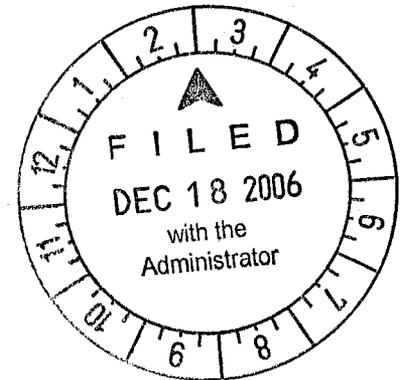


STATE OF OKLAHOMA
DEPARTMENT OF SECURITIES
FIRST NATIONAL CENTER, SUITE 860
120 NORTH ROBINSON
OKLAHOMA CITY, OKLAHOMA 73102



In the Matter of:

ODS File NO 07-031

Earthly Mineral Solutions, Inc.
Natural Mineral Processing Company,
Earthly Mineral Solutions Inc,
Roy D. Higgs, Frank L. Schwartz, and,
Ricky Lawton ,

Respondents.

APPLICATION TO EXTEND HEARING TO ALLOW ADEQUATE DISCOVERY

**OPPOSITION TO ENFORCEMENT DIVISION RECOMMENDATION
FINDINGS OF FACT AND CONCLUSION OF LAW,**

and REQUEST THE SAME BE VACATED.

PROCEEDINGS:

On November, 7, 2006, Shaun Mullins Esq., Enforcement Attorney, Oklahoma Department of Securities, filed an "Enforcement Division Recommendation." In accordance with said filing, the document indicated that Pursuant to Section 1-602 of the Oklahoma Uniform Securities Act of 2004 (Act), Okla. Stat. titl. 71, § § 1-101 through 1-701 (Supp. 2003). an investigation was conducted by the Enforcement Division of the Oklahoma Department of Securities (Department) into the activities of

[the Respondents.] Apparently as a result of the "investigation" the enforcement Division Recommendation with Findings of Fact, Authorities, and Conclusions of Law was submitted in support of the issuance of an order to cease and desist.

Respondents were not given any prior notice of the investigation or expected violation of any Securities Act in Oklahoma, or the order being requested prior to the entry of the order.

On the same date, November 7, 2006, Irving L. Faught, Administrator of the Oklahoma Department of Securities, filed a "Notice of Service of the Administrator [sic] and Affidavit of Compliance; as well as "Order to Cease and Desist and Notice of Opportunity for Hearing – Order."

The documents were received by Respondents via certified mail.

On November 15, 2006, Respondent, Rick Lawton [Lawton] send correspondence to Shaun Mullins Esq. [Petitioner] indicating:

"... Thank you for your call returning my call. I do not know the exact date that our staff signed for the registered letters which would be the date of service, but the thirty days from service to request a hearing will not give us sufficient time either retain an Oklahoma Attorney, or file the documents so I may be admitted to practice before the Administrator. I would appreciate an additional 30 day extension to request a hearing on the order..."

Petitioner's response indicated that the "Department does not agree to any extension," and was unclear as to who Respondent, Lawton was appearing for.

Lawton then responded on November 28, 2006 indicating in part as follows:

"... In essence all the letter was for is to ask, on behalf of all the named parties, and extension of an additional thirty days to file the appropriate responsive pleading..."

On December 6, 2006, Petitioner faxed and mailed Lawton correspondence indicating in part:

"...Your request, on behalf of all Respondents, for an extension of time in which to file a request for hearing of time is being granted by the Administrator. All Respondents will receive an additional Ten(10) days in which to file a request for hearing.."

Later the same day, Petitioner sent another fax indicating:

"..The purpose of this letter is to correct the previously delivered correspondence. The hearing in this matter is set for January 8, 2007. You will receive a copy of Order Setting Hearing reflecting the location, date and time of the hearing...."

