

BEFORE THE  
ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING

**FILED**  
DEC 29 2003  
Jim Ruby, Executive Secretary  
Environmental Quality Council

IN THE MATTER OF THE BOND )  
FORFEITURE PROCEEDINGS )  
AGAINST THE BOND OF ) DOCKET NO. 08-4502  
NICHOLLS AND LEWIS, INC. )  
PERMIT NO. 813ET )

***MOTION FOR BOND FORFEITURE***

The Department of Environmental Quality, Land Quality Division (Division), through the Office of the Attorney General, hereby moves the Environmental Quality Council (Council) for an order forfeiting the bond of Nicholls and Lewis, Inc., and as grounds for this motion, states the following:

1. Nicholls and Lewis, Inc. holds permit 813ET, authorizing it to operate a gravel mining operation located at NE¼ and the SE¼ of the NE¼ in Section 26, Township54N, Range94W, in Big Horn County, Wyoming.
2. All operations have ceased at the mining site. Nicholls and Lewis, Inc. failed to perform reclamation at the mine site resulting in this bond forfeiture proceeding before the Council.
3. Nicholls and Lewis, Inc. posted a performance bond for the purpose of assuring reclamation of the mining site in the amount of three-thousand (\$3,000.00) dollars. The bond is a surety bond, number S150685, issued by Employers Mutual Casualty Company.

**COPY**

4. The DEQ issued Notice of Violation No. 3588-04 to Nicholls and Lewis, Inc. on September 15, 2004, because Nicholls and Lewis, Inc. failed to file annual reports and failed to reclaim after its mining operations ceased.
5. Based on the facts set forth in paragraph 4, it appears that Nicholls and Lewis, Inc. has ceased mining and/or abandoned the site and failed to commence reclamation within thirty (30) days of abandonment.
6. On April 26, 2004, Nicholls & Lewis, Inc.'s Ex-President, Paul Lewis executed a voluntary bond Forfeiture Agreement. A copy of the agreement is marked as Exhibit 1 and is made a part of this Motion by this reference.
7. Based on these facts, the DEQ determined Nicholls and Lewis, Inc.'s reclamation performance bond should be forfeited.
8. The Council approved the DEQ's request to initiate bond forfeiture proceedings against Nicholls and Lewis, Inc. on September 30, 2008.
9. The DEQ then requested that the Office of the Attorney General begin this proceeding.
10. On October 10, 2008, the Office of the Attorney General sent notice to Nicholls and Lewis and Robert L. Cox, Attorney in Fact by certified mail that the Council would enter an order forfeiting its bond unless the company demanded a hearing before the Council within thirty days. Ken Vines, State Insurance Commissioner

was hand delivered on the same date. Employers Mutual Casualty Company was served with notice of these proceedings by the Insurance Commissioner.

11. Notice sent to Nicholls & Lewis, Inc. and Robert Cox was returned to the Office of the Attorney General on October 14, 2008, as "unable to forward."
12. Second Notice was sent to Nicholls & Lewis, Inc. and Robert Cox on October 23, 2008. Notice to Nicholls & Lewis, Inc. was returned to the Office of the Attorney General on 28, 2008 as "unable to forward." Notice to Robert Cox was received by him on or about October 28, 2008.
13. Neither the Office of the Attorney General nor the Council has a record of a request for a hearing before the Council from Nicholls and Lewis, Inc. or Employers Mutual Casualty Company.
14. WYO. STAT. ANN. § 35-11-421(b) states that if no demand is made by the operator within thirty days of his receipt of the notice, then the Council shall order the bond forfeited.
15. The DEQ and the Attorney General's Office have satisfied all of the statutory prerequisites to this bond forfeiture, and the Council should order the bond forfeited.
16. Based on the foregoing facts, it is appropriate for Nicholls and Lewis, Inc.'s bond to be forfeited.

THEREFORE, the DEQ respectfully requests that the Council enter an ORDER requiring Nicholls and Lewis, Inc., to forfeit its reclamation performance bond to the DEQ to be used to reclaim those lands affected by Nicholls and Lewis, Inc.'s activities under permit number 813ET.

DATED this 29<sup>th</sup> day of December, 2008.

FOR THE DEPARTMENT OF  
ENVIRONMENTAL QUALITY  
LAND QUALITY DIVISION



John S. Burbridge  
Senior Assistant Attorney General  
123 Capitol Building  
Cheyenne, Wyoming 82002  
(307) 777-7841

CERTIFICATE OF SERVICE

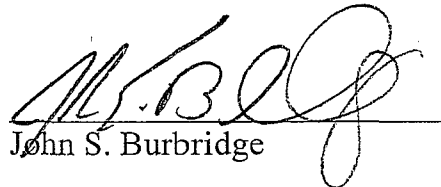
I, John S. Burbridge, hereby certify that on this 29<sup>th</sup> day of December 2008, I served a true copy of the foregoing Motion for Bond Forfeiture as follows:

Mr. Paul Lewis  
Nicholls and Lewis, Inc.  
1887 U.S. Highway 310  
Lovell, Wyoming 82431-9611

U.S. Mail, postage prepaid  
 Facsimile  
 Hand Delivery

Rudda Krummins  
Employers Mutual Casualty Company  
717 Mulberry Street  
Des Moines, Iowa 50309

U.S. Mail, postage prepaid  
 Facsimile  
 Hand Delivery

  
John S. Burbridge