

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT,
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

LIS 20-130

SEBASTIAN MINING, LLC
FKA SHRIRAM SEBASTIAN, LLC
P.O. BOX 339
HARTFORD, AR 72938

AFIN: 66-00662
PERMIT NO. 0422-MC-A2

DEFAULT ADMINISTRATIVE ORDER

This Default Administrative Order (DAO) is issued by the Director of the Arkansas Department of Energy and Environment, Division of Environmental Quality (DEQ) to Sebastian Mining, LLC (Respondent) pursuant to the Arkansas Surface Coal Mining and Reclamation Act of 1979 codified at Ark. Code Ann. § 15-58-101 *et seq.* (Reclamation Act), and the Arkansas Pollution Control and Ecology Commission's (APC&EC) Regulation 20: The Arkansas Surface Coal Mining Reclamation Code, and in accordance with the provisions of the APC&EC Regulation 8: Administrative Procedures.

FINDINGS OF FACT

1. The Director issued Notice of Default and Bond Forfeiture and Order to Show Cause, LIS 20-130 (LIS 20-130) to Respondent on March 2, 2020. LIS 20-130 is attached as DAO Exhibit A.
2. LIS 20-130 states that any response objecting to the Notice of Default and Bond Forfeiture must be filed in the form of a written request for hearing and within twenty (20) calendar days of service of LIS 20-130.
3. LIS 20-130 states that any response to the order to show cause as to why Permit No. 0422-MC-A2 and Respondent's right to mine under the Act should not be revoked must be filed in the form of a written request for hearing and within thirty (30) calendar days of service of LIS 20-130.
4. LIS 20-130 was served on Respondent and all applicable sureties, including Regions Bank and Rockwood Casualty Insurance Company, by certified mail, return receipt requested, as required by APC&EC Rule 20, Section 800.50, and by email on March 4, 2020. Respondent received LIS 20-130 on March 5, 2020. The return receipt for Respondent is attached as Exhibit B. Regions Bank received LIS

20-130 on March 6, 2020. The return receipt for Regions Bank is attached as Exhibit C. Rockwood Casualty Insurance Company received LIS 20-130 on March 9, 2020. The return receipt for Rockwood Casualty Insurance Company is attached as Exhibit D.

5. LIS 20-130 was public noticed on March 8, 2020 and March 15, 2020 in the Arkansas Democrat Gazette.

6. Respondent did not submit a timely objection and request for hearing in response to LIS 20-130, and no other interested party, including Regions Bank and Rockwood Casualty Insurance Company, submitted an objection and request for hearing in response to LIS 20-130.

ORDER

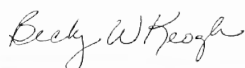
1. Pursuant to APC&EC Regulation 8.402, the allegations contained in LIS 20-130 are deemed proven.

2. By this DAO, the Collateral Bond Number 0118991882, Collateral Bond Number 0129469759, Surety Bond Number ISM-3036 are forfeited to DEQ.

3. By this DAO, DEQ is authorized to proceed to collect the forfeited amounts and, use the funds collected from the forfeiture to fund reclamation activities.

4. By this DAO, Permit No. 0422-MC-A2 and Respondent's right to mine is revoked

SO ORDERED THIS 15th DAY OF April, 2020.



**BECKY W. KEOGH, DIRECTOR
DIVISION OF ENVIRONMENTAL QUALITY**

**ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT,
DIVISION OF ENVIRONMENTAL QUALITY**

IN THE MATTER OF:

LIS 20- 130

**SEBASTIAN MINING, LLC
FKA SHRIRAM SEBASTIAN, LLC
P.O. BOX 339
HARTFORD, AR 72938**

AFIN: 66-00662

PERMIT NO. 0422-MC-A2

NOTICE OF DEFAULT AND BOND FORFEITURE AND ORDER TO SHOW CAUSE

This Notice of Default and Bond Forfeiture and Order to Show Cause (NBF) is issued by the Director of the Division of Environmental Quality (DEQ) pursuant to the authority of the Arkansas Surface Coal Mining and Reclamation Act of 1979 codified at Ark. Code Ann. § 15-58-101 *et seq.* (Reclamation Act), the Arkansas Pollution Control and Ecology Commission's (APC&EC) Regulation 20: The Arkansas Surface Coal Mining and Reclamation Code, and APC&EC Regulation 8: Administrative Procedures.

