


MEMORANDUM

TO: Environmental Quality Council (EQC) 
FROM: Todd Parfitt, Director - Department of Environmental Quality
DATE: December 17, 2012
SUBJECT: Bond Forfeiture – Bald Butte Quarry, LLC, Permit 551(s)

Attached is information relating to the failure of Bald Butte Quarry to to submit the required bond amount, and failure to reclaim the land under 551(s).

I have determined that the bond for 551(s) should be forfeited. I therefore seek your approval to request that the Attorney General begin bond forfeiture proceedings.

Should you have any questions, please contact Nancy Nuttbrock, LQD Administrator.

cc: Lowell Spackman, LQD District 1
Luck Esch, AG w/ attachments

Attachments

Date

Approved
Chairman, EQC

FILED

Dec 18, 2012

MEMORANDUM

TO: Todd Parfitt, DEQ Director

FROM: Nancy Nuttbrock, LQD Administrator *LN*

DATE: December 17, 2012

RE: Bond Forfeiture for Bald Butte Quarry, Permit 551(s)

**Jim Ruby, Executive Secretary
Environmental Quality Council**

Bald Butte Quarry, LLC has failed to submit the required bond amount, and failed to complete the reclamation of this mining operation.

The LQD inspection on August 9, 2012 confirmed that the site has not been reclaimed. It is formally requested that the Department proceed with the forfeiture procedure for the reclamation bonds of \$193,700 held for Permit 551(s). It is also recommended that the Attorney General bring suit to recover the remaining costs of reclamation that is not covered by the bond as provided in the Wyoming Statutes § 35-11-422. To cover the cost of reclaiming the site, an increase in the bond amount by \$69,826 was needed to bring the total bond amount from the current amount of \$193,874 up to \$263,700.

c: Lowell Spackman

**RECOMMENDATION FOR FORFEITURE
BALD BUTTE QUARRY
PERMIT 551(s)**

The Land Quality Division holds a Surety Bond in the amount of a \$193,874 on this operation.

The last inspection completed by the Land Quality Division was on August 9, 2012. The LQD issued a Notice of Violation (NOV) to Bald Butte Quarry on October 8, 2012 with the certified mail receipt delivered on October 18, 2012. The NOV was issued for failure to maintain the Limited Partnership license with the State of Wyoming, failure to submit an adequate bond, and failure to reclaim. It is also our understanding from the landowner, Bald Butte Land Company that their lease with Bald Butte Quarry has expired; access is an issue with the operator.

A brief history of the violations leading up to the NOV is provided in the attached memo dated October 2, 2012. Since the issuance of the NOV the following sequence of events has occurred:

The operator failed to respond to the NOV to set a date for the Settlement Agreement Meeting within the requested 15-day deadline after receipt of the NOV. Later, Lowell Spackman tried to contact the operator twice by telephone before the LQD sent a follow-up letter dated November 20, 2012 signed by Carol Billbrough, who signed on behalf of the Nancy Nuttbrock. This letter was received by the operator on November 23, 2012. The letter outlined the options that are available to the Land Quality Divisions on how to proceed with resolution of these violations. The operator was provided 10 days to contact our office to set up a meeting before this matter would be referred to the Attorney General's office for further legal action. The 10-day deadline has passed with no contact from the operator.

Summary

Wyoming Statutes §35-11-401 (e)(viii) and §35-11-415(b)(ix) requires reclamation of mining operations within thirty days after abandonment. It has been several years since any mining has taken place.

Wyoming Statutes §35-11-417 (c)(ii) requires the posing of an adequate bond for surface mining disturbances. LQD's 2011 Annual Report review was sent to BBQ proposing a bond increase for the amount of \$69,826.00 based on updates to reclamation costs. The required bond increase has not been submitted after repeated attempts to meet with the operator discuss the bond amount and repeated attempts to obtain the bond increase.

Conclusion

In conclusion, Bald Butte Quarry's compliance issues include the following:

- 1) Bad Butte Quarry has failure to maintain the Limited Partnership license with the State of Wyoming. In addition, Bald Butte Quarry's lease with the landowner Bald Butte Land Company has expired.
- 2) The operator has failed to reclaim the site after not conducting any mining operations for several years. This lack of mining is considered abandonment.
- 3) An increase in the bond by \$69,826 to bring the total bond amount from the current amount of \$193,874 up to \$263,700 has not been submitted.

