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October 7, 2016

Don J. Wenande
Executor of James Wenande Estate
James Wenande Trucking
26035 421st Ave.
Alexandria, SD 57311

Gina Schuetzle
First National Bank
Pierre Main Bank
PO Box 730
125 W. Sioux
Pierre, SD 57501-0730

James Wenande Trucking
26044 422nd Ave.
Alexandria, SD 57311

Re: *In Re First National Bank Certificate of Deposit Account Number 65314
and Account Number 85362 for State Mine License #93-507 of Wenande
Contracting Co., Inc.*

Dear Mr. Wenande & Ms. Schuetzle:

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
Mike Erickson, Michael.Erickson@state.sd.us
Brenda Binagar, Brenda.Binagar@state.sd.us
Charlie McGuigan, Charles.McGuigan@state.sd.us

STATE OF SOUTH DAKOTA

BOARD OF MINERALS AND ENVIRONMENT

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

IN RE FIRST NATIONAL BANK)
CERTIFICATE OF DEPOSIT)
ACCOUNT NUMBER 65314) PETITION FOR FORFEITURE
AND ACCOUNT NUMBER 85362) OF SURETY
FOR STATE MINE LICENSE #93-507)
OF WENANDE 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 Certificates of Deposit, submitted to the State in support of Mine License #93-507 issued to James P. Wenande Trucking ("Wenande") 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. Wenande was issued Mine License #93-507 by DENR on December 1, 1993.
6. Wenande 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 February 22, 1994, Wenande obtained and submitted to DENR a Certificate of Deposit (account number 65314, issued by First National Bank, Pierre, SD) in the amount of five hundred dollars (\$500.000) as surety for Mine License #93-507 to secure performance of reclamation activities on the mined site.
9. Based on an increase in the size of the site mined, on April 7, 2004, Wenande obtained and submitted to DENR an additional Certificate of Deposit (account number 85362, issued by First National Bank, Pierre, SD) in the amount of five hundred dollars (\$500.00) as surety for Mine License #93-507 for a total of one thousand dollars (\$1,000.00) in surety to secure performance of reclamation activities on the mined sites.
10. Wenande conducted mining activities under Mine License #93-507 at site number 507001.0 in Hanson County with the legal description of SE1/4 Section 17; T102N-R58W.
11. James Wenande passed away on October 10, 2010. His wife, Mildred Wenande, maintained the mine license until her death on March 17, 2014.
12. On May 6, 2014, Donald J. Wenande was appointed by the court and qualified as personal representative of the estate of Mildred P. Wenande.
13. Donald J. Wenande, Executor for the Mildred P. Wenande Estate, notified DENR on May 20, 2014, that he would like to close the

James P. Wenande Trucking mine license and surrender the surety to DENR for reclamation purposes.

14. On November 3, 2014, DENR mailed James P. Wenande a Mine License Renewal Invoice. On November 10, 2014, Donald Wenande, as Executor, returned the Invoice with a note indicating that he would not be paying the annual mine license fee.
15. Based on the facts presented above a Notice of Violation was issued and, effective November 16, 2015, Mine License #93-507 issued to James P. Wenande Trucking was revoked.
16. Wenande has not conducted mining operations since 2010.
17. Under SDCL 45-6-67.1, Wenande 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 #93-507.
18. More than three (3) years have passed since Wenande conducted mining operations under Mine License #93-507.
19. Wenande failed to perform final reclamation under Mine License #93-507 as required by SDCL §§ 45-6-67 and 45-6-67.1
20. Donald P. Wenande, as Executor, requested that DENR close out Mine License #93-507 and use the proceeds of the surety for reclamation.
21. DENR inspections of the sites licensed under Mine License #93-507 indicate that the costs of reclaiming those acres exceed the one thousand dollar (\$1,000.00) bond posted for Wenande's statewide mining activities.

Due to Wenande'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 that the Certificates of Deposit held by First National Bank, Pierre, SD, in the amount of one thousand dollars (\$1,000.00), held as a reclamation surety for Mine License #93-507 for Wenande, be forfeited for failure to reclaim land affected by Wenande's mining operation conducted under Mine License #93-507; and

2. Ordering that First National Bank, Pierre, 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
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Email: rich.williams@state.sd.us

*Counsel for Department of Environment
And Natural Resources*

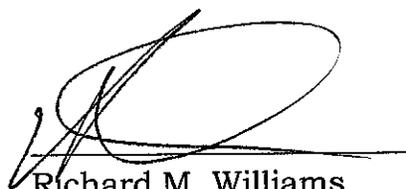
CERTIFICATE OF SERVICE

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, on this 7th day of October 2016:

Don J. Wenande
Executor of James Wenande
Estate
James Wenande Trucking
26035 421st Ave.
Alexandria, SD 57311

Gina Schuetzle
First National Bank
Pierre Main Bank
PO Box 730
125 W. Sioux
Pierre, SD 57501-0730

James Wenande Trucking
26044 422nd Ave.
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STATE OF SOUTH DAKOTA
BOARD OF MINERALS AND ENVIRONMENT

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

IN RE FIRST NATIONAL BANK)	
CERTIFICATE OF DEPOSIT)	
ACCOUNT NUMBER 65314)	NOTICE OF HEARING ON
AND ACCOUNT NUMBER 85362)	PETITION FOR FORFEITURE
FOR STATE MINE LICENSE #93-507)	OF SURETY
OF WENANDE CONTRACTING CO.,)	
INC.)	

TO: WENANDE CONTRACTING CO., INC.; DON J. WENANDE
EXECUTOR OF JAMES WENANDE ESTATE; FIRST NATIONAL 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.

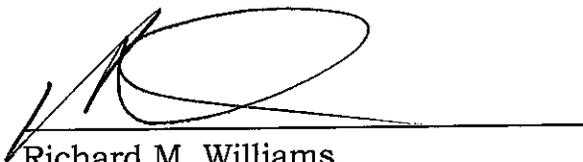
The action request by the Board is issuance of an Order forfeiting the Surety to DENR, for use in the performance of reclamation activities on land affected by mining by Wenande Contracting Co., Inc. under Mine License #93-507.

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

*Counsel for Department of Environment
And Natural Resources*

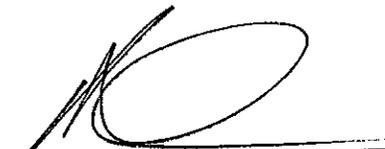
CERTIFICATE OF SERVICE

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:

Don J. Wenande
Executor of James Wenande Estate
James Wenande Trucking
26035 421st Ave.
Alexandria, SD 57311

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