
**BEFORE THE DIVISION OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH**

IN THE MATTER OF DRAPER CITY'S
REQUEST FOR AGENCY ACTION ON THE
DIVISION'S TENTATIVE APPROVAL
REGARDING GENEVA ROCK PRODUCTS,
INC.'S REVISED NOTICE OF INTENTION
TO COMMENCE LARGE MINING
OPERATIONS AT THE POINT OF THE
MOUNTAIN QUARRY (NO. M/035/0026).

**DECISION AND ORDER AFFIRMING
THE DIVISION'S TENTATIVE
APPROVAL**

Division File Number M/035/0026

Hearing Officer John Baza

John Baza, the Director of the Division of Oil Gas and Mining, in his capacity as Presiding Officer, hereby issues this Order Affirming the Division's Tentative Approval regarding Geneva Rock Products, Inc.'s ("Geneva") requested revision to their large mine notice of intention ("NOI"). The Presiding Officer considered the issues raised by the City of Draper ("Draper"), the written objections of substance (the "Objectors"), and oral arguments from some of the Objectors.

The Presiding Officer finds that many of the issues involving the impact on the lives of those living near Geneva's operation, as well as the aesthetic and recreational value of the area, fall outside the jurisdiction of the Division. This Order does not reduce or eliminate Geneva's obligations to comply with requirements from other governmental entities such as the Division of Air Quality, the Department of Transportation, the Division of Water Quality, local zoning requirements and any other legal requirements.

FINDINGS OF FACT

1. Geneva's operations at the Point of the Mountain before 2005 were exempt from regulation by the Division based on the nature of Geneva's operations. Division Response at page 2.

2. In 2005, the Division determined that Geneva's operations no were no longer exempt under the sand and gravel exemption of the Utah Mined Land Reclamation Act, Utah Code Ann. § 40-8 et. seq.(the "Act."). The Division informed Geneva of its determination and Geneva began the process of obtaining an approved large mine NOI. *Id.*

3. After several rounds of technical review and supplemental information, Geneva submitted, and the Division approved Geneva's large mine NOI in 2009. *Id.*

4. The permit area of Geneva's NOI encompassed 486.5 acres to be disturbed which according to the mining plan would take place in several phases. *Id.*

5. In 2017, Geneva submitted a revised mining plan to the Division for review. Following the review, the Division issued a tentative approval, published notice of that tentative approval, and received written objections to the tentative approval. The Division held an informal proceeding in response to objections and issued an Order affirming the Division's tentative approval ("2017 Order"). *Id.* at 3.

6. In March of 2022, Geneva sought to update its mining plan to remove 61.5 acres that were no longer part of Geneva's operation and to allow for disturbance of 77 acres included in the permit area of Geneva's NOI. *Id.* at 4.

7. The Division approved removal of the 61.5 acres and a release of the bonding associated with that area. *Id.*

8. In April of 2022, the Division completed an initial technical review of the new disturbance and requested additional information from Geneva. *Id.* at 5.

9. Geneva responded to the Division in June of 2022 incorporating additional information and revisions requested by the Division. *Id.*

10. The Division reviewed Geneva's request as supplemented and determined it complied with the statutory and regulatory requirements.

11. In August of 2022, the Division issued a tentative approval and provided notice of the tentative approval. *Id.*

12. The Division received approximately 207 written public comments in opposition to the Division's tentative approval. In addition, Draper filed a Request for Agency Action ("RAA") opposing the tentative approval. *Id.*

13. On October 21, 2022, the Presiding Officer issued a Notice of Informal Adjudicative Proceedings to discuss the RAA and the written objections of substance.

14. On November 4, 2022, the Presiding Officer modified his Notice of Informal Adjudicative Proceedings directing the Division to formally identify the "written objections of substance," to clarify which written objections were substantive and should thus be considered during the proceedings. *See Revised Notice of Informal Adjudicative Proceedings.*

15. On November 21, 2022, the Division submitted its Determination of Written Objections of Substance identifying 28 of the written public comments as objections of substance. *Id.*

16. On December 8, 2022, the Presiding Officer issued a Revised Notice of Informal Adjudicative Proceedings setting the time, place, and manner of the informal proceedings. *Id.*

17. On January 27, 2023, the informal proceedings were held at the Department of Natural Resources building in Salt Lake City and were streamed online. The Division, Draper, Geneva, and several Objectors participated in the proceedings.

