

**EXHIBIT TO**

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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**

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**EXHIBIT "C"**

**JOHN C. WILLSON  
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Telephone: 307-682-8261**

July 26, 2006

**Mr. Richard A. Chancellor  
Administrator  
Land Quality Division  
Herschler Building  
122 West 25<sup>th</sup> Street  
Cheyenne, WY 82002**

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

Dear Mr. Chancellor:

I am in receipt of a copy of your letter dated May 19, 2006, directed to my attorney, Dan Riggs. We believe there continues to be a problem with this permit and that P&M has violated the law.

You state in your letter that the minimum 10-year bond responsibility period runs through November 2009. I believe this is in error. According to P&M Coals 2005-2006 Annual Report Area B Reclamation History Sheet (my land), the reclaimed area has been interseeded in 2001, 2003, and 2005. According to P&M Coals 2005-2006 Annual Report Area C Reclamation History Sheet (BLM land), the reclaimed area has been interseeded in 2001, 2002, 2003, 2004 and 2005. To quote previous Annual Reports these interseedings were done because "Revegetated grasses came in very spotty". Clearly P&M Coals' attempts to re-vegetate both of these areas have been unsuccessful. Consequently the earliest possible release date for both Area B and Area C should be 2015, 10 years from the last interseeding. Neither Area B or C are yet capable of sustaining acceptable plant growth without constant interseeding and grooming on P&M Coals' part. One can only assume that if P&M discontinued this constant care, the revegetated grasses would continue to come in very spotty and not meet the minimum requirements for bond release. Ten years are required to demonstrate that this reclamation effort is self-sustaining before bond release can be considered. P&M cannot interseed for nine years and expect to have their bond released. At least we agree on the fact that whether or not the responsibility period runs through November 2009 per your letter or November 2015, P&M does not have legal access to the property after July 2009. What will P&M do for access to the rest of the Permitted Area not on my land should it require inspection or further remediation after July

2009? I do note that the Public Notice as approved by DEQ on August 30, 1995 and later published in The Sheridan Press states that reclamation was estimated to continue until 2010. It is my position that P&M has breached my lease agreement and has no access at all, however, under the best of circumstances for P&M it has no access after July, 2009, and that is very inadequate for purposes of this Permit.

I also believe that the inspection and necessary field studies associated with the verification of final bond release cannot be started until the end of the 10-year period. If this inspection was completed six months to five years before the 10-year bond responsibility period and the revegetation efforts continued to fail or significant erosion occurred after the inspection, would DEQ be justified in releasing the bond? If this inspection can occur before the end of the 10-year bond responsibility period, what is to prevent the coal company from having the field studies completed on a troubled area (acid soils recently limed) immediately after reseeding, knowing that in another year or two the problem will re-occur. Neither coal companies nor the DEQ can arbitrarily select a time far in advance of the 10-year bond responsibility period to conduct these studies, too much could happen in the period between the inspection and 10-year bond responsibility period. Is it DEQ's intention to inspect the entire Permit area accessed through my land prior to July 2009 and release it at a later date such as November 2015?

Wyoming Statutes Title 35, Chapter 11, Article 406, requires that "A sworn statement stating that the applicant has the right and power by legal estate owned to mine from the land for which the permit is desired". This requires a company to have and maintain surface control to all the land necessary to fulfill all the permitted mining and reclamation responsibilities. Apparently, P&M issued a sworn statement to this affect, a statement they knew they could not fulfill. P&M entered into a Surface Use Agreement for a maximum period of ten years. Had they disturbed, reclaimed and seeded my property in the first week of the Surface Use Agreement, they still wouldn't have fallen within the 10-year bond responsibility period needed to fulfill the requirements of the law. P&M necessarily falsified their sworn statement; they did not have the required surface control necessary to complete the permitting requirements.

Interestingly enough, you do not see this as a violation of the law. According to your logic, a coal company could sign a fixed 10-year Surface Use Agreement, permit the mine, mine on this land for seven years, grade the affected area in year eight, seed in year nine and then just walk away from the balance of the 10-year bond responsibility period. Would DEQ issue a permit under these circumstances if they knew in advance there was not adequate surface control to complete the reclamation responsibilities? I doubt it. Would DEQ not consider this a violation of the law and the permit? I doubt it. DEQ would take action to ensure that all permitting obligations can be met. How is the current situation any different than this hypothetical one?

