ENVIRONMENTAL QUALITY COUNCIL
DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF CHEVRON MINING INC.'S (f/k/a THE PITTSBURG & MIDWAY COAL MINING COMPANY) WELCH MINE, PERMIT NO. 497-T4	)	DOCKET NO. 07-4600

CHEVRON MINING INC.'S PRE-HEARING MEMORANDUM

COMES NOW Chevron Mining Inc. (f/k/a The Pittsburg & Midway Coal Mining Company (P&M) and hereinafter as "Chevron Mining" except where P&M is used in a quotation), by and through its undersigned attorneys, Poulson, Odell & Peterson, LLC, and Brown, Drew & Massey, LLP, and hereby submits its Pre-Hearing Memorandum and states to the Environmental Quality Council the following:

SUMMATION OF THE FACTS

Chevron Mining acquired the Welch No. 1 North Mine, Permit No. 497-T2 on or about May 10, 1999. (Welch No. 1 North Mine, Permit 497-T3 to T4 Renewal Application, (hereinafter the "T4 Renewal Application"), at tab marked "License"). On or about July 22, 1999, Chevron Mining entered into that agreement styled "Surface Use Agreement Surface Mine Reclamation" with Bluegrass, dated July 22, 1999 (the "Surface Use Agreement"). That agreement covered certain real property located in Sheridan County, Wyoming, to wit:

A tract of land situate in Lot 4 and the SW1/4 of the NW1/4 of Section 1, Township 57 North, Range 84 West, 6th P.M., Sheridan County, Wyoming, containing 56.6 acres, more or less. (The "Bluegrass Property").

On or about October 15, 1999, Chevron Mining approached Bluegrass to purchase the Bluegrass Property along with other properties.

On or about October 21, 1999, various representatives of Triton Coal met with Chevron Mining. Mr. Willson attended that meeting as a representative of Triton Coal. Triton Coal and Mr. Willson learned from Chevron Mining that it was attempting to purchase certain properties, including the Bluegrass property, from Bluegrass.

On or about October 28, 1999, Bluegrass accepted Chevron Mining's proposal to purchase the subject properties. A purchase and sale agreement was drafted by November 8, 1999, but Chevron Mining and Bluegrass never closed the transaction.

On or about November, 1999, DEQ determined that reclamation was complete. (Approval of the Renewal for Permit No. 497-T4, TFN 4 4/211, Aug. 30, 2005).

On or about September 11, 2000, Chevron Mining's Form 1 for the T3 Renewal was approved by the DEQ. Bluegrass neither objected to the application, nor DEQ's approval of the application.

On or about June 14, 2001, John Willson purchased the Bluegrass Property. Mr. Willson purchased the Bluegrass Property with knowledge of, and subject to, the Surface Use Agreement and the mining permit.

Chevron Mining subsequently began negotiations to exchange certain properties with the Department of the Interior, Bureau of Land Management. Mr. Willson filed a protest to that exchange. Mr. Willson offered to withdraw his protest, however, if

Chevron Mining would instead agree to exchange properties with him, at a value of almost 10 to 1 in his favor. He further threatened to "go to the papers" and "make a stink" about Chevron Mining.

Sometime in May, 2003, Chevron Mining informed Mr. Willson that it was rejecting his proposal. Mr. Willson informed Chevron Mining that it would be "sorry" and that he intended to make a "big stink."

On or about May 10, 2005, Aqua Terra Consultants, Inc. submitted Chevron Mining's T4 Renewal Application to DEQ. The application was submitted for the sole purpose of obtaining a valid permit for the required bond period. (Approval of the Renewal for Permit No. 497-T4, TFN 4 4/211, Aug. 30, 2005).

Mr. Willson was provided with notice of the T4 Renewal Application. (T4 Renewal Application, at tab marked "Notification"). The T4 Renewal Application included a copy of the July 22, 1999 Surface Use Agreement. (T4 Renewal Application.) The T4 Renewal Application stated that Permit No. 497-T2 was transferred to Chevron Mining on May 10, 1999. (T4 Renewal Application, at tab marked "License"). The T4 Renewal Application then specifically stated that:

> shortly after the transfer of the mine permit to P&M, [it] negotiated a new Surface Use Agreement for Surface Mine Reclamation tabbed as Legal Document 1 to allow long-term access and reclamation activities for an initial 5 year term renewable thereafter for 5 successive one year terms.

(T4 Renewal Application, at tab marked "Right to Mine" (emphasis added)). Mr. Willson neither objected to the application, nor DEQ's approval of that application, until one year later.

On or about May 8, 2006, Mr. Willson's attorney, Dan B. Riggs, submitted a complaint to Bob Giurgevich, District III Assistant Supervisor, DEQ Land Quality Division, alleging a "serious and substantial Permit violation by P&M Coal on the [Welch Permit No. 497-T4]." Mr. Willson alleged that the "earliest possible release date for the reclamation bond is September 2011." Mr. Willson further claimed that the Surface Use Agreement would terminate on July 21, 2009. Accordingly, Mr. Willson claimed that neither Chevron Mining nor the DEQ would be permitted to enter upon the Bluegrass Property for reclamation purposes. He therefore asserted that Chevron Mining's permit was issued in error.

