

December 27, 2005

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **L05AP012**

HARRIS MINE
Periodic Review Appeal

Location: East Side of SR 900, South of Issaquah City Limits

Appellant: Santana Trucking & Excavating, Inc.
represented by **Robert J. Thompson**
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King County: Department of Development and Environmental Services,
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SUMMARY OF DECISION/RECOMMENDATION:

Department's Preliminary Recommendation:	Deny appeal
Department's Final Recommendation:	Deny appeal
Examiner's Decision:	Deny appeal

EXAMINER PROCEEDINGS:

Hearing Opened:	November 17, 2005
Hearing Closed:	November 17, 2005

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes.
A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS OF FACT:

1. On July 12, 2005 the King County Department of Development and Environmental Services issued a 24-page periodic review report and decision for the Harris/Interpace Mine located on the east side of SR 900 just south of the Issaquah City limits. The site has been operating since 1971 pursuant to a series of grading permits under project file no. L71G1305. The current permit conditions date back to the mid-1990s. The periodic review report contains about five pages of recommended permit condition changes that would require a new detailed site grading plan and major corrective actions.
2. The site operator and permit holder, Santana Trucking and Excavating Inc., through its principal owner Robert Thompson has filed a timely appeal of the DDES periodic review report and decision. Mr. Thompson's appeal asserts that current site operations are completely contained within the geographic and volumes limits of existing permitting and environmental documents and that such documents should be deemed adequate to regulate future operations. At issue in particular are the adequacy of the 1994 site plan and its attached conditions as well as the sufficiency of the environmental review performed in 1976 under authority of SEPA. A pre-hearing conference was held by the King County Hearing Examiner's Office on September 26, 2005, and a pre-hearing order was issued on September 27, 2005. The public hearing on Mr. Thompson's appeal was held on November 17, 2005.
3. The development standards for mineral extraction are governed by KCC chapter 21A.22. KCC 21A.22.030 requires extractive operations and materials processing to be performed subject to a valid grading permit. KCC 21A.22.060 provides site design standards, .070 provides operating conditions and performance standards, and reclamation requirements are set forth .081.
4. The periodic review process which is the subject of this appeal is described at KCC 21A.22.050. This review is expected to occur at five year intervals and is mandated to determine whether the site is operating consistent with all existing permit conditions, that current site design and operating standards are being applied to the site, and that all permit conditions necessary to mitigate identifiable environmental impacts are in existence. As noted within the pre-hearing order, the periodic review process is not a procedure for the issuance or revocation of grading or other required permits, nor is it a procedure for waiving regulatory requirements or staying code enforcement proceedings. The practical effect of an appeal of a periodic review decision as a type 2 proceeding is to discern whether the changed permit conditions recommended by DDES are supported by adequate evidence and consistent with applicable regulatory standards.
5. Mineral extraction at the Harris Mine/Interpace site has a lengthy history. It dates back to the 1920s when the site was primarily mined for its coal deposits, with coal extraction operations peaking about 1942. Since 1952 the site has primarily been used to mine its clay deposits. Actual operations since about 1990 have involved relatively limited production totals of less than 1,000 cubic yards per year. It appears that the Harris Mine produces a very specialized type of clay and is extracted in response to specific purchase orders. DDES staff estimates that within the current 23 acre parcel about 4.2 acres are presently disturbed, including about 1.5 acres of

roads. Approximately 1.8 acres are covered with imported fill to depths as great as 20 feet. Not counting stockpiles the area of current clay mining exposure appears to be less than 1 acre.

6. Although a relatively low-quantity production site the Harris Mine property contains some unique characteristics that contribute to its capacity for impact generation. First, fine-grained clays are intrinsically highly erosive, and after going into liquid suspension they are capable of being transported over considerable distances. Second, the Harris Mine site itself is rather steep, with the topographic maps showing much of the site exceeding 40% grade. Finally, Tibbetts Creek lies just west of the site across SR 900, and a major Tibbetts Creek tributary lies along the southern site boundary. Other minor tributaries also exist on the property, and all site drainage flows to the Tibbetts Creek system. The combination of the proximity of the Tibbetts Creek system to the property, the steepness of the slopes and the highly erosive nature of the clay material means that even at low production levels the site is capable of producing major erosion and sedimentation impacts off-site if operations are not adequately regulated and managed.

Within unincorporated King County the site itself plus adjacent properties to the south and east are zoned for mining use. Properties to the west across SR 900 are zoned RA-5P. Except for the portions of the Appellant's property that are devoted to mining operations, the site itself and all immediately adjacent properties lying east of SR 900 are wooded and undeveloped.

