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BPM criminal and civil trespass of 2U Ranch negates mining permit and EQC Docket Number 18-1601

1 message

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October 5, 2018

Kyle Wendtland
 Administrator
 Department of Environmental Quality

Jim Ruby
 Executive Secretary
 Environmental Quality Council

RE: BPM criminal and civil trespass of 2U Ranch negates mining permit and EQC Docket Number 18-1601

Dear Mr. Kyle J. Wendtland and Mr. Ruby:

The Department of Environmental Quality (DEQ) and the Environmental Quality Council (EQC) are required by law (**W. S. 40-27-101 - Trespass to unlawfully collect resource data; unlawful collection of resource data**) and (**W. S. 6-3-414- Trespassing to unlawfully collect resource data; unlawful collection of resource data**) to not use resource data unlawfully collected by Bentonite Performance Minerals (BPM) through criminal and civil trespass on the 2U Ranch LLC property. This unlawful resource data is currently being used for WDEQ-LQD Mining Permit 267C – Wyoming State Mineral Lease 42804 – TFN #6 1/197 and EQC Docket Number 18-1601.

Both these laws require this unlawful resource data to be expunged from all governmental files and data bases, and it shall not be considered in determining any agency action. This unlawful resource data is also not admissible in evidence in any civil, criminal or administrative proceeding, other than a criminal and/or civil action for trespassing.

Therefore, all unlawful resource data must be removed from WDEQ-LQD Mining Permit 267C – Wyoming State Mineral Lease 42804 – TFN #6 1/197 and EQC Docket Number 18-1601. This data cannot be used in any matter for the mining permit and is not admissible as evidence in an administrative proceeding - EQC Docket Number 18-1601.

In addition, civil trespass makes BPM liable for all consequential and economic damages proximately caused by the trespass and for all litigation costs.

W. S. 40-27-101. Trespass to unlawfully collect resource data; unlawful collection of resource data:

- (a) A person commits a civil trespass to unlawfully collect resource data from private land if he:
- (i) Enters onto private land for the purpose of collecting resource data; and
 - (ii) Does not have:
 - (A) An ownership interest in the real property or statutory, contractual or other legal authorization to enter the private land to collect the specified resource data; or
 - (B) Written or verbal permission of the owner, lessee or agent of the owner to enter the private land to collect the specified resource data.
- (b) A person commits a civil trespass of unlawfully collecting resource data if he enters onto private land and collects resource data from private land without:
- (i) An ownership interest in the real property or, statutory, contractual or other legal authorization to enter the private land to collect the specified resource data; or
 - (ii) Written or verbal permission of the owner, lessee or agent of the owner to enter the private land to collect the specified resource data.
- (c) A person commits a civil trespass to access adjacent or proximate land if he:
- (i) Crosses private land to access adjacent or proximate land where he collects resource data; and
 - (ii) Does not have:
 - (A) An ownership interest in the real property or, statutory, contractual or other legal authorization to cross the private land; or
 - (B) Written or verbal permission of the owner, lessee or agent of the owner to cross the private land.
- (d) A person who trespasses to unlawfully collect resource data, a person who unlawfully collects resource data or a person who trespasses to access adjacent or proximate land under this section shall be liable in a civil action by the owner or lessee of the land for all consequential and economic damages proximately caused by the trespass. In a civil action brought under this section, in addition to damages, a successful claimant shall be awarded litigation costs. For purposes of this subsection, "litigation costs" shall include, but is not limited to, court costs, expert witness fees, other witness fees, costs associated with depositions and discovery, reasonable attorney fees and the reasonably necessary costs of identifying the trespasser, of obtaining effective service of process on the trespasser and of successfully effecting the collection of any judgment against the trespasser.**
- (e) Repealed by Laws 2016, ch. 115, § 2.
- (f) Resource data unlawfully collected on private land under this section is not admissible in evidence in any civil, criminal or **administrative proceeding**, other than a civil action for trespassing under this section or a criminal prosecution for trespassing under W.S. 6-3-414.
- (g) Resource data unlawfully collected on private land under this section in the possession of any governmental entity as defined by W.S. 1-39-103(a)(i) shall be expunged by the entity from all files and data bases, and it shall not be considered in determining any agency action.**
- (h) As used in this section:
- (i) "Collect" means to take a sample of material, acquire, gather, photograph or otherwise preserve information in any form and the recording of a legal description or geographical coordinates of the location of the collection;
 - (ii) "Peace officer" means as defined by W.S. 7-2-101;
 - (iii) "Resource data" means data relating to land or land use, including but not limited to data regarding agriculture, minerals, geology, history, cultural artifacts, archeology, air, water, soil, conservation, habitat, vegetation or animal species. "Resource data" does not include data:
 - (A) For surveying to determine property boundaries or the location of survey monuments;
 - (B) Used by a state or local governmental entity to assess property values;

