portion

May 2008

December 2010





Rock Quarry Area:

May 2008



December 2010





Discharge and Runoff – Hard Rock Quarry area:
 March 30, 2010



December 3, 2010



Fuel Tank Containment –Batch/Wash Plant area:

