

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
)
)
)
)
)
)

**MEMORANDUM IN SUPPORT OF
MOTION OF THE PITTSBURG & MIDWAY COAL MINING CO.
TO DISMISS PURPORTED APPEAL, WITH PREJUDICE**

EXHIBIT "F"

JOHN C. WILLSON
P.O. BOX 2244
GILLETTE, WYOMING 82717
Telephone: 307-682-8261

August 30, 2006

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

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

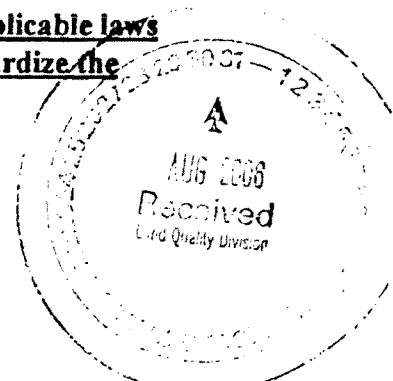
Dear Mr. Chancellor:

I received your letter of August 23, 2006 and appreciate the effort you have put into my complaint. I do agree with your conclusion that reclamation efforts to date have been inadequate and 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. This is of course the earliest possible date as continued reseeding may need to be done in future years resulting in extending the bond period even longer. I do not agree with your conclusions regarding items 2, 3, and 4 as stated in your letter and hereby request an informal review of this decision by the Director of the Department of Environmental Quality as allowed by the Land Quality Division Rules & Regulations, Chapter 16, Section 1(e).

I disagree with your interpretation of Wyo. Stat. §35-11-405 as stated in your letter as you did not take your conclusions far enough. Wyo. Stat. §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.** (emphasis added).

(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 the 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 existing affected land.** (emphasis added).



Wyo. Stat. §35-11-406(a) states:

- (ii) 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;
- (iii) A sworn statement that the applicant has not forfeited a bond posted for reclamation purposes and that all the statements contained in the permit application are true and correct to the best knowledge of the applicant;

P&M made sworn statements in accordance with (i) and (ii) above and these are simply untrue. P&M did not have adequate rights and powers by legal estate owned to mine from the land for which the permit was issued. They knew that the surface control was not adequate to insure the completion of the permit requirement but issued a sworn statement that they did. To date they have over five years with no surface control and cannot complete the permitting requirements.

Wyo. Stat. §35-11-409 states:

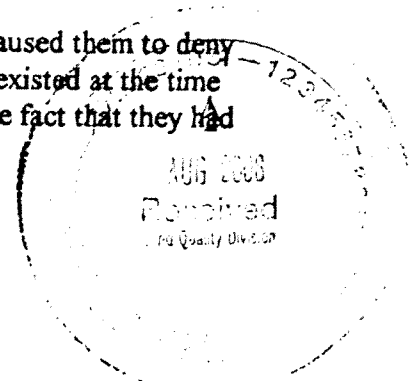
- (a) The director shall revoke a mining permit if at any time he determines that the permit holder intentionally misstated or failed to provide any fact that would have resulted in the denial of a mining permit and which good faith compliance with the policies, purposes, and provisions of this act would have required him to provide.

P&M made sworn statements in accordance with Wyo. Stat. §35-11-406(a) (i) and (ii) to the effect that they had adequate surface control to complete the requirements of the permit and they knew they did not. DEQ would never knowingly issue a permit with insufficient surface control to complete the permit requirements. The director should therefore revoke the mining permit.

Wyo. Stat. §35-11-4012 states:

- (a) The director shall revoke an operator's license:
 - (i) If at any time he becomes aware of the existence of any fact, reason, or condition that would have caused him to deny an application for a mining permit whether or not such condition existed at the time of the application;
 - (ii) If he determines that the operator intentionally misstated or failed to provide any fact that would have resulted in the denial of a license and which good faith compliance with the policies, purposes and provisions of this act would have required him to provide.

DEQ is aware of the existence of facts and reasons that would have caused them to deny an application for a mining permit at the time of the application. These facts existed at the time the permit was issued and P&M intentionally misstated or failed to provide the fact that they had



inadequate surface control to complete the permit requirements knowing that disclosure of this fact would have resulted in the denial of a license. P&M has over five years with no surface control and cannot complete the permitting requirements. DEQ would never knowingly issue a license with insufficient surface control to complete the permit requirements. The director should therefore revoke the operator's license.

Wyo. Stat. §35-11-417 states:

(a) The purpose of any bond required to be filed with the administrator by the operator shall be to assure that the operator shall faithfully perform all requirements of this act and comply with all rules and regulations of the board made in accordance with the provisions of this act.

P&M posted a bond to assure that they would faithfully perform all requirements of this act. As they have no right of legal access to the permitted property for at least five years they cannot perform the requirements of the act. DEQ knows that the lands cannot be inspected or accessed in order to release the bond. P&M is self-bonded but no reputable bonding company would underwrite a bond that the operator could not fulfill the requirements necessary for bond release. If P&M were not self-bonded they could not receive a bond. DEQ should not accept the P&M bond, as they cannot perform the requirements under the bond.

DEQ believes that the permit is self-perpetuating under Wyo. Stat. §35-11-405. This section does state "except as otherwise provided in this act" and if "the operation is in compliance with applicable laws and regulations and if the renewal requested will not substantially jeopardize the operator's responsibility on existing affected land". As noted above the act does provide for circumstances under which the permit should not be renewed. P&M is not in compliance with applicable laws and regulations and their ability to complete their responsibilities on the existing affected land is substantially jeopardized.

Based on the above facts DEQ should at a minimum issue a violation and allow P&M the opportunity to correct their violations. DEQ should in fact revoke the permit and the operator's license and has every legal right and responsibility to do so. On the foregoing basis, I 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: Dan B. Riggs, Esq.
Jeffrey W. Fleischman