On or about May 19, 2006, Richard A. Chancellor, Administrator, Land Quality Division, responded to Mr. Riggs' May 8, 2006 complaint. Mr. Chancellor ruled that the lands were "permanently seeded in November 1999. Thus, the minimum 10 year bond responsibility period runs through November 2009, not September 2011 as stated in your letter." He also ruled that there was "ample time" before July 2009 for verification of final bond release performance standards. Finally, he rejected Mr. Willson's misrepresentation claim.

On or about July 26, 2006, Mr. Willson responded to the May 18, 2006 rule from the Administrator, Land Quality Divisions. Mr. Willson's response was mailed eight (8) days after the deadline to file an appeal to the Council. Mr. Willson restated his earlier arguments, and further argued that interseeding had restarted the revegetation bond clock. He requested an "informal review although I believe a hearing on this is justified and

preferred" while simultaneously requesting the Administrator to "consider this letter as a complaint pursuant to Wyo. Stat. § 35-11-701."

Mr. Willson subsequently sent more letters or complaints to the DEQ dated August 23, 2006 and August 30, 2006. Chevron Mining was not copied on those letters.

On or about September 15, 2006, DEQ responded to Mr. Willson's August letters and determined again that it "still do[es] not find a violation of the Wyoming statutes or Land Quality Division's Coal Rules and Regulations." (Letter from R. Chancellor to J. Fleischman, Office of Surface Mining, Sept. 15, 2006).

On or about September 20, 2006, Mr. Willson apparently wrote again to the DEQ. (Letter from J. Corra to J. Willson, Oct. 16, 2006). Chevron Mining was not copied on the September 20, 2006 letter. Mr. Corra, Director of the DEQ, affirmed Mr. Chancellor's earlier rulings that Chevron Mining had complied with applicable statutes, rules and regulations. (*Id.*) Mr. Corra nonetheless elected to explore further whether Chevron Mining "deliberately made false statements to DEQ." (*Id.*)

Chevron Mining's permit application was both factually and legally true and correct. Mr. Willson was provided with notice of the T4 Renewal Application. (T4 Renewal Application, at tab marked "Notification"). The T4 Renewal Application included a copy of the Surface Use Agreement. (T4 Renewal Application, at tab marked "Legal Document 1"). The T4 Renewal Application stated that Permit No. 497-T2 was transferred to Chevron Mining on May 10, 1999. (T4 Renewal Application, at tab marked "License"). The T4 Renewal Application then specifically stated that:

> shortly after the transfer of the mine permit to P&M,[it] negotiated a new Surface Use Agreement for Surface Mine Reclamation tabbed as Legal Document 1 to allow long-term access and reclamation activities for an initial 5 year term renewable thereafter for 5 successive one year terms.

(T4 Renewal Application, at tab marked "Right to Mine"). Both Mr. Willson and DEQ knew the Surface Use Agreement might expire three months before Chevron Mining's bond release. Mr. Willson neither objected to the application, nor DEQ's approval of that application, until one year later.

By letter dated September 20, 2006, Mr. Willson advised Administrator Chancellor that he did not agree with the September 15, 2006 Decision Letter. Mr. Willson requested informal review of the decision by the Director. (Sept. 20, 2006 letter from Appellant to Administrator Chancellor). Appellant again elected to not copy Chevron Mining with his letter. (*See id.*). Mr. Willson did copy his attorney though.

At some point between September 20, 2006 and October 16, 2006, John Corra, Director of the DEQ, commenced an informal review pursuant to Mr. Willson's September 20, 2006 request. On October 16, 2006, Director Corra filed a decision letter resolving two of the three basic issues raised by Appellant in his various letters. First, Corra affirmed Administrator Chancellor's prior decision regarding surface access *(i.e.,* that Chevron Mining has legal access, and it should acquire continued access 90 days prior to expiration of the Surface Use Agreement). Director Corra therefore affirmed Administrator Chancellor's decision that Chevron Mining was in compliance with the Permit and applicable laws and regulations. That decision rendered moot the question of whether Chevron Mining "deliberately made false statements to DEQ"—it is impossible

for Chevron Mining to lie about its compliance when the Director has ruled that Chevron Mining was in compliance. Second, the Director reversed and vacated Administrator Chancellor's decision concerning reclamation of the cut bank. Director Corra required Chevron Mining to submit a plan of correction for the sloped areas at issue. Appellant made no attempt to appeal these decisions until April 13, 2007.

Further, Chevron Mining worked to resolve the Mr. Willson's alleged concern that he wished to build a house on the subject property. Chevron Mining, after consultation with Mr. Willson and the DEQ, offered to amend the permit to allow him to build a house. Mr. Willson has never responded to this offer.