I. NOTICE OF BOND FORFEITURE

The Director of DEQ hereby gives notice of default and bond forfeiture against Sebastian Mining, LLC (Respondent) for the mine site located at P.O. Box 339, Hartford, Sebastian County, Arkansas (Site). Arkansas Surface Coal Mining and Reclamation Permit, Permit No. 0422-MC (Permit), was issued by DEQ on September 9, 2010, which allowed Respondent to engage in surface coal mining in the State of Arkansas. The Permit was renewed on July 13, 2018. Respondent previously filed bankruptcy, but that action has now been dismissed. Bond Forfeiture has been deemed necessary because the Respondent is unable to conduct reclamation pursuant to APC&EC Regulation 20 Section 800.50.



ALLEGATIONS AND PROPOSED FINDINGS OF FACT

1. On September 9, 2010, DEQ issued a Permit transfer from Heidtman Mining, LLC to Shriram Sebastian, LLC.
2. On August 24, 2010, Regions Bank issued Collateral Bond Number 0118991882 in the amount of FIVE HUNDRED SEVENTY-ONE THOUSAND ONE HUNDRED AND ONE DOLLARS (\$571,101.00) as financial assurance to ensure that reclamation would be completed by Respondent or, in the event of Respondent's default and forfeiture of the bond, by DEQ.
3. On May 19, 2011, Regions Bank issued another Collateral Bond Number 0129469759 in the amount of THREE HUNDRED THIRTY-FIVE THOUSAND FIVE HUNDRED TWENTY-FOUR DOLLARS (\$335,524.00) as financial assurance to ensure that reclamation would be completed by Respondent or, in the event of Respondent's default and forfeiture of the bond, by DEQ.
4. On August 13, 2012, Rockwood Casualty Insurance Company issued Surety Bond Number ISM-3036 in the amount of ONE HUNDRED FORTY-EIGHT THOUSAND THREE HUNDRED FORTY-NINE DOLLARS (\$148,349.00) as financial assurance to ensure that reclamation would be completed by Respondent or, in the event of Respondent's default and forfeiture of the bond, by DEQ.
5. On July 9, 2013, Respondent renewed the Permit and DEQ approved the renewal. Respondent also changed the name on the Permit from Shriram Sebastian, LLC to Sebastian Mining, LLC.
6. Respondent filed for Chapter 11 Bankruptcy on November 15, 2017. Respondent's represented to DEQ that its plan for the Site was to sell the coal mine through the bankruptcy process.

7. On July 13, 2018, the Permit was renewed by DEQ. DEQ renewed the Permit in part to allow Respondent to sell the coal mine with an active permit.

8. On October 30, 2018, the United States Trustee filed a Motion to Dismiss or Convert to Chapter 7 in Respondent's Chapter 11 Bankruptcy Case.

9. On January 14, 2019, DEQ filed its Motion for Order Confirming Exception from Stay Pursuant To 11 U.S.C. § 362(B)(4) or in the Alternative Motion to Dismiss in Respondent's Chapter 11 Bankruptcy Case.

10. To resolve these motions, the United States Trustee, DEQ, and Respondent entered into a Consent Order in Respondent's Chapter 11 Bankruptcy Case. That Order included the following:

a. Debtor will comply with the terms and conditions of the mining permit, as Permit No. 0422-MC-A2; and,

b. In the event the Debtor fails to comply with any of the above conditions, then the Court may upon ex parte motion filed by the United States Trustee or the Arkansas Department of Environmental Quality dismiss the case without further hearing.

11. The Consent Order was docketed on May 16, 2019 (Doc. # 102). A copy of the Order is attached hereto as Exhibit 1 and incorporated herein by reference.

12. The United States Trustee, DEQ, and Respondent agreed to amend the order to give Respondent additional time to sell the coal mine. That amended order stated that Respondent will file a Chapter 11 Plan of Reorganization or a liquidating plan for Sebastian Mining LLC by January 31, 2020.

13. The Amended Consent Order was docketed on September 30, 2019. (Doc. # 123).

14. DEQ conducted an inspection of the Site on January 7, 2020. The inspection report is

attached as Exhibit 2.

