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FILED

MAR 04 2024

**ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING**

**IN THE DISTRICT COURT FOR THE SECOND JUDICIAL DISTRICT
IN AND FOR THE COUNTY OF CARBON, STATE OF WYOMING**

Docket No. _____

IN THE MATTER OF THE BOND FORFEITURE)
PROCEEDINGS AGAINST THE BOND OF)
IN RE QUALITY LANDSCAPE AND NURSERY, INC.)
STEVENS MINE)
)
QUALITY LANDSCAPE AND NURSERY, INC.,)
)
Petitioner,)
)
vs.)
)
STATE OF WYOMING,)
ENVIRONMENTAL QUALITY COUNCIL,)
)
and)
)
STATE OF WYOMING, <i>ex rel.</i>)
DEPARTMENT OF ENVIRONMENTAL QUALITY,)
LAND QUALITY DIVISION,)
)
Respondents.)

PETITION FOR JUDICIAL REVIEW OF AGENCY ACTION

COMES NOW the Petitioner, Quality Landscape and Nursery, Inc., by and through its counsel, James R. Salisbury, of The Salisbury Firm, P.C., and pursuant to Rule 12.01 *et seq.*, WYO. R. APP. P., Wyoming Statute § 16-3-114, and the Rules and Regulations, Department of

Environmental Quality, Chapter 1, Section 9, submits its Petition for Judicial Review of Agency Action as follows:

I. JURISDICTION AND VENUE.

This Court has jurisdiction over this matter pursuant to WYO. R. APP. P. 12 and Wyoming Statute § 16-3-114(a) in that 1) the injury or harm for which relief is sought occurred in Carbon County, Wyoming; 2) the administrative action from which this petition arises took place in Carbon County, Wyoming; 3) the real property affected by the administrative action is located in Carbon County, Wyoming; and 4) Petitioner's principal place of business is in Carbon County, Wyoming. All administrative remedies have been exhausted prior to the filing of this petition. Venue is proper in this Court.

The Wyoming Environmental Quality Council ("EQC") and the State of Wyoming, Department of Environmental Quality, Land Quality Division ("DEQ") are each an "agency", as defined in Wyoming Statute § 16-3-101(b)(i). This petition is an appeal from a final agency action. Petitioner is a person, as defined by Wyoming Statute § 16-3-101(b)(vii), affected by the final decision of an agency in a contested case as set forth herein. The final agency action for which review is sought is the Findings of Fact, Conclusions of Law and Order filed in the proceeding before the EQC on February 1, 2024, in Environmental Quality Council Docket Number 22-4503 ("EQC Order").

II. ISSUES OF LAW.

Petitioner seeks judicial review and reversal of the EQC Order (Appendix 1 hereto), on the grounds: 1) that such EQC Order, and the findings of the EQC, were not in accordance with law; 2) that such EQC Order, and the findings of the EQC, were unsupported by substantial evidence in this record or was contrary to evidence introduced at the contested case hearing; 3) that such EQC Order is without observance of procedure required by law; 4) that the EQC Order, and the findings therein, are in excess of statutory jurisdiction, authority or limitations or lacking statutory right; and 5) that such EQC Order, and the findings of the EQC, were arbitrary and capricious and/or an abuse of discretion.

III. PARTIES.

The parties to the contested case proceeding and this Petition for Judicial Review of Agency Action are: 1) Petitioner Quality Landscape and Nursery, Inc.; 2) Respondent State of Wyoming, Environmental Quality Council; 3) and Respondent State of Wyoming, Department of Environmental Quality, Land Quality Division.

IV. STATEMENT OF RELEVANT FACTS.

This proceeding arises out of a performance bond revocation proceeding initiated by DEQ seeking forfeiture of the performance bond posted by Petitioner relative to a limited mining operation on certain real property situate in Saratoga, Carbon County, Wyoming described as Lots 1 - 10, Block 11, Riverside Addition to the Town of Saratoga, Wyoming (“LMO Property”). Petitioner sought and obtained a limited mining operation permit from DEQ (LMO1496ET) on July 20, 2010. Pursuant to the terms of such permit, Petitioner excavated and removed soils from the LMO Property through 2019. For reasons reflected in the record, DEQ issued a Notice of Violation to Petitioner (“NOV 5970-19”) for allegedly mining outside the boundaries of the LMO

Property without surface owner consent which allegedly resulted in material damage to the adjacent property and for failing to salvage, conserve, and stockpile topsoil for final reclamation of the LMO Property. To resolve the alleged violations, Petitioner and DEQ entered into a settlement agreement with an effective date of July 29, 2020 (“Settlement Agreement”).

In general terms, the Settlement Agreement provided that Petitioner would provide a site development plan to DEQ, approved by the Town of Saratoga, Wyoming, within two (2) years from the effective date of the Settlement Agreement. The Settlement Agreement further provides, *inter alia*, that if Petitioner was unable to provide an approved site development plan to DEQ within the aforementioned two (2) year window, Petitioner would reclaim the LMO Property in accordance with the terms of the Settlement Agreement.

For reasons which will be further explained in this proceeding, Petitioner was unable to provide an approved site development plan to DEQ within two (2) years from the effective date of the Settlement Agreement. As a result of the failure of Petitioner to provide an approved site development plan to DEQ, DEQ, through a series of separate notices of violation, demanded that Petitioner commence reclamation of the LMO Property. When Petitioner did not commence reclamation of the LMO Property in accordance with the demands of DEQ, DEQ initiated performance bond revocation proceedings before the EQC.

