

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING

File No. 3-21864

<p>In the Matter of</p> <p>Applied Minerals, Inc.,</p> <p>Respondent.</p>
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MOTION FOR SUMMARY DISPOSITION

The Division of Enforcement (“Division”), by counsel, pursuant to the Securities and Exchange Commission (“Commission”) Rules of Practice 154 and 250, moves for an order revoking the registration of each class of securities of Applied Minerals, Inc. (“AMNL”) registered pursuant to Section 12 of the Securities Exchange Act of 1934 (“Exchange Act”).

There is no dispute that a violation has occurred. AMNL’s Answer together with the Commission’s own records show that AMNL has failed to file six periodic reports. The only remaining issue is the appropriate remedy for AMNL’s violations, a resolution governed by the Commission’s precedent on the factors set forth in *Gateway International Holdings, Inc.*, Exchange Act Rel. No. 53907, 2006 WL 1506286 at *8 (May 31, 2006) (“*Gateway*”). The facts relevant to the *Gateway* factors are likewise not disputed. First, all reporting violations are serious. Second, AMNL’s violations were recurrent, because it failed to file six consecutive periodic reports. Third, AMNL has a high degree of culpability because it knew of its reporting obligations but failed to comply with them. Fourth, AMNL has not cured its past violations and, as of May 2, 2024, had not even engaged an auditor to prepare the delinquent reports. Nor has

AMNL provided evidence of concrete remedial measures adopted to prevent future violations. Fifth, AMNL has not provided credible assurances that it will comply with the Commission's rules in the future, as evidenced by the fact, among others, it has not cured its existing delinquencies.

BRIEF IN SUPPORT

I. FACTS

A. Issuer Background.

Applied Minerals, Inc. (CIK #8328) (Ticker symbol: AMNL) is a Delaware corporation, located in Eureka, Utah, with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g).¹ AMNL first registered its securities with the Commission on Form 8-A12(g) on July 2, 2002.² Currently, unsolicited quotations for AMNL's common stock are quoted on OTC Link operated by OTC Markets Group, Inc.³

B. AMNL'S Delinquencies.

Section 13(a) of the Exchange Act and Rule 13a-1, thereunder, require that all issuers file an annual report for each fiscal year, and Exchange Act Rule 13a-13 requires that domestic issuers file quarterly reports. 15 U.S.C. §78m(a) and 17 C.F.R. §240.13a-1; 17 C.F.R. §240.13a-13. Since AMNL is incorporated in Delaware, it is a domestic issuer and must file quarterly

¹ See Exhibit ("Exh.") 1 (Delaware Secretary of State Corporate Report dated December 27, 2023) to the accompanying Declaration of Gina Joyce in Support of the Division of Enforcement's Motion for Summary Disposition ("Joyce Dec.").

² See Exh. 2 to Joyce Dec. (cover page of Form 8A-12G filed with the Commission on July 2, 2002). At that time, Respondent's name was Atlas Mining Company. According to its November 3, 2009 8-K, Atlas Mining Company changed its name to Applied Minerals, Inc. According to its November 24, 2009 8-K, Respondent changed its ticker symbol to AMNL. See <https://www.sec.gov/edgar/browse/?CIK=0000008328>; see also Rule of Practice 323 (Commission may take judicial notice of any matters in the Commission's official public records).

³ See Exh. 3 to Joyce Dec. (printout of OTC Market Report dated May 28, 2024 concerning AMNL).

reports.⁴ AMNL is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed its unaudited quarterly report on Form 10-Q for the period ended September 30, 2022.⁵ On May 2, 2024, AMNL filed its Answer admitting that it is delinquent. See Answer at ¶¶1-2.

II. APPLICABLE STANDARDS

Rule of Practice 250(b) provides for summary disposition if there is no genuine issue with regard to any material fact and the party making the motion is entitled to judgment as a matter of law. See 17 C.F.R. 201.250.

Section 12(j) empowers the Commission, where “necessary and appropriate for the protection of investors” to either suspend (for a period not exceeding twelve months) or permanently revoke a security’s registration “if the Commission finds, on the record after notice and opportunity for hearing, that the issuer of such security has failed to comply with any provision of this title or the rules and regulations thereunder.” 15 U.S.C. §781(j). In making its determination, the Commission will consider the five *Gateway* factors, which are: (1) the seriousness of the issuer’s violations; (2) the isolated or recurrent nature of the violations; (3) the degree of culpability involved; (4) the extent of the issuer’s efforts to remedy its past violations and ensure future compliance; and (5) the credibility of the issuer’s assurances, if any, against future violations. *Gateway*, 2006 WL 1506286 at *8. Where the issuer’s violations are serious and recurrent, the Commission applies “a strong presumption in favor of revocation” that can only be rebutted by “a strongly compelling showing with respect to the other factors.” *Absolute*

⁴ See Exhs. 1 and 2 to Joyce Dec. (Delaware Secretary of State Corporate Report dated December 27, 2023) and (cover page of Form 8A-12G filed with the Commission on July 2, 2002).