15. Based on the inspection, DEQ issued four (4) Notices of Violation (NOVs) to Respondent for violations of its Permit. DEQ provided these NOVs to Respondent's counsel on February 12, 2020. These NOVs indicate that Respondent has not complied with the Permit. DEQ provided previous NOVs to Respondent's counsel on November 20, 2019. Both the January 2020 and November 2019 inspection reports indicated that Respondent's liability insurance for the Site would expire on February 21, 2020. In addition, DEQ has been informed that Debtor no longer has an onsite representative to maintain compliance with the Permit.

16. On February 7, 2020 and February 18, 2020, DEQ issued Cessation Orders (COs) to the Permittee for failure to abate the violations. DEQ first observed the violations at the mine Site on or about March 27, 2019. DEQ provided multiple extensions to Respondent; however, Respondent failed to abate these violations. The COs are attached as Exhibit 3.

17. On January 29, 2020, Respondent filed a motion to convert its Chapter 11 case to a Chapter 7 Bankruptcy case. The result of this motion will be that Respondent will permanently cease mining operations under the Permit.

18. Respondent's Permit, Part K, Section 816.131 and 816.132 states, "No permanent cessation of operations will commence until all affected areas have been reclaimed in accordance with the approved permit." Respondent's Permit, Part K, Section 816.131 and 816.132 is attached as Exhibit 4.

19. On February 19, 2020, DEQ filed an *Ex Parte* Motion to Dismiss in Respondent's bankruptcy case for failure to comply with the Consent Order as amended.

20. On February 24, 2020, the court granted DEQ's *Ex Parte* Motion to Dismiss and entered an order dismissing Respondent's bankruptcy case.

21. On this date, all affected areas have not been reclaimed in accordance with the approved permit, and the outstanding NOVs and COs have not been abated. Respondent, through its counsel, has communicated that Respondent will not resume operations or complete reclamation of all affected areas in accordance with the approved permit prior to permanently ceasing operations.

22. Respondent has failed to meet the terms of the permit by failing to reclaim all affected areas in accordance with the approved permit prior to permanently ceasing operations and by failing to abate all outstanding NOVs and COs.

23. Pursuant to APC&EC Regulation 20 Section 800.50, the Director of DEQ shall forfeit all or part of a bond or bonds for any permit area or increment of a permit area if an operator fails to meet the terms of the permit, refuses or is unable to conduct reclamation of an unabated violation, or defaults on the conditions under which the bond was accepted.

24. Respondent's actions and omissions, as stated above, demonstrate a failure to comply with the terms of the permit, an inability or refusal to conduct reclamation of an unabated violation, and a default on the conditions under which the bond was accepted.

25. In compliance with APC&EC Reg. 20 Section 800.50(a)(2), DEQ hereby notifies the Respondent and all applicable sureties of the conditions under which forfeiture may be avoided.

a. An agreement by the Respondent or another party to perform reclamation operations in accordance with a compliance schedule which meets the conditions of the permit, the reclamation plan, and the regulatory program and a demonstration that such party has the ability to satisfy the conditions; or

b. A surety may complete the reclamation plan if the surety

can demonstrate an ability to complete the reclamation in accordance with the approved reclamation plan. No surety liability shall be released until successful completion of all reclamation under the terms of the permit, including the applicable liability periods of Section 800.13.

THEREFORE TAKE NOTICE THAT:

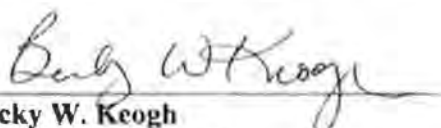
If the Respondent wishes to dispute the Allegations and Proposed Findings of Fact contained in the NBF, the Permittee must file a written Request for Hearing that is compliant with APC&EC Regulation 8 with the Commission Secretary, Arkansas Pollution Control and Ecology Commission, 101 East Capitol, Suite 205, Little Rock, Arkansas 72201, within twenty (20) calendar days of service of this NBF or the allegations herein will be deemed proven and the corrective action order, including forfeiture of identified bonds. Upon timely filing a written Response and Request for Hearing that is compliant with APC&EC Regulation 8, Permittee shall be entitled to an adjudicatory hearing upon the allegations and other matters stated in the NBF.