On December 1, 2022, DEQ filed a formal request with EQC to authorize DEQ to request the Wyoming Attorney General to begin bond forfeiture proceedings. On February 21, 2023, EQC approved DEQ’s request to pursue bond forfeiture proceedings against the performance bond(s) posted by Petitioner for the LMO Property. Petitioner objected and requested a hearing before EQC, appealing the bond forfeiture proceedings and the various notices of violation (NOV 5970-19, NOV 6176-22, and NOV 6183-22) issued by DEQ.

EQC conducted a two-day contested case hearing on Petitioner's objection on July 19-20, 2023, in Encampment, Carbon County, Wyoming ("Hearing"). Petitioner and DEQ participated at the Hearing. Following the Hearing, the parties submitted proposed findings of fact and conclusions of law on October 23, 2023.

Subsequent to deliberations by the EQC, the EQC determined bond forfeiture was warranted and entered the EQC Order on February 1, 2024. This Petition followed.

V. AGENCY DECISION.

A copy of the Order is attached hereto as Appendix 1.

VI. RELATED PETITIONS.

There are no related pending petitions for judicial review.

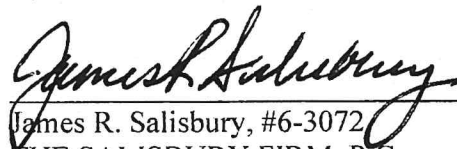
WHEREFORE, Petitioner Quality Landscape and Nursery, Inc. seeks reversal of the EQC Order attached hereto as Appendix 1; for an order for withdrawal of the Notices of Violation at issue in the EQC Order; and for such other relief as this Court deems just and equitable.

DATED: February 27, 2024.

QUALITY LANDSCAPE & NURSERY, INC.

Petitioner

By:



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COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on the 27th day of February, 2024 to the following via the method indicated below:

D. David DeWald, Sr. Asst. Attorney General	<input checked="" type="checkbox"/> First Class Mail
Shannon Leininger, Asst. Attorney General	<input type="checkbox"/> Facsimile
STATE OF WYOMING	<input type="checkbox"/> Federal Express
OFFICE OF THE ATTORNEY GENERAL	<input checked="" type="checkbox"/> Email
109 State Capitol	
Cheyenne, WY 82002	
David.DeWald@wyo.gov	
Shannon.Leininger@wyo.gov	

Todd Parfitt, Director	<input checked="" type="checkbox"/> First Class Mail
STATE OF WYOMING	<input type="checkbox"/> Facsimile
DEPARTMENT OF ENVIRONMENTAL QUALITY	<input type="checkbox"/> Federal Express
122 West 25 th Street	<input type="checkbox"/> Email
Cheyenne, WY 82002	

Kyle Wendtland	<input checked="" type="checkbox"/> First Class Mail
Administrator – Land Quality Division	<input type="checkbox"/> Facsimile
STATE OF WYOMING	<input type="checkbox"/> Federal Express
DEPARTMENT OF ENVIRONMENTAL QUALITY	<input type="checkbox"/> Email
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STATE OF WYOMING	<input checked="" type="checkbox"/> First Class Mail
ENVIRONMENTAL QUALITY COUNCIL	<input type="checkbox"/> Facsimile
2300 Capitol Ave., Suite 136	<input type="checkbox"/> Federal Express
Cheyenne, WY 82002	<input type="checkbox"/> Email

Ryan T. Schelhaas	<input checked="" type="checkbox"/> First Class Mail
Chief Deputy Attorney General	<input type="checkbox"/> Facsimile
STATE OF WYOMING	<input type="checkbox"/> Federal Express
OFFICE OF THE ATTORNEY GENERAL	<input type="checkbox"/> Email
109 State Capitol	
Cheyenne, WY 82002	


OF THE SALISBURY FIRM, P.C.

APPENDIX 1

- Findings of Fact, Conclusions of Law, and Order filed February 1, 2024

**BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING**

**IN THE MATTER OF THE BOND FORFEITURE)
PROCEEDINGS AGAINST THE BOND OF IN RE)
QUALITY LANDSCAPE AND NURSERY, INC.) Docket No. 22-4503
STEVENS MINE)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The final contested case hearing in this matter occurred before the Environmental Quality Council on July 19-20, 2023, at the Grand Encampment Opera House, 622 Rankin Ave., Encampment, Wyoming.

I. APPEARANCES

Present for the Council was Hearing Officer and Chairman Steve Lenz. Also present were Council members John Corra, Stan Blake, Ryan Greene, Shane True, and Marjorie Bedessem. Council member JD Radakovich attended and participated by videoconference.

Present at the hearing representing Quality Landscape & Nursery, Inc., was James Salisbury from the law firm The Salisbury Firm, P.C.

Present at the hearing representing the Wyoming Department of Environmental Quality (DEQ) was David DeWald, Deputy Attorney General; Shannon Leininger, Assistant Attorney General; and Tristan Fross, law student and intern at the Wyoming Attorney General's Office, who was authorized by the Hearing Officer to appear under Rule 9 of the Rules Governing the Wyoming State Bar and the Authorized Practice of Law.

Testifying on behalf of DEQ was Robin Jones, District 1 Supervisor for the Land Quality Division; Brian Goodnough, Surface Water Hydrologist for the Land Quality Division; and Kyle Wendtland, Administrator of the Land Quality Division.