⁵ See Exh. 4 to Joyce Dec. (Printout of AMNL’s EDGAR History).

Potential, Inc. (f/k/a Absolute Waste Services, Inc.), Exchange Act Rel. No. 71866, 2014 SEC LEXIS 1193, *24 (April 4, 2014).

III. ARGUMENT

AMNL admits that it failed to file six periodic reports required by Exchange Act Section 13(a) and Rule 13a-1 thereunder. Answer at ¶¶1-2. Therefore, whether a violation occurred is not disputed. The only remaining issue is the appropriate remedy for AMNL's violations. Because the facts relevant to the *Gateway* factors are not disputed, no evidentiary hearing is necessary for a remedy determination. Under Commission precedent, the appropriate remedy is revocation.

A. AMNL's violations of Section 13(a) are serious and recurrent.

1. AMNL's violations are serious.

All violations of Section 13(a)'s reporting requirements are serious because timely and accurate reporting is statutorily required and the reporting requirements are one of the primary statutory tools for protecting the integrity of the securities marketplace. As the Commission has stated:

Failure to file periodic reports violates a central provision of the Exchange Act. The purpose of the periodic filing requirements is to supply investors with current and accurate financial information about an issuer so that they may make sound decisions. Those requirements are "the primary tool[s] which Congress has fashioned for the protection of investors from negligent, careless, and deliberate misrepresentations in the sale of stock and securities." Proceedings initiated under Exchange Act Section 12(j) are an important remedy to address the problem of publicly traded companies that are delinquent in the filing of their Exchange Act reports, and thereby deprive investors of accurate, complete, and timely information upon which to make informed investment decisions.

Gateway, 2006 WL 1506286 at *6 (quoting *SEC v. Beisinger Indus. Corp.*, 552 F.2d 15, 18 (1st Cir. 1977)).

Delinquencies are especially serious when they coincide with significant events in a registrant's business. See *China-Biotics, Inc.*, Exchange Act Rel. 70800, 2013 WL 5883342 at

*11 (Nov. 4, 2013) (delinquencies were especially serious where the periods coincided with significant changes to financial results, changes to its business model, turnover in management, and major financial investments); *Citizens Capital Corp.*, Exchange Act Rel. No. 67313, 2012 WL 2499350 at *9 (June 29, 2012) (reporting violations were especially significant when they “occurred during a period when the [c]ompany admittedly engaged in various and significant changes in its business”).

Here, investors have lacked current and accurate financial information about the company since AMNL filed its quarterly report for the period ending September 30, 2022. AMNL’s reporting violations are especially serious because they coincided with AMNL’s consideration of a Chapter 11 proceeding and implementation of a recapitalization plan, a turnaround plan, and a capital raise, all significant changes in AMNL’s business. *See Answer at Exh. A, ¶¶6, 7 and 9.*

2. AMNL’s violations of Section 13(a) are recurrent.

AMNL’s failure to file six periodic reports over a 22-month period is recurrent, which satisfies the second *Gateway* factor. The Commission has held that delinquencies of similar duration are recurrent. *See e.g., Ironclad Encryption Corp.*, Rel. No. 9426, 2022 WL 488507, *3 (Feb. 15, 2022) (failure to file for “more than year” was recurrent and continuous); *Triton Emission Sols. Inc.*, Rel. No. 94255, 2022 WL 488504, *3 (Feb. 15, 2022) (same). Therefore, the second *Gateway* factor supports revocation.

B. AMNL has not rebutted the presumption of revocation with a compelling showing on the remaining *Gateway* factors. Indeed, those factors confirm that revocation is required to protect investors.

Because AMNL's violations are serious and recurrent, they give rise to the presumption that revocation is required unless AMNL makes a strongly compelling in its favor on the remaining *Gateway* factors. The remaining *Gateway* factors are strongly compelling in favor of the Division, not AMNL.

