

ENVIRONMENTAL PROTECTION AND ENHANCEMENT ACT

BEING RSA 2000, c. E-12 (the "Act")

ENVIRONMENTAL PROTECTION ORDER EPO-EPEA-35659-06

JMB Crushing Systems Inc.
Suite 2300, Bentall 5 550, Burrard Street
Vancouver BC
V6C 2B5,
Canada

Byron Levkulich, Director
JMB Crushing Systems Inc.
1400 16th Street, Suite 320
Denver CO 80202
United States

Aaron Patsch, Director
JMB Crushing Systems Inc.
1400 16th Street, Suite 320
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Jeffrey Buck, former Director
JMB Crushing Systems Inc.
3439 Keswick Boulevard SW
Edmonton, AB
T6W 3B2

Collectively referred to as the "Parties"

WHEREAS JMB Crushing Systems Inc. ("JMB") operates a pit under Registration No. 263318-00-00 located at NE-10-057-06-W4M (O'Kane Pit) in the County of St. Paul No. 19 ("O'Kane Pit");

WHEREAS Byron Levkulich and Aaron Patsch are Directors of JMB and Jeffrey Buck is a former Director of JMB ("Parties");

WHEREAS Aarbo Ranching Ltd. own the land on which the O'Kane Pit is located;

WHEREAS Harvey Aarbo is the director of Aarbo Ranching Ltd;

WHEREAS section 2.1.1 of the *Code of Practice for Pits* states any person who carries out an activity at a pit must do so in accordance with this Code of Practice;

WHEREAS an "activity at a pit" is defined in the *Code of Practice for Pits* to mean the construction, operation or reclamation of a pit;

WHEREAS on January 20, 2020 Alberta Environment and Parks ("AEP") sent an email to JMB stating that the O'Kane Pit security Bond No. BND0015362 in the amount of \$39,805.00 is expiring March 9, 2020.

WHEREAS on May 1, 2020, JMB obtained an initial order from the Court under the *Companies Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended;

WHEREAS on November 18, 2020, AEP sent a letter to JMB indicating they failed to replace financial security instruments on 7 pits that were registered to JMB and located on private land, including the O'Kane Pit;

WHEREAS on January 26, 2021, April Franks, an Environmental Protection Officer ("EPO") and Inspector under the *Environmental Protection and Enhancement Act* RSA 2000, c E-12 (the "Inspector"), conducted a review of the O'Kane Pit Activities Plan and 2019 satellite imagery of the area and determined that JMB contravened the *Code of Practice for Pits* by:

- failing to restore the required financial security as required under section 3.2.2 of the *Code of Practice for Pits*;
- failing to follow the Activities Plan mining sequence including not conducting reclamation as required under section 4.1.1 of the *Code of Practice for Pits*;
- failing to report regulatory non-compliances to the Director as required under section 6.1.1 of the *Code of Practice for Pits*;

WHEREAS reclamation of the disturbed land on O'Kane Pit has not occurred to date;

WHEREAS section 3.2.2 of the *Code of Practice for Pits* states "unless exempted by the Act or the *Conservation and Reclamation Regulation*, as amended from time to time, no person shall commence or continue an activity at a pit unless the full amount of security for that pit has been provided to the Director, as authorized in writing by the Director."

WHEREAS section 4.1.1 of the *Code of Practice for Pits* states "no person shall conduct any activity at a pit except in accordance with the most recent Activities Plan.";

WHEREAS section 6.1.1 of the *Code of Practice for Pits* states "in addition to any other reporting required pursuant to this Code of Practice, the Act or the regulations under the Act, any person carrying out an activity at a pit shall immediately report any contravention of this Code of Practice to: (a) the registration holder; and (b) the Director: (i) by telephone at (780) 422-4505, or (ii) by a method:(A) in compliance with the release reporting provisions of the Act and the regulations; or(B) authorized in writing by the Director.";

WHEREAS on February 12, 2021, AEP issued a Notice of Non Compliance ("NONC") to JMB stating that AEP had identified non-compliances under the *Code of Practice for Pits* for pits registered to JMB located on private land, including the O'Kane Pit;

WHEREAS the NONC also stated that, by February 18, 2021, JMB was to provide:

- an assessment of the pits against the terms and conditions of the Registration and the *Code of Practice for Pits*, and
- a plan to bring each pit into compliance with the Registration and the *Code of Practice for Pits*;

WHEREAS JMB requested two extensions to the deadline to provide the information requested in the NONC, which AEP granted;

WHEREAS on February 24, 2021, JMB provided AEP with its response to the NONC, which stated that JMB's intentions with respect to the O'Kane Pit were as follows:

- to submit an updated Activities Plan by April 30, 2021 for the purpose of reclamation,
- to post a security bond as a part of the closing of the CCAA court proceedings upon acceptance of the updated activities plan, and
- implement reclamation within three years of the updated activities plan approval;

WHEREAS on February 22, 2020 EPO has a conversation with the landowner, Harvey Aarbo, who indicated that;

- JMB last operated the O'Kane Pit on or about summer 2018, at which time they operated without payment of royalties to the landowner;
- Aarbo Ranching Ltd. purchased the property in 2018 and has not had contact with JMB, Harvey Aarbo assumed he was responsible for the reclamation;
- Harvey Aarbo was relying on the security instrument from AEP to offset some reclamation costs and is concerned that JMB has not replaced security;