ISSUES AND ANALYSIS

Draper and the public commenters raised a variety of issues. The following analyzes the issues within the Division’s jurisdiction and explains why some of the issues raised by Draper and the Objectors fall outside the Division’s authority.

1. Does local zoning prevent the Division from reviewing and approving Geneva’s revision and is Geneva circumventing local zoning laws by seeking a revision to its NOI?

Local zoning does not prevent the Division from reviewing and approving Geneva’s revised NOI and the Utah Mined Land Reclamation Act does not permit Geneva to circumvent local zoning laws. The Act provides the Division’s approval of an NOI is not contingent on compliance with local zoning ordinances. The Act states “[t]he approval of a notice of intention shall not relieve the operator from responsibility to comply with all other applicable statutes, rules, regulations, and ordinances...” Utah Code Ann. § 40-8-17. This language makes clear that the Division may approve an NOI prior to an operator’s compliance with other applicable statutes, including local zoning ordinances, while simultaneously clarifying that approval does not relieve Geneva from compliance with other applicable statutes, rules, regulations, and ordinances.

2. Is the Division required to wait until Geneva has obtained all other necessary permits, licenses, and approvals before processing a revision to Geneva’s NOI?

The Act does not require the Division to wait until Geneva has obtained all other necessary permits, licenses and approvals before processing and approving a revision to Geneva’s NOI. As quoted above the Act states “[t]he approval of a notice of intention shall not relieve the operator

from responsibility to comply with all other applicable statutes, rules, regulations, and ordinances...” Utah Code Ann. § 40-8-17. The language of the Act signals to the Operator that, after receiving approval from the Division, the Operator must still comply with all other laws which may include obtaining other permits licenses or approvals. The Division noted in its briefing that “many Operators seek an approved NOI as the first step in their permitting journey since it is often a prerequisite to obtaining required permits from other governmental entities.” Division’s Response at page 8.

3. Did the Division consider fugitive dust and air quality impacts related to Geneva’s operations?

The Division appropriately relied on sister agencies to consider and analyze Geneva’s air quality impacts from fugitive dust and other emissions. The Act permits the Division to require “mining operations be conducted to minimize or prevent hazards to public health and safety,” provided that the Division does not “abrogate or interfere with the powers or duties of the Department of Environmental Quality.” Utah Code Ann. §§ 40-8-7(1)(j) and 40-8-5(3).

The Division of Air Quality (“DAQ”), which is an agency within the Department of Environmental Quality, has expertise in air quality and the Division of Oil Gas and Mining will continue to rely on DAQ’s expertise. As the Division noted in its briefing, “the Division of Air Quality [DAQ] has been granted authority to impose requirements to control emissions and fugitive dust.” Nothing in the Act supplants DAQ’s authority and Reliance on DAQ is consistent with the Division’s past decisions including the 2017 Order.

In this case while evaluating Geneva’s requested revision the Division appropriately relied on a recent DAQ Approval Order. The Approval Order included a DAQ approved Fugitive Dust

Control Plan. As noted by Geneva and the Division in their filings the requested revision will not increase Geneva's production volumes. While the air quality in the Salt Lake Valley is of great concern to its residents and visitors, the Division will continue relying on DAQ to regulate fugitive dust and emissions.

4. Does Geneva have a vested mining use?

The Division does not have authority to adjudicate vested mining uses. The Act grants the Division "jurisdiction and authority over all persons and property, both public and private, necessary to enforce this chapter," referring to Title 40, Chapter 8 of the Utah code. Utah Code Ann. 40-8-5. The statute governing vested mining use falls outside of Title 40, Chapter 8, instead it falls under Title 17, Chapter 41. The Act grants the Division authority over considerations within the Act. A vested mining use dispute relates to considerations outside the Act, and thus outside the Division's ability to make determinations.