1. AMNL has exhibited a high degree of culpability.

Evidence that a violation was "inadvertent or accidental" establishes a low level of culpability. *China-Biotics, Inc.*, 2013 WL 5883342 at *10. Evidence that an issuer knew of its reporting obligations but failed to comply with them establishes "a high degree of culpability." *Id.* (issuer had a "high degree of culpability" where it "did not file a single periodic report for more than a year and a half" and continued in its delinquencies "despite multiple warnings and the institution of [revocation] proceedings").

AMNL has been filing required reports for over twenty years, *see* Joyce Dec. at Exh. 4, and there can be no dispute that AMNL knew periodic reports were required. AMNL's culpability is aggravated by its failure to file a Form 12b-25 notifying the Commission of its inability to timely file several of the delinquent reports. Joyce Dec. at Exh. 4. *See also* *China-Biotics*, 2013 WL 5883342 at *11 (failure to file Form 12b-5 is an aggravating factor for culpability). Accordingly, AMNL has failed to satisfy its burden of proof on the third *Gateway* factor, and the undisputed evidence supports revocation.

2. AMNL has not made sufficient efforts to remedy its past violations and ensure future compliance.

AMNL has not made a compelling showing regarding its efforts to remedy its past violations. Indeed, AMNL concedes that, as of May 2, 2024 (the date the Answer was filed),

AMNL had not even engaged an auditor for the delinquent reports and was merely “in discussions with a public accounting firm.” *See Answer, Exh. A at ¶3.*

To make a compelling showing of future compliance, AMNL must demonstrate that it has implemented concrete and effective measures to ameliorate the cause of its filing failures. *See Phlo Corp., Exchange Act Rel. No. 55562, 2007 WL 966943, *16 (Mar. 30, 2007).* In its Answer, AMNL does not explain the cause of its violations, let alone identify concrete measures to prevent future ones.

AMNL’s Answer suggests that a lack of funding was at least partially responsible for its violations, stating that, to ensure ongoing compliance, it is negotiating the reduction of its debt and implementing plans to generate revenue and raise funds. *See Answer at 4, Second Aff. Defense and Exh. A at ¶¶6-7.* But AMNL’s description of the debt re-negotiation does not establish that its debt has in fact been reduced. AMNL merely states that its proposal has been approved by “key,” not all, creditors. *Id.* at ¶6. And even if the proposal becomes effective, AMNL will still owe “approximately \$2.7 million, which will have a [sic] maturities scheduled over the next two years.” *Id.* AMNL has provided no evidence of the new debt’s payment terms or whether, after the debt payments, AMNL will have sufficient funds to fund its future compliance. As for AMNL’s institution of an “operational turnaround and capital raising plan that will bridge the Company to positive cash flow within the next 12 months,”⁶ AMNL does not explain what is involved in the turnaround or how much capital it needs to raise for its cash flow to become positive. In any event, it would be pure speculation to conclude that AMNL’s plans will be successful. A high-level description of a speculative plan to generate positive cash flows falls far short of a compelling showing of AMNL’s efforts to ensure future compliance.

⁶ *Id.* at ¶7

Finally, none of the plans AMNL describes in its Answer have resulted in curing past delinquencies or preventing future ones, as evidenced by the fact that AMNL has not cured any of the delinquencies at issue in the OIP and has missed two additional reports since adopting the plans described in its Answer. *See Joyce Dec. at Exh. 4* (after AMNL filed its Answer, it missed the deadlines for the first and second quarterly reports for fiscal year 2024). Where a registrant's plans to ensure future compliance have not resulted in compliance as a matter of fact, the registrant has failed to make a compelling showing on future compliance. *See Investco, Inc.*, Exchange Act Rel. No. 240, 2003 WL22767599 at *3 November 24, 2003) (registrant's termination of its former CEO, repossession of corporate records, and hiring of an auditor did not provide evidence of concrete measures ensuring future compliance where efforts had resulted in the filing of only one of several delinquent reports). Thus, AMNL has failed to satisfy its burden of proof on the fourth *Gateway* factor, and the undisputed evidence supports revocation.

3. AMNL has not provided credible assurances as to future compliance.

AMNL's likelihood of future violations can be inferred from a single past violation, including the very violation that led to the enforcement action. *See KPMG Peat Marwick LLP*, Exchange Act Rel. No. 44050, 2001 SEC LEXIS 422 at *21- 22 (Mar. 8, 2001).

