



Public Service Commission
State of North Dakota

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September 30, 2010

Mr. David A. Smith, President
Smith Contracting, Inc.
3941 Wynne Avenue
Butte, MT 59701

RE: Notice of Default for Failure to Perform Required Work on the Buechler/Velva AML Project

Dear Mr. Smith:

We are aware that Smith Contracting, Inc. has ceased work on the 2010 Buechler/Velva Abandoned Mine Lands project and it has become apparent that the required work will not be completed as required under Contract No. AM-588-10. Smith Contracting has not performed any work on this project for more than a week and some of the earth-moving equipment has been removed from the project site. At this time we estimate that less than 40% of the required project work has been completed. Based on recent verbal conversations with representatives of Smith Contracting, we understand Smith Contracting does not plan to complete the Buechler/Velva project by the mid-October completion date as specified in the Notice to Proceed that was issued by our project manager and that you acknowledged in mid-May. Therefore, this Notice of Default is issued for Smith Contracting's failure to perform as required under the contract and the revised schedule that Smith Contracting provided to us in early July.

We plan to initiate action with First National Insurance Company of America, the surety that issued performance and payment bonds (Bond No. 6662386) for this project, to perform the remaining work that is required for this project or to file claims under these bonds. Also, please be advised that AML staff has been contacted by two suppliers that have indicated they have not been paid for supplies or services provided to Smith Contracting in association with the Buechler/Velva project.

Please advise us in writing by October 7, 2010, whether or not Smith Contracting plans to complete the Buechler/Velva project as required by Contract No. AM-588-10.

Sincerely,

James R. Deutsch
Director, AML Division

CERTIFIED

cc: Jeff Olson, First National Insurance Company of America