



Liberty Mutual Surety

December 15, 2010

North Dakota Public Service Commission
600 East Boulevard, Dept 408
Bismarck, North Dakota 58505

R. Jeffrey Olson
Home Office Counsel

P.O. Box 34670
Seattle, WA 98124-1670
Jeff.Olson@LibertyMutual.com
Phone: 206.473.5929
Fax: 866.548.7321

Attention: Mr. James Deutsch

Re: Principal: Smith Contracting, Inc.
Obligee: North Dakota Public Service Commission
Bond No.: 67S000136
Project: 2010 Buechler/Velva Phase 1 Abandoned Mine Lands Site in Ward County
Surety: First National Insurance Company of America

Dear Mr. Deutsch:

As you may be aware, we are reviewing the documents you previously forwarded us regarding the above referenced claim. In addition, we have forwarded those documents to Smith Contracting, Inc for its review and comment.

In connection with that effort, please be advised that we would request the following additional documentation from you regarding this matter:

- (1) We have been informed that a meeting was held on August 20, 2010 regarding Smith Contracting Inc's Change Order request. Please provide us with all documents related to that meeting;
- (2) The Public Service Commission diaries indicate that pictures were taken on numerous days. Please provide us with copies of all photographs taken of the project site by the Public Service Commission or its representatives;
- (3) The August 24th diary indicates that Mr. Bill Dodd too cycle times and made notes. Please provide us with copies of those;
- (4) The September 21 diary indicates that Public Service Commission personnel surveyed for purposes of determining quantities. Please provide us with this survey and all other surveys taken by the Public Service Commission or its representatives;
- (5) The July 8th diary indicates that Mr. Dave Smith was on the project site for a meeting with yourself and Mr. Bill Dodd. Please provide us with all documentation concerning this meeting;
- (6) We understand that Mr. Ray Kelsuk was on the project site numerous days. Please provide any and all notes, photos, or documents from Mr. Kelsuk;
- (7) It appears that several diary entries may not have been made for May 26 – 31, June 1, 2, 12, 13, July 2 -5, 9 – 11, 15, 17, 18, 21, 24, August 1, 7, 8, 14, 15, 21-26, 28-31, and September 2-4. Please provide the diary entries for these dates;
- (8) We have been informed by Smith Contracting, Inc that the project requirements with respect to "storm water" require a log to document storm events of greater than 0.50 inches of rain. Please provide us with copies of any logs or inspection reports regarding this;

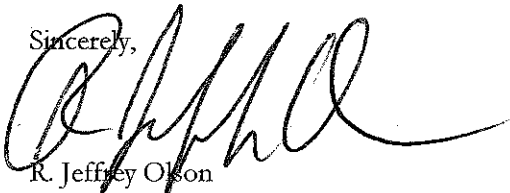
- (9) Please provide us with any videos or audio records by the Public Service Commission concerning this project;
- (10) Diary entries indicate that conference calls were made between the Public Service Commission and Smith Contracting, Inc on June 30 and July 8, 2010. Please provide us with copies of any documents or notes regarding those conference calls;
- (11) Please provide us with copies of all e-mails relating to the project;
- (12) We have been advised by Smith Contracting, Inc that Ward County, wherein the project is located, was declared a disaster area for 2010 due to abnormal rainfall. Please provide us with any documents which would indicate your understanding of this fact.
- (13) We understand that an on-site conference and the pre-bid walk of the project were conducted on or around April 7, 2010. Please provide us with a copy of all documents, notes, e-mails, minutes, website postings, etc related to the project walk-through and on-site conference.

Thank you in advance for your prompt furnishing of these materials. As always, should you have any questions please do not hesitate to call.

Please note that this letter is sent to you for investigatory purposes only. It should not be construed by you or your company as an admission of liability or a promise to perform or pay your company's claim in whole or in part. Our activities are undertaken with a full reservation of all rights and defenses which Liberty Mutual Insurance Company and/or Smith Contracting, Inc., has or may have at law, equity or under the terms and provisions of the bond and contract documents. This reservation of rights shall remain in full force and effect unless expressly revoked by surety in writing.

Please do not hesitate to contact me if you have any questions.

Sincerely,



R. Jeffrey Olson
Home Office Counsel

RJO/rjo

cc: Smith Contracting, Inc.
John Sebastian
Warren Maierhofer