LEGAL AUTHORITY:

Title 660, Department of Securities, indicates, in part, as follows:

"...§ 1-604. Administrative enforcement

A. If the Administrator determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this act or a rule adopted or order issued under this act or constituting a dishonest or unethical practice or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting a violation of this act or a rule adopted or order issued under this act or constituting a dishonest or unethical practice, the Administrator may:

1. Issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with this act;

2. Issue an order denying, suspending, revoking, or conditioning the exemptions for a broker-dealer under subparagraph d or f of paragraph 1 of subsection B of Section 18 of this act [Section 1-401 of this title] or an investment adviser under subparagraph c of paragraph 2 of

subsection B of Section 20 of this act [Section 1-403 of this title]; or

3. Issue an order under Section 9 of this act [Section 1-204 of this title].

B. An order under subsection A of this section is effective on the date of issuance. Upon issuance of the order, the Administrator shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The order must include a statement whether the Administrator will seek a civil penalty or costs of the investigation, a statement of the reasons for the order, and notice that, within fifteen (15) days after receipt of a request in a record from the person, the matter will be scheduled for a hearing and the hearing shall be commenced within fifteen (15) days of the matter being set for hearing. If a person subject to the order does not request a hearing and none is ordered by the Administrator, within thirty (30) days after the date of service of the order, the order, that may include a civil penalty or costs of the investigation if a civil penalty or costs were sought in the statement accompanying the order, becomes final as to that person by operation of law. If a hearing is requested or ordered, the Administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until final determination.

C. If a hearing is requested or ordered pursuant to subsection B of this section, a hearing must be held pursuant to the Administrative Procedures Act. A final order may not be issued unless the Administrator makes findings of fact and conclusions of law in a record in accordance with the Administrative Procedures Act. The final order may make final, vacate, or modify the order issued under subsection A of this section...." [emphasis added]

Additionally, SUBCHAPTER 9. HEARING PRACTICES AND

PROCEDURES, in part, as follows:

"...660:2-9-2. Setting or denial of hearing
Upon receipt of a written request for a hearing, as outlined in 660:2-9-1 of this Subchapter, the Administrator shall either set down the matter for **hearing within sixty days (60) from the receipt of the request** therefore or shall issue a written order denying hearing. [emphasis added]

660:2-9-3. Prehearing proceedings

(a) Time of notice. Notice of all hearings shall be given not less than ten (10) days in advance thereof to all persons directly affected by such hearing, but for good cause shown, any hearing may be rescheduled, provided all persons entitled to notice of such hearing are promptly advised thereof.

(b) Contents of notice. The notice of hearing shall contain the following information:

- (1) the time and place of hearing;
- (2) a statement of the matters to be considered thereat;
- (3) a statement of legal authority and jurisdiction under which the hearing is to be held;
- (4) a short plain statement of the matters asserted. If such statement of the issues is not sufficient, upon application a more definite and detailed statement will be furnished; and
- (5) a reference to the particular sections of law involved.

(c) Proceedings.

(1) Prehearing conference. As soon as is practicable after the request for hearing is received, the Administrator, or the Hearing Officer, shall schedule a prehearing conference and enter a scheduling order that is intended to expedite the disposition of the action; clarify matters under consideration, and insure the fair, orderly and efficient conduct of the proceedings. The parties shall confer in person or by telephone prior to the prehearing conference and attempt to prepare a single agreed scheduling order to submit to the Hearing Officer prior to the date of the scheduling conference. If the proposed scheduling order is acceptable to the Hearing Officer no scheduling conference need be held. If the parties are unable to agree, the Hearing Officer shall issue an appropriate scheduling order or hold a scheduling conference in person or by telephone. The scheduling order should establish at least the following:

- (A) a statement of the issues as they then appear;
- (B) a proposed plan and schedule of discovery;
- (C) any limitations proposed to be placed on discovery;
- (D) any other proposed orders with respect to discovery;
- (E) a preliminary list identifying all witnesses, documents and exhibits intended to be utilized at the hearing, including a brief statement of the testimony each witness will offer;
- (F) a schedule for filing and exchanging of any prehearing briefs;
- (G) any requirements or requests for discovery;
- (H) stipulations regarding introduction of documents;

- (I) identification of any expert witness intended to be called, including a brief summary of their expected testimony;
- (J) any matters of which official notice may be taken;
- (K) the date or dates and time for the final prehearing conference;
- (L) the date and time of the hearing; and
- (M) such other matters as may aid in the disposition of the matter...."

