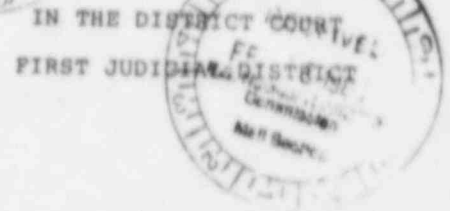


STATE OF WYOMING )  
COUNTY OF LARAMIE ) SS.



40-8745  
RETURN ORIGINAL TO PDR, HQ



ALLIED FIDELITY INSURANCE COMPANY, )  
Petitioner, )  
vs. )  
ENVIRONMENTAL QUALITY CONTROL )  
Respondant. )

Docket No. \_\_\_\_\_

MOTION FOR STAY

COMES NOW the Petitioner herein, by and through its attorneys, Godfrey & Sundahl, and moves this Court for a stay of the Order entered by the Respondant on January 15, 1986 and filed on January 21, 1986, which declared the Allied Fidelity Insurance Company bond number FS113301 forfeited in the amount of \$441,005, for the reason that the Petitioner has been denied its due process rights guaranteed under the Wyoming and the United States Constitution, and also the provisions of the Wyoming Administrative Procedure Act, in that prior to declaring the bond forfeited, the Environmental Quality Council refused the request for a hearing filed by Allied Fidelity Insurance Company. Because this matter comes to the Court by virtue of the dignity of the United States and Wyoming Constitution, it is respectfully submitted that no bond should be required as a condition of this stay. The Petitioner further asserts that violation of constitutional rights always, as a matter of law, constitutes irreparable loss, damage and harm from which the Petitioner has no adequate remedy at law.

8603100560 860218  
PDR ADOCK 04008745  
C PDR

DESIGNATED ORIGINAL

FILED BY *Mary C. Hertz*



DATED this \_\_\_\_ day of February, 1986.

\_\_\_\_\_  
John A. Sundahl  
GODFREY & SUNDAHL  
2020 Carey Avenue, #403  
P.O. Box 328  
Cheyenne, WY 82003-0328  
(307) 632-6421  
Attorney for Allied Fidelity

NOTICE OF HEARING

PLEASE TAKE NOTICE that the hearing in the above-entitled matter will be brought before the Court, the Honorable \_\_\_\_\_ presiding, on the \_\_\_\_ day of February, 1986 at the hour of \_\_\_\_ : \_\_\_\_ .m.

\_\_\_\_\_  
John A. Sundahl

CERTIFICATE OF SERVICE

I, John A. Sundahl, do hereby certify that a true and accurate copy of the foregoing was served upon the following by depositing the same in the United States Mail, postage prepaid on this \_\_\_\_ day of February, 1986.

John D. Erdmann  
Senior Assistant  
Attorney General  
123 Capitol Avenue  
Cheyenne, WY 82002

Steve Shanahan  
Senior Assistant  
Attorney General  
123 Capitol Avenue  
Cheyenne, WY 82002

\_\_\_\_\_  
John A. Sundahl



STATE OF WYOMING        }  
                              } SS.  
COUNTY OF LARAMIE     }

IN THE DISTRICT COURT  
FIRST JUDICIAL DISTRICT

ALLIED FIDELITY INSURANCE COMPANY, }  
  }  
                                  Petitioner, }  
  }  
                              vs.                }  
  }  
ENVIRONMENTAL QUALITY COUNCIL,        }  
  }  
                                  Respondent. }

Docket No. \_\_\_\_\_

PETITION FOR REVIEW

COMES NOW Allied Fidelity Insurance Company, by and through its attorneys, Godfrey & Sundahl, and pursuant to the provisions of W.S. 16-3-114, submits this Petition for Review to the Court of the Order entered by the Environmental Quality Council on January 15, 1986 and filed on January 21, 1986, which Order dismissed the Request for Hearing filed by Allied Fidelity Insurance Company and declared Bond #FS113301, in the amount of \$441,005.00, forfeited for reclamation of the Bison Basin Uranium Mine. In support hereof, your Petitioner respectfully shows to the Court as follows:

1. The Petitioner has exhausted its administrative remedies. There is no statutory or common-law provision which precludes or limits judicial review of this matter.

2. Your Petitioner is aggrieved and adversely affected in fact by a final decision of an agency in a contested case, which decision entered on January 15, 1986 and filed on January 21, 1986 declared a bond of Allied Fidelity Insurance Company forfeited in the amount of \$441,005.00 for the purpose of reclamation of the Bison Basin Uranium Mine.

3. The administrative action which gives rise to this appeal took place in Laramie County, Wyoming, and therefore venue is proper in this Court, and this Court has jurisdiction over the parties and the subject matter.



4. At some time prior to 1981, the Department of Environmental Quality, Land Quality Division, issued a permit to mine to Ogle Petroleum, Inc., a Colorado Corporation. At no time thereafter was the permit (Permit #504) ever transferred or assigned to any other corporation, organization or entity. Accordingly, the only permittee for the product is Ogle Petroleum, Inc., a Colorado corporation.

5. On or about the time of the issuance of the permit, Ogle Petroleum, Inc., a Colorado corporation, obtained the reclamation bond from Traveler's Indemnity Company dated July 22, 1980, Bond #146F7117.

