

MEMORANDUM

TO: John V. Corra, Director, Wyoming Department of Environmental Quality

THROUGH: Donald McKenzie, Administrator, Land Quality Division *DK 7/23/08*

FROM: Lowell Spackman

DATE: July 25, 2008

SUBJECT: **Background Information and Chronology for Bond Forfeiture Action 181LE, Phoenix Metals of Wyoming, (Watts & Wagner)**

- 1) *Copy of NOV which forms basis of forfeiture*
A copy of NOV Docket No. 4200-07 is attached to this Memorandum
- 2) *Brief History of the operation*
The authorization for this operation was issued to Phoenix Metals of Wyoming on November 3, 1987. Mr. Reuben Watts and Mr. Wagner were the operators of Phoenix Metals. Mr. Watts and Mr. Wagner have passed away.
- 3) *Explanation of why forfeiture is necessary*
LQD denied the renewal of the Phoenix Metals operation with John Wagner's letter dated March 17, 2003. On December 6, 2005, the LQD Administrator approved Patrick Morgan to operate under the License to Mine after he submitted an additional \$2,000.00 reclamation bond. However, the 2006 Annual Inspection determined that Mr. Morgan began operating without submitting the required \$2,000.00 reclamation bond and has not responded to LQD contacts or done any reclamation.
- 4) *Documentation of attempts to get operator to reclaim.*
All inspection reports since the year 2000 have noted compliance issues that have not been addressed by the operator. Certified mailing to Mr. Wagner, his wife, and daughter have been ignored or not accepted. Recent legal documents have been served by the Adams County Sheriff in Colorado and still no response.
- 5) *All information submitted by the operator relevant to the forfeiture.*
Mr. Herman Wagner had responded to LQD letters of October 24, 2001 with his letters dated September 3, 2002, March 31, 2003 and November 3, 2003. Mr. Wagner's letter dated September 3, 2002 states that Mr. Watts had hired a contractor ten years earlier to remove 197 tons from the prior disturbance of Metal Extraction. He also stated that a permit identification sign would be installed the next spring. Mr. Wagner's letter dated March 31, 2003 states that no disturbance was created under the period of 181-LE and that his bond should be sent back to him. Mr. Wagner's letter dated November 3, 2003 states that the 181-LE disturbance was pick and shovel and the area where debris is

located was hauled off by Mr. Watts. The letters are confusing and no repair or reclamation work was completed on site.

- 6) *Status of the operator.*
Mr. Watts and Mr. Wagner have passed away. All attempts to settle the compliance issues with Mr. Wagner's family have failed. Phoenix Metal status with the Secretary of State is delinquent and inactive since 1998.
- 7) *Land Ownership and location including a complete legal description and general location.*
The surface owner is federal managed by the US Forest Service. The original authorization was for exploration in Sections 31 & 32, Township 16 North, Range 78 West in Albany County. The 181LE disturbance that was authorized includes the Gold Run Extension #1, #2, #3 and Miss Clair claims. This operation is located 3.5 miles south of State Highway 130. USFS roads 338 and 307 are used as access roads to the operation.
- 8) *Acres disturbed and reclaimed based on recent field inspection.*
Approximately 8 acres of disturbance will have to be reclaimed, depending on if the US Forest Service wants the access road reclaimed. No reclamation has been completed on the site but trees have established in the spoils of the disturbed area. The site was last inspected by the LQD on July 16, 2007.
- 9) *The bond amount and type including issuing company and number.*
LQD holds a \$2,000.00 Certificate of Deposit (1337) bond from the Equality State Bank of Cheyenne for the reclamation of the exploration disturbance.
- 10) *A brief discussion of the type of reclamation necessary and the adequacy of the bond to finance that work.*
The bond is not adequate to reclaim the disturbance. The reclamation will require extensive grading and seeding. The amount of grading and seeding will depend on the US Forest Service recommendation, as a good share of the old disturbance has trees that have established on their own. Any reclamation that is required will be over \$50,000.00 because of the remoteness of the area.
11. *A draft memorandum for the Director's signature to the EQC requesting approval to initiate bond forfeiture proceedings.*
The memorandum is attached.

Chronology of Events

October 24, 2001. John Wagner's letter detailing the corrective actions that are required to bring the license to explore into compliance.

December 15, 2001. A phone conversation with Shelly McLain indicated that she had hired an attorney, Mr. Earl Madsen, to handle the compliance issues. Mr. Madsen was to contact LQD concerning the compliance issues.

