

State of New Mexico
Energy, Minerals and Natural Resources Department

Susana Martinez
Governor

Tony Delfin
Acting Cabinet Secretary

Fernando Martinez, Director
Mining and Minerals Division



CERTIFIED MAIL – RETURN RECEIPT REQUESTED

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September 19, 2016

Gerald Smith, President
GEO Southwest, LP (“GSW”)
P.O. Box 353
9751 Hwy. 86
Silverton, TX 79257

RE: Additional Comments on the Proposed Closeout Plan and FA for the Deming Mill and Tailing Facility; Permit No. LU009RE, Luna County, NM

Dear Mr. Smith:

The Mining and Minerals Division (“MMD”) received your letter dated June 24, 2016, in response to our letter of May 9, 2016, providing you with reviewing agency comments and also requesting additional information regarding the above referenced Closeout Plan and Financial Assurance (“FA”) proposal. Your letter posed three questions of MMD and requested clarification of several other specific elements from our letter of June 24, 2016. MMD has found the Closeout Plan and FA proposal to be technically incomplete until receipt of acceptable supplemental information as requested by this letter. This letter provides a response to each of the three questions in addition to providing information toward clarifying certain other questions posed in your letter. Below, please find each individually numbered question from your letter, followed by MMD’s response to each. **MMD hereby requires that you provide a revised closeout plan and FA proposal within 30 days following receipt of this letter.**

The following are the three questions posed by your letter and relating to additional unreclaimed disturbance located within the Permit Area:

1. ***Why was this area not reclaimed by ENVIRON when they were working at the Deming Mill on behalf of the bankruptcy trust for the specific purpose of correcting any environmental problems left behind by ASARCO?***

MMD Response: ENVIRON was not involved with the reclamation of the disturbance area of concern described in our letter. The area of concern was reclaimed in 2007-2008

RE: Additional Comments on the Proposed Closeout Plan and FA for the Deming Mill and Tailing Facility; Permit No. LU009RE, Luna County, NM

September 19, 2016

Page 2 of 5

by ENTACT Environmental Services, LLC (“ENTACT”), who was contracted by ASARCO prior to ASARCO’s bankruptcy settlement and trust agreement had been established in December, 2009. ENTACT completed remedial and reclamation activities associated with the Deming Tailings Impoundment and Windblown Tailings Closure Project under the New Mexico Environment Department’s (“NMED”) Voluntary Remediation Program with the objective of those remedial activities being that of meeting residential cleanup criteria of the NMED Soil Screening Levels and involved the excavation of approximately 207,646 yd³ of windblown tailings which were removed from the area located immediately east of the reclaimed tailings facility and placed on the existing tailing impoundment.

It should be noted and clarified that it was exclusively within this area in which Mr. John Strand was contracted by ASARCO on January 10, 2007, to provide backhoe trenching for soil sampling purposes. Later, an additional 15,991 yd³ of impacted soil was excavated by ENTACT from the area of concern located to the south of the Mimbres River, east of the existing former ASARCO Mill and Plant Area and immediately adjacent and north of the existing reclaimed tailings facility. Mr. Strand conducted no backhoe trenching in these areas of concern located south of the Mimbres River and his services involving the backhoe trenching were exclusive to the windblown area located north of the Mimbres River and east of the reclaimed impoundment.

The windblown tailings and impacted soils that were excavated from these areas in 2007 and 2008, were then placed in the existing former ASARCO tailing facility and covered with a 30-inch cover system and revegetated. Following removal of windblown tailings and impacted soils from each discreet excavation area (windblown tailings area east of the ASARCO impoundment and the impacted soils area south of the Mimbres River) un-impacted native soils were re-exposed in each area and tested for any exceedance of the approved cleanup levels and each area were then regraded to contour and revegetated directly into the existing native soils. However, since then and becoming most noticeably problematic during 2014-2015; this reclamation area located within the Permit Area and south of the Mimbres River, east of, and across from County Road 394 and, east of the existing former ASARCO Mill and Plant Area; has not progressed as well as required and prior revegetation efforts completed by ENTACT for this reclaimed area have been unsuccessful and have gradually failed due to the effects of increased erosion in this immediate vicinity and subsequent re-exposing of tailing material at the surface, coupled with ongoing severe drought conditions.

Following ASARCO’s bankruptcy and settlement in December 2009, and subsequent establishment of the ASARCO Multi-State Custodial Trust, ENVIRON International Corporation (“ENVIRON”) was contracted by the Trustee to conduct remedial actions at the former ASARCO Mill and Plant Area. While the primary objective of the earlier remedial actions completed by ENTACT in 2007 and 2008, within the windblown affected areas were to meet residential cleanup criteria of the NMED Soil Screening Levels, the primary objectives of later remedial actions completed by ENVIRON in 2011 and 2012, were specifically to meet the industrial cleanup criteria of the NMED Soil

RE: Additional Comments on the Proposed Closeout Plan and FA for the Deming Mill and Tailing Facility; Permit No. LU009RE, Luna County, NM

September 19, 2016

Page 3 of 5

Screening Levels based on the historical use of the mill area and the planned future use of returning the mill to operation.