An issuer's failure to meet self-imposed deadlines for curing past deficiencies also undermines the credibility of its assurances of future compliance. *Am. Stellar Energy, Inc. (n/k/a Tara Gold)*, Exchange Act Rel. No. 64897, 2011 WL 2783483, at *4 (July 18, 2011) (assurances of future compliance were not credible where issuer "failed to adhere to the schedules that the company itself set"). In its Answer, AMNL stated that it would become compliant in the "very near future." *See Answer, Exh. A at ¶5*. That was more than three months ago, but AMNL has still not filed a single delinquent report and has allowed new delinquencies to accrue. Indeed,

AMNL has a history of not meeting self-imposed deadlines. On March 31, 2023 in its Form 12b-25, AMNL told the Commission that it would file its 2022 annual report on “or before the fifteenth calendar day following the prescribed due date,” which was April 15, 2023.⁷ See Joyce Dec. at Exh. 5. AMNL missed that deadline by over a year, and the report remains delinquent. AMNL has not met its burden of proof on the fifth *Gateway* factor, which supports revocation.⁸

C. Revocation is necessary and appropriate for investor protection.

The undisputed evidence on all five *Gateway* factors establishes that revocation is necessary and appropriate for the protection of investors. Although not relevant to the *Gateway* analysis, AMNL suggests that, because its stock is “very lightly traded,” few investors would be harmed if the Commission decided not to revoke its registration. See Answer at Third Aff. Defense.⁹ The Commission should reject this argument.

There is no threshold number of investors who must be harmed before the Commission acts to protect them.¹⁰ Nor is investor protection limited to existing investors of a delinquent registrant. Investor protection is concerned with future investors of a delinquent registrant as well as all investors who trade in securities regulated by the Commission. “Revocation is a

⁷ See https://www.sec.gov/Archives/edgar/data/8328/000157587223000490/app061_12b-25.htm

⁸ AMNL alleges as an “affirmative defense” that it is not a shell company. See Answer at First Aff. Defense. However, the Commission has repeatedly stated that, in considering the *Gateway* factors, “it is of no significance that [an issuer] is not a shell company.” *Jetronic Indus., Inc. (n/k/a New Bastion Dev., Inc.)*, Exchange Act Rel. No. 462, 2012 WL 2394414, *7 (June 25, 2012) (citing authorities).

⁹ In a seemingly contradictory argument, AMNL suggests that no trading is allowed on OTC Market’s Expert Market. *Id.* Presumably, AMNL means that broker dealers may not solicit quotes for AMNL securities. While that is true, as AMNL itself acknowledges, investors may still trade (and have been trading) in AMNL securities on the Expert Market. See Joyce Dec. at Exh. 3.

¹⁰ AMNL’s efforts to minimize the harm to investors by pointing out that its stock is thinly traded is additional evidence cutting against the credibility of its assurances of future compliance. An issuer’s failure “to recognize the importance of providing [required] information to its investors undermines the credibility of its assurances of future compliance with its reporting obligations.” *Am. Stellar Energy, Inc. (n/k/a Tara Gold)*, Exchange Act Rel. No. 64897, 2011 WL 2783483 at *5 (July 18, 2011).

prospective remedy and is imposed based on [the Commission’s] concern about protecting future investors in the company.” *Citizens Capital Corp.*, Exchange Act Rel. No. 67313, 2012 WL 2499350 at *8 (June 29, 2012). Investor protection also takes into account “the broader systemic harm” that follows from registrants who fail to comply with reporting requirements. *Absolute Potential, Inc.*, 2014 WL 1338256 at *7. By imposing a sanction significant enough to deter other issuers from engaging in similar conduct, the Commission protects current and prospective investors of all public filers. *See Advanced Life Sciences Holdings, Inc.*, Rel. No. 81253, 2017 WL 3214455 at *6 (July 28, 2017). Allowing AMNL to escape revocation would signal to other issuers that filing failures do not result in significant sanctions. That message would undercut Section 13(a)’s reporting requirements to the detriment of all investors. The protective purpose served by deterrence requires revocation here.

IV. Conclusion

For the reasons set forth above, the undisputed facts establish that a sanction of revocation is appropriate and necessary for the protection of investors. Accordingly, the Division requests that the Commission grant the Division’s Motion for Summary Disposition and that the Commission revoke the registrations of each class of AMNL’s securities registered under Exchange Act Section 12.

Dated: August 14, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I caused a true copy of the Division of Enforcement's Motion for Summary Disposition as to Applied Minerals, Inc. and Brief in Support to be served on August 14, 2024, in the manner indicated below:

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