6. Ogle Petroleum, Inc., a Colorado corporation and the sole permittee for the in-situ uranium project in question, was dissolved in 1981.

7. On May 6, 1982, the Department of Environmental Quality, Land Quality Division, determined that the amount of the bond previously provided by Traveler's Indemnity Company was inadequate for injecting mining unit #2, and requested additional bonding for the second injection unit.

8. On July 22, 1982, your Petitioner issued Bond #FS113301 in the amount of \$441,005.00 to Ogle Petroleum, Inc. At the time of issuance of the reclamation performance bond, Ogle Petroleum, Inc., a Colorado corporation, did not exist, even though it was the only permittee and the only entity authorized to conduct mining and reclamation operations. In addition, Ogle Petroleum, Inc., a Colorado corporation, was the only organization which had contracted with the State of Wyoming for reclamation and was the only entity which was obligated to provide reclamation under the laws of the State of Wyoming.

9. At no time pertinent hereto did the State of Wyoming or the permit holder ever advise your Petitioner that the permit holder did not exist and had been liquidated, and at no time was your Petitioner ever advised that the Ogle Petroleum, Inc. to which it issued the bond, was not the permit holder or the operator, and had no obligations for reclamation under the laws of the State of Wyoming. At all times pertinent hereto, the



State of Wyoming and the Department of Environmental Quality knew or should have known of that change of status. The failure to advise your Petitioner constituted a material variation in the risk of its bond, and in fact, it would not have even ever issued a bond to an organization which did not hold a permit and have an obligation to reclaim. The State of Wyoming, has an obligee on the bond, had a duty to speak, and therefore there were misrepresentations of a material nature which rendered the bond void.

10. Shortly before July 25, 1985, the Director of the Department of Environmental Quality made a determination that the reclamation performance bonds, including that of your Petitioner, should be forfeited, and received approval to begin bond forfeiture proceedings from the Environmental Quality Council on July 25, 1985. However, even then none of the Ogle companies or the State of Wyoming, or the Department of Environmental Quality, ever advised your Petitioner of any problems with the mining facilities, the permit holder, or any operator. This failure to advise took place notwithstanding the fact that every year since the initiation of the bond, your Petitioner had made written requests of the Department of Environmental Quality seeking a status report.

11. Apparently, on October 31, 1985, the Department of Environmental Quality was advised that, effective November 6, 1985, operations would be ceased at the mine, due to a lack of financial capacity. Your Petitioner was not so advised.

12. On November 6, 1985, the Office of the Attorney General, on behalf of the Land Quality Division of the Department of Environmental Quality, issued a notice to all potential interested parties, including Allied, of the intention to forfeit the bond. A true and accurate copy of such notice is attached hereto and incorporated by this reference as Exhibit A.

13. A meeting was scheduled before the Environmental Quality Council on or about December 10, 1985, during which time the Department of Environmental Quality sought a bond forfeiture determination from the Environmental Quality Council, even though



the statutory period for requesting a hearing had not yet expired. Although your Petitioner never received any formal notice of such a hearing, it found out by word of mouth and appeared at the hearing and objected to any bond forfeiture.

14. Thereafter, on or about December 12, 1985, your Petitioner made a formal and timely request for a hearing for the Environmental Quality Council. Such a request for a hearing is attached hereto and incorporated by this reference as Exhibit B.

15. By Order dated December 18, 1985, the Environmental Quality Council issued its Notice of Hearing and Order, which advised the parties, including Allied, that the hearing would be conducted as a contested case hearing commencing on January 10, 1986. A true and accurate copy of the Notice of Hearing and Order is attached hereto and incorporated by this reference as Exhibit C. Thereafter, on January 9, 1986, the Office of the Attorney General filed a Motion to Dismiss the protest of Allied Fidelity Insurance Company. A true and accurate copy of that Motion to Dismiss the Protest is attached hereto and incorporated by this reference as Exhibit D. The Court's attention is directed to paragraphs 4 and 5 thereof, which strikes certain portions of the Motion as being inaccurate representations. These changes in the Motion were made orally at the hearing on January 10, 1986.

16. On January 10, 1986, the Environmental Quality Council orally granted the Motion to Dismiss and ordered the bonds forfeited. A true and accurate copy of that Order, which was entered on January 15, 1986, and filed on January 21, 1986, is attached hereto and incorporated by this reference as Exhibit E. The Order speaks for itself and reveals that the basis for the Order was that only an operator was entitled to a hearing under W.S. 35-11-421(b). Accordingly, reasoned the Environmental Quality Council, your Petitioner had no right to have a hearing before having its bond forfeited.

17. The Order dismissing the request for a hearing and forfeiting the bond was entered by the Environmental Quality Council without the taking of any evidence whatever. It was



entered without ever having a record that there were violations of the Environmental Quality Act.

18. At the hearing on the Motion to Dismiss, your Petitioner argued unsuccessfully that due process of law and the Administrative Procedure Act required a hearing before the bond of your Petitioner was forfeited.