7. The permitting history for the Harris Mine dates back to 1971 when the Interpace Corporation was issued a grading permit for 93 acres. Environmental review under SEPA occurred for the Interpace property in late 1976. An environmental checklist is dated December 9, 1976, and a determination of non-significance was issued on December 17, 1976. The checklist identifies the project as encompassing 93 acres on a steep hillside which drains to Tibbetts Creek. Mining operations were expected to be completed by 1994. In response to checklist questions the applicant asserted that the proposal would not result in unstable earth conditions, in erosion or siltation, in changes in drainage patterns or runoff amounts, or discharges to surface waters, water quality impacts or fisheries impacts.
8. It appears that a grading plan was first submitted in 1980 showing topographical contours and two small areas of proposed operations, one near the southeast corner of the current parcel and the other to its northwest in the portion of the site being currently worked. Some 13 years later a more detailed plan dated June 28, 1993, was submitted. It was partially approved by DDES's predecessor, the Building and Land Development Division on July 14, 1994. The approval stamp on the plans was signed by lead site development specialist, Fred White, who appended the following handwritten notation: "Approval limited to ESC-drainage features and exploration at this time."
9. It is not disputed that the plan approved in 1994 displays more information than simply ESC and drainage facilities and proposed locations for site exploration. Rather staff's assertion is that these further features were not supported by sufficient detail to merit their approval. Staff's position is amply supported by the documentary record within the Harris Mine grading file. Staff review documents generated between June 28, 1993 and the July 14, 1994 approval date detail the shortcomings of the Harris Mine's site plan. For example, a November 3, 1993 memo from Jim Kramer, Manager of the County's Surface Water Management Division, contains the following comments:

“With the proposed Interpace site plan, not only will the sediment generated by the earthflow continue to enter the Tibbetts Creek system, but there is a significant risk of increasing sediment loading from the mine site to levels similar to those of Sunset Quarry.

“The SWM division has several concerns about the adequacy of the submitted project plans to address existing and potential sediment problems well enough to protect the downstream system. They are:

- 1) The plans need to show and discuss in more detail how onsite sediment and surface water will be managed for all stages of construction/mining activity.
 - The construction sequence portion of the plans only mentions the construction of one sediment trap; the remaining sediment trap and ponds are not included.
 - It is not clear how the sediment/erosion control system will be modified to adapt to changing site conditions as excavation begins. It appears that evacuation will remove some of the interceptor berms and swails, but the plans do not show how the system will continue to direct sediment and runoff to the ponds and traps.
- 2) The sediment traps and ponds are undersized.
 - The pond design procedure used in the present plan is intended to remove sediment sizes down to medium silt (>0.02 mm). The history of this site as a refractory clay mine suggests that much of the sediment will be in the clay size fraction (< 0.005 mm). A pond sized to remove sediment of this size would need a surface area more than 16 times larger than the current design.
 - There is no allowance in the sizing of the sediment ponds for surface water and sediment entering the site from offsite areas.
 - The 7-9% slopes used to design the traps and ponds appear to be inappropriate. In the King County soils survey, the site soils, OvF, are defined as having 40-75% slopes.
 - The 2-year 24-hour precipitation used in the trap design was taken from the wrong spot on the isopluvial map. It should be 2.8 inches, not 2.5 inches.
 - A sediment budget analysis was not included in the drainage system design. The sediment estimation methods used are not adequate for this type of site.
 - The 2-year 24-hour storm used in the design is also not adequate for this type of site.”

The Kramer memo also criticizes the 1976 environmental checklist as not accurately portraying the environmental impacts of the mining project. It emphasizes that the checklist representation that the proposal would produce no increase in erosion on or off the site is not credible for the Harris Mine clay soil type in this steep location.

10. A June 20, 1994 memo from geologist John Bethel to Fred White entitled “Grading Plans for the Interpace Mine” expanded upon the SWM comments. It noted that plan revisions submitted by the grading permit applicant had not addressed the issues raised by the SWM memorandum. It also documented then-existing erosion and sedimentation problems on the property and offered the following comments on the grading plan submittal:

- “3. The off-site analysis is incomplete. It describes the drainage course of the discharge from one sedimentation pond, but does not address discharge from the site into two other drainage courses, one north of the site and one south. Both of these tributaries will be receive runoff from portions of the site, which will be disturbed under the present proposal, and both have been severely degraded as a result of past drainage from this site.
4. Sediment discharge from the site to Tibbetts Creek is an issue of enormous environmental concern, and yet the sediment control plan presented is cursory and incomplete. Plans show construction of a single sedimentation pond and include a set of standard erosion control notes. Beyond this, there is no further analysis, clarification, or detail. Operation of a surface mine in a setting as steep and erosion-prone as the upper Tibbetts valley should include a comprehensive, detailed, state-of-the-art erosion control/water quality protection plan. The present submittal falls short of this mark by a considerable margin.”

