



# Public Service Commission

## State of North Dakota

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January 5, 2010

Neil Iverson, Superintendent  
Agri Industries, Inc.  
PO Box 1166  
Williston, ND 58802-1166

Dear Mr. Iverson:

This letter is being sent as a reminder of several items related to Contract No. AM-578-09 for the Williams County Road 9 Phase 4, AML Project. Currently, the following items need to be resolved before this contract can be closed.

- 1. Clean-up:** The contract states that the contractor is responsible for clean-up of project site and any off-site area that is used, and restoration of damaged or destroyed real property including utilities, structures, yards, fences, roads, haulage ways, access points, crops and ditches. Restoration may include recontouring or shaping, reseeding, regravelling, resurfacing and repair of roads, driveways and structures, as needed to achieve *pre-construction conditions*. (IFB pg 41-42) There are several areas that require further attention as listed below:
  - **Ring property:** cold mix patch of asphalt driveway near the mailbox, where the mixer truck damaged road surface.
  - **Falk property:** this is the area where drill cuttings and grout waste was disposed of. This area needs to be picked clean of all trash, graded, and seeded. This area also may require the addition of SPGM (suitable plant growth material).
  - **Grandview (Kingsview Lane):** There are still several areas within this road ditch right-of-way that require attention to clean-up remaining grout waste and spilled oil. This work can be done with a rake, shovel, and a little manual labor.
  - **Solberg Property:** there are several areas that require attention. Areas that had large quantities of grout spilled on the surface need to be addressed. Currently these areas will not support vegetation regrowth. Oil has been spilled in other areas of the lawn. These areas need to be addressed to restore them to the condition it was in before any drilling and grouting activities occurred. The landowner also has mentioned that waste associated with the project was disposed of in an inappropriate manner on his property; this will need to be rectified. The area located to the south of the driveway where drill cuttings were disposed of needs further attention to the satisfaction of the landowner.

**2. Bills of Lading and Mill Certifications:**

- Contractor is required to provide the project manager with all bills of lading and mill certifications for each load of cement, flyash, and all admixtures as well as any load tickets or receipts for aggregate. (IFB pg 39)

**3. Certification of Payment:**

- Enclosed is SFN 19715 CERTIFICATION OF PAYMENT TO EMPLOYEES, SUPPLIERS, SUB-CONTRACTORS. This form needs to be filled out and returned within 10 days of final payment.
- I have received inquiries from Agri Industries' sub-contractors wondering how the PSC was handling payments. Please reference IFB page 13 in reference to Payment and Performance Bonds.

The issues associated with the clean-up portion of the contract seem to be a recurring problem. Currently \$19,500 remains in the contract specified for clean up. This bid item is listed in the IFB as a lump sum payment item. The clean-up was not completed before the end of the performance period for this project which was November 11, 2009. Also, inclement weather did not set in and preclude further work until at least December 1, 2009. This should have been more than enough time to finish the relatively small amount of clean-up associated with the entire project. At this time there are several options that the PSC is considering:

**Option 1** - Terminating the contract without paying any of the clean-up bid item.

**Option 2** - Imposing Liquidated Damages from the end of the extended performance period of November 11 thru December 1. This would impose a penalty of \$6,000 (20 days @ \$300/day) that could be deducted from the payment for clean-up.

**Option 3** - Require a new schedule and action plan from Agri Industries for completion and approval of all outstanding items in the spring of 2010. If this route is preferred, an attention to exact detail will be of the highest priority.

We are at a point that we will require a response from Agri Industries within 10 days of the receipt of this letter on the option that you prefer. If Agri Industries should choose to submit a new schedule of construction and action plan for completing the clean-up items, this new DETAILED schedule and action plan should be included in the response for approval. If the response is not to the satisfaction of both myself and the landowners involved, I will either require further details, or revert to one of the other available options listed above.

I have discussed these issues with representatives of Agri Industries in the past, either in person, over the phone, or via email, with little or no results. I look forward to resolving these issues and closing out the contract. Should you have any questions please feel free to contact me.

Sincerely,



Tim Oswald  
Project Manager  
Abandoned Mine Lands Division

CERTIFIED MAIL

Enclosure



**CERTIFICATION OF PAYMENT TO EMPLOYEES, SUPPLIERS,  
SUB-CONTRACTORS**  
PUBLIC SERVICE COMMISSION  
ABANDONED MINE LANDS DIVISION  
SFN 19715 (3-94)

The undersigned hereby certifies to the Public Service Commission that all of our employees engaged in work on the following project have been paid their full wages in accordance with the Fair Labor Standards Act. It is further certified that all of our suppliers and/or sub-contractors engaged for the purpose of fulfilling the terms of the contract on the subject project have been paid in full for their services.

Project Name
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Signature of Authorized Official	Date
Title of Position	