



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

Bureau of Land and Waste Management
Division of Mining and Solid Waste Management

August 23, 2011

Mr. Donald Godwin, Owner
Southern Asphalt, Inc.
3370 Mt. Pisgah Cemetery Road
Conway, SC 29526

RE: Exemptions from SC Mining Act
Cotton Patch Subdivision Retention Pond, Horry County

Dear Mr. Godwin:

Thank you for discussing excavation of the Cotton Patch Subdivision retention basin with me on August 16, 2011. As explained over the phone, there is no exemption within the S.C. Mining Act (Act), Section 48-20-40, for subdivision development.

The Act does allow exemptions for 1) excavation or grading when conducted solely in aid of on-site farming or of on-site construction [Section 48-20-40(1.b)], and 2) excavations for borrow pits maintained solely in connection with construction, repair and maintenance of the public road systems of the state's Department of Transportation (Section 48-20-280).

Southern Asphalt, Inc. submitted a mine application to the Department for this site in March 2010. The application was subsequently withdrawn in April 2010. Based on file information, Southern Asphalt, Inc.'s intent was to provide material solely to SCDOT projects (see attachments).

During our conversation, you clarified this was not the current situation. It is the understanding of Southern Asphalt, Inc. that this work was exempt from the Act because the basin is being excavated as a retention pond for subdivision development, thereby meeting the "on-site construction" exemption of the Act.

Several criteria are used by the Department to evaluate the applicability of the on-site construction exemption concerning retention ponds required for subdivisions. In determining the applicability of this exemption, the Department looks at criteria including:

- Is the basin an aesthetic feature or functioning as storm water management
- Is the basin designed by an engineer to met the requirements to contain stormwater
- Is the basin being excavated to the required stormwater design (and not in excess of that design)?
- Are appropriate local/state permits issued for the project?

Once a pond is excavated to a size/depth exceeding the engineered design of the retention basin, it would be considered mining. At that time, the purpose of the excavation is no longer for basin design; typically material is removed and consumed in projects offsite, therefore mining.

The Act defines mining as (a) the breaking of the surface soil to facilitate or accomplish the extraction or removal of ores or mineral solids for sale or processing or consumption in the regular operation of a business; (b) removal of overburden lying above natural deposits of ore or mineral solids and removal of the mineral deposits exposed, or by removal of ores or mineral solids from deposits lying exposed in their natural state.

During our discussion, you stated the basin was designed conservatively (i.e. was over-sized) in order to enhance the marketability of the subdivision and to protect the adjacent Carolina Bay. The additional capacity needed to enhance the aesthetics of the pond is not necessary to successfully perform its storm water function. Therefore, excavation of the Cotton Patch retention basin larger or deeper than specified in Storm water Construction Permit #26-10-08-03 dated September 2010 would require a Mine Operating Permit.

If you have any questions regarding the S.C. Mining Act, or about the process of obtaining a Mine Operating Permit, please call me at 803 896-4263.

Sincerely,

A handwritten signature in black ink, appearing to read "Marianna DePratter". The signature is stylized with a large, sweeping initial "M" and a long, horizontal stroke extending to the right.

Marianna DePratter, P.G.
Mining & Reclamation Program

cc: Larry Ragsdale, Director, Region 6 EQC
Bill Kregloe, OCRM