



MEMORANDUM

TO: John V. Corra, Director, Department of Environmental Quality (DEQ) 

FROM: Donald R. McKenzie, Administrator, Land Quality Division (LQD) 

DATE: June 10, 2008

RE: History and Documentation for the Forfeiture Recommendation of the Reclamation Performance Bond held for Dirtworks LLC, 1113ET

Introduction

Dirtworks has not initiated reclamation at this mine site. The company is out-of-business and has been advised by the bankruptcy trustee to not sign a voluntary bond forfeiture agreement with the LQD. The bankruptcy trustee has indicated he will not contest the LQD forfeiture process.

Documentation Leading to the Recommendation for Bond Forfeiture

Information that documents the events that have led to this recommendation for bond forfeiture include the following as outlined in LQD Instruction Memorandum 34:

- 1) Notice of Violation (NOV) that forms the basis for the forfeiture: A NOV was issued for failure to reclaim the mine site under LQD's Non-coal Rules and Regulations, Chapter 10, Section 5 (a).
- 2) Brief history of the operation leading up to the Voluntary Forfeiture: A memo dated June 10, 2008, is attached outlining the Chronology of Events.
- 3) Explanation of why forfeiture is necessary: Dirtworks LLC has gone bankrupt and has no resources to reclaim the mine site.
- 4) Documentation of attempts to get the operator to reclaim the site: A letter was mailed to Dirtworks on November 5, 2007 requesting reclamation commence. On November 9, 2007, a voluntary forfeiture agreement was mailed to Dirtworks to allow the LQD to assume reclamation of the mine site. On March 12, 2008, a NOV was sent to Dirtworks to resolve the reclamation issue at the mine. These documents are attached.
- 5) Information submitted by the operator relevant to the forfeiture: On October 17, 2007, the 2007 annual report cover letter indicated Dirtworks was out-of-business and the annual report form reflected this as well. On November 9, 2007, Malcom Shepard with Dirtworks called the LQD and stated he was unable to reclaim the mine and that he had filed for bankruptcy. On March 14, 2008, Randy Royal, bankruptcy trustee, said he would not contest the LQD forfeiture process. On March 17, 2008, Malcom Shepard indicated via telephone that he had received the NOV and that a settlement meeting would not make a difference as he had no resources to reclaim the mine. These documents are attached.

- 6) Status of Operator: Dirtworks is out-of-business according to a cover sheet on the 2007 Annual Report for 1113ET and confirmed by telephone conversation with Mr. Shepard, agent and manager of Dirtworks LLC on November 9, 2008. The Secretary of State website indicates Dirtworks LLC is inactive (attached).
- 7) Land ownership and legal description: The Form 10 from the approved application lists the landowner as Sun Land and Cattle Company in parts of the SW/4 of Section 16 Township 26 North, Range 89 West, in Carbon County, Wyoming.
- 8) Number of acres disturbed and reclaimed: The last annual report indicates 6 acres of surface has been disturbed. LQD GPS indicates about 5.3 acres of disturbance. See attached map.
- 9) Information on the Reclamation Performance Bond: A certificate of deposit at Security State Bank, #6-2881, for \$9996.00 is the total amount of bond available for forfeiture.
- 10) Reclamation that is needed and the adequacy of the bond: The LQD estimated reclamation amount is \$15,000. See attached June 11, 2008 email from Bill Hogg.
- 11) Memos from the WDEQ Director to the Attorney General's office requesting initiation of the bond forfeiture process:
 - Attached is a memorandum from Don McKenzie, LQD Administrator, to John Burbridge, Assistant Attorney General, requesting initiation of the bond forfeiture process (Memo dated June 10, 2008).
 - Attached is a memorandum from the WDEQ Director to the EQC requesting approval to initiate bond forfeiture

Attachments

c: Lowell Spackman, Pam Rothwell & Bill Hogg

MEMORANDUM

TO: 1113ET, DirtWorks LLC, Limited Mining Operation, Carbon County, Wyoming
FROM: Donald McKenzie, Administrator, Land Quality Division
DATE: June 10, 2008
RE: **Bond Forfeiture Chronology**

August 2, 2002 A Limited Mining Operation was issued to Dirtworks LLC.

October 24, 2007 The cover letter with the 2007 Annual Report indicates that Dirtworks LLC has gone out of business.

November 5, 2007 LQD mailed the operator a letter that required the grading of the DirtWorks disturbance be completed by January 1, 2008 and seeding be completed no later than the spring of 2008.

November 9, 2007 Malcom Shepard called LQD and indicated that he was unable to complete the reclamation that was required. He had filed for bankruptcy and had no resources to complete the reclamation.

November 9, 2007 LQD mailed a Voluntary Bond Forfeiture Agreement Form for the operators use.

March 3, 2008 LQD conducted an inspection to determine if the operator had completed the reclamation as required. No reclamation had been completed.

