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October 7, 2016

Dakota Sand and Gravel, Inc.  
HC 71 Box 13A  
Newell, SD 57760

Douglas Falzerano  
Executor of Alvin Falzerano Estate  
Dakota Sand & Gravel, Inc.  
PO Box 248  
Belle Fourche, SD 57717-0248

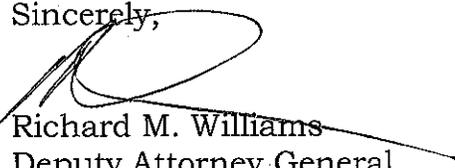
Mike Tyndall, Manager  
First Western Bank  
PO Box 2160  
Belle Fourche, SD 57717

Re: *In Re First Western Bank Certificate of Deposit Account Number 3761 and Account Number 4403 for State Mine License #86-339 of Dakota Sand and Gravel, Inc.*

Dear Mr. Falzerano & Mr. Tyndall:

Enclosed please find a true and correct copy of the Petition for Forfeiture of Surety and Notice of Hearing in regard to the above referenced matter. If you have any questions, please give our office a call. Thank you.

Sincerely,

  
Richard M. Williams  
Deputy Attorney General

RMW/jm  
Enclosures

Cc w/Encl.: Tom Cline, [Tom.Cline@state.sd.us](mailto:Tom.Cline@state.sd.us)  
Mike Erickson, [Michael.Erickson@state.sd.us](mailto:Michael.Erickson@state.sd.us)  
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Charlie McGuigan, [Charles.McGuigan@state.sd.us](mailto:Charles.McGuigan@state.sd.us)

STATE OF SOUTH DAKOTA

BOARD OF MINERALS AND ENVIRONMENT

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

IN RE FIRST WESTERN BANK	)	
CERTIFICATE OF DEPOSIT	)	
ACCOUNT NUMBER 3761	)	PETITION FOR FORFEITURE
AND ACCOUNT NUMBER 4403	)	OF SURETY
FOR STATE MINE LICENSE #86-339 OF	)	
DAKOTA SAND AND GRAVEL, INC.	)	

The Minerals and Mining Program of the Department of Environment and Natural Resources ("DENR") petitions the South Dakota Board of Minerals and Environment ("BME") for an Order forfeiting the above entitled Certificates of Deposit submitted to the State in support of Mine License #86-339 issued to Dakota Sand and Gravel, Inc. ("Dakota") and DENR, for failure to perform reclamation on land affected by mining operations.

In support of this request, DENR states and alleges as follows, and hereby petitions for a contested case hearing regarding these allegations pursuant to South Dakota Codified Law, Chapters 45-6 and 1-26 and ARSD Chapter 74:09:01:

1. DENR is the state agency, along with the Board, that regulates Sand, Gravel and Construction Aggregate Mining within the State of South Dakota pursuant to, *inter alia*, SDCL Chapter 45-6.
2. DENR holds reclamation sureties on behalf of the State of South Dakota ("State") for Sand, Gravel and Construction Mining activities as required by SDCL 45-6-71.
3. Failure to complete reclamation activities within three (3) years of the cessation of mining may result in the forfeiture of the surety pursuant to SDCL 45-6-67.1.
4. Pursuant to ARSD 74:09:01:05 and SDCL Chapter 1-26, DENR may initiate an enforcement hearing by filing a petition and serving a notice of a contested case upon the alleged violator.
5. Dakota was issued Mine License #86-339 by DENR on December 29, 1986.

6. Dakota properly licensed a construction aggregate site and followed the surety requirements in SDCL Ch. 45-6.
7. Pursuant to SDCL 45-6-71, a surety, cash or certificate of deposit, in the amount of five hundred dollars (\$500.00) per acre of affected land must be submitted to DENR prior to the commencement of mining. In lieu of filing a surety for each acre, an operator may post twenty thousand dollars (\$20,000.00) by means of the same instruments for statewide mining of sand, gravel, or rock to be crushed and used in construction.
8. On December 12, 1995, Dakota obtained and submitted to DENR a Certificate of Deposit (account number 3761, issued by First Western Bank, Belle Fourche, SD) in the amount of five hundred dollars (\$500.000) as surety for Mine License #86-339 to secure performance of reclamation activities on the mined site.
9. Due to the size of the disturbed acreage, on June 18, 1997, Dakota obtained and submitted to DENR an additional Certificate of Deposit (account number 4403, issued by First Western Bank, Belle Fourche, SD) in the amount of five hundred dollars (\$500.00) as surety for Mine License #86-339 for a total of one thousand dollars (\$1,000.00) in surety to secure performance of reclamation activities on the mined sites.
10. Dakota conducted mining activities under Mine License #86-339 at the following locations:

