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FILED

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Jim Ruby, Executive Secretary
Environmental Quality Council

July 5, 2018

VIA HAND DELIVERY

Meghan Lally
Chair, Wyoming Environmental Quality Council
122 W. 25th Street
Herschler Building 1W, Room 1714
Cheyenne, WY 82002

Re: Petition for Order in Lieu of Consent and Request for Hearing
WDEQ/LQD Mine Permit 267C
State of Wyoming Lease 0-42804 Amendment TFN 6 1/197

Dear Chair Lally:

Bentonite Performance Minerals, LLC (BPM) has applied to the Wyoming Department of Environmental Quality, Land Quality Division (WDEQ/LQD) to amend its bentonite surface mining permit to include additional lands. Despite its best efforts, BPM has been unable to secure the consent to the proposed mining and reclamation plans from the affected surface owner 2U Ranch, LLC (2U) and, as a result, the permitting process has stalled. Because the surface owner has withheld consent and because WDEQ/LQD cannot process BPM's permit amendment application absent surface owner consent, BPM requests that the Environmental Quality Council (EQC), after hearing, issue an Order in Lieu of Consent. As explained below, BPM meets all of the requirements for the EQC to issue an Order in Lieu of that Consent.

Request for Hearing: Pursuant to Chapter 2, Section 4 of the EQC Rules, BPM hereby requests that the EQC convene a hearing and subsequently issue an Order in Lieu of Consent as prescribed by Wyo. Stat. § 35-11-406(b)(xii).

I. Parties

Bentonite Performance Minerals, LLC
554 US Highway 212
Belle Fourche, SD 57717

2U Ranch, LLC
426 Lonesome Country Road
Alzada, MT 59311

II. Background and Facts

BPM is a limited liability company organized and existing under the laws of the State of New Jersey and authorized to conduct and engage in the business of mining in the State of Wyoming. BPM is authorized to and conducts bentonite surface mining operations in the State of Wyoming pursuant to, among others, WDEQ/LQD Mine Permit 267C.

BPM is the lessee of certain unpermitted bentonite deposits located in Crook County, Wyoming by virtue of a June 2, 2011 lease agreement by and between BPM and the State of Wyoming (Lease 0-42804). Pursuant to Lease 0-42804, the State of Wyoming granted BPM the exclusive right and privilege to strip-mine, extract, remove and dispose of the bentonite deposits in or under approximately 608.66 acres of lands in Crook County, Wyoming. The leased minerals are adjacent to BPM's existing Mine Permit 267C bentonite mining operations.

On February 24, 2016, BPM requested WDEQ/LQD amend Mine Permit 267C to include those adjacent bentonite deposits covered by Lease 0-42804. 2U is the owner of the surface lands affected by the proposed mining and reclamation operations, and, as such, must be afforded the opportunity to review and consent to the proposed mining and reclamation plans prior to the issuance of the amended permit.

Beginning in January 2015, BPM shared with 2U the proposed mining and reclamation plans. To the extent possible, BPM revised the mining and reclamation plans to address 2U's interests and concerns. Unfortunately, after years of working with 2U to secure its consent, the parties are at an impasse and the permitting process has stalled. For this reason, BPM has elected to forgo obtaining consent from 2U and request that the EQC issue an Order in Lieu of that Consent pursuant to Wyo. Stat. § 35-11-406(b)(xii).

III. Legal Framework

The Environmental Quality Act mandates that the EQC issue an Order in Lieu of Consent if it finds that (1) the mining and reclamation plans have been submitted to the surface owner for approval; (2) the mining and reclamation plans are detailed so as to illustrate the full proposed surface use, including proposed routes of ingress and egress; (3) the use does not substantially prohibit the operations of the surface owner; and (4) the proposed reclamation plan reclaims the surface to its approved future use, in segments if circumstances permit, as soon as feasibly possible. Wyo. Stat. § 35-11-406(b)(xii)(A)-(D).

BPM will demonstrate at hearing that it has taken the steps necessary to obtain an Order in Lieu of Consent. BPM has submitted the mining and reclamation plans to 2U and provided 2U with the opportunity to review and consent to the proposed operations. The mining and reclamation plans sufficiently detail the use and disturbance of the surface lands, including all routes of ingress and egress. The mining and reclamation plans are designed to minimize impacts to 2U, and the proposed surface use will not substantially prohibit 2U's operations. By its terms, BPM's reclamation plan requires that the disturbed surface be reclaimed as soon as feasibly possible in compliance with Wyoming law.

**V. Conclusion**

BPM initiated the permit amendment process approximately 28 months ago, and surface owner consent is all that prevents WDEQ/LQD from processing the application. In light of the delays experienced thus far and the importance of making meaningful progress, BPM respectfully requests the EQC convene a hearing on this petition at its earliest convenience. The EQC has the authority – and is obligated in this instance – to grant BPM an Order in Lieu of Consent, and BPM will demonstrate at hearing that the requirements for the issuance of an Order in Lieu of Consent have been satisfied.

Sincerely,

A handwritten signature in black ink, appearing to read "Matt J. Micheli".

Matt J. Micheli
Samuel R. Yemington
Holland & Hart LLP
2515 Warren Avenue, Suite 450
P.O. Box 1347
Cheyenne, WY 82001

ATTORNEYS FOR BENTONITE
PERFORMANCE MINERALS, LLC

CERTIFICATE OF SERVICE

I hereby certify that on July 5, 2018, I served a true and correct copy of the foregoing PETITION FOR ORDER IN LIEU OF CONSENT AND REQUEST FOR HEARING on the following:

By Registered Mail, Return Receipt Requested:

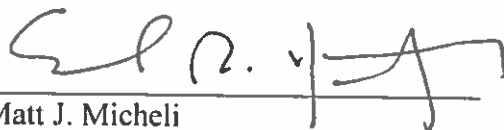
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