Draper and Geneva are currently litigating this dispute in the Third Judicial District Court for Salt Lake County. Consistent with the Act and the Division's previously stated position the Presiding Officer will not make a determination whether Geneva has a vested mining use and will instead defer to the court's determination in that litigation.

5. Did the Division consider slope stability?

The Division considered slope stability in its tentative approval. Utah law requires waste piles, spoil piles and fills to be regraded and sloped to minimize safety hazards and erosion; highwalls must be reclaimed and stabilized to achieve a slope angle of 45 degrees or less. *See* Utah Admin. Code R647-4-111. To comply with this requirement, Geneva conducted a slope stability analysis and submitted the results of that analysis as Appendix H to their request. In its briefing,

Geneva represents that its slopes go above and beyond the minimum safety factors. These safety factors include both static safety factors and seismic safety factors.

During oral arguments the Division explained that highwall slope stability had been a concern for the Division when Geneva submitted its initial revised NOI. The Division requested modification to the highwall slopes to make them more gradual and less prone to erosion. Geneva worked with the Division to incorporate the Division's requested modifications.

Draper and the Objectors have not pointed to any specific deficiency in the slope analysis submitted by Geneva, or a specific area wherein the regulations have not been met. The Presiding Officer accordingly affirms the Division's tentative approval with regards to the issue of slope stability based on the slope analysis provided by Geneva, the Division's review and approval of the slopes in Geneva's modified plan, and the failure by Draper and the Objectors to point out any specific deficiencies or areas of concern.

6. Is Geneva's request defective because it supplements materials previously submitted?

Geneva's request is not defective because it contains supplements to materials already submitted. Utah law requires an operator "provide a general narrative description identifying potential surface and/or subsurface impacts." Utah Admin. Code R647-4-109. The Division reviewed what Geneva submitted and concluded that Geneva fulfilled this requirement. Geneva noted in its briefing on this issue that many studies and plans included very recent information.¹

¹ Geneva provided a Storm Water Pollution Prevention plan dated February of 2022, an Approval Order from DAQ dated July of 2021, a slope stability analysis dated February of 2022, and a hydrology study dated February of 2021.

Geneva also represented that no significant ecological changes have occurred warranting further impact assessments to plants or wildlife in the area.

During oral arguments the Division explained that it had conducted a thorough analysis of Geneva's submitted materials. The Division invited Draper to offer arguments as to any specific impacts that had not been addressed under applicable laws and regulations. The Division noted that without instructions outlining specific measures to take, grounded in law the Division must follow the plain language of the relevant laws and regulations. When given a chance to respond to the Division's statement Draper did not provide specific measures to take, or point to any specific impacts; instead, Draper asserted that Geneva was best situated to determine and mitigate impacts.

The Presiding Officer affirms the Division's tentative approval with regards to sufficiency of supplemented information. The Division strives to include public involvement and provide transparency in its decision-making. These proceedings are emblematic of the Division's consistent effort to work with operators and the public to ensure responsible development of Utah's mineral resources.

7. Has the Division considered road conditions perceived to be linked to Geneva's operations like traffic, rock chips, and truck emissions?

The Division does not regulate road conditions such as traffic, rock chips, and truck emissions. Utah law vests the Utah Department of Transportation ("UDOT") with the "general responsibility for planning, research, design, construction, maintenance, security, and safety of state transportation systems." Utah Code Ann. § 72-1-201. Within UDOT's authority is the ability to regulate covering of vehicles "carrying dirt, sand, gravel, rock fragments, pebbles, crushed base, aggregate, [and] any other similar material." Draper and the Objectors have not provided any legal

authority granting the Division the ability to regulate Geneva's logistical operations occurring miles or even hundreds of miles from their mining operations. The Division has expertise and jurisdiction over mining and reclamation operations, and appropriately relies on sister agencies to regulate areas outside of the Division's expertise such as traffic, rock chips, and truck emissions.

8. Will the Division permit blasting to take place as part of Geneva's operations?

In a recent Division Order the Division required the operator, "utilize best practices when blasting and shall take precautions to minimize and monitor seismic disturbance to nearby natural landscape features and man-made structures. An example of best practices may be found in Utah Admin. Code R645-301-500." Division Order File No. S/035/055 at page 19. The Act contains permissive language allowing the Division to control some aspects of mining operations in the interest of public health, safety, and welfare. Utah Code Ann. § 40-8-7(1)(j).