19. The Petitioner herein asks this Court to hold unlawful and set aside the January 15, 1986 Order of the Environmental Quality Council as being arbitrary, capricious, and abuse of discretion, and no otherwise in accordance with law, and also on the basis that the Order is entered contrary to constitutional right, power, privilege or immunity. Finally, your Petitioner asserts that the Order was entered without observance of procedure required by law.

20. The basis for this appeal is twofold. First, under the Administrative Procedure Act, the matter before the Environmental Quality Council was a contested case. W.S. 16-3-101(b)(ii) defines a "contested case" as "a proceeding including but not restricted to rate making, price fixing and licensing, in which legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for hearing". W.S. 16-3-101(b)(vi) defines a "party" as "each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party". W.S. 16-3-107(a) requires that in any contested case, all parties shall be afforded an opportunity for hearing after reasonable notice. Thus, under the Wyoming Administrative Procedure Act, your Petitioner, as a person or entity being subjected to forfeiture of its \$441,005.00 bond, was entitled to a hearing and an opportunity to present testimony and arguments prior to declaring its bond forfeited.

21. In addition, the due process clauses of the United States and Wyoming Constitutions make it fundamental that your Petitioner have an opportunity to be heard, and to defend, enforce, and protect its right at a hearing consistent with the essentials of a fair trial. Fallon vs. Wyoming State Board of



Medical Examiners, 441 P.2d 322, at 327 (Wyo. 1968). The requirements of due process include the right to be adequately advised of the charges, a reasonable opportunity to meet the charges by way of defense or mitigation, representation by counsel, and an adequate opportunity to call witnesses. Sims vs. State, 530 P.2d 1176 (Wyo. 1975); White vs. Board of Trustees of Western Wyoming Community College District, 648 P.2d 528 (Wyo. 1982). The failure on the part of the Environmental Quality Council to allow a hearing to your Petitioner, and the refusal to permit the introduction of evidence, violated your Petitioner's substantive and procedural rights to due process of laws guaranteed by the Wyoming and the United States Constitutions.

22. In the event that W.S. 35-11-421(b) is construed to permit hearings only upon the request of an actual operator, then such statute is unconstitutional and specifically violates the Due Process Clause of the United States Constitution in that it deprives the petitioner of property without the due process rights of a hearing.

23. Because of the failure to allow the introduction of evidence or the opportunity to be heard, your Petitioner was deprived of its ability to argue that no valid bond existed which could be forfeited. In addition, the Petitioner had evidence which demonstrated that injection unit #2, for which the additional bond of your Petitioner was required, was never built and no construction was begun. Therefore, there was reclamation required and no basis for bond forfeiture. Third, your Petitioner was precluded from establishing that, even if the second injection unit had been built, the total estimated cost of reclamation was only \$275,000.00, as opposed to the \$441,005.00 which was actually declared to be forfeited. In addition, your Petitioner was precluded from demonstrating that a notice of violation issued on July 22, 1985, was cured, and therefore there were no outstanding notices of violation at the time of the bond forfeiture. Your Petitioner was further precluded from arguing that since a Notice of Violation is a condition precedent to any bond forfeiture, it was legally impossible to forfeit the bonds.





Additional evidentiary matters bearing on the above and other issues were also precluded.

24. The only way in which your Petitioners due process rights and rights protected by the Wyoming Administrative Procedure Act can be guaranteed as if this Court were to enter an Order which set aside and annulled the Order of the Environmental Quality Council dated January 15, 1986 and filed on January 21, 1986, and to further ordered that no bond forfeiture would be permitted unless and until the Environmental Quality Council held a full evidentiary hearing, with full rights of participation to be guaranteed to Allied Fidelity Insurance Company.

25. In order to preclude any further action on the illegal bond forfeiture, it is necessary and proper for the Court to enter a stay of the described order of the Environmental Quality Council pending final disposition by this Court under the Petition for Review filed herein. Allied Fidelity Insurance Company is irreparably injured and harmed unless a stay is granted, for which there can be adequate remedy at law.

WHEREFORE, Allied Fidelity Insurance Company prays that the Court enter herein an Order setting aside and voiding the Order issued by the Environmental Quality Council on January 15, 1986 and filed on January 21, 1986; that the Court declare W.S. 35-11-421(b) to be unconstitutional; that the Court enter a stay of such Order pending ultimate disposition by this Court; that the Court grant such other and further relief as may seem just and proper in the premises, including an Order that there shall be no bond forfeiture of the Allied Fidelity Insurance Company bond until such time as there has been a full evidentiary hearing with full rights of participation guaranteed by the due process clauses of the United States and Wyoming Constitutions.



DATED this 10<sup>th</sup> day of Feb, 1986.

ORIGINAL SIGNED BY

PAUL KAPP *for*

John A. Sundahl  
GODFREY & SUNDAHL  
2020 Carey Avenue, #403  
P.O. Box 328  
Cheyenne, WY 82003-0328  
(307) 632-6421  
Attorney for Allied Fidelity  
Insurance Company

CERTIFICATE OF SERVICE

I, John A. Sundahl, do hereby certify that I served a true and accurate copy of the above Petition for Review upon the following, by depositing same in the United States Mail, postage prepaid, on the 10 day of Feb, 1986.

