



Department of Environmental Quality

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



Mark Gordon, Governor



Todd Parfitt, Director

CERTIFIED MAIL RETURN RECEIPT REQUESTED # 7017 1070 0000 5306 5090

Mr. John Corra
Wyoming Environmental Quality Council
2300 Capitol Avenue
Hathaway Building 1st, Room 136
Cheyenne, WY 82002

FILED

JUL 16 2020

Jim Ruby, Executive Secretary
Environmental Quality Council

**RE: Bond Forfeiture Recommendation – Yellowstone Landscaping, Inc.
Limited Mining Operations No. ET1419**

Dear Mr. Corra,

Attached is the required information relating to the failure of Yellowstone Landscaping, Inc. (Mr. Daniel May, Agent) to reclaim lands affected by gravel mining under Limited Mining Operations (LMO) No. ET1419. Yellowstone Landscaping, Inc. is no longer licensed to do business in Wyoming and the company no longer possesses mineral leases for this operation.

I have reviewed the supporting information in the attached File Memorandum and have determined that the following performance bond for LMO No. ET1419 should be forfeited:

\$2,500.00 Certificate of Deposit, issued by Big Horn Federal Savings Bank (Bond No. 1177)

At this time, in accordance with W.S. § 35-11-421(a), I am seeking approval from the Wyoming Environmental Quality Council (EQC) to make a formal request of the Attorney General to begin bond forfeiture proceedings for the aforementioned bond.

Should you have any questions, please contact Kyle Wendtland, WDEQ/LQD Administrator (307) 777-7655 or kyle.wendtland@wyo.gov.

Sincerely,



Todd Parfitt
Director, WDEQ


Date: 7/8/20

Attachments: ET1419 File Memorandum, EQC Letter of Approval

cc: Kyle Wendtland, WDEQ/LQD Administrator
Nancy Williams, WDEQ/LQD District 2 Supervisor
Steve Lenz, EQC Secretary

MEMORANDUM

TO: Todd Parfitt, WDEQ Director

THROUGH: Kyle Wendtland, WDEQ/LQD Administrator 
Nancy Williams, WDEQ/LQD District 2 Supervisor

FROM: Cameron Sloan, WDEQ/LQD District 2 Natural Resources Analyst

DATE: June 30, 2020

SUBJECT: Bond Forfeiture Recommendation – Yellowstone Landscaping, Inc.
Limited Mining Operations No. ET1419

Introduction:

Yellowstone Landscaping, Inc. filed for Chapter 7 bankruptcy (Case 13-20837) on August 29, 2013 and was administratively dissolved (tax) by the Secretary of State (Filing ID 2006-000511405) on June 9, 2014. Yellowstone Landscaping, Inc. currently holds Limited Mining Operation (LMO) ET1419, also known as the Topsoil Pit, which is inactive and unreclaimed.

ET1419, the Topsoil Pit, is located in Tract 43R (Section 30), T. 56N., R. 98W., which is approximately 4 miles northeast of Powell. ET1419 was approved for up to 2.5 acres of affected land and the surface is privately owned by Mr. Rusty Karst. Approximately 3.2 acres of land has been affected at the operation. Yellowstone Landscaping, Inc. failed to reclaim ET1419 and, as a result, a Notice of Violation Docket No. 5869-18 (enclosed) was issued on August 29, 2018. To date, no work to reclaim the operation has been initiated.

I therefore, recommend forfeiture of the following reclamation performance bond for ET1419:

- \$2,500.00 Certificate of Deposit issued by Big Horn Federal Savings Bank (Bond No. 1177)

Reclamation Requirements:

A reclamation cost estimate was developed for ET1419 based on the existing liabilities present at the site. The reclamation cost is based on current WDEQ/LQD Guideline 12/12A rates in conjunction with information provided from past inspections and aerial imagery.

