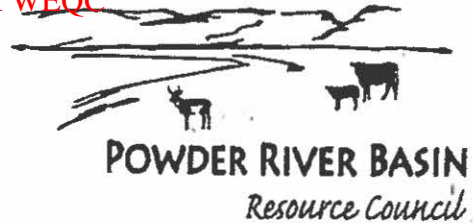


ENCOURAGING RESPONSIBLE DEVELOPMENT TODAY ~ FOR TOMORROW

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October 1, 2015

Exhibit 1

Kyle Wendtland
Administrator of the Land Quality Division
Department of Environmental Quality
Herschler Building
122 W. 25th St.
Cheyenne, WY 82002

RE: Objections to the DEQ's Proposed Renewal of the Eagle Butte Mine Permit

Dear Mr. Wendtland,

The Powder River Basin Resource Council ("Resource Council") hereby submits these objections to the proposed renewal of the Eagle Butte Mine permit noticed in the Gillette News Record on August 28, 2015.

Pursuant to W.S. § 35-11-406(k), the Resource Council requests an informal conference with the Director to discuss our objections and hopefully resolve them to the benefit of our members and the Department. With the company in bankruptcy proceedings, this permit renewal presents issues of first impression for our organization, the public, and the Department. We believe these issues would be well suited to be addressed in an informal conference with the Director.

Organizational Interest in the Permit Renewal

The Resource Council is a grassroots, member-based organization that has worked to address the impacts of coal mining on people and the environment since our inception in 1973. Our core membership lives in the Powder River Basin and many of our members work, live, and recreate near the coal mines of the area. We have members who live and regularly travel by the Eagle Butte Mine that experience aesthetic impacts, impacts to their property, and impacts to

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Jim Ruby, Executive Secretary
Environmental Quality Council

their livelihoods as a result of the mine's operations. We are therefore an "interested person" within the meaning of W.S. § 35-11-406(k).

Objections and Concerns

The standard of review for a permit renewal is:

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 boundary 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.

W.S. § 35-11-405(e) (emphasis added).¹

In the case of Alpha's mines, including the Eagle Butte Mine, the operator is not in compliance with applicable laws and regulations. Specifically, Alpha is not in compliance with the Wyoming Environmental Quality Act's ("WEQA") financial assurance requirements for surface coal mining operations because Alpha's bonds are currently "self-bonds" and the operator no longer qualifies for "self-bond" status in Wyoming.

A "self-bond" is a type of reclamation bond authorized under the federal Surface Mining Control and Reclamation Act ("SMCRA") and the WEQA, which implements SMCRA at the state-level and governs permitting requirements for coal mines in Wyoming. 30 U.S.C. § 1259(c); Wyo. Stat. Ann. § 35-11-417(d). According to Wyoming's regulations implementing the WEQA, a self-bond is "an indemnity agreement in a sum certain made payable to the State, with or without separate surety." Wyo. Land Quality Rules and Regulations ("LQRR"), Chap. 11 § 1(a). In the case of Alpha, no separate surety has been posted, and therefore no third-party

¹ It is clear from the language in SMCRA that Congress intended an affirmative finding that the operation is in compliance a necessary component of permit renewals. See 30 U.S.C. § 1256(d); 30 C.F.R. § 744.15 (permits carry a right of successive renewal unless findings are made that the operator is in noncompliance with the environmental protection standards of the Act or that the terms and conditions of the permit are not being satisfactorily met).

financial guarantee has been made to cover the \$191,370,000 reclamation bond for the Eagle Butte Mine. See Memo from Kurt King, DEQ, Aug. 6, 2015 at 3, attached as Exhibit 1.

To limit the risk to state and federal governments of companies being unable to meet reclamation obligations, SMCRA provides that only financially solvent companies, as determined by a series of financial fitness tests specified in the regulations, may qualify for self-bonding. *Id.* at § 2(vii), (xii). If a company fails the financial fitness tests, it is no longer able to “self-bond” in Wyoming. For that reason, the regulations provide:

The Administrator may require the operator to substitute a good and sufficient corporate surety licensed to do business in the State if the Administrator determines in writing that the self-bond of the operator fails to provide the protection consistent with the objectives and purposes of this Act.

Id. at § 5(a).

On May 26, 2015, the Department did just that and issued an order determining that Alpha no longer qualifies for self-bond status. Letter from Todd Parfitt, Wyoming DEQ, to Alpha Coal West – Eagle Butte Mine, May 26, 2015, attached as Exhibit 2. The order required Alpha to substitute other financial assurance documents for its self-bonds within ninety days of the order. *Id.* The ninety day deadline is also required by the LQRR Chapter 11 regulations. LQRR, Ch. 11 § 5(a). In fact, the LQRR Chapter 11 regulations dictate that:

If the operator fails within 90 days to make a substitution for the revoked self-bond with a corporate surety, cash, governmental securities, or federally insured certificates of deposit, or irrevocable letters of credit, the Administrator shall suspend or revoke the license of the operator to conduct operations upon the land described in the permit until such substitution is made.