Testifying on behalf of Quality Landscape was Creed William James, former mayor of the Town of Saratoga; Craig Kopasz, professional civil engineer with Engineering Associates; and Randy Stevens, owner and operator of Quality Landscape.

The following exhibits were admitted into evidence: DEQ exhibits 1 through 32 and Quality Landscape exhibits 1 through 21.

Following the contested case hearing, the parties submitted proposed findings of fact and conclusions of law on October 23, 2023. The Council subsequently met and deliberated via videoconference on November 17, 2023.

The Council, having heard and considered all the evidence in this case and being fully advised, pursuant to the Wyoming Administrative Procedure Act, Wyo. Stat. Ann. § 16-3-110, finds and concludes (by a vote of 6-1¹) that DEQ has met its burden and that Quality Landscape's bonds for limited mining operation ET1496 (hereinafter "LMO" or "LMO ET1496") are forfeited under Wyo. Stat. Ann. § 35-11-421(c).

II. JURISDICTION

This case arises from DEQ's December 1, 2022², formal request to the Council to authorize DEQ to request the Wyoming Attorney General to begin bond forfeiture proceedings for Quality Landscape's LMO, pursuant to Wyo. Stat. Ann. § 35-11-421(a). Specifically, DEQ is seeking bond forfeiture on Quality Landscape's Bond No. 73880 in the amount of \$1,000 and Bond No. 202001

¹ Council member True voted against the motion to forfeit Quality Landscape's bonds.

² The request was dated November 30, 2022, but filed with the Council on December 1, 2022.

in the amount of \$65,000 for allegedly breaching the terms of the Settlement Agreement executed as part of Notice of Violation, Docket No. 5970-19 and for allegedly violating the Environmental Quality Act and DEQ's rules. Specifically, in addition to violating the Settlement Agreement, DEQ alleges that Quality Landscape violated the Act and DEQ's rules when it failed to save, preserve, and stockpile topsoil at the LMO and when it mined outside the LMO legal boundary without surface owner consent.

On February 21, 2023, after reviewing the documentation submitted to the Council, the Council approved DEQ's request to pursue bond forfeiture proceedings under Wyo. Stat. Ann. § 35-11-421(a). Quality Landscape subsequently made a written demand to the Council requesting a hearing and appealing from the bond forfeiture proceedings and DEQ's notices of violation 5970-19, 6176-22, and 6183-22 (hereinafter "NOVs"). Because Quality Landscape timely requested a hearing under Wyo. Stat. Ann. § 35-11-421(b), the Council has jurisdiction to decide this bond forfeiture proceeding pursuant to Wyo. Stat. Ann. § 35-11-421.

III. STATEMENT OF THE CASE/ISSUES AND CONTENTIONS

At issue in this case is whether this Council should grant DEQ's request for bond forfeiture in the amount of \$66,000 for LMO ET1496 for Quality Landscape's alleged breach of the Settlement Agreement executed by DEQ and Quality Landscape as part of Notice of Violation, Docket No. 5970-19. DEQ originally issued Notice of Violation, Docket No. 5970-19 because it alleged that Quality Landscape was mining outside the legal boundary description of the LMO without surface owner consent which resulted in material damage to the adjacent property and for failing to salvage, conserve, and stockpile topsoil for final reclamation. Quality Landscape and DEQ executed the Settlement Agreement to resolve those alleged violations.

DEQ subsequently issued NOV Docket No. 6176-22 to Quality Landscape on August 12, 2022, because Quality Landscape allegedly failed to comply with the terms of the Settlement Agreement. DEQ issued NOV Docket No. 6183-22 to Quality Landscape on October 17, 2022, because Quality Landscape allegedly failed to address NOV Docket No. 6176-22. Essentially, DEQ issued both notices of violation (6176-22 and 6183-22) because of Quality Landscape's alleged failure to comply with the Settlement Agreement.

Concerning the Settlement Agreement, DEQ contends that Quality Landscape failed to comply with sections 7(c) and 7(d) of the Settlement Agreement by not meeting the deadline to either provide DEQ a site plan approved by the Town of Saratoga or to commence site reclamation.

Conversely, Quality Landscape contends that it could not comply with section 7(c) because of the Town's conduct and that the reclamation requirement in paragraph 7(d) did not contain a time limit or deadline to provide a proposed reclamation plan prior to DEQ instituting performance bond forfeiture proceedings. Quality Landscape also contends that it did not violate the Environmental Quality Act or DEQ's rules as specified in the NOVs.

This case boils down to whether Quality Landscape failed to comply with the terms of the Settlement Agreement as part of the NOVs and/or violated the Act or DEQ's rules. If the Council concludes that Quality Landscape failed to comply with the Settlement Agreement and/or violated the Act or DEQ's rules, the Council must enter an order forfeiting the bonds in the amount of \$66,000. Conversely, if the Council concludes that Quality Landscape did not violate the Settlement Agreement or the Act or DEQ's rules, the Council must enter an order to withdraw the NOVs.