Finally, in the same Title, it is noted:

"...660:2-9-1. Hearings

- (a) Authority to hold hearings. The Administrator may hold hearings upon the request of any party to an individual proceeding.
- (b) Appointment of hearing officer. The Administrator may appoint a Hearing Officer to hold hearings whenever he deems appropriate under the circumstances. The Administrator shall enter into a written contract with each Hearing Officer appointed, which shall govern the terms of appointment.
- (c) Request for hearing. The request for hearing shall be in writing and shall specifically admit, deny, or state that the party does not have, and is unable to obtain, sufficient information to admit or deny each allegation of the Department. When a person intends in good faith to deny only a part of an allegation, the party shall specify so much of it as is true and shall deny only the remainder. A statement of a lack of information shall have the effect of a denial. Any allegation not denied shall be deemed admitted...."

APPLICATION TO EXTEND HEARING
TO ALLOW ADEQUATE DISCOVERY

It is clear under Title 660, especially 660-2-9-3, a hearing would require the right to adequate discovery, in preparation to the right to be heard.

As noted above, all orders, filings, and investigative inquiry has been entered, or administrated without prior notice to Respondents.

To further complicate the matter, as noted above under 660-2-9-1, a respondent wishing to have a hearing must provide the "request for hearing shall be in writing and

shall specifically admit, deny, or state that the party does not have, and is unable to obtain, sufficient information to admit or deny each allegation of the Department."

The pleading served upon Respondents were simply the order to cease and desist indicating that: " For purposes of this Order, the Administrator of the Oklahoma Department of Securities (Administrator) hereby adopts the Findings of Fact and Conclusions of Law set forth in the Enforcement Divisions Recommendation."

Respondent will treat the findings of fact, and conclusions of law as "each allegation" to address, until adequate discovery is available to address the specific allegations of a complaint.

Lawton therefore, requests an extension of any hearing pending the pre-hearing order, and adequate discovery regarding the investigative inquiries made in support of the recommendation.

**OPPOSITION TO ENFORCEMENT DIVISION RECOMMENDATION
FINDINGS OF FACT AND CONCLUSION OF LAW,
and REQUEST THE SAME BE VACATED.**

FINDINGS OF FACT:

1. EMS is a Nevada corporation with its principle place of business at 3850 Ponderosa Way, Las Vegas, Nevada.

ADMIT

2. [A]NMPC is a Nevada corporation with its principle place of business at 3850 Ponderosa Way, Las Vegas, Nevada. [B] NMPC is an affiliate of and is controlled by Respondents Higgs, Schwartz, and Lawton.

ADMIT

[A] NMPC is a Nevada Corporation with its principle place of business at 3850 Ponderosa Way, Las Vegas, Nevada.

DENY,

[B] [NMPC is an affiliate of and is controlled by Respondents Higgs, Schwartz, and Lawton. NMPC is a separate Nevada Corporation with eight stockholders, Higgs, Schwartz, and Lawton are elected annually as Board of Directors, and corporate officers.

3. Higgs is represented by EMS to be the Chairman of the Board, Chief Executive Officer and Treasurer of EMS.

ADMIT.

4. Schwartz is represented by EMS to be the President of EMS.

ADMIT

5. Lawton is represented by EMS to be the House Counsel, Secretary and Resident Agent of EMS

ADMIT.

6. [A] Beginning in or about January, 2004, EMS offered and/or sold interests in mineral claims (the "Mineral Claim Interests") in and/or from the State of Oklahoma. [B] Written materials distributed by EMS (the "Sales Literature") state that EMS holds mineral claims to approximately 19,000 acres of land near Las Vegas, Nevada. [C] The Sales Literature states that the land subject to the EMS mineral claims is owned by the United States and managed by the United States Bureau of Land Management (BLM). [D] The Sales

Literature states that EMS is the "Sponsor and owner of sale (sic) of certain fractional interest in mineral claims." [E]The Sales Literature states that EMS is offering the Mineral Claims Interest at Twenty Thousand Dollars (\$20,000.00) per acre.

A. ADMIT

EMS offered to sell a portion of their mining claims to interested buyers.

Some buyers were from Oklahoma¹

B. ADMITS

EMS has perfected ownership interest to approximately 19,000 acres of mining claims near Las Vegas, Nevada.

