



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: 7020 1810 0001 9090 9168

Mr. John Corra
Wyoming Environmental Quality Council
2300 Capitol Avenue
Cheyenne, WY 82002

RE: Bond Forfeiture Recommendation - Future Enterprises, LLC, Limited Mining Operation, ET1179

Dear Mr. Corra:

Attached is the required information relating to the failure of Future Enterprises, LLC (Mr. Gary Muller, Agent) to reclaim lands affected by scoria mining under Limited Mining Operation (LMO) No. ET1179. Future Enterprises, LLC is no longer licensed to do business in Wyoming.

I have reviewed the supporting information in the attached File Memorandum and have determined that the following performance bonds for LMO No. ET1179 should be forfeited:

\$3,000 Certificate of Deposit, issued by First Northern Bank of Wyoming (Bond No. 8978)

\$1,500 Certificate of Deposit, issued by First Interstate Bank (Bond No. 22010409)

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.

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

Sincerely,

Date: June 16, 2021

Todd Parfitt, Director
Department of Environmental Quality

Attachments: ET1179 File Memorandum, EQC Letter of Approval

cc: Kyle Wendtland, WDEQ/LQD Administrator
Mark Rogaczewski, Sheridan DEQ
Steve Lenz, EQC Secretary

MEMORANDUM

TO: Todd Parfitt, WDEQ Director
File, Docket No. 6084-21, LMO ET1179 Abandonment

THROUGH: Kyle Wendtland, WDEQ/LQD Administrator
Mark Rogaczewski, WDEQ/LQD District 3 Supervisor

FROM: Kole Stewart, District 3, Natural Resource Analyst

DATE: June 2, 2021

SUBJECT: Bond Forfeiture Recommendation – Future Enterprises, LLC, Limited Mining Operation No. ET1179

Introduction:

Authorization for Limited Mining Operation (LMO) ET1179 was granted to Future Enterprises LLC, on May 1, 2001. The mine is located in the NWSE Qtr-Qtr of Section 18, Township 57N, Range 83W. Currently, there are approximately 3.8 acres that have been disturbed and left unreclaimed. The Department of Environmental Quality, Land Quality Division (LQD) is currently holding Certificate of Deposit Number 8978 with the First Northern Bank of Wyoming in the amount of \$3,000.00 and Certificate of Deposit Number 220104049 with First Interstate Bank in the amount of \$1,500. The total bond currently held by the LQD is \$4,500.00 for the reclamation of this mine. The Wyoming Secretary of State dissolved Future Enterprises, LLC, on June 4, 2008 for delinquent taxes. Mr. Muller later formed a separate business, New Process, LLC. The Wyoming Secretary of State dissolved New Process, LLC, on June 9, 2014 for delinquent taxes.

Mr. Gary Muller, a representative of now defunct Future Enterprises, LLC, has not submitted the required annual report for this LMO since the 2013-2014 reporting period despite repeated requests to do so. Mr. Muller was sent a letter by the District III LQD each year from 2002 to 2019 reminding him to submit an annual report on or before the due date of May 1. Additionally, there has been no activity at the mine since 2009. According to Chapter 10, Section 5(a) of the Non-Coal Rules, “[a]fter the mining operations have ceased the operator shall notify the Administrator of such fact and commence reclamation and restoration.”

Mr. Muller of Future Enterprises was issued a NOV for abandonment and failure to reclaim LMO ET1179 under Docket No. 6084-21 on April 14, 2021. In addition to LMO ET1179, Mr. Muller of Future Enterprises LLC currently holds LMO authorizations for ET1335 and ET1366. The LQD has also issued NOVs 6083-21 and 6082-21 to Mr. Muller for abandonment and failure to reclaim these LMO mines. Mr. Muller previously held LMO ET0786 under the entity Muller Construction Company. The bond was forfeited for LMO ET0786 in 1992 as a result of abandonment and failure to reclaim this mine. Based on the aforementioned information and the lack of response to the NOV, I recommend that the following bonds be forfeited:

- \$3,000.00 Certificate of Deposit, issued by First Northern Bank of Wyoming (Bond No. 8978)
- \$1,500.00 Certificate of Deposit, issued by First Interstate Bank (Bond No. 220104049)

Reclamation Requirements:

The reclamation cost estimate was developed for ET1179 based on the existing liabilities present at the site. The reclamation cost is based on current WEDQ/LQD Guidelines 12/12A rates in conjunction with information provided from past inspections and aerial imagery.

The mine site is inactive with no formal reclamation plan. This site is an LMO and therefore exempt from statutory permitting requirements. Information from the 2020 and previous inspection reports indicates that the disturbance spans approximately 3.8 acres. The mine currently has a highwall approximately 10 to 15 feet tall and 200 ft long, a haul road 380 ft long, and approximately 1500 cubic yards of topsoil stockpiled. Additionally, a large quantity of unauthorized materials has been imported to the site including concrete and asphalt road debris, some of which will require removal prior to reclamation. The Sheridan LQD office estimated that reclamation at the site will cost approximately \$5,500, which is \$1,000 more than the bond currently held by WDEQ. This estimate may be subject to increase as a result of the cost to remove the unauthorized material that cannot be used as fill and any other unforeseen costs.