Finally, the Bethel memo referred to a SWM study then underway and asserted that in such study “the SWM division has identified the Interpace mine site as one of the most prolific sediment sources in the Tibbetts Creek Basin.”

11. The limited scope of the 1994 site plan approval is also reiterated within the appended grading permit conditions, which besides the usual standard requirements also contained in capital letters the following site-specific term: “No construction activities, excluding routine maintenance of existing facilities, shall begin prior to the acceptance and approval of revised construction plans by King County Building and Land Development or its successor agency.”

In addition to undersized drainage facilities and an inadequate supporting drainage analysis, the 1994 plans are defective in their failure to clearly depict planned expansion of mining operations; to provide plans for stockpiles and culverts, on-site stream classifications and required setbacks; and for the absence of permit approval for past filling and disclosure of future filling plans, inadequate characterization of site slopes, and the lack of a reclamation plan. Moreover, proposed mining activities are not sufficiently described to determine whether other agency permits may be required, including a state NPDES permit for runoff discharges.

12. The basic inadequacy of the drainage and erosion and sedimentation control facilities on the Harris Mine property is substantiated by the site's inspection and enforcement record. The DDES periodic review report documents six instances between 1977 and August 2004 where stop work orders or correction letters were issued based on the functional failure of the drainage and ESC facilities. These enumerated events are further supplemented in the file by other inspection reports that the periodic review decision does not cite. It appears that erosion and sedimentation issues began to manifest within a month after the issuance of the 1997 SEPA determination of non-significance. A January 18, 1977 report by inspector Roger Brazier described the following conditions encountered on January 14, 1977:

“This is the worst grading condition in existence that I have ran across in quite some time. There is no silt control whatsoever. Silts run rampant, heading for a creek that is an eastern tributary of Tibbetts Creek.”

The report also described Tibbetts Creek as “highly discolored” with siltation and a siltation pond as totally filled with sediment and ineffective.

13. More than 25 years later this same pattern of inadequate drainage facilities and insufficient erosion and sedimentation control continues to exist. Inspection notes by Paul Meyer for January 30, 2004 read as follows:

“There has been fairly heavy rains and soils are saturated. Particular site is producing a lot of sediment from disturbed processing site. Although permit holder has laid straw on this area, it is still not enough to stop a large amount of clay and silt to move down gully into Tibbetts Crk. Small sediment pond is overwhelmed and not doing a lot. The major stream that drains the upper part of site is a significant water contributor to Tibbetts Creek. It is also carrying a large sediment load and is actively downcutting in its lower reaches. Some of material it is downcutting is old waste piles. New fill material placed on upper site is contributing sediment.”

14. Mr. Meyer's notes for a March 29, 2004 site inspection expressed similar concerns. Then in August 2004 an unusually large summer storm hit the Issaquah area. Mr. Meyer's inspection notes entered August 24, 2004 contained the following description:

“Site inspect 8/23/04. Rare, large winter-like storm. Had visited the site 8/20/04. As usual, the process area was graded to bare, soil, no erosion sediment control. The fill site was bare, the ditches were full. But it was summer. This weekend a big storm. Went by site and stopped briefly on Aug. 23 after first pulse had gone through on Sun. Operator had an excavator and small dozer on site and had graded roads, and cleaned out ditches. Evidence of rilling and channeling on fill pile, but rest of site had been regraded. Another small storm went through last night and into morning. Went by site this morning. Ditches cleaned yesterday have totally filled with sediment and water flowing down road until it gets to culvert. Goes into creek below road at culvert. Rest of water flows over clay rich area, through stockpiles and generally into small sed trap under power lines. Water is overflowing that trap around and silt fences and into drainage. Very turbid water flows into Tibbetts Creek. Took pictures. In Tibbetts Creek can see wedges of clay-rich bars where drainage flows into the Tibbetts.”

The staff photographs for August 2004 entered into the record support the description provided above.

15. One could go on. Comments provided to the periodic review process by Sue Clarke, senior engineer with King County Water and Land Resources based on her August 2004 site visit, provide much the same information: exposed stockpiles of soils, ineffective erosion and sedimentation control, undersized sediment ponds and turbid discharges to Tibbetts Creek. Similar observations were made within a “Tibbetts Creek Sediment Supply and Disposition” study performed for the King County Surface Water Management Division in June 1995.

