

Andrew J. Kuhlmann, 7-4595  
Senior Assistant Attorney General  
Wyoming Attorney General's Office  
2320 Capitol Avenue  
Cheyenne, WY 82002  
PH: (307) 777-6946  
Fax: (307) 777-3542  
andrew.kuhlmann@wyo.gov  
*Attorney for the State of Wyoming*  
*Department of Environmental Quality*

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

**IN THE MATTER OF THE APPEAL OF )  
THE RENEWAL BOND AMOUNT FOR ) EQC DOCKET NO. 16-4601  
BENTONITE MINING PERMIT NO. 624 )**

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**DEQ'S PREHEARING STATEMENT, WITNESS DISCLOSURES  
AND EXHIBIT LIST**

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Respondent, the State of Wyoming, Department of Environmental Quality, through its undersigned counsel, hereby submits this prehearing memorandum, list of witnesses, and list of exhibits.

**I. WITNESS LIST**

**A. WILL CALL:**

Brian Wood  
District 2 Assistant Supervisor  
Land Quality Division  
Wyoming Department of Environmental Quality  
c/o Andrew Kuhlmann  
Wyoming Attorney General's Office  
2320 Capitol Avenue  
Cheyenne, WY 82002  
(307) 777-6946

Mr. Wood may testify about his duties as a permit coordinator for the Department, and specifically his work on Permit No. 624. Mr. Wood may testify generally about the procedures

and processes involved with the Department reviewing annual reports, inspecting mine permits, drafting inspection reports, calculating bond amounts, setting bond amounts, or other related procedures. He also may testify regarding his knowledge, skill, experience, training, or education qualifying him as an expert regarding field inspections, inspection reports, and bond determinations for mining permits including, but not limited to, Permit No. 624. Additionally, he may testify about his knowledge, observations, and opinions regarding field inspections, annual reports, inspection reports, bond calculations, interactions and communications with the petitioner, his company and its agents, or other aspects of or issues related to Permit No. 624 or its reclamation bonding. He may testify based upon his observations, actions, and opinions in support of the Department's inspection reports, determination of the bond amount for Permit No. 624, and the letter from the Department setting the bond amount for Permit No. 624.

**B. MAY CALL:**

Alan Edwards  
Deputy Director  
Wyoming Department of Environmental Quality  
c/o Andrew Kuhlmann  
Wyoming Attorney General's Office  
2320 Capitol Avenue  
Cheyenne, WY 82002  
(307) 777-6946

Mr. Edwards may testify about his knowledge of, and actions involving, Permit No. 624 and other permits owned by the petitioner or his company. Mr. Edwards may also testify regarding the Department's responsibilities and procedures related to this matter.

DEQ reserves the right to call any witnesses called or designated by the petitioners, as well as any other witnesses needed for the purposes of rebuttal or impeachment testimony.

## **II. STATEMENT OF CLAIMS, DEFENSES, AND ISSUES**

The petitioner claims that the Department wrongly determined the renewal bond amount stated in the Department's letter to the petitioner, dated December 16, 2015. He also claims that the Department's calculation required too much topsoil re-spreading. He also claims that the Department cannot require a contingency fee. Finally, the petitioner claims that he should be able to reclaim his land to any standard the he desires, regardless of state-wide Department standards and regulations designed to protect the public's health and safety and the State's land resources.

The Department claims as a defense that the Council does not have subject matter jurisdiction to hear this matter because the Act does not provide for an appeal of this nature to be heard by the Council. *See DEQ's Mot. to Dismiss* (for more detailed discussion). The Department further claims that the petitioner failed to state a claim for which relief may be granted by the Council because the Act does not provide for any appeal of this nature or for the Council to provide relief in such a matter. The Department also claims that it and its staff did not act arbitrarily, capriciously, in abuse of its discretion, or contrary to law in any actions they took to regulate Permit No. 624 or establish the bond amount required for the most recent renewal period. In addition, the Department claims that the actions it took regarding Permit No. 624 were discretionary. The regulatory actions taken by the Department and the renewal bond amount and conditions established by the Department were all proper.

## **III. BURDEN OF PROOF**

If the Council has subject matter jurisdiction to hear this matter, the nature of this petition would be an administrative review of a past Department decision setting the bond amount. Therefore, the petitioner would have the burden of proof to establish, based on the preponderance

of the evidence, that the Department's decision was arbitrary, capricious, an abuse of discretion, or contrary to the law. *See* Wyo. Stat. Ann. § 16-3-114(c).

#### IV. EXHIBIT LIST


At the hearing in this matter, the Department may use the following exhibits:

1. DEQ 1 Permit and License Forms
2. DEQ 2 2013 Mine and Reclamation Plans
3. DEQ 3 1989 Original Mine and Reclamation Plans
4. DEQ 4 2012 Reports and Correspondence
5. DEQ 5 2013 Reports and Correspondence
6. DEQ 6 2014 Reports and Correspondence
7. DEQ 7 2015 and 2016 Reports and Correspondence
8. DEQ 8 DEQ Land Quality Noncoal Rules Chapter 1
9. DEQ 9 DEQ Land Quality Noncoal Rules Chapter 3
10. DEQ 10 DEQ Land Quality Guidelines 12 and 12A
11. DEQ 11 Appendix C and Land Ownership Map

The Department has filed copies of the exhibits listed above along with this memorandum.

The Department also reserves the right to introduce any exhibits designated by the petitioner or any other exhibits for the purposes of impeachment.

DATED this 16<sup>th</sup> day of June 2016.

  
Andrew J. Kuhlmann (Wyo. Bar No. 7-4595)  
Senior Assistant Attorney General  
Wyoming Attorney General's Office  
2320 Capitol Avenue  
Cheyenne, WY 82002  
T: (307) 777-6946  
[andrew.kuhlmann@wyo.gov](mailto:andrew.kuhlmann@wyo.gov)

**CERTIFICATE OF SERVICE**

I hereby certify that on the 10<sup>th</sup> day of June, 2016, a true and correct copy of the foregoing document was filed electronically with the Wyoming Environmental Quality Council's online docket system and served electronically through that system on the following:

Todd Parfitt Director, DEQ todd.parfitt@wyo.gov	Alan Edwards Deputy Director, DEQ alan.edwards@wyo.gov
Heather Jacobsen Jacobsen Law Office, LLC hjlawoffice@wyoming.com	

  
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WYOMING ATTORNEY GENERAL'S OFFICE