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October 7, 2016

Western Surety Co.
c/o CNA Surety
Surety Claims
333 S. Wabash – Floor 41
Chicago, IL 60604
E-mail: claims@cnasurety.com

Weatherton Contracting Co., Inc.
Carl Weatherton, President
46935 298th ST
Beresford, SD 57004-5255

Weatherton Contracting Co., Inc.
Carl Weatherton, President
PO Box 151
Beresford, SD 57004-0151

Re: *In Re Western Surety Company c/o CNA Surety Bond #141551847 Issued
for State Mine License #88-364 of Weatherton Contracting Co, Inc.*

To Whom It May Concern:

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.:

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STATE OF SOUTH DAKOTA

BOARD OF MINERALS AND ENVIRONMENT

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

IN RE WESTERN SURETY COMPANY)
C/O CNA SURETY) PETITION FOR FORFEITURE
BOND #141551847 ISSUED FOR) OF SURETY
STATE MINE LICENSE #88-364 OF)
WEATHERTON CONTRACTING CO., 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 surety bond, submitted to the State in support of mine license #88-364 issued to Weatherton Contracting Co., Inc. ("Weatherton"), for failure to perform reclamation on land affected by mining operations.

In support of this request, the Department 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, with 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, the DENR may initiate an enforcement hearing by filing a petition and serving a notice of a contested case upon the alleged violator.
5. Weatherton was issued Mine License 88-364 by DENR on April 11, 1988.

6. Weatherton properly licensed several construction aggregate sites 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. As surety for its State Mine License #88-364, Weatherton obtained and submitted a surety bond in the amount of twenty thousand dollar (\$20,000.00) for statewide mining activities.
9. Weatherton conducted mining activities under Mine License 88-364 at various sites within South Dakota. Those sites include:

SITE NO.	COUNTY	LEGAL DESCRIPTION
364001.0	Brule	Sections 19 & 20; T101N-R69W
364002.0	Tripp	Section 10 and 11; T99N-R79W
364003.0	Hutchinson	NE1/4 NE1/4 Section 5; T97N-R58W
364004.0	Bon Homme	W1/2 Section 2; T94N-R58W
364005.0	Mellette	SE1/4 Section 23; T42N-R33W
364006.0	Lincoln	N1/2 SW1/4, Lots 1, 2, 3, N1/2 of Lot 4, Section 1; T99N-R49W
364007.0	Kingsbury	SW1/4 Section 26; T110N-R56W
364008.0	Hutchinson	E1/2 W1/2 NW1/4 Section 10; T97N-R58W
364009.0	Meade	SE1/4 Section 14; & the portion that lies east of I-90 of the NE1/4 Section 23; T3N-R6E
364010.0	Hutchinson	Gov't. Lots 6 & 7 in Section 14; T97N-R58W
364011.0	McPherson	NE1/4 Section 11; T126N-R71W
364012.0	Gregory	N1/2 NW1/4 & N1/2 NE1/4 Section 30; T96N-R67W
364013.0	Beadle	SW1/4 Section 32; T112N-R64W