IV. FINDINGS OF FACT³

1. Quality Landscape is a landscape construction business located in Saratoga, Wyoming. (Tr. – Jones testimony, 23; Stevens testimony, 252).
2. Randy Stevens is the owner-operator of Quality Landscape. (Tr. – Stevens testimony, 252).
3. On July 22, 2010, DEQ approved Quality Landscape’s application for an LMO. (DEQ Exs. 3, 6). The LMO is in Saratoga, adjacent to Highway 130/230. (Tr. – Jones testimony, 24). The LMO property is owned by the Randy Stevens Trust. (Tr. – Stevens testimony, 253; DEQ Ex. 3). The Randy Stevens Trust leases the LMO property to Quality Landscape. (Tr. – Stevens testimony, 253).
4. Originally, the reclamation bond (Bond No. 73880) for the LMO was set in the amount of \$1,000. (Tr. – Stevens testimony, 260; DEQ Exs. 3, 13).
5. To comply with the Town of Saratoga’s subdivision master plan, Mr. Stevens removed the majority of the soil from the LMO property. (Tr. – Stevens testimony, 257-258).
6. Following site inspections in 2013, 2014, and 2015, DEQ issued its 2013-2014-2015 annual inspection report on February 18, 2016. DEQ started to note possible off-site disturbance, but due to ambiguity with the Carbon County Assessor’s website DEQ could not determine if there had been offsite disturbance at that time. (Tr. – Jones testimony, 26-28; Goodnough testimony, 139-140; DEQ Ex. 3).
7. Subsequently, following site inspections in 2016, 2017, and 2018, DEQ issued its 2016-2017-2018 annual inspection report on June 4, 2018. In the report, DEQ noted that the sheet

³ To the extent testimony is cited as the basis for a finding of fact, the Council has resolved any conflicts or disputes between testimony of others in favor of the cited testimony.

pile wall, that is located outside the LMO boundary and is on the Town of Saratoga's property, had been excavated of the material supporting it from the side facing the LMO. (Tr. – Jones testimony, 28-29; Goodnough testimony, 141, 190; DEQ Ex. 4). During a March 2018 site inspection, Randy Stevens and a representative of the town, Mr. Wilcoxson, represented to DEQ that Mr. Stevens had permission to mine up to the sheet pile wall and property owned by the Town. (Tr. – Jones testimony, 37-38; DEQ Ex. 4). The report further noted that DEQ would not require Quality Landscape amend the 2-foot-wide strip up against the sheet pile wall (along the south side) if the Town requested this material be mined. (DEQ Ex. 4).

8. In April 2018, a Wyoming State Mine Inspector inspected the property and noted safety concerns with the sheet pile wall. (Tr. – Jones testimony, 29-30; DEQ Ex. 10).

9. DEQ conducted site inspections on June 12 and July 26, 2018. Following the inspections, DEQ issued its inspection report on January 25, 2019. In the report, DEQ explained that Quality Landscape had mined outside its LMO permit boundary. (Tr. – Jones testimony, 37; DEQ Ex. 5). At this time, however, it was unclear if Quality Landscape had permission to mine outside its LMO. (Tr. – Jones testimony, 37-38; DEQ Ex. 5). Based on the understanding that Mr. Stevens had the Town's permission, DEQ did not proceed with an enforcement action at that time and did not require Quality Landscape to amend the tract of land being mined. (Tr. – Jones testimony, 38; DEQ Ex. 5).

10. In June 2019, DEQ received a letter from Mr. Wilcoxson stating that the Town of Saratoga never gave Mr. Stevens permission to mine on the Town's adjacent property and up to the sheet pile wall. (Tr. – Jones testimony, 38-41; DEQ Ex. 21). Mr. Wilcoxson explained "that the only way permission could be given to mine 2 feet on Town Property would be by a vote of the entire Town Council and written letter granting permission." (DEQ Ex. 21).

11. Regardless of any permission granted by the Town of Saratoga, Mr. Stevens never amended the LMO permit and DEQ never granted Mr. Stevens permission to mine outside the mine boundary. (Tr. – Goodnough testimony, 154; Wendtland testimony, 204). Mr. Stevens never provided to DEQ written consent from the Town of Saratoga that authorized Quality Landscape to mine on the Town’s adjacent property. (*See* DEQ Ex. 21).

12. Following a June 2019 site inspection, a DEQ inspector issued the 2019 annual inspection report on August 13, 2019. The inspector concluded that mining had occurred outside the LMO boundary. (Tr. – Jones testimony, 41-43; DEQ Ex. 6). Based on the inspection, DEQ noted that Mr. Stevens appeared to have removed material from the Town of Saratoga’s property and may have compromised the integrity of the sheet pile wall. (Tr. – Jones testimony, 43; DEQ Ex. 6).

13. DEQ requested Quality Landscape to provide a survey if it wanted to refute the finding that it had mined outside the LMO legal description. (Tr. – Jones testimony, 42-44; DEQ Ex. 6). DEQ also informed Quality Landscape that reclamation of the property and stabilizing the wall must begin or DEQ would proceed with enforcement actions. (Tr. – Jones testimony, 43; DEQ Ex. 6). DEQ provided Quality Landscape with an opportunity to respond in writing to any incorrect or misleading statements. (Tr. – Jones testimony, 43-44; DEQ Ex. 6). Mr. Stevens never responded. (Tr. – Jones testimony, 43-44).

14. During the 2019 annual inspection, DEQ also made a finding that there was no topsoil stored at the LMO. (Tr. – Jones testimony, 44; DEQ Ex. 6). During the mining operations, there was no topsoil salvaged or stockpiled at the LMO. (Tr. – Jones testimony, 25, 27, 44-45; Goodnough testimony, 139, 143, 147; DEQ Exs. 2, 3, 4, 5, 6, 7).