(C) Collected or intended to be collected by a peace officer while engaged in the lawful performance of his official duties.

W. S. 6-3-414. TRESPASSING TO UNLAWFULLY COLLECT RESOURCE DATA; UNLAWFUL COLLECTION OF RESOURCE DATA:

- (a) A person is guilty of trespassing to unlawfully collect resource data from private land if he:
- (i) Enters onto private land for the purpose of collecting resource data; and
 - (ii) Does not have:
 - (A) An ownership interest in the real property or, statutory, contractual or other legal authorization to enter the private land to collect the specified resource data; or
 - (B) Written or verbal permission of the owner, lessee or agent of the owner to enter the private land to collect the specified resource data.
- (b) A person is guilty of unlawfully collecting resource data if he enters onto private land and collects resource data from private land without:
- (i) An ownership interest in the real property or, statutory, contractual or other legal authorization to enter the private land to collect the specified resource data; or
 - (ii) Written or verbal permission of the owner, lessee or agent of the owner to enter the private land to collect the specified resource data.
- (c) A person is guilty of trespassing to access adjacent or proximate land if he:
- (i) Crosses private land to access adjacent or proximate land where he collects resource data; and
 - (ii) Does not have:
 - (A) An ownership interest in the real property or, statutory, contractual or other legal authorization to cross the private land; or
 - (B) Written or verbal permission of the owner, lessee or agent of the owner to cross the private land.
- (d) Crimes committed under subsection (a), (b) or (c) of this section are punishable as follows:
- (i) By imprisonment for not more than one (1) year, a fine of not more than one thousand dollars (\$1,000.00), or both;
 - (ii) By imprisonment for not less than ten (10) days nor more than one (1) year, a fine of not more than five thousand dollars (\$5,000.00), or both, if the person has previously been convicted of trespassing to unlawfully collect resource data or unlawfully collecting resource data.
- (e) As used in this section:
- (i) "Collect" means to take a sample of material, acquire, gather, photograph or otherwise preserve information in any form and the recording of a legal description or geographical coordinates of the location of the collection;
 - (ii) Repealed by Laws 2016, Ch. 117, § 2.
 - (iii) "Peace officer" means as defined by W.S. 7-2-101;
 - (iv) "Resource data" means data relating to land or land use, including but not limited to data regarding agriculture, minerals, geology, history, cultural artifacts, archeology, air, water, soil, conservation, habitat, vegetation or animal species. "Resource data" does not include data:
 - (A) For surveying to determine property boundaries or the location of survey monuments;
 - (B) Used by a state or local governmental entity to assess property values;

(C) Collected or intended to be collected by a peace officer while engaged in the lawful performance of his official duties.

(f) No resource data collected on private land in violation of this section is admissible in evidence in any civil, criminal or **administrative proceeding**, other than a prosecution for violation of this section or a civil action against the violator.

(g) Resource data collected on private land in violation of this section in the possession of any governmental entity as defined by W.S. 1-39-103(a)(i) shall be expunged by the entity from all files and data bases, and it shall not be considered in determining any agency action.

Sincerely,

Ronald J. Ericsson, PhD

Scott A. Ericsson, PhD

Roland S. Ericsson, Attorney at Law