C. ADMITS

EMS represents that mining claims are real property interests wherein the ownership of the land is the United States Government and the land is Managed by the BLM, however, rights to enter and mine locatable minerals are with EMS or any other owner of claims.

D. ADMITS

EMS is selling a portion of their claims. The claims are often described as a portion of an entire claim (i.e. 10 acres of an 80 acres claim is 12.5% of the whole) However, all transfers were a divided individual interest to a specific number of acres described by legal meets and bounds in transfer

¹ EMS required all purchasers either personally or by their representative attend an information seminar in Las Vegas, Nevada.

deed. With all right to the mineral in the acres sold, described as undivided.

E. ADMITS

The sales price per acre ranged from \$10,000 to \$30,000 depending on purchase date.

7. [A] The Sales Literature represents that the Mineral Interests will increase in value through appreciation of land values near Las Vegas, Nevada. [B]The Sales Literature makes reference to the "constant growth" and "sprawl" of the city of Las Vegas and states: "The trend shows more than a trebling of values in a 6 year period, which equates to an average increase of roughly 35% per year." [C]The Sales Literature states that before the land can be sold by the BLM to accommodate expansion by the city of Las Vegas the BLM must purchase the Mineral Claim Interests.

A. DENY

The allegation is taken out of context. EMS represents that Mining Claims are based upon established "in ground" mineral value, as shown from 2200 assays of claims area (and spot price of minerals discovered on the claims; on going sales from claims will also show value of claims; and condemnation proceedings evaluate value of claims with consideration on highest and best use as an alternative to "proven reserve"; or a combination of all methods.

B. DENY

The allegation is taken out of context. EMS shows the auction prices for BLM land as published for sales after actions. EMS also shows average sale of land in Las Vegas area. The increase is shown from local publications.

C. ADMIT in part, and DENY in part

EMS represents that BLM has purchased mining claims when they desire to change the use of the ground. EMS represents that BLM must purchase or extinguish the mining claim interest in the ground if it is to be used for something different than mining.

8. [A] The Sales Literature states under the heading "What a Deal?" that the purchaser of a Mineral Claim Interest from EMS will receive a claim in an area pre-designated by EMS. [B] EMS further represents that it will use its "knowledge and expertise" to maintain the claims in good standing under "...all state and federal laws."

A. DENY

The allegation is taken out of context. The Sales Literature under "What's the Deal?" reads as follows: "...Purchaser may select the location of his/her particular claim(s) from a pre-designated area (Refer to Map 1) ..."

"...If the BLM chooses to action an area in which claims retained by EMS predominated, Purchaser shall have the right to either exchange with EMS its claim (s) for a claim (s) about to be auctioned, or retain the mineral claim (s) for further speculation. In the event there are more such Purchaser claims than EMS claims, swaps will be accomplished in order of seniority of acquisition by Purchaser(s)."

B. DENY

The allegation is taken out of context. In the "Agreement of Purchase and Sale and Joint Escrow Instructions, with EMS, it is stated:

" 10. Seller to maintain said claims. Seller represents that they are aware of all State and Federal Laws regarding perfecting and maintaining placer unpatented Mineral claims, and agree to use such knowledge and expertise to assist Buyer to maintain said claims in good standing in the future after the date of sale. Buyer will bear the out-of-pocket costs of Mineral Claim maintenance, and reimburse Seller in a timely fashion for expenses paid on the behalf of the Buyer if Seller so chooses to bill Buyer for these costs."

Also in the "First Right of Refusal to Process Claims" agreement with NMPC it states:

"...7. Annual Assessment Work . NMPC shall be responsible for the performance and filing of assessment work and intent to hold. At no time shall Owner make any public filings, claims, or in any other manner cloud or encumber NMPC's title or interest in the Claims...."²

- 9. [A] To provide investment returns, in addition to the appreciation in value of the Mineral Claim Interest, the Sales Literature states that a purchaser may grant NMPC a "right of first refusal" to extract the minerals from the purchaser's Mineral Claim Interest (the "Right of First Refusal Contracts). [B] In exchange for this "right of first refusal" the Mineral Claim Interest purchaser will receive a return of 7% per annum of the purchase price for a period of five years.

A. DENY

The literature explains as follows: " Aside from the purchase agreement with EMS, a separate agreement is entered into with Natural Mineral Processing

² The paragraph refers to annual assessment work but the law now requires only the payment of a maintenance fee.

