

EXHIBIT TO

IN THE MATTER OF THE APPEAL)
OF THE PITTSBURG & MIDWAY)
COAL MINING CO.'S WELCH)
PERMIT NO. 497-T4.)

) Docket No.: 07-4600
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**MEMORANDUM IN SUPPORT OF
MOTION OF THE PITTSBURG & MIDWAY COAL MINING CO.
TO DISMISS PURPORTED APPEAL, WITH PREJUDICE**

EXHIBIT "A"

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May 8, 2006

Mr. Bob Giurgevich
District III Assistant Supervisor
DEQ Land Quality Division
1866 S. Sheridan Ave.
Sheridan, WY 82801

RE: P & M Coals Welch Permit No. 497-T4

Dear Mr. Giurgevich:

We represent John C. Willson, owner of the land described below and successor to Bluegrass Coal Development Company under a Surface Use Agreement Surface Mine Reclamation dated July 22, 1979 (a copy enclosed for ease of reference).

This letter is to notify you of a serious and substantial Permit violation by P & M Coal on the above mentioned Permit. This will require that the DEQ Land Quality Division revoke P & M Coals Welch Permit No. 497-T4 and the forfeiture of the performance bond.

P & M Coal has a Surface Use Agreement Surface Mine Reclamation with our client, John C. Willson, on a tract of land situated 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, WY, containing 56.6 acres, more or less. This Agreement terminates at the very latest the 21st day of July 2009. As your records will reflect, the earliest possible release date for the reclamation bond is September 2011. P & M has no legal right to enter the Willson property after July 21, 2009. Additionally DEQ has no right to enter the property for inspections after this date.

In the Permit P & M has committed to fulfill all requirements of the law, rules, and regulations applicable to the Permit. P & M cannot legally fulfill this commitment (these requirements are listed in Wyoming Statutes Title 35, Chapter 11, Article 4). At the time of final bond release, if the permitted area could be inspected (it can't) and the reclamation found to be inadequate for release of the bond, P & M would have no legal right to enter the property to remediate these deficiencies.

The DEQ Land Quality Division could not and would not have issued a Permit if it had known P & M had no legal right to the surface property to fulfill all requirements of the Permit on the surface land disturbed. DEQ can and is required to revoke a permit (W.S. 35-11-409) if:

- (a) The director shall revoke a mining permit if at any time he determines that the permit holder intentionally misstated or failed to provide any fact that would have

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resulted in the denial of a mining permit and which good faith compliance with the policies, purposes, and provisions of this act would have required him to provide.

(b) Unless an emergency exists, and except as otherwise provided in this act, the revocation of a permit shall become effective upon thirty (30) days' notice to the operator. In an emergency, a special meeting of the council may cause a revocation to become effective upon receipt of notice by the permit holder.

(c) When an inspection carried out pursuant to the enforcement of this act reveals that a pattern of violations by any surface coal mine operator of any requirements of this act or any permit conditions required by this act has existed, and that these violations were caused by the unwarranted failure of the operator to comply with these requirements or permit conditions, or that these violations are willfully caused by the operator, the director shall issue an order to the operator to show cause why the permit should not be suspended or revoked. Opportunity for a public hearing before the council shall be provided. If a hearing is requested the director shall inform all interested parties of the time and place of the hearing. Upon failure of the operator to show cause why the permit should not be suspended or revoked, the council shall suspend or revoke the permit.

P & M knew that it did not have adequate surface control many years ago, at the absolute latest when the time clock was started for the final bond release. You may also inquire as to whether P & M has reported this deficiency as required by "35-11-411 Annual report"

P & M cannot fulfill the requirements of the Permit. This is a violation of the Permit W.S. 35-11-421, Bond Forfeiture Proceedings, (a) states "If the director determines that a performance bond should be forfeited because of any violation of this act, he shall, with the approval of the council, make formal request of the attorney general to begin bond forfeiture proceedings.

We respectfully request that you take the necessary and required actions against P & M for the willful and knowing disregard of the requirements of their Permit.

Very truly yours,

LONABAUGH AND RIGGS, LLP

By: Dan B. Riggs

DBR:skh

Enclosure

cc: John C. Willson

Bob Utter, Pittsburgh & Midway Coal Mining Company