John D. Erdmann  
Senior Assistant  
Attorney General  
123 Capitol Building  
Cheyenne, WY 82002

Steve Shanahan  
Senior Assistant  
Attorney General  
123 Capitol Building  
Cheyenne, WY 82002

ORIGINAL SIGNED BY

PAUL KAPP *for*

John A. Sundahl



BEFORE THE ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING



IN THE MATTER OF THE PROPOSED BOND )  
FORFEITURE OF OGLE PETROLEUM, INC. )

Docket No. \_\_\_\_\_

REQUEST FOR HEARING

COMES NOW Allied Fidelity Insurance Company, whose address is 11555 North Meridian Street, Carmel, Indiana, 46032, by and through its attorneys, Godfrey & Sundahl, and respectfully move the Environmental Quality Council for a hearing in the above-entitled matter before any bond of Ogle Petroleum, Inc., or any other related entity is forfeited. In support hereof, Allied Fidelity Insurance Company (herein after referred to as "Allied") respectfully shows to the Council as follows:

1. Allied is an insurance company duly licensed and authorized to conduct the business of surety insurance within the state of Wyoming, and is in good standing with the Wyoming Insurance Department and that at all times pertinent hereto, Allied was properly licensed.
2. On August 28, 1980, Ogle Petroleum, Inc., a Colorado Corporation, was issued an in-situ mining permit by the Department of Environmental Quality, in permit number 504. Based upon information and belief, that permit has never been assigned or transferred, nor has it been sold.
3. On or about July 22, 1982, Allied, a surety, and Ogle Petroleum, Inc., as principal, issued Reclamation Performance Bond number FS113301 in favor of the state of Wyoming in the amount of \$441,005. Based upon information and belief, at the time of the execution of the stated bond, Ogle Petroleum, Inc., a Colorado Corporation did not exist. Allied Fidelity asserts that there is no valid bond which could be forfeited under any circumstances in this proceeding.
4. Allied further asserts that if the principal on the bond was any corporation other than Ogle Petroleum, Inc., a Colorado Corporation, then the alleged bond was not issued to an operator or a permittee, and therefore no valid obligation, bond or surety relationship exists.
5. Allied makes this request for a hearing while preserving all rights and defenses which it has or may have concerning the validity of the bond or any other type defenses which may be filed in any bond forfeiture proceedings, including but not limited to the invalidity of the bond, fraud in

EXHIBIT

the execution, material misrepresentation, change of condition of a material nature, and non-payment of premium.

6. This request for a hearing is made because by a notice dated November 6, 1985, the office of the Wyoming Attorney General advised Allied, among others, that it's bond would be forfeited unless a hearing was requested within 30 days after receiving the notice. The notice was received by Allied on November 22, 1985. Thus, this request is made in reliance upon the resolution adopted by the Environmental Quality Council on December 11, 1985 that such notice could be filed without any prejudice to Allied's rights to assert defenses against the state of Wyoming or the principal. Allied does not by this request intend to become an operator, permittee, or licensee under the Environmental Quality Act, and nothing contained herein should be construed as adopting such a position. Rather, this request is made in order to protect the Due Process Rights of Allied guaranteed by the United States and Wyoming Constitutions, and to protect it's rights under the Wyoming Administrative Procedure Act in order to avoid the forfeiture of any alleged bond which is invalid and which does not exist for the benefit for the state of Wyoming.

7. This request for a hearing is timely filed.

8. Allied is in the process of gathering all of the facts and reserves the right to make additional allegations or assertions of fact, or principles of law.

9. Under W.S.35-11-421, bond forfeiture proceedings can be instituted only if there is a violation of the Environmental Quality Act. The November 6, 1985 notice from the Attorney General's Office does not allege any violation of the act, and therefore bond forfeiture is inappropriate.

DATED this 12 day of December, 1985.

Original signed by John A. Sundahl

John A. Sundahl  
GODFREY & SUND AHL  
P.O. Box 328  
Cheyenne, WY 82003  
(307) 632-6421  
Attorney for Allied Fidelity



CERTIFICATE OF SERVICE

I, John A. Sundahl, do hereby certify that on the 12th day of December, 1985, I caused to be served a true and accurate of the foregoing request upon Mr. Randolph Wood, Director, Department of Environmental Quality, Herschler Building, Cheyenne, Wyoming, upon Mr. Roger Shaffer, Administrator, Land Quality Division, Department of Environmental Quality, Herschler Building, Cheyenne, Wyoming, and upon Mr. John D. Erdmann, Assistant Attorney General, State Capitol Building, Cheyenne, Wyoming, 82002.

Original signed by John A. Sundahl

John A. Sundahl



BEFORE THE  
ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING

IN THE MATTER OF THE BOND FORFEITURE, )  
BOND NO. 146 F 717 OF THE TRAVELERS )  
INDEMNITY COMPANY, AND BOND NO. FS113301 )  
OF THE ALLIED FIDELITY INSURANCE COMPANY )



NOTICE OF HEARING AND ORDER

NOTICE IS HEREBY GIVEN THAT:

1. The Environmental Quality Council will conduct a hearing at the Highway Department Auditorium, 5300 Bishop Blvd., in Cheyenne, Wyoming, on Friday, January 10, 1986, commencing at 10:00 a.m. This hearing will be conducted as a contested case hearing under the Wyoming Administrative Procedure Act. Mr. John V. Crow, a member of the Council, has been designated as the hearing examiner.