Company, Inc ("NMPC") which provides that if a purchaser desires to process the minerals on its own claim (s), purchaser must first go to NMPC and allow it to perform the processing. As consideration, NMPC will pay monthly payments of \$2400 per acres per year paid monthly, or in the alternative the consideration would be 45% more land for the same purchase price.³

B. DENY

The monthly payment was a consideration for the NMPC agreement. The purchaser had a choice of extra land as consideration, or monthly income as the consideration for the agreement. Such choice relates only to the non-compete (first right of refusal) contract not the purchase of the land.

10. [A] The Sales Literature states that the founders of EMS have a history of successful businessmen. [B] The Sales Literature further states that Higgs founded EMS. [C] The Sales Literature does not disclose that in 1989 Higgs filed a petition in bankruptcy and was discharge in 1997. [D] The Sales Literature also fails to disclose that in 1991, Higgs was fined by the Arizona Corporation Commission for violation of the registration and anti-fraud provisions of he Arizona securities laws.

- A. ADMIT
- B. ADMIT
- C. ADMIT
- D. ADMIT

³ The additional land option was later offered to a future and past purchaser when purchasers asked if there was a way not to have taxable monthly income on transaction.

11. The mineral claims offered and sold by Respondents are not registered under the Act.

ADMIT

12. The Right of First Refusal Contracts offered and sold by Respondents are not registered under the Act.

ADMIT

CONCLUSIONS OF LAW:

1. The Mineral Claims offered and sold by Respondents are securities as defined by 1-102.32 of the Act.

DENY

2. The Right of First Refusal Contract offered and sold by Respondents are securities as defined by 1-102.32 of the Act.

DENY

3. Respondents have sold and continued to offer unregistered securities in the state of Oklahoma, in violation of Section 1-301 of the Act.

DENY

4. The Administrator has the authority to order Respondents to cease and desist from engaging in an act, practice, or course of business constituting a violation of the Act.

ADMIT

5. The Administrator has the authority to impose a civil penalty for violation of the Act.

ADMIT

6. It is in the public interest to order Respondents to cease and desist from engaging in an act, practice or course of business constituting a violation of the Act.

DENY

CONCLUSION:

The sale of 100% of EMS's interest to divided acres of Mining Claims do not constitute a transaction of a security. The expectation of profit from the purchase is not dependent on the Seller.

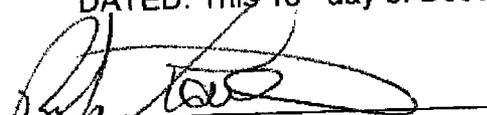
The payment of consideration for a "first right of refusal" (non-compete) agreement is not a security transaction. The contractual relationship involves restriction of sales of minerals from claims purchased that would compete with the operating company NMPC, any consideration to land purchaser relates to the non-compete agreement not a purchase of land.

The cease and desist order should be vacated.

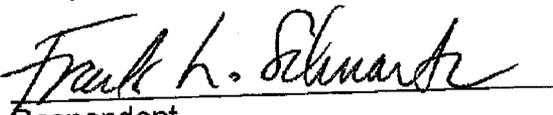
Any hearing hereon should allow sufficient time to have full discovery and the anticipated hearing for 8 January 2007 would not be sufficient.

RESPECTFULLY SUBMITTED:

DATED: This 18th day of December 2006.


Respondent
Ricky Lawton


Respondent
Roy D. Higgs


Respondent
Frank L. Schwartz

EARTHLY MINERAL SOLUTIONS INC.

FACSIMILE TRANSMITTAL SHEET

TO:	Shaun Mullins Esq	FROM:	Rick Lawton Esq
COMPANY:	Dept. of Securities State of Oklahoma	DATE:	12/18/2006
FAX NUMBER:	405-280-7742	TOTAL NO. OF PAGES INCLUDING COVER:	2 / 6
PHONE NUMBER:	405-280-7700	SENDER'S REFERENCE NUMBER:	
RE:	ODS File No. 07-031	YOUR REFERENCE NUMBER:	

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

NOTES/COMMENTS:

Please find attached my response to you 22 November 2006 fax. RL

[CLICK HERE AND TYPE RETURN ADDRESS]