If no timely Response and Request for Hearing is filed with the Secretary of APC&EC, the Director may issue a Default Administrative Order confirming the allegations as findings of fact and ordering Collateral Bond Number 0118991882, Collateral Bond Number 0129469759, and Surety Bond Number ISM-3036 to be forfeited, proceed to collect the forfeited amount, and use funds collected from bond forfeiture to complete the reclamation plan.

The collateral bonds and the surety bond will remain in effect during any appeals process until a final Order has been issued.

Date

3/2/2020


Becky W. Keogh
Director, Division of
Environmental Quality

II. ORDER TO SHOW CAUSE

26. Respondent is the permittee of the Site. The Respondent holds a permit for coal mining, Permit No. 0422-MC-A2, pursuant to the Reclamation Act. Permit No. 0422-MC-A2 was approved by DEQ on July 13, 2018 and expires on July 13, 2023.

27. Pursuant to APC&EC Reg.20 § 843.13, the Director of DEQ shall issue an order to a permittee requiring him or her to show cause why the Permit and right to mine under the Reclamation Act should not be suspended or revoked. APC&EC Reg.20 § 843.13 states the following in part:

[I]f the Director determines that a pattern of violations of any requirements of the Act, this Chapter, the State program or any permit condition required by the Act exists or has existed, and that the violations were caused by the permittee willfully or through unwarranted failure to comply with those requirements or conditions. ...Unwarranted failure to comply means the failure of the permittee to prevent the occurrence of any violation of the permit or any requirement of the Act, due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or the Act, due to indifference, lack of diligence, or lack of reasonable care...

28. APC&EC Reg.20 § 843.13(a)(2)-(4) states the following regarding how the Director may make this determination:

(2) The Director may determine that a pattern of violations exists or has existed, based on two or more inspections of the permit area within any 12-month period, after considering the circumstances, including:

(i) The number of violations, cited on more than one occasion, of the same or related requirements of the Act, this Chapter, the State program or the permit;

(ii) The number of violations, cited on more than one occasion, or different requirements of the Act, this Chapter, the State program, or the permit; and

(iii) The extent to which the violations were isolated departures from lawful conduct.

(3) The Director shall determine that a pattern of violations exists, if [she] finds that there were violations of the same or related requirements of the Act, this Chapter, the State program, or the permit during three or more inspections of the permit area within any 12-month period.

(4)

(i) In determining the number of violations within any 12-month period, the Director shall consider only violations issued as a result of an inspection carried out during the enforcement of the State program.

(ii) The Director may consider violations issued as a result of inspections other than those mentioned in clause (i) in determining whether to exercise [her] discretion under paragraph (2).

A. Inability to comply with permit conditions

29. DEQ incorporates by reference and re-alleges paragraphs 1 through 24 of the Allegations and Proposed Findings of Fact above.

30. Respondent, through its counsel, has communicated that Respondent will not resume operations or complete reclamation of all affected areas in accordance with the approved permit prior to permanently ceasing operations.

31. The permanent ceasing of operations and the failure to reclaim all affected areas are continuing violations of the Act and Permit No. 0422-MC-A2.

32. To date, Respondent has failed to abate this violation of its permit and the Act.

B. Notices of Violation and Cessation Orders

WGT-003-19, 1 of 2:

33. On March 27, 2019, after inspecting the Site, DEQ issued NOV WGT-003-19, 1 of 2 to Respondent for Respondent's failure to stabilize the surface area of Refuse Pile CDWA 3, where rills and gullies had formed in the topsoil applied to the reclaimed slopes, disrupting the

reestablishment of vegetative cover. DEQ granted several abatement extensions, and Respondent failed to abate the violation. Respondent's failure to abate this violation demonstrates Respondent's indifference, lack of diligence, lack of reasonable care, and its failure to abate a violation of its permit.

34. On February 18, 2020, DEQ issued a Cessation Order for NOV WGT-003-19, 1 of 2, compelling the Respondent to cease surface coal mining operations until all violations had been abated. To date, Respondent has not complied with this Cessation Order and has failed to abate this violation of its permit. A copy of this Cessation Order that was submitted to Respondent's counsel is attached and marked as Exhibit 3.

WGT-001-20, 1-4:

35. On January 7, 2020, after inspecting the Site, DEQ issued four (4) Notices of Violation, WGT-001-20, 1-4, to Respondent for violations of its Permit and the Act.