SITE NO.	COUNTY	LEGAL DESCRIPTION
364014.0	Dewey	SW1/4 NE1/4 Section 12; T16N-R30E
364015.0	Pennington	N1/2 NE1/4 & NE1/4 NW1/4 Section 28; T1S-R11E
364016.0	Potter	SE1/4 Section 20; T120N-R74W
364017.0	Sully	SE1/4 Section 3; T114N-R78W
364018.0	Walworth	NE1/4 Section 3; T124N-R75W
364019.0	Marshall	SW1/4 Section 13; T127N-R57W
364020.0	Potter	NE1/4 Section 29; T120N-R74W
364021.0	Minnehaha	SW1/4 Section 9; T101N-R50W
364022.0	Edmunds	SE1/4 Section 34; T121N-R73W
364023.0	Corson	Section 36; T20N-R27E
364024.0	Jackson	SE1/4 SW1/4, Lots 3, 7, 8, & 9; Except Sharps Out Lots 1 & 2, Section 19; T43N-R38W
364025.0	Jackson	NW1/4 Section 29; T43N-R38W
364026.0	Butte	NW1/4 Section 5 & NE1/4 Section 6; T8N-R2E
364027.0	Day	Section 27; T122N-R53W
364028.0	Lawrence	NE1/4 SE1/4 NW1/4 Section 1; T5N-R4E
364029.0	Pennington	NE1/4 Section 23; T2S-R12E
364030.0	Faulk	N1/2 Section 26 & SW1/4 Section 23; T118N-R67W
364031.0	Buffalo	NW1/4 Section 20; T108N-R68W
364032.0	Mellette	SW1/4 Section 27; T41N-R27W
364033.0	Corson	NW1/4 Section 16; T19N-R30E
364034.0	Brule	NW1/4 Section 16; T105N-R69W
364035.0	Butte	NW1/4 Section 12, SW1/4 Section 1, SE1/4 Section 2, & NE1/4 Section 11; T8N-R3E
364036.0	Meade	Section 12; T6N-R8E
364037.0	Meade	W1/2 NE1/4 SE1/4 Section 21; T7N-R12E

SITE NO.	COUNTY	LEGAL DESCRIPTION
364038.0	Hamlin	N1/2 Section 28; T115N-R51W
364039.0	Deuel	SE1/4 SW1/4 Section 17 & NW1/4 NE1/4 Section 20; T114N-R50W
364040.0	Custer	Sections 29, 30, 31, 32, 33, 34, & 35; T3S-R7E and Sections 2, 3, 4, 10, & 11; T4S-R7E
364041.0	Beadle	SE1/4 Section 24; T113N-R61W
364042.0	Tripp	NW1/4 Section 29; T100N-R74W
364043.0	Oglala Lakota	Section 13; T35N-R42W
364044.0	Oglala Lakota	SW1/4 Section 6; T35N-R41W
364045.0	Jackson	Section 21; T44N-R33W
364046.0	Clay	NW1/4 Section 23; T95N-R52W
364047.0	Yankton	E1/2 NW1/4 & NE1/4 Section 12; T94N-R56W
364048.0	Jerauld	Section 3; T108N-R63W
364049.0	Custer	NW1/4 Section 26; T4S-R7E
364050.0	Codington	SE1/4 SE1/4 SW1/4 Section 14; T116N-R52W
364051.0	Haakon	SW1/4 Section 8; T1N-R23E
364052.0	Custer	SW1/4 Section 20 and NW1/4 Section 29; T6S-R7E
364053.0	Tripp	S1/2 Section 19; T100N-R74W
364054.0	Deuel	SE1/4 Section 16; T114N-R50W
364055.0	Lawrence	S1/2 SW1/4 Section 11 and N1/2 NW1/4 Section 14; T7N-R2E
364056.0	Gregory	NE1/4 Section 26 (Area North of Highway 18); T97N-R72W
364057.0	Hamlin	Section 16; T115N-R51W
364058.0	Aurora	SE1/4 Section 34; T101N-R66W
364059.0	Hanson	N1/2 SW1/4 Section 9; T103N-R58W
364060.0	Lyman	W1/2 W1/2 SW1/4 Section 27; T105N-R74W
364061.0	Lyman	NE1/4 Section 29; T105N-R74W

SITE NO.	COUNTY	LEGAL DESCRIPTION
364062.0	Clark	NE1/4 Section 31; T117N-R57W
364063.0	Meade	Section 18; T4N-R6E
364064.0	Gregory	SE1/4 Section 24; T96N-R69W
364065.0	Lyman	SW1/4 SW1/4 Section 21; T106N- R71W
364066.0	Day	NW1/4 Section 26; T122N-R53W