2. The hearing is held pursuant to Sections 35-11-101 through 35-11-1207, W.S. 1977 As Amended, regulations promulgated thereunder, and the Department of Environmental Quality Rules of Practice and Procedure.

3. The particular statutes and rules involved include, among others:

- A. W.S. Section 35-11-417; and
- B. W.S. 35-11-421.

4. The Petitioner, the Travelers Indemnity Company, asserts that a violation of the Environmental Quality Act must be shown, pursuant to Section 35-11-421(a), before the State should look to a bond for reclamation costs. The Petitioner, Travelers Indemnity, further states that the Department of Environmental Quality, Land Quality Division, is not utilizing the bonding provisions and its other powers as a means of assuring compliance by the operator or permit holder. The decision to seek forfeiture of the bond is therefore premature.

5. The Petitioner, Allied Fidelity Insurance Company, asserts that Reclamation Performance Bond No. FS113301 was issued to Ogle

EXHIBIT

C

Petroleum, Incorporated. At the time the bond was issued Ogle Petroleum, Inc., a Colorado Corporation, and the holder of an in-situ mining permit, No. 504, did not exist. Allied Fidelity Insurance Corporation states that there may be no valid bond which may be forfeited in this proceeding, and has requested a hearing to avoid forfeiture of the bond prior to a determination of the validity of the bond.

6. The Department of Environmental Quality asserts that the permit holder, Ogle Petroleum, Inc., a Colorado Corporation, is no longer operating under Permit No. 504, an in-situ mining permit. The Department of Environmental Quality also states that there is no responsible party to which the Department may look for completion of reclamation and prevention of groundwater deterioration. Thus, the Department seeks forfeiture of both of the above-referenced bonds, to undertake reclamation on behalf of the State of Wyoming.

IT IS HEREBY ORDERED THAT:

1. All parties shall appear on January 10, 1986 at 10:00 a.m. to present evidence;

2. List of witnesses, their addresses, phone numbers, the substance of their proposed testimony, and a summation of the facts and legal issues shall be served by each party upon all opposing parties no later than the end of the business day on January 6, 1986;

3. All parties shall prepare and file with the clerk of the Environmental Quality Council, Proposed Findings of Fact and Conclusions of Law by the end of the business day on January 17, 1986.

DATED this 18th day of December, 1985.

John V. Crow  
John V. Crow  
Hearing Examiner



CERTIFICATE OF SERVICE

I, Terri A. Lorenzon, certify that at Cheyenne, Wyoming, on the 14th day of December, 1985, I served the a copy of the foregoing Notice of Hearing and Order, by depositing copies of the same in the United States mail, postage prepaid, duly enveloped and addressed to:

✓ David D. Freudenthal  
Freudenthal, Salzburg & Bonds, P.C.  
P. O. Box 387  
Cheyenne, WY 82003

John A. Sundahl  
Godfrey & Sundahl  
P. O. Box 328  
Cheyenne, WY 82003

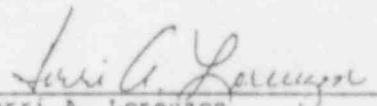
and by interoffice mail of the same date to:

Mr. Randolph Wood, Director  
Dept. of Environmental Quality  
Herschler Building  
122 West 25th Street  
Cheyenne, WY 82002

Roger Shaffer, Administrator  
Land Quality Division  
Dept. of Environmental Quality  
122 W. 25th Street  
Cheyenne, WY 82002

Steve R. Shanahan  
Senior Assistant Attorney General  
Attorney General's Office  
123 Capitol Building  
Cheyenne, WY 82002

✓ John Erdmann  
Assistant Attorney General  
Attorney General's Office  
123 Capitol Building  
Cheyenne, WY 82002

  
Terri A. Lorenzon  
Administrative Aide  
Wyoming Environmental Quality  
Council  
Emerson Building, Room 304  
2001 Capitol Avenue  
Cheyenne, WY 82002



BEFORE THE  
ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING

IN THE MATTER OF BOND FORFEITURES, )  
BOND NO. 146F7117 OF THE TRAVELERS )  
INDEMNITY COMPANY, AND BOND NO. FS113301 )  
OF THE ALLIED FIDELITY INSURANCE COMPANY, )

JOHN V. CROW, Hearing Examiner:

MOTION TO DISMISS THE PROTEST  
OF ALLIED FIDELITY INSURANCE COMPANY

COME NOW the Director of the Wyoming Department of Environmental Quality, Randolph Wood, and the Administrator of its Land Quality Division, F. Roger Shaffer, by and through the undersigned attorney for the State of Wyoming, who respectfully move the Environmental Quality Council to dismiss these proceedings, and more particularly to dismiss the oral protest of the Allied Fidelity Insurance Company, for the reasons stated below:

1. No person with standing to protest the forfeiture of the two surety bonds which are the subject of this case has appeared in protest.