Mr. Thompson’s response to all of this is to state that whenever erosion and sedimentation events have occurred, he has taken prompt action to clean up the site, cover stockpiles, and restore ditches, check dams and fabric fences. But this really misses the fundamental point, which is that the goal of the County’s regulatory process with respect to mining operations is to prevent erosion and sedimentation impacts from occurring in the first place, not simply to clean up the mess afterward. The fundamental inadequacy of the Harris Mine site’s erosion and sedimentation control measures and drainage facilities is abundantly supported by the record, as are the resultant turbidity impacts from sediment releases off-site to Tibbetts Creek.

16. The DDES periodic review report deals as well with other potential impact issues arising from mining operations at the Harris site. These include noise, traffic, air and dust issues. While the need to meet normal regulatory standards with respect to these functions is clear, the relatively low intensity of site operations and the property’s forested surroundings do not appear to raise any issues that the standard regulatory mechanisms cannot address. No “identifiable environmental impacts” of any unusual magnitude are disclosed within the record regarding these secondary review topics, and no special findings are required.

CONCLUSIONS:

1. One of the issues raised by this appeal is whether the 1976 SEPA threshold determination of non-significance issued to Interpace for the Harris Mine site retains any current validity and thereby precludes DDES from requiring a new environmental checklist and new threshold determination. Resolution of this question is governed by WAC 197-11-600, which regulates the use of existing environmental documents. WAC 197-11-600 (3) requires an agency “acting on the same proposal” to use an existing “environmental document unchanged” unless certain exceptional circumstances obtain. With respect to a previously issued DNS, WAC 197-11-600 (3) (b) requires preparation of a new threshold determination if there are:

- “(i) Substantial changes to a proposal so that the proposal is likely to have significant adverse environmental impacts . . . ; or
- “(ii) New information indicating a proposal’s probable significant adverse environmental impacts. (This includes discovery of misrepresentation or lack of material disclosure.) A new threshold determination . . . is not required if probable significant adverse environmental impacts are covered by the range of alternatives and impacts analyzed in the existing environmental documents.”

2. Mr. Thompson is correct in asserting that the scope of current Harris Mine operations falls within the geographic and quantitative limits described within the 1976 environmental checklist. The 1976 checklist was for a 93 acre parcel and the current operation is contained within a 23 acre portion of that original tract. Moreover, the Interpace operations as described in the 1976 checklist anticipated a higher level of materials production than characterizes the current business. What is inaccurate about the 1976 checklist and the DNS derived from it is not the description of the proposal but rather the description of the probable significant adverse environmental impacts resulting from such proposal. The checklist describes the mining operation as not resulting in unstable earth conditions, not causing erosion or siltation, not involving discharge into surface water or water quality impacts, and as not having impacts to fisheries resources. Without speculating as to whether these inaccuracies constituted misrepresentations or material non-disclosure when they occurred in 1976, it is indisputable that more than 25 years of new information demonstrates beyond any doubt that these checklist representations were incorrect and that significant adverse environmental impacts have resulted from mining operations at the Harris site. Accordingly, under WAC 197-11-600 a new environmental checklist and threshold determination should be required for continued grading operations at the Harris Mine site.

3. As noted above, KCC 21A.22.030 requires all mining operations to be conducted under a valid grading permit. One of the arguments raised by Mr. Thompson in his appeal is that a new site plan and permit conditions ought not be required for the Harris Mine because the 1994 site plan and its appended conditions adequately manage mining operations consistent with current regulations. The issuance and renewal of clearing and grading permits are governed by KCC chapter 16.82. Questions of permit duration and renewal are primarily governed by KCC 16.82.085. These provisions state that no clearing and grading permit can be issued for more than two years unless it is a programmatic permit, which may have a duration of five years. However, KCC 16.82.053 A specifies that mineral extraction does not qualify for a programmatic permit.

KCC 16.82.085 B provides that DDES may renew a clearing and grading permit if it determines that “operating conditions and performance standards have been met and that the permit conditions are adequate to protect against the impacts resulting from the permitted activity.” Among the operating conditions and performance standards specified for mineral extraction operations within KCC 21A.22.070, is that the “operator shall control surface water and site discharges to comply with KCC chapter 9.04 and the surface water design manual and KCC chapter 9.12 and the stormwater prevention manual.” Since it is beyond debate that Harris Mine operations chronically fail to control surface water and site discharges consistent with surface water design manual requirements, there is no basis for arguing that current operating and performance standards have been met or that current permit conditions adequately protect against the impacts of the grading activity.