15. At that time, DEQ determined that there were no more minable materials within the LMO boundary. (DEQ Ex. 6). DEQ informed Quality Landscape that it must proceed with reclamation. (DEQ Ex. 6).

16. On September 20, 2019, DEQ issued NOV Docket No. 5970-19 to Quality Landscape for several violations of the Environmental Quality Act and DEQ's rules. Specifically, DEQ concluded that Quality Landscape had mined outside its LMO boundary without the adjacent surface owner consent and for failing to preserve and stockpile topsoil at the site for reclamation. (Tr. – Jones testimony, 44-46; Goodnough testimony, 146-148; DEQ Ex. 15).

17. In 2019, Quality Landscape ceased mining on LMO ET1496. (Tr. – Goodnough testimony, 178; Wendtland testimony, 203).

18. In 2020, DEQ increased the bond amount by \$65,000 for the reclamation of the property. (Tr. – Jones testimony, 46-47; Stevens testimony, 261; DEQ Ex. 13). The bond amount was increased because the original bond was not adequate to properly reclaim the property due to its condition. (Tr. – Jones testimony, 46). Quality Landscape posted the increased performance bond in the form of a letter of credit for \$65,000 (Bond No. 202001). (Tr. – Jones testimony, 46-47; DEQ Ex. 13).

19. On July 8, 2020, Mr. Stevens signed a Settlement Agreement with DEQ to address the alleged violations identified in NOV Docket No. 5970-19. (Tr. – Jones testimony, 63-64; DEQ Ex. 17). To resolve NOV Docket No. 5970-19, DEQ and Quality Landscape agreed that Quality Landscape would provide an “approved site plan” within 24 months to DEQ reflecting the use and/or development of the LMO property. The site plan was required to be approved by the Town of Saratoga and if that didn't occur, Quality Landscape would proceed with site reclamation. (Tr. – Jones testimony, 64-67; Goodnough testimony, 155-158; Wendtland testimony, 205-206; DEQ

Ex. 17). If Quality Landscape failed to comply with the Settlement Agreement, DEQ would proceed with a notice of violation. (Tr. – Jones testimony, 67).

20. The Settlement Agreement provides, in part:

7. Quality Landscape and the DEQ/LQD desire to resolve the alleged violations identified in NOV 5970-19 without litigation. Without admitting liability, and in lieu of litigation pursuant to Wyo. Stat. Ann. § 35-11-901(a)(ii), Quality Landscape therefore agrees to perform the following actions:

...

c. Quality Landscape will provide an approved site plan to DEQ/LQD within twenty-four (24) months of signing this agreement reflecting the use and/or development of LMO 1496ET proposed by Quality landscape.

...

vi. The site plan must be approved by the Town of Saratoga;

...

If Quality Landscape does not complete the approved site plan within twenty-four (24) months, Quality Landscape must proceed with site reclamation as described in subsection (d).

d. If Quality Landscape is unable to complete Section 7(c) of this agreement, Quality Landscape agrees to develop an alternative plan to stabilize and reclaim LMO 1496ET, in accordance with the reclamation schedule and actions provided below:

i. Quality Landscape must propose and submit an alternative plan to DEQ/LQD for the reclamation of LMO 1496ET. This plan must include the following:

...

4. . . . Quality Landscape will provide the LMO 1496ET reclamation plan and soil analysis for DEQ/LQD review within ninety (90) days of commencing the alternative plan. DEQ/LQD will conduct a technical review of the reclamation plan. . . .

...

...

f. Quality Landscape agrees that if Quality Landscape violates any term of this Settlement Agreement, DEQ/LQD shall provide notice of the violation to Quality Landscape and provide Quality Landscape a reasonable opportunity to cure. Should Quality Landscape fail and/or refuse to cure such violation within a reasonable period of time after notice, Quality Landscape will pay to DEQ/LQD stipulated civil penalties in the amount of one thousand dollars (\$1,000.00) per day the violation exists.

(DEQ Ex. 17).

21. Quality Landscape had 24 months to provide DEQ a site plan, approved by the Town of Saratoga, for Quality Landscape's desired commercial use of the property. (Tr. – Jones testimony, 64; Goodnough testimony, 155-158; DEQ Ex. 17). However, if Quality Landscape was not able to get an approved site plan to DEQ within that time, Quality Landscape had to proceed with site reclamation. (Tr. – Jones testimony, 64-65; Goodnough testimony, 157; Wendtland testimony, 205; DEQ Ex. 17).

22. Under subsection 7(f) of the Agreement, the parties agreed “that if Quality Landscape violates any term of this Settlement Agreement, DEQ/LQD shall provide notice of the violation to Quality Landscape and provide Quality Landscape a reasonable opportunity to cure.” (DEQ Ex. 17).

23. In the 2020 and 2021 annual inspection reports issued March 3, 2021, and June 23, 2021, respectively, DEQ informed Quality Landscape of the deadlines in the Settlement Agreement. (Tr. – Jones testimony, 70; DEQ Exs. 7, 8) (“As agreed upon in the NOVSA [Notice of Violation Settlement Agreement], OLN [Quality Landscape] has until July 8, 2022 to provide the approved site plan described in Section 7(c) of the agreement. If QLN does not fulfill the conditions set forth in Section 7(c), then QLN must proceed with developing an alternative plan

to stabilize and reclaim LMO 1496ET in accordance with Section 7(d) of the agreement. . . . LQD would like to reiterate the NOVSA for the NOV, Docket No. 5970-19 deadline of July 8, 2022 to complete the requirements described in this agreement. If QLN does not complete these requirements, LQD will proceed with the forfeiture process and execute the option to recover any additional cost to reclaim the LMO.”). DEQ instructed Quality Landscape to respond in writing if it identified any incorrect or misleading statements. (Tr. – Jones testimony, 70; DEQ Exs. 7, 8). Mr. Stevens did not respond. (Tr. – Jones testimony, 70).