In this instance pursuant to the authority granted under the Act, and consistent with the recent Division Order the Presiding Officer within his discretion requires that if blasting takes place Geneva will take precautions to minimize and monitor seismic disturbances on properties in the vicinity before during and after a blast. Further, Geneva will ensure best practices are followed; an example of best practices can be found at Utah Admin. Code R645-301-500.

9. Did the Division consider erosion control?

The Division considered erosion control as a part of its review of Geneva's revised NOI. Utah law requires that operations be "conducted in a manner such that sediment from disturbed areas is adequately controlled. The degree of erosion control shall be appropriate for the site specific and regional conditions." Utah Admin. Code R647-4-107. When Geneva initially submitted its revision, the Division was concerned about the "long-term preservation of topsoils." Division's

Response at page 9. Geneva cured that deficiency and the revised “NOI describes Geneva’s plans for protecting and redepositing existing soils.” Geneva’s Response at page 10. The Division reviewed and approved those plans.” Geneva Response at page 10. Draper and the Objectors have not identified any portion of the revised NOI that does not meet the erosion regulatory requirements.

The Presiding Officer is satisfied that erosion control has been appropriately addressed and affirms the Division’s tentative approval with regards to erosion.

10. Did the Division consider impacts to groundwater and the Jordan River?

The Division considered impacts to groundwater and the Jordan River in its review of the Revised NOI. Utah law requires operators “provide a general narrative description identifying potential surface and/or subsurface impacts,” including, “projected impacts to surface and groundwater systems.” Utah Admin. Code R647-4-109.

The Division notes in its briefing that impacts to the aquifer and Jordan River were a concern for the Division when Geneva initially submitted its revision. Since that time Geneva has remedied the deficiency prompting the Division’s tentative approval. To address this requirement Geneva commissioned a hydrology study analyzing the potential effects to groundwater and the Jordan River. The study concluded that Geneva’s operations as outlined in its revised NOI would not materially impair groundwater or the Jordan River. Geneva included the results of this study as Appendix I.

Draper and several Objectors asserted that Geneva’s operations would negatively impact water quality. However, Draper and the Objectors fail to provide evidence of potential negative

impacts and similarly fail to point out any deficiencies, inaccuracies or inadequacies in the hydrology study commissioned by Geneva.

The Presiding Officer is satisfied that impacts to groundwater and the Jordan River have been considered and requirements under Utah Admin. Code R647-4-109 are satisfied.

11. Did the Division consider impacts to the flight park and other paragliding activities in the area?

The Division does not have authority to regulate Geneva's impact on the flight park and other paragliding activities in the area. Draper and the Objectors fail to provide legal support that the Division may consider potential offsite impacts to recreation opportunities.

Geneva represents that the revised NOI would not interfere with paragliding recreational opportunities to the north and south of Geneva's operation. Specifically, Geneva points out the revised NOI would avoid areas of Steep Mountain which Geneva owns. Avoiding mining operations on Steep Mountain will likely allow continued paragliding to the north of Geneva's operations. Further Geneva indicates it has assisted in maintaining an access road to the Flight Park State Recreation Area south of Geneva's operations.

While the Division is sympathetic to the concerns of those who recreate in the Flight Park and on Steep Mountain the Division must stay within its regulatory authority.

12. Should Geneva be required to perform concurrent reclamation?

As part of its review, the Division determined that Geneva is complying with regulations surrounding concurrent reclamation. Utah law requires an operator reclaim disturbed areas when those areas are no longer needed. Utah Admin. Code R647-4-107. As noted above in findings of fact ¶¶ 6-9, Geneva requested release of 61.5 acres of their permit area contemporaneous with their

request to disturb roughly 77 acres. These actions comply with the requirements under Utah Admin. Code R647-4-107. Draper and the Objectors did not point out an area within Geneva's operations that is "no longer needed," and would thus require concurrent reclamation.

The Presiding Officer believes the requirements under Utah Admin. Code R647-4-107 have been satisfied and affirms the Division's tentative approval on this point.

