

**FILED**

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING

SEP 22 1994

Terri A. Lorenzon, Attorney  
Environmental Quality Council

IN THE MATTER OF THE BOND )  
FORFEITURE PROCEEDINGS )  
AGAINST THE BOND OF )  
MULLER CONSTRUCTION FOR )  
LIMITED MINING EXEMPTION NO. )  
786ET )

DOCKET NO. 2398-92

**STIPULATION**

The Department of Environmental Quality, Land Quality Division, and Muller Construction, by and through undersigned counsel, stipulate to the following:

1. The parties to the above-captioned bond forfeiture proceeding, the Department of Environmental Quality, Land Quality Division (DEQ) and Muller Construction (Muller) desire to resolve all disputes concerning this proceeding through this stipulation, and desire that the Council enter an Order For Bond Forfeiture.
2. This is a bond forfeiture action against the bond of Muller. This action is authorized by W.S. 35-11-421, and the Council has jurisdiction over the subject matter of this action and the parties hereto pursuant to the same statute and W.S. 35-11-112.
3. Muller operated a sand and gravel mine near Sheridan. The location of the operation is more specifically described as the SW1/4,NW1/4 of Section 31, T56N, R83W, Sheridan County, Wyoming.
4. Muller operated this facility pursuant to permit no. 786ET, which was issued by the DEQ. The DEQ regulates this facility pursuant to W.S. 35-11-401(e)(vi), (vii), (viii), (ix), (f) and (k), and DEQ Noncoal Rules, Chapter X.
5. The operation has affected 5.5 acres. The DEQ must clean up refuse, grade and contour the pit, topsoil, and seed the area to completely reclaim the pit. The DEQ estimates that it will cost \$3,500.00 to reclaim those affected lands. This estimate is reasonable and uncontested.
6. Pursuant to W.S. 35-11-401(e)(viii), Muller is obligated to

- reclaim all land affected pursuant to permit no. 786ET.
7. Pursuant to W.S. 35-11-401(e)(vii), Muller was obligated to post a reclamation performance bond with the DEQ. Muller satisfied this requirement by posting a \$900.00 Certificate of Deposit, no. 2247, issued by the Sheridan National Bank.
  8. To date, Muller has failed to completely reclaim all lands affected by its mining operation. The DEQ has no evidence of any activity at the mine since 1992.
  9. Muller's failure to perform any reclamation at the mine since 1992 constitutes a violation of W.S. 35-11-401(e)(viii).
  10. On July 22, 1992, the DEQ issued Notice of Violation no. 2398-92 to Muller.
  11. This violation constitutes adequate cause to request approval from the Council to request that the attorney general initiate bond forfeiture proceedings, pursuant to W.S. 35-11-421(a).
  12. The Council has approved a bond forfeiture action, and the Attorney General's Office has properly initiated bond forfeiture proceedings by sending notice to Muller by certified mail dated January 11, 1993.
  13. Muller requested a hearing on January 29, 1993. Muller notified the Attorney General's Office that Gary Muller had filed Chapter 7 bankruptcy, and that the State's action might be stayed by the bankruptcy action.
  14. On February 12, 1993, the parties filed a Joint Motion For Stay on the ground that Muller had filed an acceptable reclamation plan and expressed its intent to reclaim the mine.
  15. On February 23, 1993, the Council entered an Order For Stay.
  16. On May 18, 1993, the DEQ informed the Attorney General's Office that Muller had not begun reclamation, and requested the Attorney General's Office resume bond forfeiture proceedings.
  17. On June 10, 1993, the Attorney General's Office moved the Bankruptcy Court to modify the stay which automatically commences after a bankruptcy petition is filed, pursuant to 11 U.S.C. §362.

18. On June 25, 1993, the Bankruptcy Court entered an Order Modifying Automatic Stay, which permits the State to continue the bond forfeiture proceedings.
19. On July 22, 1993, the DEQ moved the Council to schedule a hearing for this matter.
20. On September 8, 1994, the Council scheduled a hearing for October 19, 1994.
21. Muller admits that its mine is not completely reclaimed.
22. Muller agrees to forfeit Certificate of Deposit no. 2247, issued by the Sheridan National Bank, in the amount of \$900.00. Muller waives its right to a hearing.
23. The extent of Muller's liability to reclaim this mine is \$900.00, and the DEQ's receipt of that amount upon presentation of the certificate of deposit for payment shall fully satisfy the DEQ's claim for reclamation costs.
24. All proceeds from this bond forfeiture which are not necessary to complete reclamation of all lands affected by Muller's operation shall be returned to Muller in an amount not to exceed \$900.00.
25. This Stipulation constitutes a full resolution of the above-captioned matter. The parties' compliance with the terms shall constitute full satisfaction of all claims in this proceeding.
26. This Stipulation is binding upon Muller, its directors, officers, agents, employees, successors and assigns, and upon the State of Wyoming.

27. The parties shall be responsible for their own costs incurred in this matter, including attorney fees.

FOR MULLER CONSTRUCTION



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FOR THE DEPARTMENT OF ENVIRONMENTAL  
QUALITY, LAND QUALITY DIVISION



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