The LQD is recommending that the bond forfeiture process be initiated.

MEMORANDUM

TO: Todd Parfitt, Director
Nancy Nuttbrock, LQD Administrator

THROUGH: Lowell Spackman, District 1 Supervisor

FROM: Pam Rothwell, Permit Coordinator

DATE: December 17, 2012

SUBJECT: **Chronology of Events for Issuance of Notice of Violation Docket No. 5067-12 to Bald Butte Quarry L.P., (BBQ) Permit 551s**

CCH LP is the operator of the Bald Butte Quarry located in Niobrara and Goshen Counties. The quarry is in a granite outcrop that has historically been mined for railroad ballast. The operator has not been able to secure a contract for materials and therefore, no mining has occurred since 2000. BBQ applied for Interim Mine Stabilization status in 2004, however the application was retracted prior to public notification, requiring BBQ to follow the mine and reclamation plan. LQD has stated through annual report reviews since 2006, that the lack of mining or reclamation activity constitutes abandonment under the LQD Noncoal Rules and Regulations, Chapter 3, Section 2(k)(i). The regulation states, "*Reclamation must begin as soon as possible after the mining commences and must continue concurrently until such time that the mining operation is terminated and all affected land is reclaimed.*" A similar requirement is included in the Wyoming Environmental Quality Act § 35-11-401 (e)(viii) which states "*After the mining operations have ceased or within thirty days after abandonment of the mining operation, the operator shall notify the administrator of such fact and commence reclamation and restoration in compliance with the rules and regulations...*"

Chronology of Events

- October 23, 2009** A letter of Conference and Conciliation was issued including a requirement to complete reclamation of the Bald Butte Quarry within one year of the date of the letter. The letter also requested the operator schedule a meeting to discuss the lack of mining and a reclamation bond estimate which was not included in the 2009 Annual Report. The operator failed to respond to the letter or complete the required reclamation.
- April 3, 2012** LQD's 2011 Annual Report review was sent to BBQ proposing a bond increase for the amount of \$69,826.00 based on cost updates since the last bond review which was in 2000. The letter repeated the request for the operator to schedule a meeting with LQD by April 30, 2012 to discuss the lack of mining and reclamation at the mine site.

- May 2, 2012** LQD re-sent the April 3, 2012 letter due to uncertainty that the information was sent on April 3, 2012. The request for the meeting was requested by May 18, 2012.
- May 24, 2012** No response was provided from BBQ. The formal Director's letter requesting a \$69,826.00 bond increase was sent to BBQ.
- July 2, 2012** Deanna Hill, LQD Bond Analyst contacted Mr. Hutchinson to advise him that the 45 day acceptance of the bond increase had expired and agreed to provide an extension (i.e. couple of weeks) but the request must be in writing.
- July 9, 2012** Deanna and Lowell Spackman attempted to contact Mr. Hutchinson. Deanna left a message stating the request for an extension must be in writing and LQD had not received the request. In addition, Deanna notified Mr. Hutchinson that BBQ was not authorized to transact business since February 2010. The authority had been revoked for nonpayment of taxes. Therefore, no mining was allowed until this is resolved.
- July 11, 2012** Mr. Hutchinson provided an email request for a two week extension to update the bond. Deanna extended the due date to July 31, 2012.
- August 14, 2012** Pam Rothwell contacted Mr. Hutchinson to inquire about the status of the delinquent bond and taxes to the State of Wyoming. He asked for more time as he is consulting with his partner.
- September 27, 2012** Pam emailed Mr. Hutchinson notifying him that the LQD would proceed with a Notice of Violation for the failed compliance to increase the bond and resolve the delinquent taxes with the State of Wyoming

Inspection Report Summary of Mining without Concurrent Reclamation

- June 20, 2001** The June inspection report cited a requirement for an application for interim mine stabilization if mining was not re-established by the end of the year.
- April 23, 2002** The April inspection compliance required a revision for interim mine stabilization within 60 days.
- April 18, 2003** LQD issued Notice of Violation and Order for violation of Chapter 3, Section 2(k)(ii). The Order required a plan to initiate reclamation or a revision for interim mine stabilization within 30 days
- April 19, 2004** BBQ submitted a revision for interim mine stabilization. The plan was retracted prior to public notice and therefore was not approved.

