

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

**IN RE BENTONITE PERFORMANCE) DOCKET 18-1601
MINERALS LLC)**

**BENTONITE PERFORMANCE MINERALS LLC'S RESPONSE IN OPPOSITION TO
2U RANCH LLC'S REQUEST FOR INDEFINITE STAY OF PROCEEDING**

Petitioner Bentonite Performance Minerals, LLC (BPM), pursuant to Chapter 2, Section 11(a) of the Rules of the Wyoming Department of Environmental Quality, hereby responds in opposition to Respondent 2U Ranch LLC's (2U) request for an indefinite stay of the above-captioned proceeding and states as follows in support:

1. BPM is engaged in the business of mining in the State of Wyoming, and BPM is authorized to and conducts bentonite surface mining operations pursuant to Wyoming WDEQ/LQD Mine Permit 267C.

2. 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).

3. On February 24, 2016, BPM requested WDEQ/LQD amend Mine Permit 267C to include those adjacent bentonite deposits covered by Lease 0-42804, of which 2U is the surface owner.

4. On June 28, 2016, WDEQ/LQD determined that the Mine Permit 267C amendment application satisfied completeness requirements.

5. To date, WDEQ/LQD has not determined the Mine Permit 267C amendment application to be technically complete as an executed Form 8 (Surface Owner Consent) or an Order in Lieu of Consent has not been provided by BPM.

6. Beginning in January 2015, BPM shared with 2U the proposed mining and reclamation plans and, to the extent possible, revised the mining and reclamation plans to address 2U's interests and concerns.

7. To date, 2U has withheld its consent and the permitting process has stalled.

8. For this reason, on July 5, 2018 – approximately 28 months after BPM initiated the permit amendment process – BPM requested the EQC, pursuant to Chapter 2, Section 4 of the Rules of the Wyoming Department of Environmental Quality, convene a hearing and issue an Order in Lieu of Consent as prescribed by Wyo. Stat. § 35-11-406(b)(xii).

9. The issuance by the EQC of an Order in Lieu of Consent will allow WDEQ/LQD to process the Mine Permit 267C amendment application.

10. On August 7, 2018, the Hearing Examiner issued an order setting an August 21, 2018 pre-hearing conference.

11. On August 9, 2018, 2U moved the Hearing Examiner to indeterminately delay the pre-hearing conference, thereby effectively requesting that the Hearing Examiner agree to an indefinite stay of the proceeding.

12. 2U did not contact or confer with counsel for BPM prior to filing its motion as required by Chapter 2, Section 11(c) of the Rules of the Wyoming Department of Environmental Quality.

13. 2U alleges that the August 21, 2018 pre-hearing conference is “premature” because (1) Mine Permit 267C is technically inadequate; (2) Lease 0-42804 is invalid; and (3) the parties have not mediated the dispute.

14. BPM disputes each allegation; however, regardless of merit, 2U's claims regarding the technical adequacy of Mine Permit 267C and the validity of Lease 0-42804 are irrelevant to and have no bearing on this proceeding.

15. The subject matter of this proceeding is strictly limited to the four elements enumerated by Wyo. Stat. § 35-11-406(b)(xii) and necessary to obtain an Order in Lieu of Consent. Specifically, in this hearing the EQC will be asked to determine whether:

- A. The mining and reclamation plans were submitted to the landowner;
- B. The mining and reclamation plans were detailed so as to illustrate the proposed surface use;
- C. The use does not substantially prohibit the operations of the surface owner; and
- D. The reclamation plan reclaims the surface to its approved future use as soon as feasibly possible.

16. Any challenges to the adequacy of Mine Permit 267C or the validity of Lease 0-42804 fall beyond the purview and jurisdiction of the EQC for this proceeding.

17. Wyoming law affords 2U the opportunity and right to challenge the adequacy of the of Mine Permit 267C and the validity of Lease 0-42804; however, an Order in Lieu of Consent proceeding is not the appropriate venue to raise these allegations.

18. With respect to mediation, BPM is not obligated, whether contractually, statutorily or otherwise, to mediate any matter with 2U.

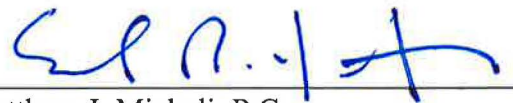
19. On July 13, 2018 – eight days after BPM initiated this proceeding – 2U requested that BPM mediate surface access issues. BPM agreed to mediate surface access issues at 2U's earliest convenience. However, on August 6, 2018, 2U informed BPM that it was no longer interested in pursuing mediation. It appears to BPM that 2U is not sincerely interested in

resolving the surface access issues, but rather set on delaying and disrupting this proceeding and the processing of the Mine Permit 267C amendment application.

20. An indefinite stay of the proceeding unfairly prejudices BPM. BPM initiated the Mine Permit 267C amendment process approximately 30 months ago, and surface owner consent is all that prevents WDEQ/LQD from processing the Mine Permit 267C amendment application. BPM has a statutory right to petition the EQC for an Order in Lieu of Consent, and the EQC is mandated to grant BPM an Order in Lieu of Consent upon a showing of compliance with Wyo. Stat. § 35-11-406(b)(xii). In light of the considerable delays experienced thus far and the importance of making meaningful progress, BPM respectfully requests the Hearing Examiner deny 2U's request to indefinitely stay this proceeding.

WHEREFORE, Petitioner Bentonite Performance Minerals, LLC respectfully requests the Hearing Examiner deny Respondent 2U Ranch LLC's request to indefinitely stay the above-captioned proceeding.

DATED August 14, 2018.



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CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2018, I served a true and correct copy of the foregoing BENTONITE PERFORMANCE MINERALS LLC'S RESPONSE IN OPPOSITION TO 2U RANCH LLC'S REQUEST FOR INDEFINITE STAY OF PROCEEDING to the following:

By Hand Delivery:

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