Currently, your Draft Closeout Plan submittal does not address our concern with this disturbance area located in the Permit Area. The Closeout Plan must include a reclamation plan for addressing all areas of disturbance located within the Permit Area, including this area, in addition to including the area within the reclamation cost estimate and FA proposal. **GSW must revise the Closeout Plan and reclamation cost estimate and FA proposal to include a reclamation plan for addressing this area, including a schedule for completing the reclamation work.**

- 2. When did MMD and ED first become aware of this issue?* Since approximately 2006, some of the disturbance and also the topographically elevated erosional source area was initially believed by MMD to be located off-site of the former ASARCO properties and that most of the disturbance existed mostly within the permit area of the adjacent reclaimed tailing facility located to the south and separated by an errantly placed fence line. MMD required the permittee of the adjacent property to complete corrective actions within this area, in 2006 and also in 2011; and, at that time, and without the benefit of a survey proving otherwise, MMD and every other entity involved with the project believed that the fence line separating the two properties represented the actual property line separating the two properties.

With this being the case, prior excavation and reclamation activities completed by ENTACT along the area located north of the fence line and within the area of concern were limited due to the fence line and presumed property line and thus, work proceeded within the area only up to the fence line that separated the two sites and reclamation was completed exclusively in these areas, up to and not beyond this fence line to avoid trespass onto the property beyond the fence line.

In a letter dated March 12, 2015, you and MMD were provided with a letter from the adjacent property owner, Cyprus Pinos Altos Corporation (“Cyprus”), that included a description of the actual surveyed property boundary line location, along with a map and diagram illustrating the position of their facility in relation to yours and its location to the north of the Cyprus facility. Our records indicate that you have since also completed a survey of the property boundaries and your survey also validates that the fence line separating the two properties is not the actual property boundary line. **MMD recommends that GSW relocates this fence line to more accurately delineate the southern boundary of your permit area between your property and the adjacent permit area located to the south.**

- 3. Why are we just now learning about it?* After the field inspection in January, and following receipt of Cyprus’ letter in March 2015, all parties (you, Cyprus and MMD) realized that the property boundary separating your permit area from the Cyprus permit area located to the south is not accurately represented and that the area of concern lies within your permit area. This, along with the increased erosion occurring in the area along with unsuccessful revegetation that has gradually failed due to the effects of

RE: Additional Comments on the Proposed Closeout Plan and FA for the Deming Mill and Tailing Facility; Permit No. LU009RE, Luna County, NM

September 19, 2016

Page 4 of 5

increased erosion in this immediate vicinity and subsequent re-exposing of tailing material at the surface, coupled with ongoing severe drought conditions; it has now become critical that this area of concern be included and adequately addressed within your Closeout Plan and FA submittals. Currently, MMD and the State of New Mexico are deficient in regard to having no approved Closeout Plan and no FA from GSW to cover reclamation of disturbance within the Permit Area and, given that we are currently in negotiations with GSW toward approving these required elements relating to your permit, now is the time to resolve these pending issues toward approving your Closeout Plan and FA.

Foregoing the resolution of the numbered items addressed above, you indicate within your letter that you estimate that the area of concern to consist of approximately one acre in size and that you intend to modify your Closeout Plan and FA to include the reclamation of this area. You also indicate that this would include borrowing cover material from existing borrow sources within the Permit Area and then covering the area to a depth suitable to support vegetation, and then reseeding the reclaimed area. In addition to the reclamation of the area of concern you further indicate within your letter that you intend to also amend the Closeout Plan and FA estimate to include the cost of plugging and abandonment of the three groundwater monitoring wells within your Permit Area.

Other questions posed within your June 24, 2016, letter are centered on FA and must also be addressed herewith, including a proposal for the Director of MMD to waive the requirement in the Rules for a Phase I Environmental Site Assessment (“ESA”). Based on our field analysis of the proposed collateral properties without the benefit of a Phase I ESA Report to prove otherwise, MMD has determined that the properties you have offered as collateral contain areas of significant environmental concern or may include portions of the mine permit area or otherwise may be considered an “affected area”. **In order to evaluate these conditions, MMD requires that GSW provide MMD with the results of a Phase I Environmental Assessment of the properties being considered for collateral FA. No waiver of this requirement by the Director is possible.**

Regarding the question within your letter on what amount of margin would be required by MMD for any water rights and/or any real property that are to be pledged as collateral for covering FA requirements, MMD requires a margin of 20% on any water rights and real property that are provided as collateral if the nature of the collateral proposed to be given as security for FA is subject to fluctuations in value over time. The Director requires that such collateral have a fair market value at the time of permit approval in excess of the FA amount by a reasonable margin. The amount of such margin shall reflect changes in value anticipated over a period of five years, including depreciation, appreciation, marketability and market fluctuation. In any event, the Director shall require a margin for legal fees and costs of disposition of the collateral in the event of forfeiture. In support of the above described requirements with regards to collateral FA, **GSW must provide MMD with the information pursuant to 19.10.12.1208.C(3)(b) and 19.10.12.1208.C(3)(c)(v) NMAC.** Alternatively, GSW may submit another more readily approvable form of FA that doesn't require the evaluation of real property as collateral FA; other acceptable forms of FA are limited to surety bonds, letters of credit or cash accounts described in 19.10.12.1208 NMAC.

Gerald Smith – GEO Southwest, LP

RE: Additional Comments on the Proposed Closeout Plan and FA for the Deming Mill and Tailing Facility; Permit No. LU009RE, Luna County, NM

September 19, 2016

Page 5 of 5

If you have any questions concerning this letter, please contact me at (505) 476-3436 or via email at: james.hollen@state.nm.us.

Sincerely,

A handwritten signature in blue ink that reads "James Hollen". The signature is written in a cursive style.

James Hollen, Permit Lead – LU009RE
Mining Act Reclamation Program/MMD

cc: Mine File - Permit LU009RE
Holland Shepherd, Program Manager