- November 27, 2006** The September 2006 cover letter stated that in lieu of BBQs withdrawal of the revision for interim mine stabilization they are required to follow the approved mine plan. Further the letter states reclamation must begin according to Chapter 3, Section 2(k)(i).
- October 23, 2009** A Letter of Conference and Conciliation (LCC) was issued with the June Inspection report citing reclamation requirements and requested reclamation be completed within one year.
- November 12, 2010** The July inspection report noted mining activity (removal of rock from stockpiles). The report indicated that mining activity would be verified through the review of the next annual report
- August 27, 2012** The August inspection report cited the reclamation requirements (Chapter 3, Section 2(k)(i) and requested an updated mine and reclamation schedule within 60 days.

**RECOMMENDATION FOR FORFEITURE
BALD BUTTE QUARRY
PERMIT 551(s)**

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A brief history of the violations leading up to the NOV is provided in the attached memo dated October 2, 2012. Since the issuance of the NOV the following sequence of events has occurred:

The operator failed to respond to the NOV to set a date for the Settlement Agreement Meeting within the requested 15-day deadline after receipt of the NOV. Later, Lowell Spackman tried to contact the operator twice by telephone before the LQD sent a follow-up letter dated November 20, 2012 signed by Carol Bilbrough, who signed on behalf of the Nancy Nuttbrock. This letter was received by the operator on November 23, 2012. The letter outlined the options that are available to the Land Quality Divisions on how to proceed with resolution of these violations. The operator was provided 10 days to contact our office to set up a meeting before this matter would be referred to the Attorney General's office for further legal action. The 10-day deadline has passed with no contact from the operator.

Summary

Wyoming Statutes §35-11-401 (e)(viii) and §35-11-415(b)(ix) requires reclamation of mining operations within thirty days after abandonment. It has been several years since any mining has taken place.

Wyoming Statutes §35-11-417 (c)(ii) requires the posing of an adequate bond for surface mining disturbances. LQD's 2011 Annual Report review was sent to BBQ proposing a bond increase for the amount of \$69,826.00 based on updates to reclamation costs. The required bond increase has not been submitted after repeated attempts to meet with the operator discuss the bond amount and repeated attempts to obtain the bond increase.

Conclusion

In conclusion, Bald Butte Quarry's compliance issues include the following:

- 1) Bald Butte Quarry has failure to maintain the Limited Partnership license with the State of Wyoming. In addition, Bald Butte Quarry's lease with the landowner Bald Butte Land Company has expired.
- 2) The operator has failed to reclaim the site after not conducting any mining operations for several years. This lack of mining is considered abandonment.
- 3) An increase in the bond by \$69,826 to bring the total bond amount from the current amount of \$193,874 up to \$263,700 has not been submitted.

The LQD is recommending that the bond forfeiture process be initiated.



Department of Environmental Quality

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



Matthew H. Mead, Governor

John Corra, Director

October 8, 2012

CERTIFIED MAIL, RETURN RECEIPT REQUESTED # 7012 1640 0000 8427 2822

Mr. Steve Hutchinson
Bald Butte Quarry, LLC
709 Kansas Ave., Room 200
Topeka, KS 66603

RE: Notice of Violation, Docket No. 5067-12, Permit 551(s), Bald Butte Quarry

Dear Mr. Hutchinson:

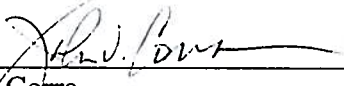
Enclosed you will find a Notice of Violation (NOV) issued under the provisions of Wyoming Statute § 35-11-701(c). The NOV is the result of failure to respond to requests to meet with the Land Quality Division regarding violations associated with the referenced permit. The LQD has requested the site be reclaimed due to lack of mining activity and that the bond be increased to cover the cost to reclaim the site. You have not responded to any of the requests.

The failure to reclaim and failure to increase the bond are identified in the NOV. In addition, delinquency of not paying taxes assessed by the Wyoming Secretary of State's Office has resulted in your license revocation to conduct business in the State. This violation is also identified in the NOV.


In effort to resolve this matter without further legal action, the LQD is requesting you contact Lowell Spackman LQD, District I Supervisor at 307-777-7052 or lowell.spackman@wyo.gov within **fifteen (15)** days of receipt of this letter to schedule a meeting to discuss resolution of this enforcement action. Should resolution of this enforcement action be reached as a result of this meeting, a Settlement of Agreement will be signed by both parties.

