

**BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING**

FILED

DEC 03 2007

**IN THE MATTER OF THE APPEAL OF
CHEVRON MINING INC.'S
WELCH MINE, PERMIT NO. 497-T4
(F/K/A THE PITTSBURG & MIDWAY
COAL MINING CO.**

)
)
)
)
)

Terri A. Lorenzon, Director
Environmental Quality Council
DOCKET NO. 07-4600

ORDER DENYING MOTION TO DISMISS

THIS MATTER has come before the Environmental Quality Council on September 26, 2007, in Casper, Wyoming upon Chevron Mining Inc.'s (Chevron) motion to dismiss with Deborah Baumer, Hearing Examiner.

The Council members present at the hearing were John Morris, Presiding Officer, Richard C. Moore P.E., Dennis Boal, Sara Flitner, Kirby Hedrick, David Searle, and Mark Gifford. Also present for the Council were Terri A. Lorenzon, Director/Attorney and Bridget Hill, Assistant Attorney General. The Petitioner, John C. Willson, represented by Dan Riggs of Lonabaugh & Riggs, LLP, Sheridan, Wyoming, was present at the hearing. The Permittee, Chevron, was represented by Scott M. Campbell of Poulson, Odell & Peterson, LLC of Denver, Colorado and Tomas F. Reese of Brown, Drew & Massey, LLP of Casper, Wyoming, were present at the hearing. The Department of Environmental Quality, Land Quality Division (DEQ), was represented by John S. Burbidge, Senior Assistant Attorney General was present at the hearing. The Council being otherwise well advised in the premises, the Council finds and orders as follows:

- 1. Issues:** Chevron argued that the Petitioner's appeal should be dismissed on the following grounds:
 - A. The Director's decision was complete and final on October 16, 2006 and the Petitioner failed to appeal that decision in a timely manner.
 - B. Even if the Director's October 16, 2006 decision letter was not a final agency action and the final agency action was January 3, 2007, the Petitioner failed to timely appeal.
 - C. The Petitioner's January 11, 2007 letter had no legal effect.
 - D. The Petitioner failed to follow the DEQ RULES OF PRACTICE AND PROCEDURE.

2. Findings:

A. The Council finds that the Director's October 16, 2006 letter was not a final action. Specifically, the letter indicated that the Director was still exploring the matter and would inform the Petitioner of the results of his further exploration. Thus, the Petitioner was not required to appeal within 60 days of the Director's October 16, 2006 letter.

B. The Council finds that the Director's January 3, 2007 decision letter was a final action. Therefore, under the DEQ RULES OF PRACTICE AND PROCEDURE, Ch. 1, § 16, the Petitioner was required to make an appeal to the Council within 60 days of that decision.

C. The Council finds that the Petitioner's January 11, 2007 letter was sufficient to be considered an appeal to the Council under the DEQ RULES OF PRACTICE AND PROCEDURE, Ch. 1, § 16. Accordingly the Petitioner's appeal was timely under the DEQ RULES OF PRACTICE AND PROCEDURE.

3. Order:

It is hereby ordered that Chevron Mining Inc.'s motion to dismiss is denied.

DATED this 3 day of December, 2007.

John Morris, Presiding Officer
Environmental Quality Council
Herschler Building, Room 1714
122 West 25th Street
Cheyenne, WY 82002
Tel: (307) 777-7170
Fax: (307) 777-6134

CERTIFICATE OF SERVICE

I, Alyx Reed, certify that at Cheyenne, Wyoming, on the 3rd day of December, 2007, I served a copy of the foregoing **ORDER** by depositing copies of the same in the United States mail, postage prepaid, duly enveloped and addressed to:

Tom Klepperich
P.O. Drawer 5059
Sheridan, WY 82801

Scott M. Campbell
Poulson, Odell and Peterson, LLC
1775 Sherman St., Suite 1400
Denver, CO 80203


Thomas F. Reese
Brown, Drew & Massey, LLP
159 N. Wolcott, Suite 200
Casper, WY 82601

also to the following persons via interoffice mail:

John Burbridge
Office of Attorney General
123 State Capitol
Cheyenne, WY 82002

Rick Chancellor
Administrator
Land Quality Division, DEQ
122 West 25th Street, 3-W
Herschler Building
Cheyenne, WY 82002

John Corra
Director
Department of Environmental Quality
122 W. 25th St., Herschler Bldg.
Cheyenne, WY 82002



Alyx Reed

Environmental Quality Council
122 W. 25th Street,
Herschler Bldg., Rm. 1714
Cheyenne, WY 82002
Tel: (307) 777-7170
Fax: (307) 777-6134