

FILED

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

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of Environmental Quality

**BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
OF THE STATE OF WYOMING**

IN THE MATTER OF:)	
Mullinax Concrete Services Co.)	Docket No. 09-4602
Limited Mining Operation Application)	
TFN 5 4/123)	

RESPONSE OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

The Department of Environmental Quality ("DEQ")/ Land Quality Division ("LQD") by and through its attorney, John S. Burbridge, Senior Assistant Attorney General, hereby responds to Mullinax Concrete Services Co., Inc's ("Mullinax") Supplemental Petition for Review/Request for Hearing ("Petition") and states to the Environmental Quality Council ("EQC") the following:

1. The DEQ/LQD admit the allegations contained in the first sentence of paragraph 1 of Mullinax's Petition. The DEQ/LQD denies the allegations contained in the remainder of paragraph 1 of Mullinax's Petition.
2. The DEQ/LQD admit the allegations contained in the first sentence of paragraph 2 of Mullinax's Petition. The DEQ/LQD denies the allegations contained in the

remainder of paragraph 2 of Mullinax's Petition.

- 3a. The DEQ/LQD admit the allegations contained in paragraph 3a of Mullinax's Petition.
- 3b. The DEQ/LQD admit the allegations contained in the first two sentences in paragraph 3b of Mullinax's Petition. The DEQ/LQD states that the third sentence of paragraph 3b of Mullinax's Petition is a statement of law that speaks for itself. The DEQ/LQD denies the allegations contained in the last sentence of paragraph 3b of Mullinax's Petition.
- 3c. The DEQ/LQD admit the allegations contained in the first sentence of paragraph 3c of Mullinax's Petition. The DEQ/LQD denies the allegations contained in the last sentence of paragraph 3c of Mullinax's Petition.
- 3d. The DEQ/LQD admit the allegations contained in paragraph 3d of Mullinax's Petition.
- 3e. The DEQ/LQD admit the allegations contained in paragraph 3e of Mullinax's Petition.
- 3f. The DEQ/LQD admit the allegations contained in the first sentence of paragraph 3f of Mullinax's Petition. The DEQ/LQD denies the allegations contained in the second sentence of paragraph 3f of Mullinax's Petition.
- 3g. The DEQ/LQD does not have sufficient information to either admit or deny the allegations contained in paragraph 3g of Mullinax's Petition.
- 3h. The DEQ/LQD does not have sufficient information to either admit or deny the

allegations contained in paragraph 3h of Mullinax's Petition.

- 3i. The DEQ/LQD admit the allegations contained in the first sentence of paragraph 3i of Mullinax's Petition.
4. The DEQ/LQD denies the allegations contained in the unnumbered paragraph found between paragraph 3i and paragraph 4 of Mullinax's Petition.
5. Paragraphs 4a, 4b, 4c, 4d & 4e of Mullinax's Petition present issues that may be before the EQC and do not require a response. The DEQ/LQD denies any portion of the issues presented by Mullinax in paragraphs 4a, 4b, 4c, 4d & 4e that can be considered an allegation or to the extent any sort of a response could be deemed to be required.
6. The DEQ/LQD denies the allegations contained in the unnumbered paragraph found between paragraph 4e and paragraph 5 of Mullinax's Petition.
7. Paragraph 5 of Mullinax's Petition is a request for hearing. Accordingly, no response is required. To the extent any sort of response could be deemed to be required, the DEQ denies any information in paragraph 5 that could be considered an allegation.
8. The DEQ denies each and every allegation not specifically admitted to in this response.

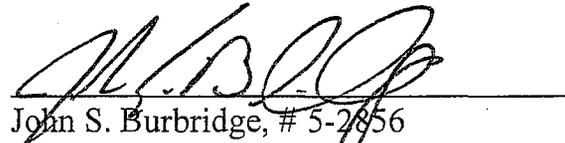
AFFIRMATIVE DEFENSES

1. Mullinax has failed to state a claim upon which relief can be granted.
2. The EQC lacks jurisdiction to hear this appeal.

WHEREFORE, the DEQ prays that the EQC enter an ORDER affirming the denial of TFN 5 4/123 by the Department of Environmental Quality/Land Quality Division.

Respectfully submitted this 18th day of February, 2010.

FOR THE DEPARTMENT OF
ENVIRONMENTAL QUALITY



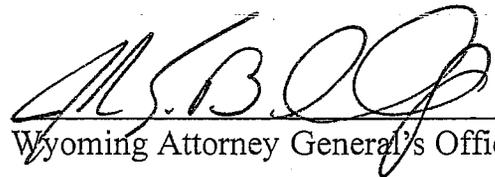
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CERTIFICATE OF SERVICE

I certify that the foregoing document was served by US. Mail, postage prepaid, and addressed correctly, to the following people on the 18th day of February, 2010:

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