If you should have any questions regarding this letter, contact Mr. Spackman. Thank you for your cooperation in this matter.

Respectfully,



John V. Corra
Director
Department of Environmental Quality



Nancy Nuttbrock
Administrator
Land Quality Division

Enclosure: **Notice of Violation**
cc: District I



DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF WYOMING

NOTICE OF VIOLATION

IN THE MATTER OF THE NOTICE OF)
VIOLATION ISSUED TO)
BALD BUTTE QUARRY, L.P.) DOCKET NO. 5067-12
709 S. KANSAS AVE.)
TOPEKA, KS 66603)
Re: PERMIT 551s, Bald Butte Quarry)

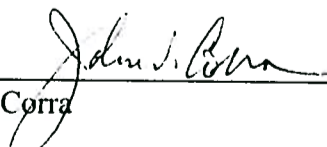
NOTICE

NOTICE IS HEREBY GIVEN THAT:


1. Notice of Violation (NOV) is being sent to you pursuant to Wyoming Statute (W.S.) §35-11-701(c)(i) which requires that a written notice shall be issued in the case of failure to correct or remedy an alleged violation.
2. The Bald Butte Quarry (BBQ) is located in a portion of Section 31, T31N, R63W and a portion of Section 6, T30N, R63W which includes areas in both Niobrara and Goshen Counties, Wyoming.
3. As a result of the operator's failure to demonstrate active mining status with no observed reclamation activity and failure to increase the bond to meet updated and current cost requirements the LQD requested numerous times for the operator to schedule meetings with the LQD and also to respond to a Letter of Conference and Conciliation in effort to eliminate violations. The operator did not respond to the requests.
4. The operator has failed to maintain the Limited Partnership license with the State of Wyoming.
5. Failure to reclaim mining operations within thirty days after abandonment is a violation of Wyoming Statute § 35-11-401 (e)(viii) and § 35-11-415(b)(ix).
6. Failure to post adequate bonding for surface mining disturbances is a violation of Wyoming Statutes § 35-11-417 (c)(ii) .
7. W.S. § 35-11-901(a) provides that any person who violates and provision of the Environmental Quality Act or any rule, standard, permit, license or variance adopted hereunder is liable to a penalty of ten thousand dollars (\$10,000) for each day of violation, which penalty may be recovered in a civil action brought by the Attorney General in the name of the People of the State of Wyoming.

NOTHING IN THIS NOTICE shall be interpreted in any way, limit or contravene any other remedy available under the Environmental Quality Act, nor shall this notice be interpreted as being a condition precedent to any other enforcement action.

SIGNED this 8th day of October, 2012



John V. Corra
Director
Department of Environmental Quality



Nancy Nuttbrock
Administrator
Land Quality Division

Please direct all inquiries regarding this Notice of Violation and Order to Mr. Lowell Spackman, Wyoming Department of Environmental Quality, Land Quality Division, Cheyenne Office, 122 West 25th Street, Cheyenne, WY 82002. Telephone No. (307) 777-7052.

cc: Lowell Spackman, District I



Department of Environmental Quality

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



Matthew H. Mead, Governor

John Corra, Director

CERTIFIED MAIL

August 27, 2012

Mr. Steve Hutchinson
Bald Butte Quarry, LLC
709 Kansas Ave. Room 200
Topeka, KS 66603

VP
8-14-12

RE: Permit 551(s), Bald Butte Quarry (BBQ), 2012 Inspection Report

Dear Mr. Hutchinson:

The Land Quality Division (LQD) has completed the above referenced inspection report with compliance requirements that will require your attention. The mine sign is in disrepair, erosion is continuing on the southeast slope that requires maintenance and the site requires reclamation. Please find the report enclosed including a request to update the permit with a reclamation schedule. The requested compliance issues must be addressed **within 60 days** of receipt of this letter. I will conduct a follow-up inspection to verify the work is completed.

As we discussed on the telephone on August 14, 2012, LQD has requested a bond increase for the reclamation of the mining disturbance which is past due (Director Letter dated May 24, 2012). I agreed to allow more time for BBQ to acquire the bond increase as you indicated you would have it in a couple of weeks. The LQD is also aware that BBQ is no longer registered with the State of Wyoming to conduct business and will need to resolve this issue.