The mine site is inactive with no formal reclamation plan. The site is a Limited Mine Operation (LMO) and therefore exempt from statutory permitting requirements. Information from the 2019 Inspection Report suggests that the existing disturbance spans approximately 3.2 acres, whereas the approved acreage for the operation is 2.5 acres. Furthermore, the current topography does not allow for through drainage, which creates low spots that have been noted to accumulate water. There is a history of noxious weeds present at the site and very little available topsoil for replacement. There is some vegetation establishing on the existing soil, including several trees in the pit area. The post-mining land use is listed on the original notification as farm land. Reclamation to the listed use will require regrading of the disturbed area to bring it to grade with the adjacent farmland and to establish through drainage, and it will also require effective use of the limited topsoil to provide suitable ground for farming. Reclamation costs

are estimated to be \$3,500.00, which is \$1000.00 more than the bond currently held by WDEQ covers. The estimate may be subject to an increase if import material is required due to the limited topsoil available for reclamation.

Pertinent History:

Below is a current chronology of pertinent events for ET1419, with accompanying dates:

- 12/18/07** LMO ET1419 was approved and issued to Spomer Construction Co., Inc. (Carl Spomer) on property owned by Mr. Spomer.
- 08/23/12** ET1419 was transferred from Spomer Construction Co., Inc. to Yellowstone Landscaping, Inc. (Daniel May). Big Horn Federal Savings Bank Certificate of Deposit no. 1177 for \$2,500 was accepted as the new bond. Mr. May had also previously acquired ownership of the property from Mr. Spomer.
- 12/20/12** The most recent Annual Report for ET1419 was received from Yellowstone Landscaping, Inc.
- 05/23/13** ET1419 was inspected in response to the 2012 Annual Report.
- 08/29/13** Mr. May (Yellowstone Landscaping, Inc.) filed for Chapter 7 bankruptcy (Case 13-20837).
- 05/12/14** Wyoming Builders, Inc. won its foreclosure case against Yellowstone Landscaping, Inc.
- 06/09/14** Yellowstone Landscaping, Inc. was administratively dissolved by the Wyoming Secretary of State due to unpaid taxes.
- 10/21/14** An Annual Report reminder letter ET1419 was sent to Yellowstone Landscaping, Inc.; the letter was returned as undeliverable shortly afterward.
- 10/27/14** The Park County Sheriff issued a Sheriff Deed, recorded as Park County Document 2014-5279, to Wyoming Builders, Inc. for Yellowstone Landscaping, Inc.'s relevant assets, following public auction in response to the foreclosure case.
- 01/27/17** ET1419 was discussed with Mr. Spomer. Mr. Spomer indicated that he had sold the ET1419 property to Mr. Rusty Karst and that Mr. Karst had no interest in mining and wanted the operation reclaimed so he could farm it. Mr. Spomer was concerned with getting the operation reclaimed to the WDEQ/LQD's satisfaction so that he could get the bond back he received in the Sheriff Deed.
- 01/30/17** District 2 Supervisor Nancy Williams and previous permit coordinator Matthew Dillon discussed ET1419 with WDEQ/LQD Administrator Kyle Wendtland. Mr. Wendtland provided two scenarios under which the operation could be reclaimed. Under scenario one, the bonds would be forfeited; and the WDEQ/LQD would work with the current landowners to reclaim the operations. Under scenario two, Mr. Spomer would provide full documentation to support that he is the owner of Yellowstone Landscaping, Inc.'s assets along with surface owner consent from the current landowners. Upon receipt of the documentation, the

operations would be transferred back to Mr. Spomer. After it was properly reclaimed, ET1419 would be terminated and the bonds would be returned to Mr. Spomer.