10. In 2007, DENR inspections of the sites licensed under Mine License #88-364 indicated that 413.66 acres remained un-reclaimed.
11. Bond number 141551847 was assigned to Western Surety Company, a writing company for CNA Surety ("CNA"), on February 20, 2009, to secure performance of reclamation activities on the mined sites.
12. On March 1, 2010, DENR notified Weatherton by letter that Weatherton was out of compliance for failure to remit the required annual license fee and annual report to the DENR and that failure to submit the required information within thirty (30) days would result in the revocation of Weatherton's mine license.
13. On April 9, 2010, DENR again notified Weatherton by letter that Weatherton was out of compliance for failure to remit the required annual license fee and annual report to DENR and that failure to submit the required information within thirty (30) days would result in the revocation of Weatherton's mine license.
14. On May 20, 2010, the South Dakota Secretary of State issued an administrative dissolution of Weatherton Contracting Co., Inc.
15. Effective on September 30, 2010, and based on Weatherton's failure to submit an annual report and pay the license fee, and the administrative dissolution of Weatherton, Weatherton's Mine License #88-364 was revoked by means of Notice of Violation.
16. Weatherton has not conducted mining operations since at least 2010.
17. Under SDCL 45-6-67.1, Weatherton 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 #88-364.

18. More than three (3) years have passed since Weatherton conducted mining operations under Mine License #88-364.
19. Weatherton failed to preform final reclamation under Mine License #88-364 as required by SDCL §§ 45-6-67 and 45-6-67.1
20. DENR inspections of the sites licensed under Mine License #88-364 indicate that the costs of reclaiming those acres exceed the twenty thousand dollar (\$20,000.00) bond posted for Weatherton's statewide mining activities.

Due to Weatherton's failure to perform reclamation of land affected by mining under Mine License 88-364 and pursuant to SDCL chapter 45-6 and ARSD 74:09 DENR requests an Order stating the following:

1. Declaring Western Surety Company, C/O CNA Surety, bond number 141551847, held as a reclamation surety for Mine License 88-364 for Weatherton Contracting Co. Inc., forfeited for failure to reclaim land affected by Weatherton's mining operation conducted under Mine License 88-364; and
2. Ordering that CNA, within ninety (90) days, conduct reclamation efforts, pursuant to SDCL 45-6-67, on the areas described below, or in the alternative, transfer proceeds from the above-referenced surety bond, in the amount of twenty thousand dollars (\$20,000.00) to DENR for performance of reclamation activities.

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

*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, and also by E-mail upon Western Surety Co. c/o CNA Surety on this 7th day of October 2016:

Western Surety Co.
c/o CNA Surety
Surety Claims
333 S. Wabash - Floor 41
Chicago, IL 60604
E-mail: claims@cnasurety.com

Weatherton Contracting Co., Inc.
Carl Weatherton, President
46935 298th ST
Beresford, SD 57004-5255

Weatherton Contracting Co., Inc.
Carl Weatherton, President
PO Box 151
Beresford, SD 57004-0151



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 WESTERN SURETY COMPANY)
C/O CNA SURETY) NOTICE OF HEARING ON
BOND #141551847 ISSUED FOR) PETITION FOR FORFEITURE
STATE MINE LICENSE #88-364 OF) OF SURETY
WEATHERTON CONTRACTING CO., INC.)

TO: Weatherton Contracting Co., INC., Western Surety Company, &
CNA Surety

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 Weatherton Contracting Co., Inc. under Mine License #88-364.

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
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1302 E. Highway 14, Suite 1
Pierre, SD 57501
Tele: 605-773-3215
Email: rich.williams@state.sd.us

*Counsel for Department of Environment
And Natural Resources*

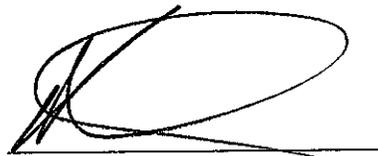
CERTIFICATE OF SERVICE

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, and also by E-mail upon Western Surety Co. c/o CNA Surety on this 7th day of October 2016:

Western Surety Co.
c/o CNA Surety
Surety Claims
333 S. Wabash – Floor 41
Chicago, IL 60604
E-mail: claims@cnasurety.com

Weatherton Contracting Co., Inc.
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46935 298th ST
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