24. During the 24 months, Mr. Stevens had discussions with the Town of Saratoga regarding development at LMO ET1496. (Tr. – James testimony, 224-226).

25. Quality Landscape did not submit an approved site plan to DEQ as required by the Settlement Agreement. (Tr. – Goodnough testimony, 157).

26. On August 12, 2022, as provided in the Settlement Agreement, DEQ sent Quality Landscape NOV Docket No. 6176-22 for violating the terms of the Settlement Agreement for NOV Docket No. 5970-19. (Tr. – Jones testimony, 73-74; Goodnough testimony, 159-160; DEQ Ex. 18). DEQ provided Quality Landscape 45 days to cure the violations. (Tr. – Jones testimony, 74; Goodnough testimony, 160; DEQ Ex. 18). No approved site plan or reclamation plan was provided during that cure period. (Tr. – Goodnough testimony, 157-160).

27. On August 31, 2022—over a month after the deadline in the Settlement Agreement expired—Mr. Stevens’ engineer signed and stamped a draft site plan to send to the Town of Saratoga for discussion purposes. (Tr. – James testimony, 226-227; Kopasz testimony, 246; QLN Ex. 21; DEQ Ex. 17). In September 2022, the Town of Saratoga sent Mr. Stevens three possible alternatives for the development of LMO ET1496 and Mr. Stevens responded with his thoughts and concerns. (Tr. – James testimony, 226).

28. On October 3, 2022, DEQ granted Mr. Stevens an extension to comply with the Settlement Agreement to October 7, 2022. (Tr. – Jones testimony, 74; DEQ Ex. 19). Mr. Stevens did not submit an approved site plan or a reclamation plan to DEQ during that time. (Tr. – Jones testimony, 74; Wendtland testimony, 205-206).

29. No site plan has been approved by the Town of Saratoga for LMO ET1496. (Tr. – Kopasz testimony, 249; Stevens testimony, 272). Mr. Stevens admitted that he has been unable to move forward with the commercial development of the property because “the Town has not been able to come up with a solution that they can either afford or will actually be accepted by an engineer.” (Tr. – Stevens testimony, 273).

30. On October 17, 2022, DEQ sent to Mr. Stevens NOV Docket No. 6183-22 for failing to fulfill the terms of the Settlement Agreement. (Tr. – Jones testimony, 74-75; DEQ Ex. 20).

31. Because Quality Landscape had failed to comply with the Settlement Agreement, on December 1, 2022⁴, Todd Parfitt, director of DEQ, sought approval from the Council to make a formal request to the Attorney General to begin bond forfeiture proceedings. The Council approved the request for bond forfeiture on February 21, 2023. (*See* Bond Forfeiture Recommendation and subsequent Council order filed within this docket).

32. On April 12, 2023, Quality Landscape filed a “Notice of Appeal and Petition for Hearing” in this matter, appealing DEQ NOVs 5970-19, 6176-22, and 6183-22. (*See* Notice of Appeal and Petition for Hearing filed within this docket).

⁴ The request was dated November 30, 2022.

33. As of the date of the contested case hearing, Mr. Stevens has not submitted an approved site plan or a reclamation plan to DEQ as required under the Settlement Agreement. (Tr. – Wendtland testimony, 206; Stevens testimony, 280).

V. CONCLUSIONS OF LAW

A. Principles of Law

34. Paragraphs 1 through 33 of the findings of fact are incorporated herein.

35. Wyoming Statute § 35-11-421 states:

(a) If the director determines that a performance bond should be forfeited because of any violation of this act, he shall, with the approval of the council, make formal request of the attorney general to begin bond forfeiture proceedings.

(b) The attorney general shall institute proceedings to forfeit the bond of any operator by providing written notice to the surety and to the operator that the bond will be forfeited unless the operator makes written demand to the council within thirty (30) days of his receipt of notice, requesting a hearing before the council. If no demand is made by the operator within thirty (30) days of his receipt of notice, then the council shall order the bond forfeited.

(c) The council shall hold a hearing within thirty (30) days after the receipt of the demand by the operator. At the hearing, the operator may present for the consideration of the council statements, documents and other information with respect to the alleged violation. At the conclusion of the hearing, the council shall either withdraw the notice of violation or enter an order forfeiting the bond.

Wyo. Stat. Ann. § 35-11-421(a)-(c).

36. Wyoming Statute § 35-11-401(e)(vi)(C) states, in part:

After the limited mining operations have ceased, the operator shall notify the administrator of such fact in the operator's next annual report and commence reclamation and restoration in compliance with the rules and regulations of the land quality division of the department of environmental quality. . . .

Wyo. Stat. Ann. § 35-11-401(e)(vi)(C).

37. Wyoming Statute § 35-11-401(e)(vi) and Chapter 10, Section 1 of DEQ's rules for LMOs require written consent from the surface owner and surface lessee, if any, of the lands to be affected. Wyo. Stat. Ann. § 35-11-401(e)(vi); see also *Rules*, DEQ, Land Quality – Non Coal, Chapter 10, § 1(a)(ii).