- 01/31/17** Mr. Spomer was contacted, and the second scenario from the 1/30 call was explained. Following this, Mr. Spomer asked what liability he has on the operations; he was told that he did not have any. Based on the costs associated with his attorney as well as reclaiming the operations, Mr. Spomer then stated that the bonds were not valuable enough and that he had decided he did not want to pursue this anymore.
- 02/07/17** Mr. Karst, the owner of the ET1419 property, was contacted. He stated that he did not want the operation to be there. He wanted the existing stockpile contoured and the site cleaned up so he could expand his field into that area and be able to farm it. Mr. Karst also indicated that Mr. Spomer would be his choice to reclaim the site as his equipment was stored nearby.
- 03/23/17** Ms. Williams and Mr. Dillon had another discussion with Mr. Wendtland on the status of ET1419 and Mr. Karst's desire to have the operation reclaimed. Mr. Wendtland stated that the WDEQ/LQD would need to work toward forfeiting the bond as Mr. Spomer was no longer interested in assuming liability of the operation.
- 06/07/17** A message was left for Mr. Karst indicating that ET1419 would be inspected soon.
- 06/13/17** ET1419 was inspected, and 5 compliance issues were identified.
- 06/19/17** The report from the 6/13 inspection of ET1419 was mailed to Yellowstone Landscaping, Inc.
- 07/27/17** An inspection of ET1419 was conducted, and it was found that the disturbance area had been disked but the stockpile and highwalls were still present.
- 07/28/17** Mr. Karst was contacted to discuss the disking done at ET1419. He explained that his neighbor had done the work to control the weeds there and that this type of maintenance work would continue until the operation is fully reclaimed. It was explained that the WDEQ/LQD was working toward getting the operation reclaimed.
- 08/07/17** A letter was sent to Yellowstone Landscaping, Inc. stating that, as of 7/27, they had not done any work to resolve the compliance issues for ET1419 outlined in the inspection report sent on 6/19. Further, the letter explained that they would be subject to a Notice of Violation for failure to reclaim unless they contacted the WDEQ/LQD within 30 days of receipt.
- 09/07/17** The 8/7 letter pertaining to ET1419 was returned to the Lander WDEQ/LQD office as undeliverable.
- 12/22/17** Mr. May contacted the Lander WDEQ/LQD office and left a message explaining he wanted to discuss ET1419.
- 01/24/18** Ms. Williams and Mr. Dillon returned Mr. May's phone call. He explained that he wanted to be done with ET1419. The entire forfeiture process was explained to him, and he was encouraged to reclaim the operation instead of to forfeit. He stated that he did not think that was possible; however, he would think about it and contact WDEQ/LQD with his decision.

- 02/07/18** Ms. Williams and Mr. Dillon called Mr. May to follow-up on his decision on reclaiming ET1419. He stated that he would not be able to reclaim the operation and would need to forfeit. He also provided a mailing address for any future correspondence to be sent to.
- 08/28/18** An annual inspection of ET1419 was completed by new permit coordinator Gwen Robson, Mr. Dillon, and Ms. Williams.
- 08/29/18** A Notice of Violation for ET1419 (Docket No. 5869-18) was issued to Yellowstone Landscaping, Inc., c/o Daniel May.
- 08/30/18** An Inspection Report from the 8/28 inspection was sent to Mr. May.
- 09/06/18** Mr. May called Ms. Williams office number at WDEQ/LQD and left a message that he received the NOV and was calling as instructed in the cover letter.
- 09/07/18** Ms. Williams called Mr. May back and left a voicemail for him to call her to discuss scheduling up a Settlement Agreement meeting for the NOV.
- 12/18/18** Mr. May called the WDEQ/LQD to discuss the NOV. Mr. May talked with Ms. Williams, who asked Ms. Robson to call Mr. May to address Mr. May's concerns.
- 03/11/19** Ms. Robson made a follow-up phone call to Mr. May with no response.
- 04/02/19** Ms. Robson called Mr. May to discuss his plans for the site. Mr. May said that he had been waiting to receive the landowner information from WDEQ/LQD so that he could contact them regarding reclaiming the site. WDEQ/LQD gave Mr. May the landowner contact information and requested he contact WDEQ/LQD with his plan by the end of the month.
- 05/07/19** Ms. Robson placed a follow-up call to Mr. May and left a message.
- 08/19/19** Ms. Robson called Mr. May to follow-up regarding a reclamation plan for the site. Mr. May confirmed that he would call the landowners that night to discuss a reclamation plan and would call WDEQ/LQD tomorrow.
- 08/23/19** Ms. Robson called Mr. May to follow-up regarding plans for the site. No contact was made. Mr. May did not return the call.
- 02/06/20** Ms. Williams, accompanied by Mr. Dillon and new permit coordinator Cameron Sloan, called Mr. May to follow-up once again regarding the reclamation plans for the site. Mr. May answered and failed to recall if he had contacted the landowners or not. Mr. May requested the contact information be sent to him via a new email so he could contact the landowner for the site area and decide what he wanted to do.
- 02/07/20** Mr. Sloan sent an email to Mr. May providing the contact information that was requested in the call on 02/06/2020 and gave Mr. May two weeks to contact the landowners and decide on what he planned to do with the operations. The email stated that Mr. May must return his decision by no later than 02/21/2020.
- 02/21/20** A response to the 2/7 email was not received by this date, nor has a response been received since.

