



2. On June 15, 2017, BHB filed its amendment application for Permit to Mine No. 248C (Herco Amendment or Application). The Application amends Permit to Mine No. 248C to include an additional 347 acres into the existing permit area.

3. BHB believes that it already has the necessary "instruments of consent" from the surface owner under W.S. §35-11-406(b) as explained hereafter, but out of an abundance of caution and in conjunction with the application, BHB sought written landowner consent from Mr. Jim Crossingham (Crossingham), the surface owner.

4. BHB has made substantial efforts to obtain Crossingham's approval of the mining and reclamation plans and to secure his signature on Form 8 as required by the Land Quality Division (LQD), to no avail. On June 15, 2017, BHB sent a complete copy of the mining and reclamation plans, legal descriptions of the real property, description of access roads, detailed drawings and descriptions of the proposed reclamation, and other documents consistent with the requirements of W.S. §35-11-406(b)(xii), all as set forth in **Exhibit 1** attached hereto.

5. On August 21, 2017, counsel for BHB sent a second request to Crossingham by certified mail, requesting that he sign Form 8. **Exhibit 2**, attached hereto. Despite these efforts by BHB, Crossingham has refused to respond, making it necessary for BHB to file its Petition with the EQC seeking an Order in Lieu of Landowner Consent under W.S. §35-11-406(b)(xii).

6. The mining will not substantially prohibit the operations of the surface owner, and the mining and reclamation plans explain in detail the plans for reclamation

of the surface to its approved future use, in segments as circumstances permit, and as soon as feasibly possible.

7. The EQC has jurisdiction of this matter pursuant to W.S. §35-11-112(a), (iv), W.S. §35-11-112(c)(ii), and W.S. §35-11-406(b)(xii).

8. The Herco Amendment includes the following real property in T41N, R81W:

Section 2: SE1/4SE1/4  
Section 11: E1/2

9. BHB already owns and / or leases the minerals within the Herco Amendment area and therefore has the legal right to mine the land encompassed within the area of its amended application. Although BHB does not believe it is required to prove ownership or legal right to the bentonite under W.S. §35-11-406(b)(xiii) since it already holds, "instruments of consent" to mine pursuant to its quit claim deeds, assignments and leases, BHB provides the following information relating to the acreage described in the Amendment. BHB has the following legal instruments granting it the right to mine within the area of the amended application:

<b>Legal Description</b>	<b>Date</b>	<b>Title Document</b>
SE1/4SE1/4 of Section 2	March 19, 2014	Herco Minerals Quitclaim deed
NE1/4NE1/4 of Section 11	March 19, 2014	Herco Minerals Quitclaim deed
NE1/4 of Section 11 (remainder)	April 30, 2013	Assignment - Jim Crossingham
SE1/4 of Section 11	August 15, 2016	Bentonite Lease Agreement

10. The quit claim deeds, Assignment and Lease are attached hereto as Exhibits 3, 4 and 5.

11. With respect to the NE1/4 of Section 11, Crossingham assigned to BHB his "right, title and interest in and to the bentonite in, on and under" the TTT #10 mining claim with the "right to use and occupy the Mining Claims as reasonably necessary for

mining operations thereon without payment of additional fees or surface damage payment." Black Hills has honored the Assignment by making annual payments of \$15,000 to Crossingham from the time the Assignment was signed in April, 2013, all while Crossingham has denied BHB the right of access by refusing to sign Form 8.

12. Petitioner has satisfied each of the requirements of W.S. §35-11-406(b) and is entitled to an Order in Lieu of Landowner Consent from the EQC:

(xii) For an application filed after March 1, 1975, including any lands privately owned but not covered by the provisions of paragraph (b)(xi) of this section an instrument of consent from the surface landowner, if different from the owner of the mineral estate, to the mining plan and reclamation plan. If consent cannot be obtained as to the mining plan or reclamation plan or both, the applicant may request a hearing before the environmental quality council. The council shall issue an order in lieu of consent if it finds:

(A) That the mining plan and the reclamation plan have been submitted to the surface owner for approval;

(B) That the mining plan and the reclamation plan is detailed so as to illustrate the full proposed surface use including proposed routes of egress and ingress;

(C) That the use does not substantially prohibit the operations of the surface owner;

(D) The proposed plan reclaims the surface to its approved future use, in segments if circumstances permit, as soon as feasibly possible;

WHEREFORE, Petitioner requests that the EQC set a hearing on BHB's request for an Order in Lieu of Landowner Consent, and thereafter enter its order granting Petitioner the right to enter upon said lands to conduct mining operations in accordance with its mining and reclamation plans in lieu of surface owner consent.

Respectfully Submitted this 20th day of September, 2017.



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Cheyenne, WY 82001  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that he provided a copy of the foregoing as indicated below, to the following on the 20th day of September, 2017, addressed as follows:

David Bagley  
Chairman, Environmental Quality Council  
122 W. 25<sup>th</sup> St., Room 1714  
Cheyenne, WY 82002

Hand Delivered

Todd Parfitt  
Director, DEQ  
200 W. 17<sup>th</sup> Str  
Cheyenne, WY 82002

Hand Delivered

Jim Crossingham  
TTT Ranch  
P.O. Box 988  
Mount Airy, North Carolina 27030

Certified Mail, Return  
Receipt Requested



David G. Ditto