



Mark Gordon, Governor

Department of Environmental Quality

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



Todd Parfitt, Director

CERTIFIED MAIL RETURN RECEIPT REQUESTED # 7017 1070 0000 5306 9560

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. ET1336**

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. ET1336. 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. ET1336 should be forfeited:

\$4,000.00 Certificate of Deposit, issued by Big Horn Federal Savings Bank (Bond No. 1277)

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 at (307) 777-7046 or kyle.wendtland@wyo.gov.

Sincerely,


Todd Parfitt
Director, WDEQ


Date: 7/8/20

Attachments: ET1336 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. ET1336

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) ET1336, also known as the Karst Pit, which is inactive and unreclaimed.

ET1336, the Karst Pit, is located in Lot 21 and the SE1/4 SE1/4, Section 1, T. 54N., R. 101W., which is approximately 5 miles southwest of Ralston. ET1336 was approved for up to 4.0 acres of affected land and the surface is privately owned by Jerry and Ruth Thompson. Approximately 3.9 acres of land has been affected at the operation. Yellowstone Landscaping, Inc. failed to reclaim ET1336 and, as a result, DEQ issued a Notice of Violation, Docket No. 5868-18, (enclosed) on August 29, 2018. To date, no work to reclaim the operation has been initiated despite repeated requests from the Wyoming Department of Environmental Quality – Land Quality Division (WDEQ/LQD).

I therefore, recommend forfeiture of the following reclamation performance bond for ET1336:

- \$4,000.00 Certificate of Deposit issued by Big Horn Federal Savings Bank (Bond No. 1277)

Reclamation Requirements:

A reclamation cost estimate was developed for ET1336 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 since it is a limited mining operation and therefore exempt from statutory permitting requirements. Information from the 2019 Inspection Report suggests that the highwalls appear to be unstable and are deteriorating, material and soil stockpiles have no buffer between them, and Russian olives (invasive) are growing around the operation. This reclamation will require significant highwall reduction through material movement to return the disturbed area to original contours. The landowner has mentioned that they would like a ranch pit left on a portion of the reclamation. However, they have not provided any specific information on a preferred location. Reclamation is estimated to cost \$12,500.00. WDEQ currently holds a bond totaling \$4000.00, which is

\$8,500.00 less than the estimated cost to reclaim the site. The cost estimate may decrease by some amount depending on the landowner's request regarding a ranch pit.

Pertinent History:

Below is a chronology of pertinent events for ET1336, with accompanying dates:

- 12/22/05** LMO ET1336 was approved and issued to Wyoming Builders, Inc. (Carl Spomer) on property owned by Ray Karst.
- 09/28/12** ET1336 was transferred from Wyoming Builders, Inc. to Yellowstone Landscaping, Inc. (Daniel May). Big Horn Federal Savings Bank Certificate of Deposit no. 1277 for \$4,000 was accepted as the new bond. Mr. Karst remained the property owner.
- 12/20/12** The most recent Annual Report for ET1336 was received from Yellowstone Landscaping, Inc.
- 05/23/13** ET1336 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 for ET1336 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, including the bond for ET1336, following public auction in response to the foreclosure case.
- 01/27/17** ET1336 was discussed with Mr. Spomer. Mr. Spomer indicated that the ET1336 property was sold to Mr. Karst's son-in-law and daughter, Jerry and Ruth Thompson, and that the gravel lease was not renewed as the Thompsons did not want to have an operation there. Mr. Thompson had apparently told Mr. Spomer that he did not want the operation completely reclaimed; he instead wanted it contoured so that it would naturally reclaim. 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 ET1336 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. Mr. Wendtland also stated that the WDEQ/LQD would only allow up to 2 acres of unreclaimed land at the ET1336 operation