On the third issue, Director Corra withheld a decision pending further investigation on "[t]he questions of whether the operator deliberately made false statements to DEQ" in order to obtain Permit approval, and generally whether there was any culpability on Chevron Mining's part. (Oct. 16, 2006 Decision Letter from Director Corra to Willson). He withheld a decision on this issue despite finding that Chevron Mining was in compliance with its permit and the applicable law.

On or around November 20, 2006, Director Corra and Administrator Chancellor held an informal conference with Chevron Mining pursuant to Wyo. DEQ Rules & Regs., Practice & Proc., Ch. 6, § 3. At this hearing, the DEQ accepted statements from Chevron Mining in order to determine any culpability on the part of Chevron Mining in connection with its most recent Permit renewal application.

On January 3, 2007, Director Corra issued his decision on the third issue. Following his investigation, Director Corra was "satisfied that there [were] no deliberate

attempts to deceive the DEQ" when Chevron Mining sought renewal of its Permit. Moreover, "[h]ad DEQ addressed the documentation issues during review of the renewal application, the appropriate remedy" would not have been to deny the renewal application, but rather "to condition renewal to require clarification of the access documentation and require a good faith effort to resolve the issue prior to the expiration date of the current agreement," since "taking any other action would only transfer responsibility to reclaim the area to the DEQ and not resolve the access matter." Therefore, there was no basis to revoke the Permit under either W.S. § 35-11-409 or 412. Director Corra also noted in his decision letter that Chevron Mining had always operated under a "Surface Owner Consent" document in addition to the Surface Agreement, and that the consent document (which has no expiration date) "is the primary instrument through which DEQ determines an operator's right to disturb and reclaim land." (Jan. 3, 2007 Decision Letter from Director Corra to Willson). Director Corra also found that "an agreement has been in place since the time of original permit issuance in 1979, and has always had a 10-year term. In fact, it has been renewed twice." *(Id.)*

By letter dated January 11, 2007, filed with the EQC by Director Corra and received by the Council on January 19, 2007, Mr. Willson wrote to Director Corra the following: "Dear Mr. Corra: I do not agree with your decision concerning my complaint and hereby request an appeal to the Environmental Quality Council. Could you please provide me with dates and any procedural requirements as I need to coordinate this meeting with my attorney." (Jan. 11, 2007 letter from Willson to Director Corra). Yet

again, he decided to not copy Chevron Mining on his letter. He has never served this letter upon Chevron Mining. His letter was copied, however, to his attorney.

On April 13, 2007, Mr. Willson's attorney, Dan Riggs, filed with the Council a document entitled "Appeal." The action upon which a hearing is requested is identified as "the lack of action by the Department of Environmental Quality concerning the Pittsburg & Midway Coal Mining Company [sic] Welch Mine Permit, Permit No. 497-T4." Some of the claims now being made by Appellant are being raised for the first time.

LEGAL ISSUES

1. Was the DEQ's decision correct and supported by the law and the normal practice of the DEQ?

2. Is it proper for the Appellant to raise issues not addressed in the WDEQ decision?

LIST OF EXHIBITS

Attached hereto as **Exhibit A** is a list of the exhibits to be put forward by Chevron Mining. Chevron Mining reserves the right to submit additional exhibits as necessary to respond to the arguments and factual presentation of Appellant. Once the issues are clearly delineated at the pretrial hearing, the Appellant's issues will hopefully be narrowed so that Chevron Mining can properly list any additional exhibits. Chevron Mining may use as an exhibit any document found in the file of the DEQ/LQD on this matter, any document referenced by the DEQ/LQD in their letters affecting this matter, any exhibit listed or used by any other party to this matter, and may use other evidence or documents developed or discovered after the date of this pre-hearing memorandum.

LIST OF WITNESSES

The list of witnesses with a description of their potential testimonies is attached as **Exhibit B** hereto. Chevron Mining reserves the right to submit additional witnesses as necessary to respond to the arguments and factual presentation of Appellant. Once the issues are clearly delineated at the pretrial hearing, the Appellant's issue will hopefully be narrowed so that Chevron Mining can properly list any additional witnesses. Additionally, Chevron Mining may call any witness listed by any other party, and may also call any witness that may be needed for rebuttal testimony.

Respectfully submitted, this 28th day of February, 2008.

Chevron Mining Inc.

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Its Attorneys

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of February, 2008, a true and correct copy of the foregoing **CHEVRON MINING INC.'S PRE-HEARING MEMORANDUM** was served as follows:

John Morris, Presiding Officer Department of Environmental Quality Environmental Quality Council Herschler Building, Room 1714 122 West 25th Street Cheyenne, WY 82002	[ ] U.S. Mail [X] Overnight FedEx [ ] Electronic Mail [ ] Hand Delivery
John Burbridge Assistant Wyoming Attorney General Wyoming Attorney General's Office 123 Capitol Building Cheyenne, WY 82002	[X] U.S. Mail [ ] Overnight FedEx [ ] Electronic Mail [ ] Hand Delivery
Tom Klepperich LONABAUGH AND RIGGS, LLP P.0. Box 5059 Sheridan, WY 82801	[X] U.S. Mail [ ] Overnight FedEx [ ] Electronic Mail [ ] Hand Delivery