



# 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

## CERIFIED MAIL RETURN RECEIPT REQUESTED # 7020 1810 0001 9090 9212

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

### RE: Bond Forfeiture Recommendation – Future Enterprises, LLC, Limited Mining Operation No. ET1366

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 sand and gravel mining under Limited Mining Operation (LMO) No. ET1366. 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 bond for LMO ET1366 should be forfeited:

\$4,000 Certificate of Deposit, issued by First Interstate Bank (Bond Number 220144743)

At this time, in accordance with W.S. § 35-11-421(a), I am seeking approval from the Wyoming Environmental Quality Counsel (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) 777-7655 or [kyle.wendtland@wyo.gov](mailto:kyle.wendtland@wyo.gov).

Sincerely,

Todd Parfitt, Director  
Department of Environmental Quality

June 23, 2021  
Date

Attachments: ET1366 File Memorandum, NOV Docket No. 6082-21

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

## MEMORANDUM

**TO:** Todd Parfitt, WDEQ Director  
File, Docket No. 6082-21, LMO ET1366 Abandonment

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

**FROM:** David Schellinger, District 3 Natural Resources Program Principal

**DATE:** June 21, 2021

**SUBJECT:** Bond Forfeiture Recommendation – Future Enterprises, LLC, Limited Mining Operation No. ET1366

### **Background:**

Authorization for Limited Mining Operation (LMO) ET1366 was granted to Future Enterprises, LLC on October 16, 2006. The mine is located in SENE Qtr-Qtr and NESE Qtr-Qtr of Section 1, Township 52N., Range 83W. Currently there are approximately 3.1 acres that have been disturbed and left un-reclaimed. The Department of Environmental Quality, Land Quality Division (LQD) is currently holding Certificate of Deposit Number 220144743 with the First Interstate Bank in the amount of \$4,000 for the reclamation of this mine. The Wyoming Secretary of State dissolved Future Enterprises, LLC on June 4, 2008 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 2007 to 2014 reminding him to submit an annual report on or before the due date of October 16. Additionally, there has been no activity at the mine since 2007. 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, LLC was issued a NOV for abandonment and failure to reclaim LMO ET1366 under Docket No. 6082-21 on April 14, 2021. In addition to LMO ET1366, Mr. Muller of Future Enterprises, LLC currently holds LMO authorizations for ET1335 and ET1179. The LQD has also issued NOVs 6083-21 and 6084-21 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 aforementioned information and the lack of response to the NOV, I recommend the following bonds be forfeited:

- \$4,000.00 Certificate of Deposit, issued by First Interstate Bank (Bond Number 220144743)

### **Reclamation Requirements:**

The reclamation cost estimate was developed for ET1366 based on existing liabilities present at the site. The reclamation cost is based on 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. 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 3.1 acres. The mine currently has a highwall approximately 10 feet high and 600 feet long that surrounds the active pit location on the north, east and south edges. The eastern disturbance edge daylights into a drainage. Approximately 1,500 cubic yards of topsoil are stockpiled at various locations around the pit location. Highwall reduction and grading of approximately 5 feet of fill into the center of the pit will allow through drainage to the eastern disturbance edge. The post-mining land use will be livestock grazing and wildlife. The Sheridan LQD office estimated that reclamation of the site will cost approximately \$3,637, which is \$363 less than the bond currently held by the WDEQ.

### **Pertinent History:**

The following chronological timeline is provided to show the correspondence and requests District III LQD has sent to Mr. Muller in regards to ET1366 and his response or lack thereof.

1. August 13, 2007 – 2006-2007 Annual Report received by the LQD (64 days early).
2. June 6, 2008 – Future Enterprises dissolved administratively by the Secretary of State for delinquent taxes.
3. April 8, 2009 – Mark Rogaczewski letter requesting 2007-2008 Annual Report be sent in 30 days or a written explanation why it cannot.
4. July 1, 2009 – 2007-2008 Annual Report received by LQD (258 days late). Report states that seeding would be completed by the surface owner per original contract, and termination by conversion to “non-com(mercial) operation by landowner.”
5. July 6, 2009 – Letter acknowledging receipt of 2008-2009 Annual Report and reminder of the October 16, 2009 due date for the 2008-2009 Annual Report. Annual Report not received by the LQD.

