

Virginia Department of Mines, Minerals and Energy  
Board of Surface Mining Review

Minutes of October 12, 2006 Hearing

The Board of Surface Mining Review (“Board”) met at 11:00 a.m., October 12, 2006, to consider an appeal by LeSueur-Richmond Slate Corp. (Permit Number 05745AA) of orders issued by the Department of Mines, Minerals and Energy’s Division of Mineral Mining (DMME, DMM). The Board conducted an administrative hearing in the conference room at the Buckingham County Administration Building, Route 60, Buckingham Court House, VA. 23921.

Three Board members were present to conduct the administrative hearing: James O. Crook, Chairman, Joyce K. Lewis, and Tom T. Makin.

David Mitchell and Thomas Hughes appeared on behalf of LeSueur-Richmond Slate Corp. Damien Fehrer of the Division of Mineral Mining and D. Nelson Daniel, Assistant Attorney General and counsel to the Division of Mineral Mining, appeared on behalf of the DMME.

Chairman Crook opened the hearing and noted the purpose of the hearing was to hear appeals of Special Orders (S.O.’s) V71434, V71670, and V71671. Chairman Crook noted that the time for appeal of S.O. V71434 issued March 16, 2005 was passed. Mr. Mitchell stated that Richard Rose, operator of LeSueur-Richmond Slate Corp., has agreed to withdraw the appeal of S.O. V71434.

Mr. Daniel stated that S.O. V71670 requires LeSueur-Richmond Slate Corp. to clean-up material at the crossing of its haul road with State Route 675. He also stated that S.O. V71671 requires the mine company to repair screening along State Route 675. Mr. Daniel stated that these are on-going issues, the mine operator has been aware of the problems, and has failed to correct the conditions. These facts prompted the issuance of the orders. Mr. Mitchell stated that LeSueur-Richmond Slate Corp. has been working to address issues all along the road, and has made good faith efforts to follow the mining regulations plus its mining plans and specifications. Regarding the screening, Mr. Mitchell stated that the fence not being attractive is subjective. He stated he was aware that Department of Mines, Minerals and Energy regulations require improvements of appearance. Mr. Mitchell stated that the Virginia Code doesn’t address the issue of appearance of mines, the regulation is outside the authority of the Department to adopt, and it also raises constitutional issues since it is outside of the police powers of the Commonwealth to address issues that are purely aesthetic.

Mr. Daniel submitted 18 exhibits and proposed findings of fact and conclusions of law for the Board’s consideration. Mine Inspector Fehrer reviewed the events leading to the issuance of the Special Orders. He noted that the problems have been continuing. Inspections between October 2005 and July 2006 revealed that repairs to the fence were needed and the road crossing needed to be maintained to prevent debris from being

tracked into Route 675. When he made note of the necessary corrective actions to mine officials, they had indicated that corrective action would be taken. During an investigation on August 3, 2006, material was observed on the road and the fence was determined to be in need of repair. The S.O.'s were issued on August 8, 2006. Photos were provided to demonstrate the condition of the road and screening fence. Copies of mine permit documents were introduced that describe the approved plans for the screening fence along State Route 675. On follow-up inspections Mine Inspector Fehrer found that no work had been done to comply with the S.O.'s. Photos were also presented to document the condition of the screening fence and the crossing of State Route 675 on August 23, 2006 and October 11, 2006 (showing debris on the road and that no action had been taken to repair the fence).

Mr. Daniel presented documentation of the informal review of the S.O.'s and the affirmation of the orders by the Division of Mineral Mining. Mr. Daniel requested that the Board affirm the orders.

Thomas Hughes, mine manager for LeSueur-Richmond Slate Corp., described his interaction with Mine Inspector Fehrer over the past 7 or 8 years. Mr. Hughes stated that the haul road crossing with State Route 675 has been a continuing problem. Mr. Hughes described improvements to the road and its drainage system that LeSueur-Richmond Slate Corp. had made over the years. Mr. Hughes stated that all work that the Division of Mineral Mining had requested had been done except the installation of a water bar. The maintenance of the crossing was described as a daily issue. Mr. Hughes stated that there is no "quick fix" to the problem. Mr. Hughes also discussed drainage problems that exist along State Route 675. Mr. Hughes described the need for maintenance of Route 675 by the Virginia Department of Transportation and the need for signs and lowered speed limits on the road to improve safety. On questioning by Mr. Daniel, Mr. Hughes stated that the debris in the ditches and culverts of Route 675 is coming from the mine roads. Mr. Hughes said he was unaware of any other solutions to the crossing of public roads by mine roads, and that maintenance is the solution. Mr. Hughes also stated that the paved mine road is not cleared of debris, but only the crossing of State Route 675 is cleaned. Mr. Hughes stated that warning signs and reduced speed limits do not address the problems with the road crossing debris. Mr. Hughes stated he thought they would help improve safety for the traffic on Route 675.

Mr. Daniel recommended that the Board conclude that the Division of Mineral Mining Director acted within the scope of his authority in affirming the violations cited in S.O.'s V71670 and V71671. Mr. Daniel also stated that the conditions of the road crossing and the screening fence are addressed by regulation and LeSueur-Richmond Slate Corp.'s permit and that there is ample evidence in the record to support the issuance of the S.O.'s. He stated that the regulations had been in effect since 2003. Mr. Daniel stated that Department of Mines, Minerals and Energy exhibits demonstrated that LeSueur-Richmond Slate Corp. officials indicated that they would correct the conditions that led to the S.O.'s, but the conditions still existed. The Board was asked to affirm S.O.'s V71670 and V71671.

Mr. Mitchell stated that regarding S.O. V71670 the condition of the State Route 675 crossing spoke for itself. Mr. Mitchell said that the crossing was difficult to maintain, and the conditions are not a result of negligence by LeSueur-Richmond Slate Corp. Regarding S.O. V71671, Mr. Mitchell stated that the fence might not be attractive. Mr. Mitchell questioned whether there was any evidence in the Virginia Code or the enabling statute authorizing the Department of Mines, Minerals and Energy to regulate the appearance of mine sites. Mr. Mitchell stated that in other statutes, the courts have held that the public health, safety and welfare can be addressed through police power, but not strictly appearance. Mr. Mitchell also stated that the regulation is beyond the limits of the Constitution related to the exercise of police power.

Chairman Crook stated that regarding the legality of regulations; the Board was not acting on their appropriateness. The Board then affirmed S.O.'s V71670, and V71671. A written order will be prepared. The hearing was recorded.

There being no further business, the hearing was adjourned at approximately 1:40 p.m.

Minutes by: Conrad T. Spangler, III  
Secretary to the Board