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*Department of Environmental Quality*

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

**In the Matter of the Appeal of the Notice of )  
Violation and Order Issued to Good Bentonite ) Docket 17-4201A  
Company, LLC, DEQ NOV Docket 5748-17 )**

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**DEPARTMENT OF ENVIRONMENTAL QUALITY'S MOTION FOR A MORE  
DEFINITE STATEMENT OF THE GROUNDS FOR APPEAL**

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The Department of Environmental Quality ("Department"), through its undersigned counsel, hereby files this motion in response to the Wyoming Environmental Quality Council's ("Council") *Order for Hearing and Response Order*, issued on June 26, 2017. The Department files this motion pursuant to the Department's and the Council's Rules of Practice and Procedure, Chapter 2, Section 12(b), and consistent with Wyoming Rule of Civil Procedure 12(e).

On May 12, 2017, the Department issued Mr. Brian Good and Good Bentonite Company, LLC, (collectively, "Good Bentonite") a notice of violation and order, DEQ docket number 5748-17, ("NOV and Order") regarding the required reclamation bond for Permit PT-533. Good Bentonite appealed the NOV and Order within 10 days after the date of the notice by requesting, in writing, a hearing before the Council. Good Bentonite's letter to the Council was filed on May 17, 2017, and simply stated:

We, Brian and Danae Good of Good Bentonite Company, LLC are appealing this Notice of Violation, Docket #5748-17, on this date of

May 12, 2017. We would like the EQC council to review. Notice of Violation and Order, attached[.]

On June 26, 2017, the Council issued an *Order for Hearing and Response Order*, in which it ordered the Department to file a responsive pleading in this matter no later than July 3, 2017.

The Department believes that Good Bentonite's written request satisfies the minimum requirements under Wyoming Statute § 35-11-701(c)(ii) to request a Council hearing on this NOV and Order. However, Good Bentonite has not yet identified the statements of fact or law in the NOV and Order that it disagrees with. The company also has not stated any reasons why the Council should find "that no violation has occurred" and "rescind the order", or whether Good Bentonite is requesting some other relief. *See* Wyo. Stat. Ann. § 35-11-701(c)(iii). While the Department asserts that a violation has occurred and that its NOV and Order should be affirmed in all respects, the Department cannot adequately respond to Good Bentonite's allegations challenging the NOV and Order until the company identifies the facts and law upon which it relies. Without that information, the Department currently "cannot reasonably prepare a response" to the request for hearing because the request is too vague and ambiguous.

To correct this situation, the Department moves the Council to require Good Bentonite to file a more definite statement of the grounds for its appeal. To grant this motion, the Department refers the Council to Rule 12(e) of the Wyoming Rules of Civil Procedure, which provides:

A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response. The motion must be made before filing a responsive pleading and must point out the defects complained of and the details desired. If the court orders a more definite statement and the order is not obeyed within 10 days after notice of the order or within the time the court sets, the court may strike the pleading or issue any other appropriate order.

Although this provision is not specifically adopted by reference the Council's Rules of Practice and Procedure, the hearing officer in this matter has sufficient discretion to grant this procedural motion. *See Rules of Practice and Procedure*, ch. 2, § 12(b).

THEREFORE, the Department hereby requests:


1. That the Council look to Wyoming Rule of Civil Procedure 12(e) and require Good Bentonite to supplement its request for hearing with a more definite statement of: (1) the facts and law in the NOV and Order that the company disputes, (2) the relief that the company is requesting from the Council, and (3) the grounds for granting that relief. At a minimum, the Department requests that the Council require Good Bentonite to provide, "[a] statement in ordinary but concise language of the specific allegations on which the petition is based, including references to the statute, rule, or order that the petitioner alleges has been violated[.]" *See Rules of Practice & Procedure*, ch. 2, § 4(b)(iii).

2. That the Council consider requiring Good Bentonite to file the more definite statement no later than 10 days after the date of the Council's order granting this motion. The Department also suggests that the Council require the Department to file its responsive pleading to the more definite statement no later than 10 days after the statement's deadline.

A proposed order granting this motion is attached. The Department's counsel understands that Good Bentonite is not currently represented by counsel in this case. The Department's counsel conferred with Mr. Good about the motion a couple days prior to its filing. At Mr. Good's request, Department's counsel provided Good Bentonite a period of time to consider the motion and notify the Department's counsel about the company's position on the motion. However, that period

expired and, as of the time of filing, Good Bentonite had not responded about its position.

Respectfully submitted this 30<sup>th</sup> day of June, 2017.

  
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*Counsel for the State of Wyoming Department  
of Environmental Quality*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 30<sup>th</sup> day of June, 2017, a copy of the foregoing document was filed electronically with the Wyoming Environmental Quality Council's online docket system and copies were served, as indicated, on the following:

Todd Parfitt  
Director, DEQ  
[todd.parfitt@wyo.gov](mailto:todd.parfitt@wyo.gov)  
*(By email)*

Alan Edwards  
Deputy Director, DEQ  
[alan.edwards@wyo.gov](mailto:alan.edwards@wyo.gov)  
*(By email)*

Brian and Danae Good  
Good Bentonite Company, LLC  
3796 Lane 32 ½  
Greybull, WY 82426  
[teamrope@tctwest.net](mailto:teamrope@tctwest.net)  
*(By U.S. Mail and email)*

  
\_\_\_\_\_  
Wyoming Attorney General's Office

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

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Company, LLC, DEQ NOV Docket 5748-17     )**

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**ORDER GRANTING THE DEPARTMENT OF ENVIRONMENTAL QUALITY'S  
MOTION FOR SCHEDULING CONFERENCE AND A MORE DEFINITE  
STATEMENT OF GROUNDS FOR APPEAL**

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On June 28, 2017, the Department of Environmental Quality ("Department") filed the *Department of Environmental Quality's Motion for a More Definite Statement of the Grounds for Appeal*. The Environmental Quality Council's ("Council") presiding officer on this matter, having considered the motion and the applicable statutes and regulations, and being otherwise fully advised on the premises, hereby GRANTS the motion and ORDERS:

1. Good Bentonite Company, LLC, shall file a more definite statement of: (1) the facts and law in the NOV and Order that the company disputes, (2) the relief that the company is requesting from the Council, and (3) the grounds for granting that relief. Good Bentonite shall file this more definite statement no later than \_\_\_\_\_, which is 10 days after the date of this order.

2. The Department shall then file a responsive pleading to the more definite statement no later than \_\_\_\_\_, which is 10 days after the statement's deadline.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Deb Baumer, Presiding Officer  
Environmental Quality Council

**CERTIFICATE OF SERVICE**

I, \_\_\_\_\_, certify that at Cheyenne, Wyoming, on the \_\_\_\_\_ day of \_\_\_\_\_, 2017, I served a copy of the foregoing *Order Granting the Department of Environmental Quality's Motion for Scheduling Conference and a More Definite Statement of Grounds for the Appeal* by electronic mail to the following:

Brian and Danae Good  
Good Bentonite Company, LLC  
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Greybull, WY 82426  
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Andrew J. Kuhlmann  
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