4. In addition, KCC 16.82.055 and .060 outline the requirements for a complete and sufficient clearing and grading permit application. The site plan approval issued by DDES in 1994 to the Appellant for the Harris Mine site was explicitly described as limited and partial. Among the required elements missing from the application package as specified in the ordinance were proposed grading contours, adequate erosion and sedimentation control facilities, adequate permanent drainage facilities, a complete description of the work proposal including volumes, total area and locations, the delineation of on-site critical areas and their buffers and a

reclamation plan meeting the requirements of KCC 21A.22.081. Accordingly, no basis exists for concluding that the 1994 site plan provides all of the information required under current regulations and meets grading and clearing ordinance operating conditions and performance standards.

5. The 1994 grading plan proposed by the Appellant cannot meet current site design and operating standards if it does not provide the information required for a complete and adequate grading permit application submittal. The record demonstrates further that current operations fail to mitigate identified environmental impacts in the areas of erosion and sedimentation control, discharge of turbid flows to Tibbetts Creek, delineation and analysis of steep slope impacts, and potential impacts to protected stream buffers. This failure to meet current standards and to mitigate environmental impacts requires that the Department's periodic review decision be upheld and the appeal be denied.
6. The DDES periodic review decision has appended to it 27 conditions that seek to bring the Harris Mine operation into compliance with current design and operating standards and to mitigate the environmental impacts identified within the Department's report and supported by the facts reviewed in this appeal. The actions required of the mine operator as identified within the conditions include submitting a new site grading plan that cures the defects identified within the 1994 plan and implementing the erosion and sedimentation control and drainage facilities necessary to avoid future discharges of turbid runoff to the Tibbetts Creek system. Some of these proposed conditions are directly responsive to the operational shortcomings identified within the periodic review report while others are more generic requirements that reflect current regulations in a broader context. While one may quibble with the exact phrasing of some of these conditions, the purpose of this appeal proceeding is not to micromanage the permitting process, but simply to assure that through the regulatory process the fundamental purposes of KCC 21A.22 are being met. We conclude therefore that the DDES conditions are supported by the record and by the underlying regulatory framework, and we do not discern that they are in any essential respect inappropriate.

The biggest problem divulged by the periodic review report and its underlying documentation is not that staff's proposed actions are inappropriate, but rather that they should have been taken many years ago. The fact that the Harris Mine is a small operation generating limited revenues may argue for phased implementation of regulatory requirements, but the sedimentation impacts to Tibbetts Creek are sufficiently severe and frequent as to require that at least these specific operational effects be promptly and satisfactorily prevented and controlled. While in 1994 it may have been understandable to provide Mr. Thompson with some extra time to get his paperwork in order, it is indefensible that 11 years later these issues should remain unresolved. Staff should provide Mr. Thompson with a reasonable final deadline for submitting the plans and studies necessary to correct the chronic and egregious drainage, erosional and sediment control problems that characterize the Harris Mine property. But if this deadline is missed, DDES needs to muster the bureaucratic courage to shut the operation down.

DECISION:

The periodic review appeal of Robert J. Thompson, dba Santana Trucking and Excavating, Inc., is DENIED. The periodic review report and decision issued by DDES on July 12, 2005 is affirmed.

ORDERED this 27th day of December, 2005.

Stafford L. Smith
King County Hearing Examiner

TRANSMITTED this 27th day of December, 2005, to the parties and interested persons of record:

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NOTICE OF RIGHT TO APPEAL

The action of the hearing examiner on this matter shall be final and conclusive unless a proceeding for review pursuant to the Land Use Petition Act is commenced by filing a land use petition in the Superior Court for King County and serving all necessary parties within twenty-one (21) days of the issuance of this decision. The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.

MINUTES OF THE NOVEMBER 17, 2005, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L05AP012.

Stafford L. Smith was the Hearing Examiner in this matter. Participating in the hearing were Paul Meyer and Fred White, representing the Department; and Robert J. Thompson and Shawn O'Brien representing the Appellant.

The following Exhibits were offered and entered into the record:

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| Exhibit No. 1 | Periodic Review Report and Decision with attachments dated July 12, 2005 |
| Exhibit No. 2 | Photographs (12 pages) taken August 3, 2004, of the property which were sent in response to the Pre-Hearing Conference |
| Exhibit No. 3 | Grading permit file |
| Exhibit No. 4 | Aerial photo taken in 2002 of property |
| Exhibit No. 5 | Photographs (A-L) depicting current conditions |
| Exhibit No. 6 | Hand-written notes from Ron Ainslie dated July 24, 1995 |
| Exhibit No. 7 | Hand-written notes from Ron Ainslie dated May 22, 1996 |
| Exhibit No. 8 | Inspection report of site from DDES |
| Exhibit No. 9 | Comments and photos from Sue Clarke dated August 13, 2004 |

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