<b>SITE NO.</b>	<b>COUNTY</b>	<b>LEGAL DESCRIPTION</b>
339004.0	Butte	SW1/4 SE1/4 Section 12; T8N-R2E
339003.0	Butte	E1/2 NW1/4 Section 9; T8N-R5E
339002.0	Butte	NW1/4 Section 28; T13N-R9E
339001.0	Lawrence	SW1/4 SE1/4 Section 12; T2N-R2E

11. The Owner of Dakota, Alvin Falzerano, passed away on November 26, 2013.
12. On February 24, 2014, Douglas D. Falzerano was appointed by the court and qualified as personal representative of the estate of Alvin Falzerano.

13. Douglas D. Falzerano, Executor of the Alvin Falzerano Estate, notified DENR on December 18, 2014, that he would like to close the Dakota Sand and Gravel, Inc. mine license and surrender the surety to DENR for reclamation purposes.
14. On November 3, 2014, DENR mailed Dakota Sand and Gravel, Inc. annual report forms for the mine site listed above. The annual report forms include instructions for completing the forms and submitting the annual mine license fee. Dakota failed to submit the annual report forms and fee by December 29, 2014.
15. Based on the facts presented above, a Notice of Violation was issued and, effective January 12, 2016, Mine License #86-339 issued to Dakota was revoked.
16. According to a note written by Douglas D. Falzerano, Executor of the Alvin Falzerano Estate, attached to a Mine Renewal Invoice, and received by DENR on December 18, 2014 "there has been no activity on this site for many years."
17. Under SDCL 45-6-67.1, Dakota had three (3) years after all mining under the Mine License ceased to perform final reclamation on all lands affected by mining under Mine License #86-339.
18. More than three (3) years have passed since Dakota conducted mining operations under Mine License #86-339.
19. Dakota failed to perform final reclamation under Mine License #86-339 as required by SDCL §§ 45-6-67 and 45-6-67.1
20. DENR inspections of the sites licensed under Mine License #86-339 indicate that the costs of reclaiming those acres exceed the one thousand dollar (\$1,000.00) surety posted for Dakota's mining activities.

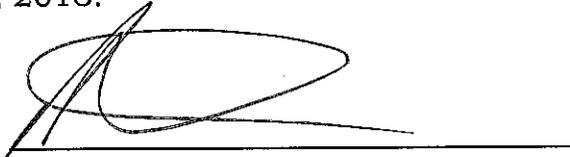
Due to Dakota's failure to perform reclamation of land affected by mining under Mine License #86-339 and pursuant to SDCL chapter 45-6 and ARSD 74:09 DENR requests an Order stating the following:

1. Declaring that the Certificates of Deposit held by First Western Bank, Belle Fourche, SD, in the amount of one thousand dollars (\$1,000.00), held as a reclamation surety for Mine License #86-339

for Dakota, be forfeited for failure to reclaim land affected by Dakota's mining operation conducted under Mine License #86-339; and

2. Ordering that First Western Bank, Belle Fourche, SD, transfer proceeds from the above-referenced accounts, in the amount of one thousand dollars (\$1,000.00) to DENR for performance of reclamation activities to the extent feasible with the proceeds.

Dated this 7th day of October, 2016.