38. Chapter 10, Section 4 of DEQ's rules for LMOs provide the following:

Section 4. Operation.

(b) All topsoil from affected lands shall be saved and stockpiled in such a manner to minimize wind and water erosion. Such stockpiles shall be clearly identified by a sign.

Rules, DEQ, Land Quality – Non Coal, ch. 10, § 4(b).

39. Chapter 10, Section 5 of DEQ's rules for LMOs provide the following:

Section 5. Reclamation.

(a) After the mining operations have ceased the operator shall notify the Administrator of such fact and commence reclamation and restoration. Provided however, that immediate reclamation will not be required if the landowner advises the Department in writing of his intent to further utilize the product of the mine, and if he assumes the obligation of reclamation and furnishes an appropriate bond to the Administrator.

Rules, DEQ, Land Quality – Non Coal, ch. 10, § 5(a).

40. In interpreting contracts, the Wyoming Supreme Court has stated that:

The fundamental goal of contract interpretation is to determine the intent of the parties. The language of the parties expressed in their contract must be given effect in accordance with the meaning which that language would convey to reasonable persons at the time and place of its use. This Court employs common sense in interpreting contracts and ascribes the words with a rational and reasonable intent. When the provisions in the contract are clear and unambiguous, the court looks only to the 'four corners' of the document in arriving at the intent of the parties. In the absence of any ambiguity, the contract will be enforced according to its terms because no construction is appropriate.

We have said that we will construe contract language in the context in which it was written, looking to the surrounding circumstances, the subject matter,

and the purpose of the agreement to ascertain the intent of the parties at the time the agreement was made. However, we will not rewrite contracts under the guise of interpretation, and so long as there is no ambiguity, we are bound to apply contracts as they have been scrivened.

Our rules of interpretation require that we interpret a contract as a whole, reading each provision in light of all the others to find their plain meaning. We presume each provision in a contract has a purpose, and we avoid interpreting a contract so as to find inconsistent provisions or so as to render any provision meaningless.

Pope v. Rosenberg, 2015 WY 142, ¶ 20, 361 P.3d 824, 830 (Wyo. 2015) (cleaned up).

41. “A settlement agreement is a contract and, therefore, [is] subject to the same legal principles that apply to any contract.” *Dobson v. Portrait Homes, Inc.*, 2005 WY 95, ¶ 9, 117 P.3d 1200, 1204 (Wyo. 2005). A settlement agreement is, also like other contracts, subject to construction as a matter of law. *Id.*

42. When analyzing the language of a statute, the “paramount consideration is the legislature’s intent as reflected in the plain and ordinary meaning of the words used in the statute.” *Horse Creek Conservation Dist. v. State ex rel. Wyo. Att’y Gen.*, 2009 WY 143, ¶ 14, 221 P.3d 306, 312 (Wyo. 2009) (citing *Krenning v. Heart Mountain Irrigation Dist.*, 2009 WY 11, ¶ 9, 200 P.3d 774, 778 (Wyo. 2009)). “A statute is clear and unambiguous if its wording is such that reasonable persons are able to agree on its meaning with consistency and predictability.” *Horse Creek Conservation Dist.*, ¶ 14, 221 P.3d at 312 (citations omitted). “When a statute is sufficiently clear and unambiguous, we give effect to the plain and ordinary meaning of the words and do not resort to the rules of statutory construction.” *Cheyenne Newspapers, Inc. v. Bldg. Code Bd. of App. of City of Cheyenne*, 2010 WY 2, ¶ 9, 222 P.3d 158, 162 (Wyo. 2010) (quoting *BP Am. Prod. Co. v. Dep’t of Revenue*, 2005 WY 60, ¶ 15, 112 P.3d 596, 604 (Wyo. 2005)).

43. “The general rule in administrative law is that, unless a statute otherwise assigns the burden of proof, the proponent of an order has the burden of proof.” *JM v. Dep’t of Family*

Servs., 922 P.2d 219, 221 (Wyo. 1996). “The normal standard of proof in administrative hearings is the preponderance-of-the-evidence standard.” *Id.* at 223.

44. Here, DEQ, the proponent of the order, has the burden of proof and the standard of proof is the preponderance of the evidence.

45. In this matter, DEQ must provide sufficient evidence establishing that DEQ’s request for bond forfeiture was correct and in accordance with law.

46. “The burden of proving arbitrary, illegal or fraudulent administrative action is on the complainant, and this burden includes not only the clear presentation of the question, but also placement of evidence in the record to sustain the complainant’s position.” *Knight v. Env’t Quality Council*, 805 P.2d 268, 273 (Wyo. 1991) (citing *Wyo. Bancorporation v. Bonham*, 527 P.2d 432 (Wyo. 1974)).

B. Applications of Principles of Law

47. The Council finds and concludes that it has jurisdiction over this matter under Wyo. Stat. Ann. § 35-11-421.

48. The provisions of the Settlement Agreement at issue in this case are sections 7(c) and 7(d). Sections 7(c) and (d), in part, provide:

7. Quality Landscape and the DEQ/LQD desire to resolve the alleged violations identified in NOV 5970-19 without litigation. Without admitting liability, and in lieu of litigation pursuant to Wyo. Stat. Ann. § 35-11-901(a)(ii), Quality Landscape therefore agrees to perform the following actions:

...

c. Quality Landscape will provide an approved site plan to DEQ/LQD within twenty-four (24) months of signing this agreement reflecting the use and/or development of LMO 1496ET proposed by Quality landscape.

