

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 96-F-06

Date Issued: March 13, 1996

Requested by: Representative Francis J. Wald

- QUESTION PRESENTED -

Whether a subcontractor of a general primary seismic exploration contractor needs to be bonded under N.D.C.C. ch. 38-08.1 to engage in geophysical exploration if the general primary seismic contractor is bonded.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a subcontractor of a general primary seismic contractor needs to be bonded under N.D.C.C. ch. 38-08.1 to engage in geophysical exploration even if the general primary seismic contractor is bonded.

- ANALYSIS -

Any person desiring to engage in geophysical exploration must first file an application for a geophysical exploration permit under N.D.C.C. § 38-08.1-04. The application for a geophysical exploration permit must, among other things, list the name of the person intending to engage in geophysical exploration, the name of any subcontractors to be employed by the person intending to conduct geophysical exploration, the date upon which geophysical exploration is to begin, and the approximate number and depth of any drill holes and the location of any drill holes or description of the property upon which the geophysical exploration is to be conducted. Id. Additionally, N.D.C.C. § 38-08.1-04(6) provides that the application for a geophysical exploration permit include "[a] certificate from the industrial commission indicating that the person intending to engage in geophysical exploration and any subcontractors to be employed by that person have each filed with the industrial commission a good and sufficient surety bond." (Emphasis added.)

Bond requirements for geophysical exploration are set under N.D.C.C. § 38-08.1-03.1. N.D.C.C. § 38-08.1-03.1 provides, in part, that "[a]

March 13, 1996

Page 2

person desiring to engage in geophysical exploration in this state shall also file with the industrial commission a good and sufficient surety bond in the amount of \$15,000 for a single geophysical crew or a blanket surety bond in the amount of \$30,000 for all geophysical crews operating within the state for such person." Once the bond is filed and the authority to transact business in this state is effected, N.D.C.C. § 38-08.1-03.1(4) directs "the industrial commission [to] issue to the person desiring to engage in geophysical exploration or any subcontractor of that person a certificate showing that the bond has been filed and showing the name and address of the surety company and the name of the person designated resident agent for service of process." (Emphasis added.)

The emphasized language identified above was added to N.D.C.C. ch. 38-08.1 in 1987. See 1987 N.D. Sess. Laws ch. 429, §§ 1 and 2 [H. B. 1461]. The intent of H. B. 1461 was to "clarify and make clear that any subcontractor employed by a person intending to engage in geophysical exploration must be bonded." Hearing on H. 1461 Before the House Comm. on Natural Resources, 50th N.D. Leg. (February 5, 1987) (Statement of Lawrence Bender).

This is consistent with N.D.C.C. § 38-08.1-02 providing that "[a]ny person in this state engaged in geophysical exploration or engaged as a subcontractor of a person engaged in geophysical exploration shall comply with the . . . provisions of [N.D.C.C. ch. 38-08.1]; provided, however, that compliance with the provisions of this chapter by a crew or its employer constitutes compliance herewith by that person who has engaged the service of such crew, or its employer, as an independent contractor." Accordingly, when the first part of N.D.C.C. § 38-08.1-02 is read together with N.D.C.C. §§ 38-08.1-03.1 and 38-08.1-04, the law requires any person engaged in geophysical exploration to be bonded and any subcontractor of a person engaged in geophysical exploration to be bonded. This result is also consistent with this office's 1981 interpretation of N.D.C.C. § 38-08.1-02, which was reinforced by the 1987 Legislative Assembly with the enactment of H. B. 1461. Letter from Attorney General Robert O. Wefald to Rodney E. Lemieux (November 27, 1981); Hearing on H. 1461 Before the House Comm. on Natural Resources, 50th N.D. Leg. (February 5, 1987) (Written statement of Lawrence Bender)("[W]hile the attorney general in an informal opinion dated November 27, 1981, has held that subcontractors and independent contractors of persons engaged in geophysical exploration must obtain bonds, there is still confusion concerning the bonding requirements for persons engaged in geophysical exploration.")

ATTORNEY GENERAL'S OPINION 96-06

March 13, 1996

Page 3

The second part of N.D.C.C. § 38-08.1-02 provides that if a crew or its employer, hired by an entity as an independent contractor, complies with the provisions of N.D.C.C. ch. 38-08.1, [which would include its bonding requirements], then the hiring entity has complied with the chapter. This part, however, does not limit the bonding requirements for subcontractors under N.D.C.C. ch. 38-08.1, because the independent contractor's permit and its accompanying Industrial Commission certificate cover only the independent contractor and its employees, not any subcontractors the independent contractor may hire.

-EFFECT-

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

Heidi Heitkamp  
ATTORNEY GENERAL

Assisted by: David E. Clinton  
Assistant Attorney General

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