Richard M. Williams  
Deputy Attorney General  
Office of Attorney General  
1302 E. Highway 14, Suite 1  
Pierre, SD 57501  
Tele: 605-773-3215  
Email: [rich.williams@state.sd.us](mailto:rich.williams@state.sd.us)

*Counsel for Department of Environment  
And Natural Resources*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Petition for Forfeiture of Surety in the above entitled matter were served upon the following by enclosing the same in envelopes with first class postage prepaid and affixed thereto, and depositing said envelopes in the United States mail, at Pierre, South Dakota, on this 7th day of October 2016:

Dakota Sand and Gravel, Inc.  
HC 71 Box 13A  
Newell, SD 57760

Douglas Falzerano  
Executor of Alvin Falzerano  
Estate  
Dakota Sand & Gravel, Inc.  
PO Box 248  
Belle Fourche, SD 57717-0248

Mike Tyndall, Manager  
First Western Bank  
PO Box 2160  
Belle Fourche, SD 57717



Richard M. Williams  
Deputy Attorney General  
Office of Attorney General

STATE OF SOUTH DAKOTA  
BOARD OF MINERALS AND ENVIRONMENT

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

IN RE FIRST WESTERN BANK	)	
CERTIFICATE OF DEPOSIT	)	
ACCOUNT NUMBER 3761	)	NOTICE OF HEARING ON
AND ACCOUNT NUMBER 4403	)	PETITION FOR FORFEITURE
FOR STATE MINE LICENSE #86-339 OF	)	OF SURETY
DAKOTA SAND AND GRAVEL, INC.	)	

TO: DAKOTA SAND & GRAVEL, INC.; DOUGLAS FALZERANO, EXECUTOR OF ALVIN FALZERANO ESTATE; AND FIRST WESTERN BANK

NOTICE is hereby given that the Petition for Forfeiture of Surety filed by the Minerals and Mining Program of the Department of Environment and Natural Resources ("DENR") will be heard before the South Dakota Board of Minerals and Environment on November 17, 2016, at 10:00 a.m., or as soon thereafter as counsel may be heard, in the Matthew Training Center, Joe Foss Building, 523 East Capitol, Pierre, South Dakota 57501.

The nature of the hearing is a contested case proceeding at which the Board will hear the Petition for Forfeiture of Surety filed by the DENR. The legal authority and jurisdiction under which the hearing is to be held is SDCL chs. 45-6 and 1-26, and ARSD Art. 74:09. The statute which is alleged to provide a basis under which the surety be forfeited to DENR is SDCL 45-6-67.1 and -71. A short and plain statement of the matters asserted is set forth in the Petition for Forfeiture of Surety, which is incorporated herein as if fully set out.

The action request by the Board is issuance of an Order forfeiting the Surety to DENR, for use in the performance of reclamation activities on land

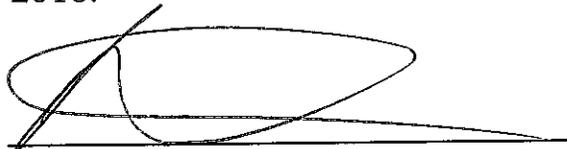
affected by mining by Dakota Sand and Gravel, Inc. under Mine License #86-339.

This hearing is an adversary proceeding. A Party has the right at the hearing: to be present, and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing.

If the amount in controversy exceeds two thousand five hundred dollars or if a property right may be terminated, any Party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the undersigned no later than ten days after service of this Notice of Hearing.

Any decision based on the hearing may be appealed to the circuit court and the State Supreme Court as provided by law.

Dated this 7th day of October, 2016.



Richard M. Williams  
Deputy Attorney General  
Office of Attorney General  
1302 E. Highway 14, Suite 1  
Pierre, SD 57501  
Tele: 605-773-3215  
Email: [rich.williams@state.sd.us](mailto:rich.williams@state.sd.us)

*Counsel for Department of Environment  
And Natural Resources*

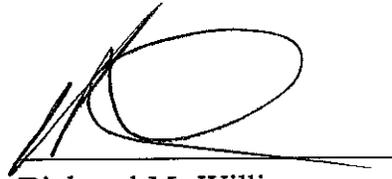
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Notice of Hearing on Petition for Forfeiture of Surety in the above entitled matter were served upon the following by enclosing the same an envelope with first class postage prepaid and affixed thereto, and depositing said envelopes in the United States mail, at Pierre, South Dakota, on this 7th day of October 2016:

Dakota Sand and Gravel, Inc.  
HC 71 Box 13A  
Newell, SD 57760

Douglas Falzerano  
Executor of Alvin Falzerano Estate  
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