2. W.S. 35-11-421(b), which concerns bond forfeiture proceedings before the Environmental Quality Council, states:

The attorney general shall institute proceedings to forfeit the bond of any operator by providing written notice to the surety and to the operator that the bond will be forfeited unless the operator makes written demand to the council within thirty (30) days after his receipt of notice, requesting a hearing before the council. If no demand is made by the operator within thirty (30) days of his receipt of notice, then the council shall order the bond forfeited. [Emphasis added.]



The word "operator" as used in the Wyoming Environmental Quality Act is defined at W.S. 35-11-103(e)(ix) as "any person, as defined in this act, engaged in mining, either as a principal who is or becomes the owner of minerals as a result of mining, or who acts as an agent or independent

EXHIBIT

D

contractor on behalf of such principal in the conduct of mining operations". This definition does not include the surety company that provides the bond for mine reclamation as required by W.S. 35-11-417.

4. Allied Fidelity Insurance Company appeared through its attorneys, Godfrey & Sundahl, a law firm in Cheyenne, Wyoming, before the Council during its meeting of December 11, 1985, and voiced an oral protest against declaration of forfeiture of its bond for the Bison Basin Mine. ~~However~~ Allied Fidelity Insurance Company has ~~not~~ submitted a written petition for a hearing as required by W.S. 35-11-421(b) and by the Attorney General's notice dated November 6, 1985. *AG corrects & apologizes*

5. On January 8, 1985, the Travelers Indemnity Company (Travelers Insurance Company) unconditionally withdrew its request for hearing, which was submitted in written form on December 13, 1985. ~~The Travelers' request for hearing is the only one in the record of this case.~~

6. Permit No. 504 for the Bison Basin Uranium Mine was issued on August 28, 1980, to Ogle Petroleum Inc., which maintained a field office in Casper, Wyoming, and an executive office at Santa Barbara, California.

7. The only licenses to mine in regard to Permit No. 504 were issued to Ogle Petroleum Inc. on August 28, 1980, and to Ogle Petroleum of California on August 20, 1985, with both entities using the same addresses in Casper, Wyoming, and Santa Barbara, California.

8. The Attorney General's notice of November 6, 1985, was received by Ogle Petroleum Inc. of California on November 12, 1985, and by Ogle Petroleum Inc. on November 14, 1985, both at their common mailing address in Santa Barbara, California.



9. The notice was also received by Travelers Indemnity Company on November 13, 1985, and by the Allied Fidelity Insurance Company on November 22, 1985.

10. More than thirty days have passed without any of the Ogle companies, or any person acting on their behalf, having requested a hearing. (Allied Fidelity Insurance Company does not purport to be an operator or to be acting on behalf of any operator of the Bison Basin Mine.)

11. The Allied Fidelity Insurance Company asserts that it "has no bond which can be forfeited." The issues that it raises with regard to the validity of Bond No. FS113301 go beyond the statutory authority of the Environmental Quality Council to decide. The issues involve contract, surety and corporations law. It would be more appropriate for a District Court to decide such issues surrounding the validity of the bond and the legal consequences of the reorganizations among the Ogle corporations. A lawsuit initiated by the Attorney General's Office will probably be required to enforce by Court judgment the order of bond forfeiture which the Council may make in this case.

12. The attorneys for Allied Fidelity Insurance Company did not serve a list of witnesses, etc. upon the undersigned attorney "no later than the end of the business day on January 6, 1986" as ordered by the Hearing Examiner. On January 8, 1986, Godfrey & Sundahl filed a Motion for Continuance, which was received only one day before the scheduled hearing. The motion indicates that the company and its attorneys are not ready to go forward with the hearing due to a lack of preparation, which is no fault of the Department or the Attorney General's Office. The Department is very concerned that any further delay in obtaining the declaration of forfeiture of the reclamation bonds will make it impossible to accomplish reclamation during the 1986



construction season, which probably will result in abandonment of the mine site with the very real risk that radioactive materials will escape from the surface facilities and into the groundwater of the State.

As stated in W.S. 35-11-421(b), the Environmental Quality Council, upon dismissing these proceedings, should act immediately to declare forfeited Bond No. 146F7117 of the Travelers Indemnity Company and Bond No. FS113301 of the Allied Fidelity Insurance Company.

Dated this ninth day of January, 1986.



John D. Erdmann  
Senior Assistant  
Attorney General  
123 Capitol Building  
Cheyenne, Wyoming 82002  
(307) 777-7841



CERTIFICATE OF SERVICE

I, John D. Erdmann, hereby certify that I served true and correct copies of the foregoing Motion to Dismiss the Protest of Allied Fidelity Insurance Company to the below listed persons by hand delivery, this 9th day of January, 1986:

David D. Freudenthal  
Freudenthal, Salzburg & Bonds, P.C.  
P.O. Box 387  
Cheyenne, Wyoming 82003

John A. Sundahl  
Godfrey & Sundahl  
P.O. Box 328  
Cheyenne, Wyoming 82003

Mr. Randolph Wood, Director  
Department of Environmental Quality  
Herschler Building  
122 West 25th Street  
Cheyenne, Wyoming 82002

Roger Shaffer, Administrator  
Land Quality Division  
Department of Environmental Quality  
Herschler Building  
122 West 25th Street  
Cheyenne, Wyoming 82002

Steven R. Shanahan  
Senior Assistant Attorney General  
123 Capitol Building  
Cheyenne, Wyoming 82002

Terri A. Lorenzon  
Administrative Aide  
Wyoming Environmental Quality  
Council  
Emerson Building, Room 304  
2001 Capitol Avenue  
Cheyenne, Wyoming 82002

John D. Erdmann  
Senior Assistant  
Attorney General



BEFORE THE  
ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING

FILED

JAN 21 1986

IN THE MATTER OF BOND FORFEITURES,  
BOND NO. 146F7117 OF THE TRAVELERS  
INDEMNITY COMPANY, AND BOND NO.  
FS113301 OF THE ALLIED FIDELITY  
INSURANCE COMPANY.

