

EXHIBIT TO

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

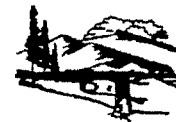
) Docket No.: 07-4600
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**MEMORANDUM IN SUPPORT OF
MOTION OF THE PITTSBURG & MIDWAY COAL MINING CO.
TO DISMISS PURPORTED APPEAL, WITH PREJUDICE**

EXHIBIT "E"



Department of Environmental Quality



To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.

Dave Freudenthal, Governor

John Corra, Director

August 23, 2006

CERTIFIED MAIL – RETURN RECEIPT REQUESTED 7005 0390 0001 7735 5334

John C. Willson
P.O. Box 2244
Gillette, Wyoming 82717

RE: The Pittsburg & Midway Coal Mining Company (P&M Coal), Welch Mine, Permit No. 497-T4

Dear Mr. Willson:

Thank you for your letter of July 26, 2006 concerning possible violations at the Welch Mine. As requested in your letter, we consider your letter to be a written complaint and will proceed accordingly. I will summarize the issues you state in your letter that lead you to believe the mine has violated the Wyoming Environmental Quality Act and the Land Quality Division Coal Rules & Regulations. If I have misstated an item or overlooked an item please contact me immediately.

1. The end of the ten year bond clock as stated in my letter of May 19, 2006 is incorrect since the interseeding conducted by the mine indicates the reclamation has failed and the bond clock needs to restart after the final successful seeding.
2. The required sworn statement filed by P&M Coal stating the applicant has the right and power by legal estate owned to mine from the land is invalid since the current surface lease expires before the end of the bond clock. You contend this is a violation of W.S. §35-11-406(a)(ii)
3. The State Decision Document concerning the accuracy and completeness of the application is in error because P&M Coal does not have access to the land during the entire bonding period. It is your opinion this results in an improperly issued permit. You contend this is a violation of W.S. §35-11-406(n)(i)
4. You further state the items above are a demonstration of P&M Coal's willful and knowing disregard of the requirements of their permit.

I will address each issue separately.

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SOLID & HAZ. WASTE
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WATER QUALITY
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John C. Willson

RE: The Pittsburg & Midway Coal Mining Company (P&M Coal), Welch Mine, Permit No. 497-T4

1. Bob Giurgevich and Stacy Page of our district office inspected the site in your presence on August 9, 2006. The purpose of the inspection was to assess the condition of the reclamation and determine if the interseeding efforts of the operator constitutes a restart of the ten year bond clock. A copy of the inspection report is attached for your information.

As a point of clarification, operators are allowed to conduct interseeding activities to enhance the reclamation without restarting the ten year bond clock. Conversely, the ten year bond period does restart when the initial seeding of the area has failed or is of such a poor quality that the likelihood of meeting bond release standards is dismal and reseeding is necessary. Interseeding does not restart the ten year bond period but reseeding does.

Our review of the numerous efforts of interseeding and the on-the-ground conditions that lead to the interseeding causes us to determine the area in fact was not interseeded but reseeded and the ten year bond period must be restarted. The ten year bond period for areas B, C, and D as designated on the annual report maps will be reset based on the last seeding effort conducted in 2005.

2. W.S. § 35-11-405 states:

(b) A mining permit once granted remains valid and in force from the date of its issuance until the termination of all mining and reclamation operations, except as otherwise provided in this act.

(e) Any valid surface coal mining permit issued pursuant to this act is entitled to a right of successive renewal upon expiration with respect to areas within boundaries of the existing permit if public notice has been given, any additional revised or updated information has been provided and the operation is in compliance with applicable laws and regulations and if the renewal requested will not substantially jeopardize the operator's responsibility on affected land.

I disagree with your interpretation of W.S. § 35-11-406(a)(i). As noted in the statutes above, the permit is valid until the end of the mining and reclamation operations and the operator has the right to successive renewals. At the time of the permit issuance and as of this date the operator has the right and power by legal estate owned to mine from the land. It has been and remains the interpretation of the Land Quality Division that a change in land ownership does not invalidate the original surface owner consent to the mine permit.

John C. Willson

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3. I find the State Decision Document to be correct and accurate. As stated above, the mine has surface owner consent and a change in the surface owner does not remove this consent.
4. I find that P&M Coal has not willfully and knowingly disregarded the requirements of their permit. They have not made false statements in the permit in light of our response to items 2 and 3.

As allowed by the Land Quality Division Coal Rules & Regulations, Chapter 16, Section 1(e), you have the right to request an informal review of this decision by the Director of the Department of Environmental Quality. If you have any questions, please contact me.

Sincerely,



Richard A. Chancellor
Administrator
Land Quality Division

encl.

RAC:bb

xc: District III w/o encl
P&M Coal w/encl