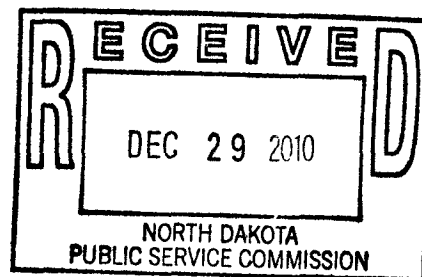


122 E. Broadway Avenue
Bismarck, ND 58501

P.O. Box 460
Bismarck, ND 58502-0460
Phone (701) 258-0630
Fax (701) 258-6498

Mr. Jeff Olson
Liberty Mutual Surety
P.O. Box 34670
Seattle, WA 98124-1670



December 28, 2010

RE: Smith Contracting, Inc.
2010 Buechler/Velva Abandoned Mine Lands Project in Ward County
Bond 6662386 issued by First National Insurance Company of America

Dear Mr. Olson:

As you should be aware, I represent the Public Service Commission in regards to the above-referenced matter. We have had an opportunity to review and gather the information requested in your December 15, 2010 letter. The following responds to the thirteen items requested in regards to your investigation of Smith Contracting, Inc's. default on the 2010 Buechler/Velva Abandoned Mine Lands Project. Additional information being provided is in an electronic format on the enclosed disc.

1. No formal record of that meeting was kept. Bill Dodd and James Deutsch took handwritten notes during the meeting (see Folder Item 1).
2. Photographs of the project site were taken by Mark Knell, Ray Kelsch, Bill Dodd and Bruce Johnson (see Folder Item 2).
3. Bill Dodd timed two haul truck cycles on August 24, 2010, and recorded that in his field notes (see Folder Item 3).
4. Mark Knell surveyed cut volumes continuously throughout the project using Nikon Total Station surveying equipment. His surveys indicate Smith Contracting moved a total of 957,714 cubic yards. This total includes the material designated as topsoil.

Sheldon A. Smith*

Randall J. Bakke***

Scott K. Porsborg**

Suzanne M. Schweigert*

Mitchell D. Armstrong**

Shawn A. Grinolds**

Stacy M. Moldenhauer**

David J. Smith*

Bradley N. Wiederholt**

* Licensed in North Dakota

** Licensed in Minnesota

• Licensed in South Dakota

* Board Certified Civil Trial
Specialist by National Board
of Trial Advocacy

54 AM-10-37 Filed: 12/29/2010 Pages: 3
**Letter response to Liberty Mutual's request for
additional information**

Mitch Armstrong

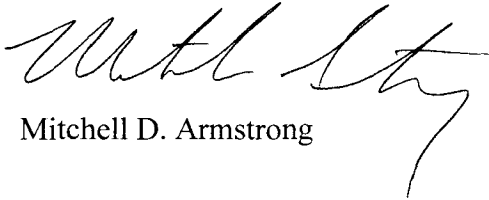
- Bruce Johnson surveyed three topsoil piles on September 15, 2010, using an RTK survey-grade GPS. His surveys indicate volumes of 14,922 cubic yards for the "Horseshoe Pit" Pile (Areas 12-14) and 2,829 and 766 cubic yards for the two stockpiles on Area 17 (see Folder Item 4).
5. Dave Smith met with Bill Dodd and James Deutsch at the project site on July 9th and Mr. Deutsch made some notes of this meeting (see Folder Item 5).
 6. Ray Kelsch was the seasonal construction inspector for the PSC at the Buechler/Velva Site. The photographs he took are included with the information provided in response to item 2. Attached are scanned copies of the notes made by Mr. Kelsch during the project (see Folder Item 6).
 7. Entries were made and have already been submitted for July 15, 21, August 23-26, 30, 31 and September 2 and 3. No entries were made for May 26 through June 3 because Smith Contracting had not yet started working on-site. The other dates listed were either weekends or holidays and PSC project manager Mark Knell was not on site.
 8. Documentation of rainfalls over 0.50 inch was a condition of the NDPDES General Permit for Stormwater Discharges from Construction Activity issued by the North Dakota Department of Health for this project. A rain gauge was placed on-site and rainfall events were recorded by Mark Knell (see Folder Item 8).
 9. Bruce Johnson made two short videotapes at the site on September 15, 2010 (see Folder Item 9).
 10. These conference calls occurred but no official records were kept. Mr. Deutsch's notes of the calls on June 30, July 8, 13, 20 and 28, August 4 and September 13 are attached (see Folder Item 10).
 11. E-mails between AML Division staff and Smith Contracting are attached (see Folder Item 11).
 12. The PSC received no prior notification from Smith Contracting with concerns about a disaster declaration in Ward County in 2010 due to abnormal rainfall. We understand the Ward County Commission may have issued an emergency declaration following the June 17th rainstorm in the immediate Minot area. However, the rain gauge at the Buechler\Velva site showed only 0.60 inch of rain

fell at that location (please refer to the rainfall records under Folder Item 8).

13. A pre-bid, on-site conference for this project was held on April 7, 2010. This was listed as Special Terms and Conditions No. 10 on Page 13 of the IFB, and also included in the solicitation notice both of which were sent to you October 12. A record was kept listing all attendees and this was also sent to you on October 12; however, no minutes or notes were taken.

If you have any questions, please let me know.

Sincerely,



Mitchell D. Armstrong

slf

enclosure

cc: Jim Deutsch (w/o enc.)
Illona Jeffcoat-Sacco (w/o enc.)

Olson.1