The bond increase must be received by LQD by **September 14, 2012** to avoid a recommendation for enforcement action. The LQD is concerned with the lack of activity with the Bald Butte Quarry operations and would like to resolve these concerns with an understanding of proposed future operations. If it would be helpful to meet to resolve the issues, please let me know.

If you have any question, you may contact me at pam.rothwell@wyo.gov or 307-777-7048.

Sincerely,

Pam Rothwell
District I Assistant Supervisor
Land Quality Division

Enclosure Inspection Report



2012 ANNUAL INSPECTION REPORT

OPERATOR: Permit 551, Bald Butte Quarry, LLC

LOCATION: West of US 85, at the Niobrara, Goshen Co. Line

INSPECTORS: Pam Rothwell, District 1 Assistant Supervisor

DATE OF INSPECTION: August 9, 2012

REPORT DATE: August 22, 2012

FIELD CONDITION: Sunny, 75° Calm

OTHER PARTICIPANTS: None

INTRODUCTION

This inspection was conducted to fulfill the requirements of the Wyoming Environmental Quality Act (WEQA) § 35-11-411(c). The focus of the inspection was to follow-up on the compliance items noted in the 2011 inspection report and to observe any mining or reclamation activity.

INSPECTION

Permit Sign and Access Road

The permit sign was posted at the turn-off at US Hwy. 85, approximately 5 miles south of Lusk. The sign should be repaired to clearly identify mine contact information (**Figure 1**).

The gate at the entrance was closed but unlocked. The road from the gate up to the highwall has erosion gullies crossing the road and along the sides of the road.

Mine Activity

There was no mining activity during the inspection. No equipment was on site. No apparent mining has occurred since the last inspection. There are four benches cut into the south facing highwall. Mined boulders stockpiled adjacent to the highwall continue to be removed. Several rock storage areas were evident south of the highwall (**Figures 2a-2d**).

Topsoil Salvage and Protection

No new topsoil salvage was evident. The existing topsoil stockpiles onsite were stable, well vegetated and signed.

Erosion and Sediment Control

Erosional gullies are continuing to develop on the lower terrace, southeast of the highwall. The area was aggressively maintained in previous years with rock berms to control the advancement of gullies. However, new gullies have developed and are advancing (**Figures 3a-3c**).

COMPLIANCE AND ASSESSMENT

- 1 The mine sign no longer provides clear identification of contact information as required by the Wyoming Environmental Quality Act (WACT), § 35-11-415(b)(i). Please update the sign with legible information required in the statute **within 60 days** of receipt of this report. LQD will conduct a follow-up inspection to verify the completion of the work.
- 2 Erosion maintenance is needed on the access road and on the developing and expanding gullies southeast of the highwall (LQD Noncoal Rules and Regulations (R&R), Chapter 3, Section 2 (i)(vi)). These repairs were requested in the 2011 Inspection Report but do not appear to have been addressed. Please conduct repairs to the gullies **within 60 days** of receipt of this report. LQD will conduct a follow-up inspection to verify the completion of the work.
- 3 No new mining has occurred on this mine site for several years. The R&Rs, Chapter 3, Section 2(k)(i) requires, "*Reclamation must begin as soon as possible after mining commences and must continue concurrently until such time that the mining operation is terminated and all of the affected land is reclaimed...A detailed time schedule for the mining and reclamation progression must be included in the reclamation plan...*" The reclamation plan defines topsoil replacement and seeding for the disturbance resulting from mining on pages 56, 56a and 56b. A mining and reclamation schedule is not found in the permit. Therefore, it is requested that BBQ provide a Non-significant permit revision (NSR) including an updated mining schedule if mining is to resume **and** a reclamation schedule through the end of the operations. This permit revision must be provided to the LQD **within 60 days** of receipt of this letter. LQD will review the proposed plan and notify BBQ with any technical review comments within 60 days of receipt of the plan.

PHOTOS



Figure 1 Mine sign contact information is not legible.



Figure 2a Staged rock area



Figure 2b Staged rock area



Figure 2c Staged rock area



Figure 2d Staged rock area



Figure 3a Erosion gully advancing toward highwall



Figure 3b Erosion gullies advancing toward highwall



Figure 3c Erosion gully advancing toward highwall