with the rest being reclaimed through seeding. After it was properly reclaimed, ET1336 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.
- 02/01/17** Mr. Thompson, the owner of the ET1336 property, was contacted. He reiterated that he did not want Mr. Spomer to completely reclaim the operation as he preferred native grass to volunteer in over seeding it. The WDEQ/LQD's reclamation requirements were explained. It was also explained that Mr. Spomer did not have any responsibility to reclaim the site. Mr. Thompson then asked if he could take it over. An explanation on what this would involve was provided, and Mr. Thompson decided to further talk it over with his wife.
- 03/02/17** Mr. Thompson called to state that he was very sure that he would like to take over ET1336 and to request an information packet on how to do this.
- 03/23/17** Ms. Williams and Mr. Dillon had another discussion with Mr. Wendtland on the status of ET1336 and Mr. Thompson's interest in assuming liability of the operation. Mr. Wendtland supported working to transfer ET1336 to the Thompsons if they were willing to move forward with it. There was also discussion on how to properly handle the paperwork for the transfer.
- 03/24/17** A letter with information on transferring ET1336, based on the 3/23 phone call, was sent to Mr. Thompson.
- 05/03/17** Mr. Thompson was contacted in order to determine if he had made any decisions on ET1336. He said he was pretty sure he still wanted to, but he had some questions on adjacent landowners and Park County's zoning for the property. He was provided the information to help answer these questions.
- 05/09/17** A letter was sent to Mr. Thompson with information on adjacent landowners and Park County's zoning for the property.
- 06/07/17** Mr. Thompson was contacted on the status of him transferring ET1336. He stated that he intended to do this but was too busy lately to work on it. He also stated that the WDEQ/LQD should not proceed with forfeiting the bond as he was serious about the transfer. He was told that the operation would be inspected soon. He expressed interest in attending the inspection.
- 08/14/17** Mr. Thompson was contacted to let him know that ET1336 would be inspected on the morning of 8/15; he stated he would attend.
- 08/15/17** ET1336 was inspected, and 6 compliance issues were identified. Mr. and Ms. Thompson also met with Mr. Dillon there to further discuss options for ET1336, including the transfer process and the bond forfeiture process. They decided to think more about what to do with the operation before making a final decision.

- 09/25/17** The report from the 8/15 inspection of ET1336 was mailed to Yellowstone Landscaping Inc. by Certified Mail.
- 10/04/17** The inspection report of ET1336 mailed on 9/25 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 ET1336.
- 01/24/18** Ms. Williams and Mr. Dillon returned Mr. May's phone call. He explained that he wanted to be done with ET1336. The entire forfeiture process was explained to him, and he was encouraged to reclaim the operation instead going to forfeiture. 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 ET1336. 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.
- 04/03/18** New permit coordinator Gwen Robson and Mr. Dillon called Mr. Thompson to discuss the current status of ET1336 and to convey that a decision must be made on assuming liability for the operation. Mr. Thompson indicated that he was in favor of forfeiture but would appreciate having a ranch pit left on a portion of the reclamation. He also stated that he would make a final decision soon; it was conveyed to him that he would be contacted again after the Notice of Violation process had commenced in order to discuss the final decision.
- 08/28/18** Annual inspection of ET1336 was completed by Ms. Robson, Mr. Dillon, and Ms. Williams.
- 08/29/18** A Notice of Violation for ET1336 (Docket No. 5868-18) 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 plans for the site. Mr. May answered and failed to recall if he had contacted the landowners or not. Mr. May had requested the contact information to be sent to him via a new email so he could contact the landowner for the site 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 ET1336 which was issued on August 29, 2018.

Enclosed: Notice of Violation Docket No. 5868-18

DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF WYOMING

NOTICE OF VIOLATION

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

) DOCKET NO. 5868-18

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 ET1336, which is located in Lot 21 and SE4SE4, Section 1, T. 54N., R. 101W.
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 ET1336 since 2012. No valid lease agreement exists between Yellowstone Landscaping Incorporated and the current surface owner of the area within the boundaries of ET1336. As such, ET1336 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 ET1336. 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 21st 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.