BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
IN AND FOR THE STATE OF UTAH

IN THE MATTER OF THE PETITION OF THE DIVISION OF OIL, GAS AND MINING FOR AN ORDER REQUIRING CESSATION OF MINING, RECLAMATION AND POSTING OF SURETY, PAGANO CLAY ESTATE, HAROLD MARSTON PERSONAL REPRESENTATIVE AND OPERATOR, PAGANO CLAY PROJECT, EMERY COUNTY, UTAH	)	NOTICE OF AGENCY ACTION DOCKET NO. 93-004 CAUSE NO. M/015/062

The Division of Oil, Gas and Mining, "Division," hereby petitions the Board of Oil, Gas and Mining, "Board," for an order directing the operator of the Pagano Clay Project to cease all mine operations, reclaim the mine site and post reclamation surety. The site is located in Emery County, Utah, and is operated by Harold Marston of Wellington, Utah.

The Division requests that a hearing on this matter be set for the Board's regularly scheduled meeting on February 24, 1993.

JURISDICTION

1. This action is brought by the Division pursuant to Utah Code Ann. §40-8-7 (1953, as amended).

2. Jurisdiction over this matter is conferred upon the Board by Utah Code Ann. §40-8-6 (1953, as amended).

CHRONOLOGICAL
STATEMENT OF FACTS

3. On May 5, 1992, the Division received from Mr. Harold Marston, as personal representative of the Jay Pagano Estate, a Notice of Intention to Commence Small Mining Operations for the Pagano Clay Project. On June 8, 1992, the Division sent a completeness letter to Mr. Marston. The letter informed Mr. Marston that a Large Mine Operation (LMO) permit application would need to be filed with this Division before the mine exceeded 5 acres of surface disturbance.

4. On August 28, 1992, the Division received a copy of a Notification of Trespass on State Lands. The notice was issued to Mr. Harold Marston, representative of the Jay Pagano Estate. The notice was issued by State Lands and Forestry. The notice discussed the lack of formal application and approval for a road crossing state land leading to a clay mining operation.

5. On September 3, 1992, Holland Shepherd, Senior Reclamation Specialist, inspected the Pagano Clay site. His inspection concluded that the mine site disturbance was significantly larger than the 5 acre limit, for a Small Mine Operation. Also, impacts to the Price River had occurred, which had not been permitted through the Division of Water Rights or the Army Corp. of Engineers. The operator had failed to obtain a Stream Alteration Permit, for constructing a sump in the Price River, and failed to obtain a Temporary Water Right permit for removal of water from the Price River.

6. On September 9, 1992 the Bureau of Land Management issued a notice of trespass to East Carbon Constructors for unauthorized road work conducted on a county road crossing BLM ground between highway 6/50 and the Jay Pagano

Operation. The road was upgraded to haul clay from the mine. The upgrade, or widening of the road, was performed without approval from the BLM.

7. On September 11, 1992, a Notice of Non-Compliance (NON) was hand delivered to Mr. Harold Marston, during a meeting at the Division's Salt Lake City offices. The Non-Compliance notice gave Mr. Marston until October 15, 1992, to submit a large mine permit application and reclamation surety to the Division for the site. State Lands and Forestry, Water Rights and Army Corp. of Engineers were notified via the NON.

8. On October 1, 1992, Holland Shepherd spoke with Mr. Marston over the phone. Mr. Marston indicated that he had already started to reclaim the site and that he did not intend to submit a large mine permit application or post a reclamation surety.

9. On October 6, 1992, the Division hand delivered another letter to Mr. Marston reiterating the permitting and bonding requirements of the NON.

10. On October 9, 1992, Holland Shepherd conducted a follow-up inspection of the Pagano Clay Operation. The surface disturbance was estimated at approximately seventeen (17) acres, and a $23,300 reclamation surety was subsequently calculated for reclamation of the mine site. A copy of the inspection report and reclamation estimate was sent to Mr. Marston.

11. On October 15, 1992, the Division received a telefaxed message from Mr. Marston, requesting an extension of time to meet State permitting requirements, and alleging the existence of extenuating circumstances.

