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Hillary Gitelman
Director

October 5, 2011

CERTIFIED MAIL

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**FINAL NOTICE OF NONCOMPLIANCE / NOTICE OF VIOLATION
AND NOTICE OF PUBLIC HEARING**

**RE: Pope Creek Quarry: CA Mine ID #91-28-0007
Equipment Removal, Reclamation, and Financial Assurance Cost Estimate
Surface Mining Permit #97420-SMP (APN 018-080-023)**

Dear Sirs:

This **Final Notice of Noncompliance / Notice of Violation** is being issued pursuant to Napa County Code (NCC) Section 16.12.610(c) and serves as formal notice to you as the operator and owners of the referenced mine that violations exist on the property. This Notice follows the County's August 26, 2011 Initial Notice of Noncompliance received by Mr. Wesner August 27, 2011 (Certified mail confirmation #7010-1060-0001-2186-7492), Mr. Harney on August 29, 2011 (Certified mail confirmation #7010-1060-0001-2190-2462), and Messrs. Marino and Nichelini on August 30, 2011 (Certified mail confirmation #7010-1060-0001-2190-2431 and 7010-1060-0001-2190-2424).

Pursuant to the Initial Notice of Noncompliance, Pope Creek Quarry is in violation of the following:

- **Financial Assurance Cost Estimate (FACE):** The failure to submit an annually updated FACE is a violation of Public Resources Code (PRC) Section 2773.1(a)(3), California Code of Regulations (CCR) Title 14 Section 3804(c), NCC Section 16.12.415, and Surface Mining Permit #97420 Condition of Approval No. 74. The County was not able to conclude the revised FACE update provided by Mr. Wesner via FAX transmittal on April 8th and 12th 2011, was adequate pursuant to PRC Section 2773.1(a) and the CCR Section 3804(a) (see the attached memo dated August 20, 2011 and inspection report dated February 24, 2011 for details). As of the date of this notice, a revised FACE has not been submitted.

- **Equipment Removal:** Failure to remove all trash/debris, materials and spoils piles, abandoned and unused equipment, buildings and installations in the Rock Quarry and Batch/Wash Plant areas is a violation of CCR Section 3709(b) and Condition of Approval No. 7, 56, and 66, of Surface Ming Permit #97420 and associated reclamation plan approved pursuant to NCC Section 16.12.300 and PRC Section 2770.
- **Reclamation:** Failure to initiate reclamation of the Rock Quarry and Batch/Wash Plant areas (which includes equipment and debris removal described above and in the inspection report) is a violation of NCC Section 16.12.340 and Condition of Approval No. 1, 2 5, and 66 of Surface Ming Permit #97420 and associated reclamation plan approved pursuant to NCC Section 16.12.300 and PRC Section 2770. Reclamation activities must include the removal of all equipment, de-compaction, re-grading and re-contouring of the facility, and installation of erosion control measures. Subsequent reclamation activities must include re-vegetation and invasive plant species control including a program/plan for controlling the star thistle infestation in and adjacent to the Batch/Wash Plant as described in the annual inspection report dated February 24, 2011.

The Initial Notice of Noncompliance issued by the County requested that Pope Creek Quarry: 1) provide an adequate Financial Assurance Cost Estimate; 2) remove all debris, materials and spoils piles, abandoned and unused equipment, and buildings and installations associated with the operation and, 3) commence reclamation of the site that by September 27, 2011. A site inspection conducted September 30, 2011, found that none of these activities have commenced: the site was substantially in the same condition as the August 4th inspection by the County and as described in the 2009/2010 Annual Inspection Report dated August 24, 2011, and as noted above a revised FACE has yet to be provided.

This matter has been set for public hearing before the Planning Commission on **November 16, 2011**, pursuant to Section 16.12.620 NCC. At this hearing the Commission will determine whether or not the operator or owners have substantially complied with the County's Surface Mining and Reclamation Ordinance (Chapter 16.12), SMARA, and the surface mining permit. If it is found that the operation is not in substantial compliance with applicable County and State codes and the mining permit requirements, the Commission shall determine if the permit should be revoked or suspended, if administrative penalties should be levied (including cost recovery of County time), or if an order to comply (in accordance with NCC Section 16.12.630) should be issued. The determination of the Planning Commission may be appealed to the Board of Supervisors.

Should you have any questions regarding this matter please contact Donald Barrella at 707-299-1338 or donald.barrella@countyofnapa.org

Respectfully,


Hillary Gitelman
Director

Enclosures:

Initial Notice of Noncompliance dated August 26, 2011
Financial Assurance Cost Estimate Memo, August 20, 2011
County Notice dated February 24, 2011
Surface Mining Inspection Report 2009/2010, February 24, 2011

Cc: Diane Dillon, Supervisor District 3
Laura Anderson, Deputy County Counsel
Patrick Lowe, Deputy Director – Conservation Division
Brian Bordona, Supervising Planner – Conservation Division
Donald Barrella, Planner III – Conservation Division
Kenneth Trott, Office of Mine Reclamation, 801 K Street, MS 09-06, Sacramento, CA 95814-3529
Don Wesner Incorporated, P.O. Box 317, Rutherford CA 94573