Pertinent History:

The following chronological timeline is provided to show the correspondence and requests the District III LQD has sent to Mr. Muller in regards to ET1179 and his response or lack thereof.

1. 05/06/02 - Mr. Muller submitted an annual report for the 2001-2002 reporting period. This report stated that 2.5 acres were newly disturbed, and 9150 cubic yards of scoria was removed from the mine. This annual report states that the remaining life of this operation is 5 years.
2. 11/13/02 - The 10/25/02 inspection report for LMO ET1179 was sent to Mr. Muller. This inspection report detailed multiple compliance concerns related to topsoil protection.
3. 11/13/02 - Mark Rogaczewski with the LQD District III office sent Mr. Muller a letter indicating that the current disturbance was larger than that reported in the 2001-2002 Annual Report, and detailing other topsoil protection related compliance issues. Mr. Rogaczewski outlined the steps necessary to comply with Non-Coal Rules and set a compliance deadline of 12/27/02.
4. 01/22/03 - Mr. Muller met with Mr. Rogaczewski to discuss compliance concerns and securing additional bond for 1.5 acres of unbonded disturbance. Mr. Rogaczewski set a new compliance deadline of 02/07/03.

5. 02/06/03 - Mr. Muller contacted Jon Sweet with the LQD District III office to inform him that he would be in the following week to discuss compliance issue resolution.
6. 02/18/03 - A Notice of Violation (NOV) (Docket No. 3462-03) was issued for failure to address the compliance concerns identified during the 10/25/02 annual inspection. Mr. Muller was given a compliance deadline of 04/15/03 to resolve all compliance issues.
7. 02/26/03 - Mr. Muller met with LQD District III Supervisor Don McKenzie and supplied the required bonding documents and stated that he would resolve all compliance issues by the 04/15/03 deadline.
8. 03/14/03 - LQD District III personnel inspected LMO ET1179 and found that all compliance issues had been addressed by Mr. Muller.
9. 04/07/03 - A Notice of Compliance (Docket No. 3463-03) was issued to Future Enterprises LLC for satisfying the terms of the previous NOV.
10. 09/16/03 - Mr. Muller submitted an annual report for the 2002-2003 reporting period. This report was nearly four months late. This report stated that zero acres were newly disturbed and 1000 cubic yards of scoria was removed from the mine. This annual report states that the remaining life of this operation is 5 years.
11. 04/16/04 - Mr. Muller submitted an annual report for the 2003-2004 reporting period on time. This report stated that zero acres were newly disturbed and 1000 cubic yards of scoria was removed from the mine. This annual report states that the remaining life of this operation is 5 years.
12. 03/31/05 - Mr. Muller submitted an annual report for the 2004-2005 reporting period. This report was submitted one month early. This report stated that zero acres were newly disturbed and 530 cubic yards of scoria was removed from the mine. This annual report states that the remaining life of this operation is 10-15 years.
13. 04/10/06 - Mr. Muller submitted an annual report for the 2005-2006 reporting period on time. This report stated that zero acres were newly disturbed and 300 cubic yards of scoria was removed from the mine. This annual report states that the remaining life of this operation is 10 years.
14. 10/10/07 - Mr. Muller submitted an annual report for the 2006-2007 reporting period five months late. This report stated that zero acres were newly disturbed and 350 cubic yards of scoria was removed from the mine. This annual report states that the remaining life of this operation is 10 years.
15. 09/23/08 - Mr. Muller submitted an annual report for the 2007-2008 reporting period nearly 5 months late. This report stated that zero acres were newly disturbed and 375

cubic yards of scoria was removed from the mine. This annual report states that the remaining life of this operation is 10-15 years.

