

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL

STATE OF WYOMING

FILED

DEC 29 2011

*Jim Ruby, Executive Secretary
Environmental Quality Council*

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

Docket No. 4868-11

PETITIONER'S PRE-HEARING MEMORANDUM

COMES NOW the Petitioner, Good Mining Company, LLC, by and through its attorney, Heather A. Jacobson, Jacobson Law Office, LLC, and hereby submits to the Court the following Pre-Hearing Memorandum:

1) NATURE OF THE CASE:

In January, 2011, Petitioner purchased a piece of property in Big Horn County. At the same time, Petitioner also leased the bentonite mining rights from the owners of the bentonite underneath the property. Petitioner's plans for the property included gathering decorative surface rocks for his home, building an irrigated field and reservoir, running livestock, and extracting bentonite from the property. When Petitioner began the process of obtaining a permit to mine bentonite from the property so that he could sell the bentonite, the Wyoming Department of Environmental Quality informed Petitioner that Black Hills Bentonite had an active bentonite permit upon the property. Petitioner was understandably surprised by this fact as he was the only person that owned the surface and had the right to mine the bentonite under the bentonite leases. Petitioner learned that Black Hills had last extracted bentonite from the property in 1993, but still

held a mining permit on the property as they had never properly completed the reclamation of the property. Over the next several months Petitioner negotiated with DEQ and Black Hills in an attempt to be able to commercially mine bentonite from the property. These negotiations were unsuccessful as both DEQ and Black Hills stances flip-flopped in the negotiations several times. During these negotiations, Petitioner began working on the property, including building roads, parking areas and beginning construction of the irrigated field. As Petitioner was making no progress in obtaining a permit to commercially mine bentonite on the property, he decided to extract a minimal amount of bentonite from the ground on the property to be used in the construction of his personal reservoir. Petitioner did not believe he was in violation of the law if he did not sell the bentonite that was extracted, but due to his contentious relationship with Mr. Brian Wood of the DEQ, he was fully aware that Mr. Wood may do something to Petitioner for Petitioner's actions. Which is exactly what happened. Mr. Wood visited the property, without Petitioner's permission on a Sunday to take pictures of the property and begin the process which ultimately led to the issuance of the Notice of Violation on July 29th, 2011. The Department of Environmental Quality (DEQ) is alleging that Petitioner "willfully and knowingly" conducted mining operations without a permit. The Petitioner denies this allegation as he mistakenly held the belief that "mining" required that the materials be sold. Petitioner further believes that the DEQ acted in an arbitrary and capricious manner by issuing the Petitioner a Notice of Violation while simultaneously ignoring the fact that the discovered permittee, Black Hills Bentonite, LLC, had filed annual reports indicating that there had been no activity since 1994, yet reclamation was not completed.

2) CONTENTIONS AND LEGAL THEORIES:

DEQ:

1. That Petitioner knowingly and willfully engaged in mining operations without a permit

Petitioner:

1. That Petitioner did not knowingly engage in mining operations without a permit.
2. That any actions taken by Petitioner were allowed under equitable principals due to the conduct of both the DEQ and Black Hills Bentonite.
3. That DEQ has acted in an arbitrary and capricious manner in issuing the NOV to Petitioner while doing nothing to enforce any rules, regulations or statutes against Black Hills Bentonite for their actions – or lack thereof – on the same property.

3) AMENDMENTS TO PLEADINGS:

The Petitioner has no amendments to the pleadings.

4) DISCOVERY:

Discovery has been completed by both parties.

5) WITNESSES:

Will Call:

Mr. Brian "Pablo" Good
3796 Lane 32 1/2
Greybull, WY 82426

May Call:

Mr. Mark Moxley
Wyoming Department of Environmental Quality
510 Meadowview Dr.
Lander, WY 82520

Mr. Brian Wood
Wyoming Department of Environmental Quality
510 Meadowview Dr.
Lander, WY 82520

6) EXHIBITS:

- Good 1 Notice of Violation dated July 29th, 2011.
- Good 2 2009-2010 Black Hills Bentonite, LLC Annual Mining Report
- Good 3 August 10th, 2011 letter from Black Hills Bentonite, LLC to Brian Good.

7) ESTIMATED LENGTH OF HEARING:

Petitioner estimates that the hearing in this matter should take no more than one-half (1/2) day.

8) LEGAL BRIEFS OR MEMORANDUMS:

Plaintiff has no plan to submit any legal briefs or memorandums of law at this time.

9) NATURE AND SUBSTANCE OF STIPULATIONS:

Petitioner and DEQ have not entered into any stipulated agreements at this time.

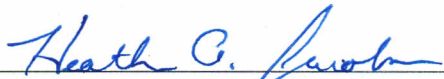
10) OTHER RELEVANT INFORMATION OR ISSUES:

Petitioner is unaware of any other relevant information or issues that should be brought before the council at the Pre-Hearing Conference.

Respectfully submitted this 29 day of December, 2011.

Good Mining Company, LLC

By:


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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Petitioner's Pre-Hearing Memorandum was served by Certified Mail, return receipt requested, on the 29 day of December, 2011, to the following:

A handwritten signature in blue ink, appearing to read "Heath J. Smith", is written over a horizontal line.

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Herschler Building, Rm. 1714
Cheyenne, WY 82002

Director, Wyoming DEQ
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Luke Esch, Asst. Attorney General
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