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Independence County Sand Mine: Arkansas Department of Energy and Environment - Division of Environmental Quality Notice of Bond Forfeiture

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The Arkansas Department of Energy and Environment – Division of Environmental Quality (“DEQ”) issued a November 24th Notice of Bond Forfeiture (“Notice”) to Arkansas Sand Company (“ASC”). See LIS No. 20-187.

The CAO provides that the Notice is issued in accordance with the provision of Arkansas Pollution Control and Ecology Commission Rule 8 (Administrative Procedures).

DEQ is stated to have issued an Open Cut Land Reclamation Act Permit (“Permit”) to mine sand (“Site”) in Independence County to ASC. The Site is stated to be currently owned by Schlumberger Technical Corporation which has informed DEQ that it will consent to any necessary reclamation activities on the affected land.

A bank Certificate of Deposit for \$33,130.00 was stated to have been issued on July 14, 2009. It is stated to have been a financial instrument secured by ASC as financial assurance for reclamation of all affected lands described in the Permit.

The Permit is stated to have expired and not been renewed on May 3, 2014. Further, there is stated to be no active open-cut mining permit issued by DEQ to any entity engaging in open-cut mining at the Site. In addition, a National Pollution Discharge Elimination System (“NPDES”) Stormwater Discharge Permit is stated to have not been renewed.

Site visits by DEQ are stated to have occurred in 2020. During such Site visits, DEQ is stated to have observed that reclamation had not been completed at the Site. No evidence is stated to have been received by DEQ that ASC or any other entity has complied with all requirements in the Permit reclamation plan.

The CAO notes that Ark. Code Ann. § 15-57-315(9) and Arkansas Pollution Control and Ecology Commission Rule 15.308(D)(12) establish the duty of operators to whom an open-cut mining permit is issued to complete all reclamation as detailed in its reclamation plan. Further, the previously referenced provisions state that the operator’s bond, or substituted security, of affected land not satisfactorily reclaimed shall be forfeited.

DEQ is stated to have determined that there are reasonable grounds to believe that ASC has committed violations of the Open-Cut Land Reclamation Act and the rules promulgated thereunder. ASC is stated to have continued to engage in open-cut mining after the Permit expired. Also referenced is such activity occurring after expiration of the previously referenced NPDES Stormwater Permit.

The previously referenced alleged violations are stated to provide DEQ the authority to forfeit any reclamation bond for failure to abate such violations. As a result, the Notice provides that the Certificate of Deposit is forfeited.

ASC is provided the ability to request a hearing before the Arkansas Pollution Control and Ecology Commission in accordance with the procedures described in Ark. Code Ann. § 8-4-218 et seq. and Arkansas Pollution Control and Ecology Commission Rule No. 8.

A copy of the Notice can be downloaded [here](#).