16. 05/18/09 - Partial landowner Peter Cherni visited the LQD District III office and logged a complaint against Future Enterprises, Inc for failure to pay royalties, unauthorized importation of concrete asphalt to LMO ET1179, and equipment leaking fluids that could contaminate groundwater. Mr. Cherni stated that he and some members of his family wished to terminate Future Enterprises LLC mining rights on the property.
17. 05/19/09 - A letter from Peter Cherni to Gary Muller supplied to the District III LQD states the Mr. Muller has 14 days to "remove your equipment, reclaim the land according to DEQ and be off mu property."
18. 05/19/09 - LQD personnel and Peter Cherni the landowner visited the site to investigate Mr. Cherni's complaint and found imported construction materials that were not authorized on site.
19. 06/23/09 - Gary Muller submitted a letter signed by himself and partial landowners William and Rudolph Cherni stating that they have no intention of stopping Future Enterprises LLC from operating at LMO ET1179.
20. 07/01/09 - Mr. Muller submitted an annual report for the 2008-2009 reporting period two months late. This report stated that zero acres were newly disturbed and 272 cubic yards of scoria was removed from the mine. This annual report states that the remaining life of this operation is 10 years.
21. 05/14/10 - Mr. Muller submitted an annual report for the 2009-2010 reporting period on time. This report stated that zero acres were newly disturbed and no scoria was removed from the mine. This annual report states that the remaining life of this operation is 1 year.
22. 10/07/10 - A letter from the Sheridan County Public Works Department was received by the District III LQD office notifying that a stop work order was placed on LMO ET1179 on 09/17/09 for conducting operations without a valid county permit.
23. 01/19/12 - Mr. Muller submitted an annual report for the 2010-2011 reporting period seven months late. This report stated that zero acres were newly disturbed and no scoria was removed from the mine. This annual report states that the remaining life of this operation is unknown.
24. 09/24/12 -The 09/13/12 inspection report for LMO ET1179 was sent to Mr. Muller certified mail. Mr. Muller signed for this document on 09/28/12. This report informed Mr. Muller that he will need to receive permission from landowners for the imported concrete. Mr. Muller was also informed of Non-Coal Rules Chapter 10, Section 5(a)(i), and requested that this mine be reclaimed if no further mining activity is planned. No attempt to reclaim the mine was made.

25. 10/30/12 - The District III LQD sent a certified letter notifying Mr. Muller that all compliance concerns will need to be addressed within ten days and Mr. Muller should contact the District III office to determine the best approach for doing so.
26. 11/19/12 - The District III LQD received a signed contract between the William and Rudolph Cherni landowners and Gary Muller of New Process LLC to operate the LMO ET1179.
27. 12/06/12 - Mr. Muller submitted an annual report for the 2011-2012 reporting period seven months late. This report stated that zero acres were newly disturbed and no scoria was removed from the mine. This annual report states that the remaining life of this operation is unknown.
28. 09/17/13 - Mr. Muller submitted an annual report for the 2012-2013 reporting period 7.5 months early. This report stated that zero acres were newly disturbed and no scoria was removed from the mine. This annual report states that the remaining life of this operation is unknown.
29. 10/10/14 - The District III LQD sent a certified letter notifying Mr. Muller that the required 2013-2014 Annual Report was not received and requested submission of the report within 50 days.
30. 10/15/14 - Mr. Muller submitted an annual report for the 2013-2014 reporting period 5.5 months late. This report stated that zero acres were newly disturbed and no scoria was removed from the mine. This annual report states that the remaining life of this operation is unknown.
31. 09/27/17 - The District III LQD sent a certified letter notifying Mr. Muller that the required 2014-2015, 2015-2016, 2016-2017 Annual Reports were not received and requested submission of the reports within 15 days. Mr. Muller did not sign for this letter and it was returned undelivered.
32. 04/25/19 - The 10/25/18 inspection report for LMO ET1179 was sent to Mr. Muller certified mail. Mr. Muller signed for this document on 05/13/2019. This inspection report detailed multiple compliance concerns including failure to reclaim the site. These compliance concerns were also detailed during previous inspections. No response to this inspection report was received from Mr. Muller and no attempts to resolve previous compliance concerns had been made.
33. 09/12/19 - The District III LQD sent a certified letter notifying Mr. Muller that the required 2018-2019 Annual Report was not received and requested submission of the report within 30 days. Mr. Muller did not sign for this letter and it was returned on 10/04/19.

34. 11/15/19 - The 11/12/19 inspection report for LMO ET1179 was sent to Mr. Muller. This inspection report detailed multiple compliance concerns including failure to reclaim the site. These compliance concerns were also detailed during previous inspections. No response to this inspection report was received from Mr. Muller and no attempts to resolve previous compliance concerns had been made.
35. 01/07/20 - The LQD Administrator sent Mr. Muller a letter advising him of the revised statute W.S. 35-11-401(e)(vi).
36. 11/10/20 -The 10/15/20 inspection report for LMO ET1179 was sent to Mr. Muller. This inspection report detailed multiple compliance concerns including failure to reclaim the site. These compliance concerns were also detailed during previous inspections. No response to this inspection report was received from Mr. Muller.
37. 04/05/ 2021 - The LQD attempted to obtain contact information for Mr. Gary Muller through reviews of LQD files, Secretary of State websites in Wyoming and Montana, internet address and phone searches, and attempts to contact local landowners and government agencies with no success.
38. 04/14/ 2021 - An NOV for abandonment and failure to reclaim LMO ET1179 was sent to Mr. Muller certified mail.
39. 5/25/2021 – The NOV documents sent to Mr. Muller via certified mail were returned undelivered.