March 12, 2008 LQD issues NOV Docket #4213-08 to resolve reclamation issues.

March 14, 2008 NOV received by Dirtworks.

March 14, 2008 Randy Royal, bankruptcy trustee calls to say he won't allow Dirtworks to sign a voluntary bond forfeiture agreement, but he would not be opposed to the LQD bond forfeiture process.

March 17, 2008 Bill Hogg and Malcom Shepard had a telephone conversation. Mr. Shepard said a settlement meeting was not going to make any difference in reclaiming the mine site as he had no resources to do the work.



Department of Environmental Quality



To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.

Dave Freudenthal, Governor

John Corra, Director

November 5, 2007

Mr. Malcom Shepard
Dirtworks LLC.
2300 Knollwood Dr.
Gillette, WY 82718

RE: Permit 1113ET, Dirtworks LLC.

Dear Mr. Shepard:

The Land Quality Division (LQD) received the 2007 Annual Report on October 24, 2007 and has attempted to reach you by telephone. The cover letter with the Annual Report indicates that Dirtworks LLC has gone out of business. The April 18, 2007, inspection of the Dirtworks disturbance determined that no reclamation has yet been completed.

Land Quality Division Rules and Regulations Chapter 10, Section 5(a) requires reclamation to begin within 30 days of the end of mining. LQD will require that the grading of the Dirtworks disturbance be completed by January 1, 2008 and seeding be completed no later than the spring of 2008.

If you have questions or comments, please contact me at 307-777-7057.

Sincerely,

Bill Hogg
District I
Land Quality Division

Herschler Building • 122 West 25th Street • Cheyenne, Wyoming 82002 • <http://deg.state.wy.us>

ADMIN/OUTREACH
(307) 777-7758
FAX 777-3610

ABANDONED MINES
(307) 777-6145
FAX 777-6462

AIR QUALITY
(307) 777-7391
FAX 777-5616

INDUSTRIAL SITING
(307) 777-7368
FAX 777-6937

LAND QUALITY
(307) 777-7756
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SOLID & HAZ. WASTE
(307) 777-7752
FAX 777-5973

WATER QUALITY
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Dave Freudenthal, Governor

John Corra, Director

November 9, 2007

Mr. Malcom Shepard
DirtWorks LLC.
2300 Knollwood Dr.
Gillette, WY 82718

RE: Permit 1113ET, DirtWorks LLC.

Dear Mr. Shepard:

I am sending this letter and attachment in response to our telephone conversation of November 9, 2007. During our conversation you stated that you no longer have the resources to reclaim the DirtWorks disturbance and have gone out of business. You also stated that you have applied for bankruptcy. Attached to this letter is a Voluntary Bond Forfeiture Agreement Form for your use.

Please sign and have the attached Voluntary Bond Forfeiture Agreement notarized. The agreement should be mailed to the Land Quality Office in Cheyenne.

If you have questions or comments, please contact me at 307-777-7057.

Sincerely,

Bill Hogg
District I
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FAX 777-5884

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FAX 777-5000

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Dave Freudenthal, Governor

John Corra, Director

March 12, 2008

**CERTIFIED MAIL # 7005 1820 0005 1478 8835
RETURN RECEIPT REQUESTED**

Mr. Malcom Shepard
DirtWorks LLC.
2300 Knollwood Dr.
Gillette, WY 82718

RE: Notice of Violation, 1113ET, Docket No. 4213-08

Dear Mr. Shepard:

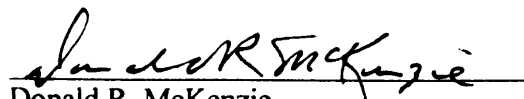
Enclosed you will find a Notice of Violation under the provisions of Wyoming Statute § 35-11-701(c)(i). The Notice of Violation is based on your failure to reclaim 1113ET. The failure to reclaim was verified during an inspection on March 3, 2008.

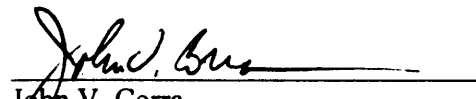
Failure to reclaim is a violation of the LQD Non-Coal Rules and Regulations Chapter 10, Section 5(a) and the Environmental Quality Act §35-11-401(e)(viii). The LQD has determined that this enforcement action warrants that a penalty be assessed.

In an effort to resolve this matter without further legal action, the LQD is requesting you contact Mr. Lowell Spackman, LQD, District I Supervisor at 307-777-7052 or at lspack@state.wy.us within fifteen (15) days of receipt of this letter to schedule a meeting to discuss resolution of this enforcement action.

If you should have any questions regarding this letter, please contact Mr. Spackman at the above noted telephone number. Thank you in advance for your cooperation in this matter.

Respectfully,


Donald R. McKenzie
Administrator
Land Quality Division


John V. Corra
Director
Department of Environmental Quality

cc: Lowell Spackman, LQD, District I
Carol Bilbrough, LQD

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