

DUHRING RESOURCE COMPANY

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August 22, 2007

SENT BY CERTIFIED MAIL  
AND FACSIMILE

Kathleen Morse, Forest Supervisor  
Allegheny National Forest  
222 Liberty Street  
P.O. Box 847  
Warren, PA 16365

RE: Stone Removal and Freedom of Information Request

Dear Ms. Morse:

As you know from previous correspondence, Duhring is involved in developing several projects on the Allegheny National Forest (ANF). Two of those projects involve Lots 8 and 9 in Sheffield Township, Warren County, Pennsylvania. We recently met with Steve Dyne, an independent contractor retained by the ANF to perform road work on those lots in preparation for an ANF timber sale.

That meeting was also attended by two ANF personnel. During that meeting, Duhring was provided with a copy of the proposed road work including the associated pit plan prepared by the ANF. The pit plan calls for removal of stone from five pits. The plan is generic as to all pits. The only information unique to any of the proposed pits is a map and test hole information relating to a pit on F.R. 446.

One of the pits for which no map is provided is located on F.R. 162. This is the closest pit to which Mr. Dyne is now working. Mr. Dyne has been removing stone from that pit for the work in which he is now engaged.

With respect to that pit on F.R. 162 and Mr. Dyne's removal of stone therefrom, I observe the following things:

1. The Forest Service Pit Plan contains no map or other information indicating where Mr. Dyne will be removing stone from the 162 pit.
2. As part of its past work, Duhring has already removed saplings and overburden from the 162 pit site.

3. Therefore, stone being removed by Mr. Dyne from 162 is being taken from areas prepared by Duhring and from which Duhring had planned to remove stone in the future.

4. Neither the Forest Service nor any of its contractors initiated discussion with Duhring as to how, when and where stone would be removed from any of the pits planned upon by the Forest Service (including 162).

5. The Forest Service Pit Plan contained in the package under which Mr. Dyne is working does not provide for any coordination for stone removal between the Forest Service and Duhring.

6. In its Plans of Operation submitted in March 2007, Duhring indicated its intention to remove stone from the pit on F.R. 162.

7. Duhring was not made aware of the Forest Service's specific plans, timetable, or location for timber removal in the Lot 8 and Lot 9 region. The contact made by Mr. Dyne approximately ten days ago was the first specific knowledge afforded to Duhring.

8. While meeting with Mr. Dyne and the two ANF employees, I complained about the lack of coordination in general and the failure to consult Duhring with respect to the stone removal in particular. The ANF employees responded that more specific maps of the pits and planned removal might be prepared in the future but that no such specifics were available at this time.

The above points are obviously sources of confusion and frustration to Duhring. When looked at in the context of the last two years, the Forest Service's approach as to stone removal does not appear to be logical. Over a year ago while Duhring was in the middle of a stoning project on Lot 9, FS personnel summarily instructed my partner to discontinue the project. Duhring's operation that day consisted of four dump trucks, one bulldozer, and one excavator. The FS did not provide any forewarning to its discontinuance notice. My partner was threatened with arrest if he failed to comply.

Thereafter the FS issued a letter indicating it controlled all of the stone in and upon the ANF. However, the ANF thereafter advised that the letter had been issued hastily and was not the ANF's official position.

Thereafter in various meetings with oil and gas operators, the ANF has staked out a variety of positions including an oft-repeated promise to issue a letter summarizing the ANF's "new policy" concerning stone. As recently as six weeks ago, that "new policy" letter was to be issued in association with a meeting which you requested with POGAM. Members of the oil and gas industry are awaiting that letter, but ANF personnel have now said the letter will not be issued.

Within the last two weeks, ANF personnel have spoken to some oil and gas operators (but not all) concerning a new oral policy. Apparently under this oral policy the ANF is seeking to impose restrictions on long-standing practices. However, those oral policies have not yet been communicated to Duhring. The only contact with Duhring came through Sheldon Winters several weeks ago when Mr. Winters indicated that Duhring would need to prepare pit plans for the pits it intended to utilize.