Terri A. Lorenson, Adm. Aide  
Environmental Quality Council

ORDER GRANTING MOTION TO DISMISS THE  
PROTEST OF ALLIED FIDELITY INSURANCE COMPANY  
AND APPROVING THE FORFEITURE OF BONDS

The Environmental Quality Council, a majority of its members in attendance at a hearing on this matter in Cheyenne, Wyoming, on January 10, 1986, and a majority of its members voting in favor of dismissal of the protest of Allied Fidelity Insurance Company, and for approval of the forfeiture of the above referenced bonds; the Council enters its findings, conclusions and order in this matter.

The Council finds that Allied Fidelity Insurance Company (Allied) is not the operator of the Bison Basin Uranium Mine, as defined by W.S. 35-11-103(e)(ix). Only an operator is entitled to a bond forfeiture hearing under W.S. 35-11-421(b). Allied has failed to make any showing that it is otherwise entitled to a bond forfeiture hearing under W.S. 35-11-421(b). The Council concludes that since Allied is not the operator of the mine, the motion of the Department of Environmental Quality to dismiss Allied's request for hearing should be granted.



EXHIBIT

E

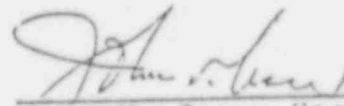
The Travelers Indemnity Company's request for a hearing was withdrawn on January 8, 1986. No other person claiming to be an operator of the mine requested a hearing pursuant to W.S. 35-11-421(b).

The Department of Environmental Quality has complied with the provisions of W.S. 35-11-421 for bond forfeiture. The Attorney General provided notice to the operator and sureties as required by W.S. 35-11-421 by notice letter dated November 6, 1985.

WHEREFORE, IT IS HEREBY ORDERED:

1. That the request of Allied Fidelity Insurance Company for a hearing be dismissed.
2. That Bond No. FS113301 of Allied Fidelity Company in the amount of \$441,005.00, and Bond No. 146F7117 of the Travelers Indemnity Company, in the amount of \$589,976.00, are declared forfeited for reclamation of the Bison Basin Uranium Mine.

Dated this 15<sup>th</sup> day of January, 1986.

  
\_\_\_\_\_  
John V. Crow, Hearing Examiner  
Environmental Quality Council



CERTIFICATE OF SERVICE

I, Terri A. Lorenzon, certify that at Cheyenne, Wyoming, on the 21st day of January, 1986, I served a copy of the foregoing Order Granting Motion to Dismiss the Protest of Allied Fidelity Insurance Company and Approving the Forfeiture of Bonds, by depositing copies of the same in the United States mail, postage prepaid, duly enveloped and addressed to:

David D. Freudenthal  
P. O. Box 387  
Cheyenne, WY 82003

John A. Sundahl  
2020 Carey Avenue, #403  
Cheyenne, WY 82003-0328


and by interoffice mail of the same date to:

Randolph Wood, Director  
Dept. of Environmental Quality  
Herschler Building  
122 West 25th Street  
Cheyenne, WY 82002

Roger Shaffer, Administrator  
Land Quality Division  
Dept. of Environmental Quality  
Herschler Building  
122 West 25th Street  
Cheyenne, WY 82002

John D. Erdmann  
Senior Assistant Attorney General  
Attorney General's Office  
123 Capitol Building  
Cheyenne, WY 82002

Steven R. Shanahan  
Senior Assistant Attorney General  
Attorney General's Office  
123 Capitol Building  
Cheyenne, WY 82002

  
Terri A. Lorenzon  
Administrative Aide  
Environmental Quality Council  
Emerson Building, Room 304  
2001 Capitol Avenue  
Cheyenne, WY 82002  
(307) 777-7170





THE STATE



OF WYOMING

ED HERSCHLER  
GOVERNOR

In reply refer to:

*Attorney General*

123 CAPITOL BUILDING  
CHEYENNE, WYOMING 82002  
PHONE 307-777-7841

A.G. McCLINTOCK  
ATTORNEY GENERAL

N-O-T-I-C-E

November 6, 1985

Ogle Petroleum Inc. of California:

William R. Merrill, Chairman of the Board  
of Directors and Chief Executive Officer;  
Glenn J. Catchpole, Director and President;  
Burdette A. Ogle, Director;  
William S. Wallis, Director;  
B. D. Bailey, Director;  
Charles R. Dodson, Director; and  
Bruce Heafitz, Director

Ogle Petroleum Inc. (a Delaware corporation); and  
Its directors and officers as their interests may appear.