WHEREAS section 137 of the *Environmental Protection and Enhancement Act* states that an operator must conserve and reclaim specified land and unless exempted by the regulation, obtain a reclamation certificate in respect of the conservation and reclamation;

WHEREAS JMB is an 'operator' under section 134(b)(ii) of the *Environmental Protection and Enhancement Act*;

WHEREAS the O'Kane Pit is a "pit" as defined in the *Activities Designation Regulation* section 3(3)(d), for the purposes of Division 3 of Schedule 2;

WHEREAS the surface land disturbance in the O'Kane Pit is "specified lands" as defined by the *Conservation and Reclamation Regulation* section 1(t)(v);

WHEREAS the Parties are operators as defined in section 134(b)(i) of *EPEA*, i.e. an approval or registration holder who carries on or has carried on an activity on or in respect of specified land pursuant to an approval or registration, and section 34(b) vii), i.e. a person who acts as principal or agent of a person referred to in any of subclauses (i) to (vi);

WHEREAS section 3.1 of the *Conservation and Reclamation Regulation* states that the *Code of Practice for Pits*, as published by AEP, is adopted and forms part of that regulation and requires that a person carrying on an activity referred to in Column A of the Schedule must

comply with the corresponding Code of Practice in Column B of the Schedule in carrying on that activity;

WHEREAS the Schedule of the *Conservation and Reclamation Regulation* states that the construction, operation or reclamation of a pit that is listed in Schedule 2, Division 3 of the *Activities Designation Regulation* must comply with the *Code of Practice for Pits*;

WHEREAS EPO April Franks, North Region (the "Inspector") has been designated as an Inspector for the purposes of issuing environmental protection orders under section 140 the *Environmental Protection and Enhancement Act*;

WHEREAS the Inspector is of the opinion that the suspension of the operation in the O'Kane Pit and directing the performance of work is necessary in order to conserve and reclaim the O'Kane Pit;

WHEREAS the Inspector is of the opinion that the surface land disturbance meets the criteria of "specified lands" defined by the *Conservation and Reclamation Regulation* section 1(t)(v)

THEREFORE, I April Franks, Inspector, North Region, pursuant to section 140 of the *Environmental Protection and Enhancement Act*, DO HEREBY ORDER:

1. The Parties shall immediately suspend any and all work at the O'Kane Pit, and shall not remove any stockpiled materials.
2. By April 13, 2021, the Parties shall submit to the Inspector for the Inspector's approval, the name and qualifications of a consultant who carries a professional designation authorized to practice reclamation on private land, which the Parties will retain to prepare and sign the below noted reclamation and remedial plan.
3. By May 20, 2021, the Parties shall submit to the Inspector for the Inspector's review and approval a written reclamation and remedial plan ("Plan").
4. The Parties shall include at minimum include all of the following in the Plan:
 - a. Particulars of the characteristics and properties of the land including topography, drainage, soils, vegetation and land capability.
 - b. A historical synopsis of the surface, subsurface and groundwater disturbance.
 - c. A description of the adjacent land uses.
 - d. An accounting of what volume of marketable aggregate is left within the O'Kane Pit and its value.
 - e. A description of the reclamation work including the type of equipment, methods and materials that will be used in implementing the Plan.
 - f. A description of the proposed reclaimed land use that includes elevations, soil

- replacement and re-vegetation.
- g. A description of how ground water infiltrating open excavations will be addressed and justification for any surface and water related improvements to be left in place.
 - h. A proposed Schedule of Implementation that shall have October 29, 2022 as the completion date.
 - i. A 6 month monitoring and maintenance program commencing October 29, 2022.
5. Upon approval of the Plan by the Inspector, the Parties shall conduct the work described in the approved Plan, according to the approved schedule of implementation, unless otherwise authorized in writing by the Inspector.
6. The Parties shall submit progress updates to the Inspector on July 30, 2021, November 30, 2021, March 31, 2022, and July 29, 2022 that include a detailed summary of all reclamation activities undertaken at O'Kane Pit;
7. Within 14 days of the completion of the requirements of this Order, the Parties shall submit to the Inspector a final written report prepared and signed by the consultant describing the work undertaken to comply with this Order.

DATED at the City of Spruce Grove in the Province of Alberta, this Thursday on the 11th day of March, 2021.



April Franks,
Inspector,
Environmental Protection Officer,
North Region

Section 91 of the *Environmental Protection and Enhancement Act* may provide a right of appeal against this decision to the Alberta Environmental Appeals Board. There may be a strict time limit for filing such an appeal. A copy of section 91 is enclosed. For further information, please contact the Board Secretary at #306 Peace Hills Trust Tower, 10011 - 109 Street, Edmonton, Alberta, T5J 3S8; telephone (780) 427-6207; fax (780) 427-4693.

Notwithstanding the above requirements, the Party shall obtain all necessary approvals in complying with this order.

Take notice that this environmental protection order is a remedial tool only, and in no way precludes any enforcement proceedings being taken regarding this matter under this Act or any other legislation.

Further, contravention of the Environmental Protection Order may lead to additional enforcement proceedings, up to and including prosecution.