12. On October 22, 1992, the Division mailed Mr. Marston a certified letter, granting him an extension of the deadline to respond until December 18, 1992. Also

as requested, the conditions for abatement of the NON were revised to require a detailed reclamation plan in lieu of a complete LMO application. The Division also agreed to re-evaluate the $23,300 reclamation surety estimate to reflect the recent regrading work performed on the site.

13. On November 10, 1992, Division staff met with Mr. Marston at the Division to discuss a resolution to the non-compliance situation at the Pagano Clay Project.

14. On November 13, 1992, the Division sent Mr. Marston another certified letter summarizing the agreements reached during the November 10th meeting. The letter required that the operator submit a reduced reclamation surety of $3,700 to only cover seeding, mulching and fertilization costs. This agreement was conditioned on the completion of all reclamation by December 18, 1992.

15. On December 2, 1992, Holland Shepherd again inspected the mine site. Regrading and contouring work had been performed, except for a section of the access road in the southwest portion of the site, covering approximately 2 acres. Seed, mulch and fertilizer application was to be applied by the end of the week.

16. On December 8, 1992, another letter was mailed to Mr. Marston reminding him of the pending December 18, 1992 deadline.

17. The December 18th deadline has passed. The operator has failed to satisfy the Division's requirements. No formal notification or explanation has been received from the operator. The Division has only received a verbal commitment from the operator that the required surety will be provided and the reclamation/revegetation work will be performed.

18. The Division continued to make contact with the operator beyond the December 18th deadline. Division staff spoke to the operator (Mr. Hank Regulski and Mr. Harold Marston) on January 8th and 15th regarding the posting of surety and the formal submittal of information.

COUNT I

19. The Division incorporates by reference paragraphs 1 through 18 as stated above.

20. The operator failed to permit the Pagano Clay Project according to the requirements of Utah Code Ann. § 40-8-1 et seq., R647-4-101 and R647-4-113, which require an operator to file a Large Mine Notice and post surety with the Division prior to commencement of a Large Mining Operation.

21. During operations, the operator failed to maintain the mine site in an environmentally safe and stable condition.

22. The continued failure of the operator to comply with statutory permitting requirements and meet Division deadlines necessitates this Board Action.

PRAYER FOR RELIEF

The Division requests that the Board grant the Division relief as follows:

1. That the Board issue an Order requiring the operator to complete the reclamation of the site by June 1, 1993.

2. That the Board issue an Order requiring the operator to immediately submit the required reclamation plan and full surety to the Division.

3. That the Board issue an Order, pursuant to Utah Code Ann. § 40-8-9(1)(a), which finds that Mr. Harold Marston as operator is in non-compliance and that he has acted knowingly and willfully in violating provisions of the Utah Mined Land Reclamation Act, Utah Code Ann. § 40-8-1, et seq. (1988, as amended) and the rules promulgated pursuant to statute.

Requested this 22nd day of January, 1993.

Lowell P. Braxton

Lowell P. Braxton, Acting Director
Utah Division of Oil, Gas and Mining
3 Triad Center, Suite 350
355 West North Temple
Salt Lake City, Utah 84180-1203

CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the foregoing Notice of Agency Action for Docket No. 93-004 Cause No. M/015/062 to be mailed by first class mail, postage prepaid, the 25 th day of January, 1993 to:

1. Mr. Mark Bailey
   Area Manager
   Price River Resource Area
   Bureau of Land Management
   900 North 700 East
   Price, Utah 84501

2. Mr. Kevin Carter
   Acting Director
   State Lands and Forestry
   355 West North Temple, Suite 400
   Salt Lake City, Utah 84180-1203

3. Mr. Robert L. Morgan
   Director
   Division of Water Rights
   1636 West North Temple, Suite 220
   Salt Lake City, Utah 84116-3156

✓4. Mr. Harold Marston – Certified mail # P 074 978 863
   Jay Pagano Estate
   P.O. Box 136
   Wellington, Utah 84501

Joel L Burns
(signature)
Engineering Tech
(Name, title or position)