End of Record

Enclosed is the NOV for ET1419 which was issued on August 29, 2018.

Enclosed: Notice of Violation Docket No. 5869-18

DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF WYOMING

NOTICE OF VIOLATION

IN THE MATTER OF THE NOTICE OF)
VIOLATION ISSUED TO)

) DOCKET NO. 5869-18

)
Yellowstone Landscaping Incorporated)
c/o Mr. Daniel May, Registered Agent)
P.O. Box 661)
Cowley, WY 82420)


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NOTICE

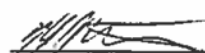
NOTICE IS HEREBY GIVEN THAT:

1. Notice of Violation (NOV) is being sent to you pursuant to W.S. §35-11-701(c)(i), which requires that a written notice shall be issued in the case of failure to correct or remedy an alleged violation.
2. Yellowstone Landscaping Incorporated is the permittee and operator for Limited Mining Operation ET1419, which is located in Tract 43R (Section 30), T. 56N., R. 98W.
3. Wyoming Department of Environmental Quality - Land Quality Division (WDEQ/LQD) Noncoal Rules and Regulations (R&R), Chapter 10, Section 5(a)(i) states that "The operation will be considered to be abandoned if any of the following occur: (A) The individual, partnership, or corporation conducting the operation goes out of business. (B) No further mining or reclamation work has been done from one annual report to the next. (C) The mineral being mined has been exhausted. (D) The period of time for which the surface owner (or lessee) gave permission has expired and a written extension has not been obtained."
4. Yellowstone Landscaping Incorporated was administratively dissolved by the Wyoming Secretary of State on June 9, 2014. The last annual report filed by Yellowstone Landscaping was received December 20, 2012. No new mining or reclamation work has been reported at ET1419 since 2012. No valid lease agreement exists between Yellowstone Landscaping Incorporated and the current surface owner of the area within the boundaries of ET1419. As such, ET1419 is considered to be abandoned per WDEQ/LQD R&R, Chapter 10, Section 5(a)(i) since at or before June 9, 2014.
5. WDEQ/LQD Noncoal R&R, Chapter 10, Section 5(a) states that "After the mining operations have ceased or within 30 days after the abandonment of the mining operation, the operator shall notify the Administrator of such fact and commence reclamation and restoration."
6. Yellowstone Landscaping Incorporated did not notify the Administrator or commence reclamation and restoration within 30 days of the abandonment of ET1419. This is in violation of WDEQ/LQD Noncoal R&R, Chapter 10, Section 5(a).
7. W.S. § 35-11-901(a) provides that any person who violates any provision of the Environmental Quality Act or any rule, standard, permit, license or variance adopted hereunder is liable to a penalty of ten thousand dollars (\$10,000.00) for each day of violation, which the penalty may be recovered in a civil action brought by the Attorney General in the name of the People of the State of Wyoming.
8. This Notice is being sent to you pursuant to W.S. § 35-11-701(c), which requires that in any case of the failure to correct or remedy an alleged violation, the Director of the Department of Environmental Quality shall cause written notice to be issued and served upon the person alleged to be responsible.

NOTHING IN THIS NOTICE OF VIOLATION (NOV) shall be interpreted to in any way limit or contravene any other remedy available under the Environmental Quality Act, nor shall this NOV be interpreted as being a condition precedent to any other enforcement action.

DATED THIS 29 day of August, 2018.


Todd Parfitt
Director
Department of Environmental Quality


Kyle Wendtland
Administrator, Land Quality Division
Department of Environmental Quality

PLEASE DIRECT ALL INQUIRIES regarding this Notice of Violation to Nancy Williams, District 2 Supervisor, WDEQ/LQD, 510 Meadowview Dr., Lander, WY, 82520 Telephone (307) 335-6939.