6. August 15, 2010 – 2009-2010 Annual Report received by LQD stating that 3 acres were reclaimed with 6-12 inches of topsoil applied (62 days early).
7. January 19, 2012 – 2010-2011 Annual Report received by LQD (190 days late)
8. July 3, 2009 at 2:00 PM - First inspection report in the file with Jon Sweet (LQD) Gary Muller (Operator) and Jerry Landry (Landowner) discusses sale of materials to complete a road project.
9. December 6, 2012 – 2011-2012 Annual Report received by LQD (51 days late).
10. February 5, 2014 – LQD Inspection Report – Grading is not complete and topsoil remains to be spread.
11. April 8, 2014 – 2012-2013 Annual Report received by LQD (123 days late) claiming “90%” reclamation of disturbances.
12. August 29, 2014 – Memorandum from BJ Kristiansen (LQD) to the Administrator detailing an inspection of LMO ET1366 with Ms. Jaime Jakes (LQD), Jerry Landry (Landowner), Kem Reid (Landowner), Mr. Muller (Operator) and Mr. Benjamin Keller (Lawyer) of Kinnaird Law Office, P.C.- No reclamation observed during the inspection. Operator notified that the LMO must be reclaimed, or the bond will be forfeited. Mr. Muller stated he would abandon the LMO.
13. September 15, 2014 – Letter from Mark Rogaczewski to Benjamin Keller concerning a decision to reclaim or abandon ET1366 (requested response by September 30, 2014).
14. September 19, 2014 – Mark Rogaczewski receives an email from Benjamin Keller stating that the former LQD employee and LMO coordinator, Jon Sweet, was in contact with him, and suggesting that Mark speak with Jon Sweet to gain a perspective on past discussions between the landowner and Mr. Muller. Mr. Rogaczewski asked that Mr. Keller obtain Mr. Sweet’s comments and recollection in writing and forward them to the LQD.
15. October 1, 2014 – The LQD receives materials from Mr. Keller including copies of an Annual Report dated July 1, 2009 that had never been received by the LQD District 3 Office, a copy of the LMO Authorization, and a copy of the undated inspection report (Item 12 above). He stated that Mr. Sweet was aware that the pit location had been in use by the landowner prior to the LMO authorization. He stated that Mr. Sweet was aware of an agreement between the operator and landowner to “stockpile a highwall” for landowner use, leaving the pit open, as he found it, and that reclamation was the responsibility of the surface owner, but Mr. Muller was willing to offer the bond amount of \$4,000 to the landowner to reclaim the pit.

16. October 15, 2014 – 2013-2014 Annual Report received by the LQD stating planned reclamation to “blend in highwall”.
17. December 30, 2014 – Mr. Rogaczewski sends Mr. Keller a letter requesting a site visit to the LMO that would be attended by Mr. Doug Emme, the LQD Mine Engineer and Ms. Jakes to determine actions to be taken to reclaim the LMO.
18. December 18, 2014 – The LQD received a response from Mr. Keller stating that Mr. Muller agreed to complete the reclamation in the spring of 2015, accounting for the state of the disturbance at the time he became responsible for the pit operation, and that he would like the reclamation plan in writing to reduce the chance of confusion regarding his obligation.
19. No annual reports received for 2014-2015 and 2015-2016 reporting years.
20. August 29, 2017 – Mark Rogaczewski mails a letter requesting that Future Enterprises, LLC provide annual reports for the 2014-2015 and 2015-2016 reporting years.
21. Letter returned on September 16, 2017.
22. September 27, 2017 – Mr. Rogaczewski sends a letter requesting the 2014-2015 and 2015-2016 Annual Reports, and reminds Future Enterprises, LLC that the next annual report will be due on October 16, 2017. Attached were partially filled-out Annual Report Forms for the three reporting years. The letter was returned on October 13, 2017.
23. No Annual Reports received since 2014.
24. August 3, 2018 – The LQD sent a Consent to Access Private Property Form A to the new landowner, Mr. Dennis Lawrence. Mr. Lawrence approved access and returned completed form on August 8, 2018.
25. March 25, 2019 – Annual Inspection mailed to Future Enterprises, LLC – delivered and accepted at a different address than that listed for Mr. Muller on the Montana Secretary of State site.
26. 2019 and 2020 annual inspections were completed and mailed to Mr. Muller at the last known address but were returned.
27. August 7, 2020 – The Administrator mailed a letter to Future Enterprises, LLC at the last known address informing him of a change in W.S. 35-11-401(e)(iv).
28. April 5, 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 by contacting local landowners and government agencies with no success.

29. April 5, 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 by contacting local landowners and government agencies with no success.
30. The LQD mailed Notice of Violation Docket No. 6082-21 via certified mail to the last known address of the operator on April 14, 2021 under the LQD Administrator's cover letter of the same date.
31. On May 24, 2021, the LQD Administrator's Administrative Assistant confirmed the NOV had not been delivered and signed for by the operator.
32. On May 25, 2021, the LQD Administrator's Administrative Assistant received the returned NOV.