

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING

**FILED**

MAR 09 2012

Jim Ruby, Executive Secretary  
Environmental Quality Council

In the Matter of the Appeal )  
of Notice of Violation and Order, )  
dated July 29<sup>th</sup>, 2011 )  
Issued to Good Mining Company, LLC )

EQC Docket No. 11-4201A

**FINDINGS OF FACTS, CONCLUSIONS OF LAW, AND ORDER**

THIS MATTER came on for final hearing before the Environmental Quality Council, consisting of Presiding Officer Dennis M. Boal, Thomas Coverdale, F. David Searle, Richard Fairservis, and John N. Morris, on January 12, 2012 at 9:00 am. Chairman Tim Flitner, while present, recused himself from participating as a panel member in the hearing due to a personal conflict of interest.

Present on behalf of Department of Environmental Quality (DEQ) was Assistant Attorney General Luke Esch. Present on behalf of the Petitioner, Good Mining Company, LLC, (Good) was Brian "Pablo" Good, owner of Good Mining Company, LLC, and Heather A. Jacobson, attorney, of Jacobson Law Office, LLC.

Testifying on behalf of DEQ was Mr. Brian Wood and Mr. Mark Moxley. Testifying on behalf of Good was Mr. Brian "Pablo" Good.

The following exhibits were submitted and received:

1. DEQ Exhibit 1
2. DEQ Exhibit 3
3. DEQ Exhibit 4
4. DEQ Exhibit 7

Each of the parties was given the opportunity to make an opening statement, call witnesses, present evidence, and make a closing statement; and the council, having heard the testimony of the parties and having reviewed the documents filed herein; makes the following findings of facts and conclusions of law:

**FINDINGS OF FACTS:**

- 1) Brian Good and Danae Good, the owners of Good Mining Company, LLC, own the real property (Property) described as follows:

Township 54 North, Range 92 West, of the 6<sup>th</sup> P.M.  
Section 19: E1/2SE1/4; SW1/4SE1/4  
Section 30: NW1/4NE1/4

2. In June of 2011, Good began constructing roads, a field, and a pad upon the property.
3. In July of 2011, Good extracted bentonite from the property and stockpiled it on a dirt pad constructed on the property.
4. Good took this action without previously obtaining a permit to mine the property from the DEQ.
5. Although Good had not obtained a permit to mine prior to extracting the bentonite, Good did not know or understand that he was violating Wyoming statute when he took these actions.

6. On July 20, 2011, Mr. Mark Moxley and Mr. Brian Wood inspected the property and took pictures of the dirt work and the bentonite stockpile.
7. Based upon this inspection, DEQ issued Good a Notice of Violation (NOV) on July 29, 2011, alleging that Good violated W.S. §35-11-401(a) and W.S. §35-11-901(j).
8. Good timely appealed the NOV on August 11, 2011.

**CONCLUSIONS OF LAW:**

1. W.S. §35-11-401(a) requires that a permit be issued prior to any person engaging in mining operations.
2. To prove a violation of W.S. §35-11-901(j) requires that the DEQ prove that a person willfully and knowingly violated Wyoming statutes, in this case, §35-11-401(a).
3. While the DEQ proved to the Council that Good violated W.S. §35-11-401(a), DEQ did not provide sufficient proof that Good knowingly and willfully violated the statute.


4. Therefore, the Council finds that Good has violated W.S. §35-11-901(a) and not W.S. §35-11-901(j) and the NOV issued in this case is modified accordingly.

**ORDER:**

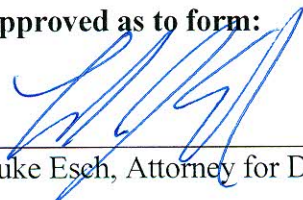
1. The Notice of Violation issued on July 29, 2011, in this matter is modified to remove the violation of W.S. §35-11-901(j), and any reference to the language contained therein, and replaced with a violation of W.S. §35-11-901(a).
2. Each party shall bear its own costs and attorney fees in this matter.

**ORDERED** by the Environmental Quality Council this 9 day of March, 2012.

**ENVIRONMENTAL QUALITY  
COUNCIL**

By:   
Dennis M. Boal, Presiding Officer

**Approved as to form:**

  
Luke Esch, Attorney for DEQ

  
Heather A. Jacobson, Attorney for Petitioner

## CERTIFICATE OF SERVICE

I, Kim Waring, certify that at Cheyenne, Wyoming, on the 13th day of March, 2012, I served a copy of the foregoing FINDINGS OF FACTS, CONCLUSIONS OF LAW AND ORDER by electronic mail to the following:

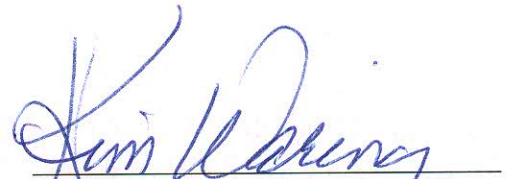
John Corra  
Director, DEQ  
[john.corra@wyo.gov](mailto:john.corra@wyo.gov)  
307-777-7937

Luke Esch  
Asst. Attorney General  
[lesch@state.wy.us](mailto:lesch@state.wy.us)  
307-777-6946

Nancy Nuttbrock, Administrator  
Land Quality Division  
[Nancy.nuttbrock@wyo.gov](mailto:Nancy.nuttbrock@wyo.gov)  
307-777-7046

also by depositing the same in the United States mail addressed to:

Heather A. Jacobson  
Jacobson Law Office, LLC  
1839 Madora Avenue  
Douglas, WY 82633  
(307) 358-3180

  
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Kim Waring, Sr. Office Supp. Spec.  
Environmental Quality Council  
122 W. 25<sup>th</sup>, Rm. 1714  
Herschler Bldg.  
Cheyenne, WY 82002  
Phone: 307-777-7170  
FAX: 307-777-6134