Coming then, full circle, to the meeting with Mr. Dyne, I note that Duhring faces interesting difficulties. Duhring has never prepared written pit plans in the past. The primary reason proffered by Mr. Winters concerning the current need for written pit plans is to coordinate the usage of the stone. Query, is there any purpose in Duhring's preparing such a plan if the Forest Service, in turn, has no intention of coordinating with Duhring? And in the particular instance of the pits which the FS is intending to use in the Dyne project, how would Duhring be expected to prepare pit plans without knowledge of the scope and location of the stone removal the FS apparently has in mind? Finally, how would you propose that Duhring deal with the situation where the FS contractor is now removing stone from the area where Duhring has already removed saplings and overburden? Should Duhring use the Forest Service tactic of threatening criminal action?

Duhring intends to proceed with its projects as set forth in the respective Plans of Operation. I remind you that the ANF is seriously delinquent with respect to those plans and that you have put Duhring in a crisis position. I call upon you to advance those projects immediately and to instruct Mr. Dyne to discontinue his usage of the pit area already cleared by Duhring. I would appreciate your prompt attention to these matters.

Also, the frustration with the ANF's continually shifting positions on stone cannot continue. ANF employees have been making inconsistent and unpredictable statements over the past two years. In order to assess the credibility of such statements, I have prepared a Freedom of Information Request. Inasmuch as I have convenient access to your office, it is not necessary for you to photocopy the requested documents. I would be happy to review them at your headquarters on Liberty Street so that we need make copies only of those which I determine to be relevant. The Freedom of Information Request is attached.

Very truly yours,

  
Arthur J. Stewart

AJS/ame  
Enclosure  
c: POGAM

## FREEDOM OF INFORMATION REQUEST

Submitted By:

DUHRING RESOURCE COMPANY

To

KATHLEEN MORSE, ALLEGHENY NATIONAL FOREST, USDA

August 21, 2007

- 1) All plans (sometimes known as pit plans), bearing in any way upon the methodology for removing stone from stone pits or other locations upon the Allegheny National Forest, and prepared by the Allegheny National Forest from January 1, 2000 through the date of this request.
- 2) All study reports, summary results, correspondence, and official staff e-mail correspondence regarding the plans referenced in paragraph 1.
- 3) All administrative memoranda concerning the plans referenced in paragraph 1.
- 4) All Categorical Exclusion, Environmental Impact Statements, Environmental Assessments, Record of Decision, and other documents prepared pursuant to NEPA, other applicable law or Forest Service policy or procedure and related to the stone pits or other locations from which stone has been removed by the Allegheny National Forest or its contractors from January 1, 2000. (Note, the documents requested pursuant to this paragraph may likely have been prepared prior to January 1, 2000. The January 1, 2000 date is used only to identify the pits to which the request relates. The document request pertains to pits utilized by the Allegheny National Forest or its contractors on or after January 1, 2000. The documents requested under this paragraph are not limited by any time frame.)
- 5) All plans (sometimes known as pit plans), bearing in any way upon the methodology for removing stone from stone pits or other locations upon the Allegheny National Forest, and prepared by persons or entities removing oil or gas on or under the Allegheny National Forest from January 1, 2000 through the date of this request.
- 6) All study reports, summary results, correspondence, and official staff e-mail correspondence regarding the plans referenced in paragraph 5.
- 7) All administrative memoranda concerning the plans referenced in paragraph 5.
- 8) All Categorical Exclusion, Environmental Impact Statements, Environmental Assessments, Record of Decision, and other documents prepared pursuant to NEPA, other applicable law or Forest Service policy or procedure and related to the stone pits or other locations from which stone has been removed by the aforesaid oil or gas operators from January 1, 2000. (Note, the documents requested pursuant to this paragraph may likely have been prepared prior to January 1, 2000. The January 1, 2000 date is used only to identify the pits to which the request relates. The document request pertains to pits

utilized by oil or gas operators on or after January 1, 2000. The documents requested under this paragraph are not limited by any time frame.)

- 9) With respect to the pits identified in any of the preceding paragraphs hereof all correspondence, memoranda, study reports, official staff e-mail correspondence, or other documents, relating to the identity of the agency, company or person who or which initially opened the pit via the first removal of stone therefrom.
- 10) With respect to the pits identified in any of the preceding paragraphs hereof all correspondence, memoranda, study reports, official staff e-mail correspondence, or other documents, relating to any charges imposed by the Allegheny National Forest for any stone removed therefrom.