Ogle Resources Inc. (a Delaware corporation); and  
Its directors and officers as their interests may appear.

Post Office Drawer 30740  
4213 State Street  
Santa Barbara, California 93110

and

Western Fuel, Inc.  
W. T. Robertson, Jr., President  
Post Office Box 32307  
Charlotte, North Carolina 28232

and

Travelers Indemnity Company  
One Tower Square  
Hartford, Connecticut 06115

and

Allied Fidelity Insurance Company  
6320 N. Rucker Road  
Indianapolis, Indiana 46220



EXHIBIT

A

Re: Forfeiture of Reclamation Performance Bonds for Permit No. 504, Bison Basin In-situ Uranium Mine, Fremont County, Wyoming: Bond No. 146F7117 dated July 22, 1980 (Travelers); and Bond No. FS113301 dated July 22, 1982 (Allied Fidelity).

Gentlemen:

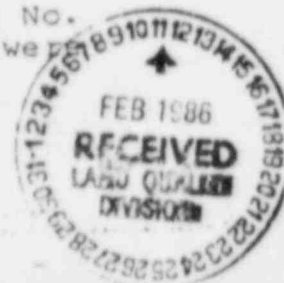
Please take notice that the Director of the Wyoming Department of Environmental Quality had determined that the above referenced performance bonds should be forfeited because of violations of the Wyoming Environmental Quality Act. Pursuant to Section 35-11-421, Wyoming Statutes 1977, the Director requested that this office be authorized to begin bond forfeiture proceedings. The Director's request was approved by the Environmental Quality Council on July 25, 1985.

Bond No. 146F7117 of the Travelers Indemnity Company in the amount of \$589,975.00 and Bond No. FS113301 of the Allied Fidelity Insurance Company in the amount of \$441,005.00 will be forfeited unless Ogle Petroleum Inc. of California (or any other entity believing itself to be the operator of the Bison Basin Mine) requests a hearing before the Environmental Quality Council within thirty days after receiving this notice.

A request for a hearing should be submitted by petition in two copies mailed by certified mail, return receipt requested, to 304 Emerson Building, 2001 Capitol Avenue, Cheyenne, Wyoming 82002, one copy of the petition to be served on the Chairman of the Council, and the other copy on the Director of the Department. A copy of this notice or other specific identification of the matter in controversy should also be included, together with a statement of the facts and law upon which the operator intends to rely. If a hearing is requested, it will be held within thirty days after the petition for hearing is received.

It appears to the Department that Ogle petroleum Inc. of California is the de-facto operator of the Bison Basin Uranium Mine, even though Permit No. 504 was originally issued to Ogle Petroleum Inc., a Colorado corporation, which was dissolved in 1981. The Department has been informed that the mining interests were transferred through Ogle Resources Inc. (a Delaware corporation) and Ogle Petroleum Inc. (a Delaware corporation) to Ogle Petroleum Inc. of California, which is presently in possession of the mine site.

On July 22, 1985, the Department Issued its Notice of Violation to Ogle Petroleum Inc. of California in Docket No. 1624-85, which stated that the in-situ mining operations were



being conducted without a valid mining permit in violation of Wyoming Statute 35-11-427, and that the operator was conducting a mining operation without a license to mine in violation of Wyoming Statute 35-11-410(a) and (b). Although Ogle Petroleum Inc. of California subsequently did obtain a license to mine under Permit No. 504, the Department has yet to receive a request for approval of the transfer and assignment of the permit. The mine has continued to be operated without proper authority.

On October 31, 1985, the Department was informed by Glenn J. Catchpole, President of Ogle Petroleum Inc. of California, that the corporation will no longer serve as operator of the Bison Basin Uranium Mine. The Department was also provided with a statement by William R. Merrill, Chairman of the Board for Ogle Petroleum Inc. of California, that the corporation will cease operations effective November 6, 1985, due to lack of financial capacity.

The Department has concluded that none of the Ogle family of corporations intends to accept the responsibilities and obligations of Permit No. 504 for reclamation of the Bison Basin mine site now that the mining operations are to be terminated. Ogle Petroleum Inc. of California has indicated that it is totally without assets to accomplish the required reclamation. Therefore, the Department intends to seek a forfeiture of the two referenced bonds so that the money can be used to pay for the necessary reclamation work by a qualified contractor in accordance with the terms of Permit No. 504.

Wyoming Department of  
Environmental Quality,  
Land Quality Division

By

John D. Erdmann

Assistant Attorney General

cc: Roger Shaffer, Administrator, LQD, DEQ  
Randolf Wood, Director, DEQ  
Environmental Quality Council  
Dale Smith, NRC, Denver, CO  
Ed Hawkins, NRC, Denver, CO  
William Brown, NRC Attorney, Arlington, TX  
Don G. Kircher, General Counsel, OPI, Santa Barbara, CA  
Glenn J. Catchpole, Casper Wyoming Office, OPIC  
Harold S. Bloomenthal, Attorney, Denver, CO  
Vincent Tonic, UNC Teton Exploration Drilling Co., Gallup,

NPM

CERTIFIED MAIL, RETURN RECEIPTS REQUESTED  
Nos. \_\_\_\_\_