...

vi. The site plan must be approved by the Town of Saratoga;

...

If Quality Landscape does not complete the approved site plan within twenty-four (24) months, Quality Landscape must proceed with site reclamation as described in subsection (d).

d. If Quality Landscape is unable to complete Section 7(c) of this agreement, Quality Landscape agrees to develop an alternative plan to stabilize and reclaim LMO 1496ET, in accordance with the reclamation schedule and actions provided below:

i. Quality Landscape must propose and submit an alternative plan to DEQ/LQD for the reclamation of LMO 1496ET. This plan must include the following:

...

4. . . . Quality Landscape will provide the LMO 1496ET reclamation plan and soil analysis for DEQ/LQD review within ninety (90) days of commencing the alternative plan. DEQ/LQD will conduct a technical review of the reclamation plan. . . .

...

...

f. Quality Landscape agrees that if Quality Landscape violates any term of this Settlement Agreement, DEQ/LQD shall provide notice of the violation to Quality Landscape and provide Quality Landscape a reasonable opportunity to cure. Should Quality Landscape fail and/or refuse to cure such violation within a reasonable period of time after notice, Quality Landscape will pay to DEQ/LQD stipulated civil penalties in the amount of one thousand dollars (\$1,000.00) per day the violation exists.

49. DEQ contends that Quality Landscape has failed to comply with the terms of the Settlement Agreement, specifically, sections 7(c) and 7(d) by not meeting the deadline to either provide DEQ a site plan approved by the Town of Saratoga or to commence site reclamation. In addition, DEQ asserts that Quality Landscape violated the Environmental Quality Act and DEQ

rules when it failed to preserve and stockpile topsoil at the LMO and by mining outside the LMO permit boundary.

50. Conversely, Quality Landscape contends that it could not comply with section 7(c) because of the Town and that the reclamation requirement in section 7(d) does not contain a time limit or deadline to provide a proposed reclamation plan prior to DEQ instituting performance bond forfeiture proceedings. Quality Landscape asserts that the Settlement Agreement is completely devoid of, and entirely lacking, any time limitation, restriction, or deadline for Quality Landscaping to reclaim the LMO property. Accordingly, Quality Landscape contends that it has not violated the Settlement Agreement. In addition, Quality Landscape contends that it did not violate the Act or DEQ's rules.

51. Based upon the plain language in the Settlement Agreement, the Council concludes that Quality Landscape violated the terms of the Settlement Agreement. First, Quality Landscape failed to provide an "approved site plan" to DEQ within 24 months of Mr. Stevens signing the Agreement. Mr. Stevens, on behalf of Quality Landscape, signed the Settlement Agreement on July 8, 2020. Accordingly, Quality Landscape had until July 8, 2022, to provide an approved site plan to DEQ. Because Quality Landscape failed to provide an approved site plan to DEQ by that date, the Settlement Agreement required Quality Landscape to comply with section 7(d) and develop an alternative plan to stabilize and reclaim the property.

52. When Quality Landscape failed to provide to DEQ the approved site plan by July 8, 2022, Quality Landscape was required to immediately proceed with site reclamation which required it to provide to DEQ its reclamation plan and soil analysis within 90 days. Quality Landscape violated section 7(d) when it failed to proceed with site reclamation by developing an

alternative plan to stabilize and reclaim the property. Indeed, Quality Landscape has not provided DEQ with a reclamation plan and soil analysis as required under the Settlement Agreement.

53. Quality Landscape suggests that the Settlement Agreement does not have a time limitation or deadline for it to reclaim the property. The Council disagrees. The Settlement Agreement plainly states that if Quality Landscape does not provide to DEQ the approved site plan within 24 months, Quality Landscape “must proceed” with an alternative plan which is site reclamation. Accordingly, after Quality Landscape failed to meet the requirements in section 7(c), it was required to immediately proceed to site reclamation by developing an alternative plan to stabilize and reclaim the property and by providing a reclamation plan and soil analysis to DEQ within 90 days.

54. Even with multiple opportunities to cure the violations, Quality Landscape still did not develop an alternative plan to stabilize and reclaim the property and failed to provide a reclamation plan and soil analysis to DEQ as required by the Settlement Agreement. As a result, Quality Landscape has violated the Settlement Agreement.

55. In addition to violating the Settlement Agreement, the Council finds and concludes that Quality Landscape violated the Wyoming Environmental Quality Act and DEQ’s rules. Specifically, the evidence establishes that Quality Landscape violated the Act and DEQ rules when it conducted mining operations without the written consent of the surface owner when it mined outside the LMO boundary and on land owned by the Town of Saratoga. Furthermore, Quality Landscape violated DEQ rules when it failed to preserve and stockpile topsoil at the LMO.

56. Although the Council is sympathetic to Quality Landscape’s situation, the Council finds and concludes that based upon the testimony and exhibits provided during the contested case hearing, DEQ has proven that the performance bonds should be forfeited.

57. The Council finds and concludes that DEQ properly, and in accordance with law, requested forfeiture of the bonds.

VI. ORDER AND DECISION

IT IS HEREBY ORDERED that Bond Nos. 202001 and 73880 in the amount of \$66,000 are forfeited to DEQ.

ENTERED this 31st day of JANUARY, 2024.



Steve Lenz, Chairman
Environmental Quality Council