March 19, 2002. LQD letter to Shelly Sandoval stating that we had not heard from Mr. Madsen; she had not responded to the October 24, 2001 LQD letter and reclamation had not been completed.

July 13, 2007 After phone conversations with Ms. Shelly C. McLain concerning voluntary bond forfeiture, LQD mailed forms for her to consider. The certified mailing was signed by Ms. Wilma Wagner on July 14, 2007. No response was received from Ms. McLain.


September 13, 2007. After a phone conversation with Ms. McLain where she stated that she had not received the July 13, 2007 correspondence, the material was again mailed to her. No response was received.

December 28, 2007. LQD issued a Notice of Violation, Docket No. 4200-07 for failure to reclaim and failure to file Annual Reports. Ms. Wagner and Ms. McLain never scheduled the settlement agreement meeting.

March 28, 2008. LQD again mailed the voluntary bond forfeiture to Ms. McLain after receiving a phone call from Ms. McLain. No response was received.

MEMORANDUM

TO: Environmental Quality Council

FROM: John Corra, Director Environmental Quality Division 

DATE: July 3, 2008

RE: Bond Forfeiture for Phoenix Metals of Wyoming, 181LE

Attached is the information relating to the failure of Phoenix Metals of Wyoming to complete the reclamation of this License to Explore by Dozing. The Operators, Mr. Watts & Mr. Wagner, have passed on and Mrs. Wagner and Ms. McLain, Mr. Wagner's daughter, have not responded to LQD correspondence that required reclamation to be completed and Annual Reports to be filed. Because they have not completed the reclamation, this Bond Forfeiture is requested.

I have determined that the bond for License to Explore by Dozing 181LE, the Watts & Wagner operation should be forfeited. I therefore seek your approval to request that the Attorney General begin bond forfeiture proceedings.

Should you have any questions, please contact the LQD Administrator.

xc: DEQ/LQD - Lowell Spackman
DEQ/Director – John Corra
EQC Administrator Aid

Attachment

Date

Approved
Chairman, Environmental Quality Council

MEMORANDUM

TO: John Burbridge, Assistant Attorney General

FROM: Donald R. McKenzie, LQD Administrator

DATE: June 20, 2008

RE: Bond Forfeiture for Phoenix Metals of Wyoming, 181-LE

Mr. Watts and Mr. Wagner failed to complete the reclamation of this Small Mining Operation prior to their passing. The Operators, Mr. Watts & Mr. Wagner and their survivors, have not reclaimed the disturbance after seven years of LQD's requests. Because of the survivors inability to complete the reclamation, this Bond Forfeiture is requested.

The LQD inspection on July 16, 2007, confirmed that the reclamation had not been started. It is formally request that the Department proceed with the forfeiture for the reclamation bonds of \$2,000 held for 181LE.

c: Lowell Spackman > Pam Rothwell > Bill Hogg



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, Dir

December 28, 2007

**CERTIFIED MAIL # 7007 1490 0001 0735 9085
RETURN RECEIPT REQUESTED**

Mrs. Wilma Wagner and Ms. Shelly McLain
Wagner & Watts
15700 Jamaica Dr
Brighton, CO 80602-7416

RE: Notice of Violation, License to Explore LE- 181, Docket No. 4200-07

Dear Mrs. Wagner and Ms. McLain:

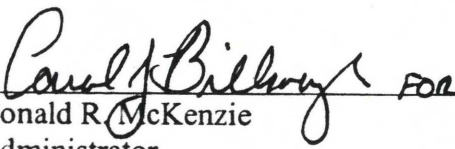
Enclosed you will find a Notice of Violation under the provisions of Wyoming Statute § 35-11-701(c). The Notice of Violation is based on the inspection conducted by Bill Hogg on July 16, 2007. The violation is for failure to submit Annual Reports, failure to reclaim the mining disturbance and failure to submit the required reclamation bond.

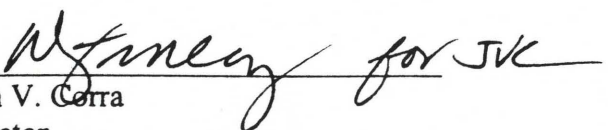
Recent attempts to resolve these issues through voluntary forfeiture have failed. This Notice of Violation is the first step toward the Land Quality Division (LQD) recommendation to the Environmental Quality Council that the performance bond be forfeited to ensure that the site is reclaimed.

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 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
License to Explore LE-181