Having made a brief review of the DEQ files on the subject Welch Permit No. 497-T4, I note a number of matters that would appear to conflict with the conclusions reached in your May 19, 2006 letter directed to my attorney, Dan Riggs. For example, the Public Notice as published in The Sheridan Press in the fall, 2005, and as approved by DEQ on August 30, 2005, clearly

stated that it was estimated that reclamation would continue on the subject lands until 2010. Interestingly, however, a letter dated May 3, 2006 from the DEQ to P&M concludes that the small tracts, amounting to less than one acre each, had in fact been permanently reclaimed. The only tract that P&M has reclaimed on me is in fact less than one acre. I assume, therefore, that the DEQ has concluded that the reclamation on my land has been achieved. However, for other lands this is apparently not the case. A report dated March 7, 2006, indicates that much of the reseeding in areas "B" and "C" has been unsuccessful. I note, for example, that in area "C", reseeding has taken place every year since 2001, but it has all been unsuccessful. How then could one justify P&M not having access to area "C" through at least the estimated reclamation through 2010? Indeed, the 10-year reclamation period should in fact start from no earlier than November 2005, according to the materials within your files.

The conclusion reached in the "State Decision Document" regarding this permit that P&M has accurately stated the facts and issued an accurate statement as to the completeness and accurateness of its application is in error. P&M has in fact not submitted accurate information to the DEQ because P&M does not have access to the land to be reclaimed for a sufficient period of time to insure that reclamation. At the time P&M Coals Welch Permit No. 497-T4 (over 750 acres) was issued, P&M could not assume that a fixed ten years would be adequate to complete the permit obligations and should have recognized the need for additional time should there be problems. If the DEQ made an error in approving P&M's application for a permit, one can understand that because the DEQ relies on P&M to be thorough and accurate. However, since the DEQ now knows that P&M was neither thorough nor accurate, I insist that the DEQ take action against P&M's improperly issued Permit.

I am hereby requesting an informal review although I believe a hearing on this is justified and preferred. All surface landowners, all coal companies and the Office of Surface Mining should be made aware of (a) surface control is not required for the entire bonding period, (b) that the inspection and necessary field studies associated with the verification of final bond release can be completed years before the 10-year bond responsibility period and at the company's and DEQ's convenience, (c) making false sworn statements in a permit application is not a violation of the law and is perfectly acceptable, and (d) DEQ is willing to change the law or its interpretation to suit the situation as needed. I truly believe that this cannot be DEQ's stance on this case. I 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 and we look forward to meeting with you on this matter.

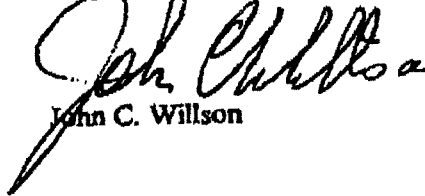
In order that there is no mistake about my position in this matter, please consider this letter as a complaint pursuant to Wyo. Stat. §35-11-701. I contend that P&M has violated the provisions of Article 4 of the Wyoming Environmental Quality Act. Specifically, the P&M application that resulted in the P&M Coals Welch Permit No. 497-T4 does not comply with Wyo. Stat. § 35-11-406(a)(ii) in that P&M does not have sufficient legal estate by which to access the lands that are the subject of the subject permit for the duration required under the permit. In addition, the subject permit is in violation of Wyo. Stat. § 35-11-406(n)(i) and (ii) in that the

application is neither accurate nor complete and the reclamation plan cannot accomplish the reclamation as required.

I also call to your attention the provisions of Wyo. Stat. § 35-11-409(a) requiring revocation of the subject permit upon a determination that the permit holder intentionally misstated or failed to provide relevant facts to your office.

On the foregoing basis, I hereby lodge a complaint under Wyo. Stat. § 35-11-701 and specifically request that your office issue a Notice of Violation to P&M concerning the above described permit and that I, and my counsel, be allowed to participate in any hearing held before your office or the Environmental Quality counsel concerning this matter.

Very truly yours,



John C. Willson

cc: Thomas F. Reese, Esq.  
Dan B. Riggs, Esq.