Id. at § 5(b) (emphasis added).

However, the ninety day deadline came and went and to date, Alpha has yet to make a financial assurance substitution for its revoked self-bonds. This puts the operator in non-compliance with Wyoming’s, and SMCRA’s, financial assurance obligations.

This Permit Renewal

Based on the Resource Council's review of the permit renewal package, and a separate conversation between Resource Council staff Shannon Anderson and LQD Administrator Kyle Wendtland, DEQ did not specifically review Alpha's financial assurance as part of the Department's renewal decision.

Nevertheless, the Department did note in the correspondence between the Department and the company that "An acceptable reclamation performance bond instrument must be in place before renewal of Permit No. 428 is approved." Memo from Kurt King, DEQ, Aug. 6, 2015 at 3. As discussed above, "an acceptable reclamation performance bond instrument" is not in place because Alpha's "self-bonds" are no longer acceptable under Wyoming law. Notably, in the course of the permit renewal, the Department did not revisit its May 26, 2015 Order requiring substitution of Alpha's "self-bonds." Therefore, under a literal reading of the EQA and its implementing regulations, Alpha's permit renewal should not be granted until the company comes into compliance with its financial assurance obligations by substituting its "self-bonds" for other financial assurance documents described in the Department's May 26, 2015 Order.

Alpha's Bankruptcy Proceedings

The Department will likely contend in response to these objections that its enforcement of its May 26, 2015 Order is barred by an agreement entered into between Wyoming and Alpha that has been filed with the bankruptcy court in Virginia. See Motion of the Debtors, Pursuant to Bankruptcy Rule 9019, For Entry of Stipulation and Order Concerning Reclamation Bonding of Their Surface Coal Mining Operations in Wyoming, Sept. 8, 2015, attached as Exhibit 3. The Agreement stipulates that "Wyoming shall not seek additional collateral or revoke, terminate, refuse to grant or amend or take any other adverse action with respect to the Debtors' mining

permits or licenses on account of the Debtors' failure to comply with the Wyoming Substitution Demand or reclamation bonding obligations" and that "any proceedings relating to the Wyoming Substitution Demand or the Debtors' self-bonding status, including the informal review process of WDEQ, shall be stayed." Id. at 21.

However, there are two main issues with Wyoming relying upon this agreement in the course of this permit renewal. First, the agreement was voluntarily entered into between Wyoming and Alpha and has not yet been approved by the Court. Therefore, no Court has barred Wyoming from enforcing its Order. Wyoming cannot voluntarily agree or decide to abstain from enforcing its laws and regulations and remain in compliance with SMCRA.

Second, and perhaps most importantly, SMCRA and the EQA do not contain exceptions to their financial assurance requirements for companies in bankruptcy proceedings. Merely because the company is in bankruptcy does not exempt them from compliance. In fact, if there is a time for greater enforcement given the company's financial condition, bankruptcy would be it. While the Department may claim that they cannot enforce the May 26, 2015 Order or any aspects of LQRR Chapter 11 rules because of the agreement they entered into with Alpha, from a legal standpoint it is clear the company is still in noncompliance. Based on a strict reading of the EQA, that means that the Department must deny the permit renewal, and no voluntary agreement with the company can waive these requirements. Otherwise, Wyoming's program implementing SMCRA would be in violation of federal requirements requiring the state program to be at least as stringent as federal law.² See 30 U.S.C. 1255(b); DK Excavating, Inc. v. Miano, 209 W.Va. 406, 410, 549 S.E.2d 280, 284 (2001).

² It should be noted that "[p]rovisions of approved State regulatory programs or permits issued pursuant to an approved State regulatory program may be enforced by the Secretary or his

Conclusion

We understand that there are practical concerns at play here given the complexity of the bankruptcy proceedings and Alpha's overall financial condition (i.e. they may not be able to post the bond substitution even if they were ordered to). However, we are also concerned about the precedent the Department would set by ignoring compliance with such a fundamental part of the EQA by issuing this permit renewal. We believe there may be a way to reconcile the practical with the law in terms of additional permit conditions that could be added to the permit at the time of renewal. As stated above, we believe this case lends itself to an informal conference with the Department to work out the various complex issues of this case.

Please let us know when an informal conference can be scheduled.

Sincerely,

A handwritten signature in black ink, appearing to read "Shannon Anderson", with a long horizontal line extending to the right.

Shannon Anderson
Powder River Basin Resource Council
934 N. Main St.
Sheridan, WY 82801
sanderson@powderriverbasin.org
307-672-5809

authorized agents." 30 U.S.C. § 900.12(b). Therefore, even if Wyoming elects not to enforce its regulations, OSM may still do so.