- a. NOV WGT-001-20, 1 of 4 was issued because Respondent failed to maintain Sediment Trap ST-1 to permit specifications. Respondent was notified on November 18, 2019 that Sediment Trap ST-1 required maintenance. No maintenance of Sediment Trap ST-1 had occurred and an NOV was issued.
- b. NOV WGT-001-20, 2 of 4 was issued because Respondent failed to maintain Temporary Diversion Ditch TD-7 to permit specifications. This violation resulted from Respondent's failure to conduct maintenance of Sediment Trap ST-1 and Respondent's failure to correct instances of permit violations when those violations occur. Respondent had been informed on November 18, 2019 about the required maintenance that could have prevented or lessened this violation, and the NOV was issued.

- c. NOV WGT-001-20, 3 of 4 was issued because Respondent failed to have Refuse Pile CWDA 3 inspected by a registered professional engineer for the fourth quarter of 2019 and failed to submit this certified report to the DEQ in a timely manner. Previously, Respondent failed to have Refuse Pile CWDA 3 inspected by a registered professional engineer for the second quarter of 2019. The failure to have Refuse Pile CWDA 3 inspected by a registered professional engineer for two quarters indicates a pattern of noncompliance, and an NOV was issued.
- d. NOV WGT-001-20, 4 of 4 was issued because Respondent failed to provide an impoundment inspection report for the fourth quarter of 2019 in a timely manner. Previously, Respondent failed to provide an impoundment inspection report for the second quarter of 2019. The failure to provide an impoundment inspection report for two quarters indicates a pattern of noncompliance, and an NOV was issued.

36. On February 7, 2020, DEQ issued four (4) Cessation Orders to the Permittee for failure to abate the WGT-001-20, 1-4 violations, compelling the Respondent to cease surface coal mining operations until all violations have been abated. To date, Respondent has not complied with these Cessation Orders and has failed to abate the violations of its permit. NOV WGT-001-20, 1 of 4 and 2 of 4 are for violations that could have been prevented if Respondent had exercised diligence in complying with the Permit. NOV WGT-001-20, 3 of 4 and 4 of 4 are for repeat violations for which DEQ had previously issued NOVs. Respondent could have prevented those violations if Respondent had exercised diligence in complying with the Permit. A copy of these Cessation Orders that were submitted to Respondent's counsel are attached and marked as Exhibit 3.

C. Liability Insurance

37. Respondent's liability insurance for the Site expired on February 21, 2020. (See Exhibit 2) APC&EC Rule 20, Section 800.60 requires Respondent to maintain liability insurance until reclamation is complete. Both the January 2020 and November 2019 inspection reports indicated that Respondent's liability insurance for the Site would expire on February 21, 2020. DEQ has not received proof of renewal of Respondent's liability insurance, which is a separate and ongoing violation of the Permit and the Act.

D. Pattern of Violations

38. A pattern of violations exists, pursuant to APC&EC Reg.20 § 843.13(a)(2), as a result of the established violations described above. Respondent failed to prevent violations from occurring and failed to abate all outstanding NOV's and CO's based on those violations. Each unabated violation described above is a repeat violation or an ongoing violation. The enumerated violations demonstrate Respondent's indifference, lack of diligence, and lack of reasonable care.

39. Respondent is hereby ordered to appear before the Commission and show cause as to why Permit No. 0422-MC-A2 and its right to mine under the Act should not be revoked.

THEREFORE TAKE NOTICE THAT:

If Respondent wishes to dispute the Allegations and Proposed Findings of Fact contained in the Order to Show Cause, Respondent must file a written answer to the show cause order and file a written Request for Hearing that is compliant with APC&EC Regulations 8 and 20 with the Commission Secretary, Arkansas Pollution Control and Ecology Commission, 101 East Capitol, Suite 205, Little Rock, Arkansas 72201, within thirty (30) calendar days of service of this Order to Show Cause, and a public hearing shall then be provided. If no hearing is requested on this Order to Show Cause, the allegations herein will be deemed proven. If the Permit and the right to

mine under the Act are revoked, complete reclamation within the time specified in the Permit's reclamation plan shall begin immediately.

3/2/2020

Date



Becky W. Keogh
Director, Division of Environmental Quality