CONCLUSIONS OF LAW

1. Utah Code Ann. § 40-8-17 states: "[t]he approval of a notice of intention shall not relieve the operator from responsibility to comply with all other applicable statutes, rules, regulations, and ordinances...." The Act contemplates that the Division's review and approval of the revised NOI is only one of potentially multiple requirements Geneva must meet before it actually undertakes mining operations. Geneva must still comply with other applicable ordinances, including local zoning ordinances. However, Division is not prohibited from issuing a tentative approval prior to all of the other permitting being completed.

2. Utah Code Ann. §§ 40-8-7(1)(j) and 40-8-5(3) permits the Division to require "mining operations be conducted to minimize or prevent hazards to public health and safety," provided that the Division does not "abrogate or interfere with the powers or duties of the Department of Environmental Quality." The Division is justified in relying on the DAQ's expertise in air quality as it relates to mining operations and the Division will continue to rely on DAQ's expertise relating to fugitive dust and air quality impacts.

3. Utah Code Ann. § 17-41 governs vested mining uses. The Division does not have jurisdiction to review challenges surrounding vested mining uses and the Presiding Officer appropriately defers to the courts on this issue.

4. Utah Admin. Code R647-4-111 requires waste piles, spoil piles, and fills to be regraded and sloped to minimize safety hazards and erosion; highwalls must be reclaimed and stabilized to achieve a slope angle of 45 degrees or less. Based on the slope stability analysis submitted by Geneva, the Presiding Officer finds the legal requirements surrounding slope stability have been met.

5. Utah Code Ann. § 72-1-201 grants UDOT the “general responsibility for planning, research, design, construction, maintenance, security, and safety of state transportation systems.”. Within UDOT’s authority is the ability to regulate covering of vehicles “carrying dirt, sand, gravel, rock fragments, pebbles, crushed base, aggregate, [and] any other similar material.” Road conditions outside of a permitted area are beyond the Division’s authority to regulate. The Division has appropriately relied on sister agencies to regulate areas outside of the Division’s expertise such as traffic, rock chips and truck emissions.

6. Pursuant to Utah Code Ann. § 40-8-7(1)(j), and consistent with the Division’s Order in File No. S/035/0055 if blasting takes place Geneva will take steps to minimize and monitor seismic disturbances on properties in the vicinity before during and after a blast. Further, Geneva will ensure best practices are followed.

7. Utah Admin. Code R647-4-107 requires that operations be “conducted in a manner such that sediment from disturbed areas is adequately controlled. The degree of erosion control shall

be appropriate for the site specific and regional conditions.” The legal requirements surrounding erosion control have been met.

8. Utah Admin. Code R647-4-109 requires operators “provide a general narrative description identifying potential surface and/or subsurface impacts,” including, “projected impacts to surface and groundwater systems.” The Division has considered potential impacts to groundwater and the Jordan River and has determined that the relevant legal requirements within the Division’s authority have been met.

9. Utah Admin. Code R647-4-107 requires an operator reclaim disturbed areas when those areas are no longer needed. There is no evidence to suggest that areas within Geneva’s revised NOI are no longer needed. Legal requirements surrounding concurrent reclamation have been met.

ORDER

NOW THEREFORE, based on the foregoing findings of fact and conclusions of law, the tentative approval of Geneva’s revised NOI is affirmed.

DATED this 20th day of March 2023.

STATE OF UTAH
DIVISION OF OIL, GAS AND MINING


/s/ [John Baza \(Mar 20, 2023 10:24 MDT\)](#)

John Baza
Director of the Utah Division of Oil Gas and Mining.

RIGHT OF APPEAL

This ORDER may be appealed to the Board of Oil, Gas and Mining in accordance with the procedures set out in Utah Code Ann. § 63G-4-301 by filing a written Request for Review with the Board of Oil Gas and Mining within thirty (30) days of the ORDER being issued.

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of March 2023, I caused a true and correct copy of the foregoing **DECISION AND ORDER AFFIRMING THE DIVISION'S TENTATIVE APPROVAL** for **Division File Number M/035/0026** to be mailed to the following:

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