

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

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

**CORRECTED ORDER ON PETITIONER'S MOTION TO COMPEL
COMPLIANCE WITH DISCOVERY REQUESTS AND SANCTIONS**

The Petitioner, Bentonite Performance Minerals, LLC (BPM) filed a motion to compel compliance with discovery requests and sanctions on November 30, 2018 asking this hearing officer to: 1) require Respondent, 2U Ranch, LLC's representative, Ronald Ericsson appear for a deposition in Cheyenne on December 7, 2018; 2) require Respondent to produce documents responsive to the November 5, 2018 notice of deposition on or before December 5; and 3) require Respondent to remit the reasonable expenses, including attorney's fees accrued in preparing for and attending the November 19, 2018 deposition and drafting and filing Petitioner's motion to compel.

The parties appeared for a hearing on Petitioner's motion on December 3 in Cheyenne at 10:00 a.m. BPM's counsel, Matthew Micheli and Samuel Yemington, appeared in person and 2U Ranch, LLC's representatives, Ronald Ericsson and Roland Ericsson appeared by phone. Having considered the parties' arguments and relevant filings and being fully advised, I find and conclude as follow:


1. The failure of Ronald Ericsson to appear at the noticed deposition in Sundance, Wyoming on November 19, 2018 was an honest mistake by Ronald Ericsson. In response to the Petitioner's notice of deposition dated November 5, Roland Ericsson sent an email to Matthew Micheli on November 7, 2018 notifying him of Ronald Ericsson's unavailability on November 19, 2018. However, the email address used

by Roland Ericsson was incorrect and Mr. Micheli did not receive that email. It is important to note that the email address used by Roland Ericsson was the same incorrect email address used by the Council in prior documents delivered to both parties. As a result, the failure to show up for the November 19 deposition was an honest mistake which makes the award of attorney's fees and costs unjust.

2. Respondent 2U Ranch, LLC shall deliver to BPM all documents requested by BPM in its notice of deposition. Respondent shall send all documents via email today, December 3, which are capable of being emailed. The remaining documents shall be served upon BPM by mailing the documents to BPM's counsel no later than tomorrow, December 4, 2018.
3. BPM shall deliver to 2U Ranch, LLC the documents requested by 2U Ranch, LLC as soon as possible.
4. BPM's request for sanctions is denied.
5. The parties shall hold the deposition of Ronald Ericsson no later than December 12, 2018. The deposition shall be conducted through video conference. The parties shall work with each other to set the specific time of the deposition and to make sure that it will be conducted through video conference.
6. The contact information for the parties was exchanged today to avoid any further communication issues. The parties shall use that contact information going forward.

SO ORDERED.

DATED this 3rd day of December 2018.



John Corra, Hearing Examiner
Environmental Quality Council *jc*

CERTIFICATE OF SERVICE

I, Jim Ruby, certify that at Cheyenne, Wyoming, on the 3rd day of December 2018, I served a copy of the foregoing **Order** by electronic mail to the following:

Samuel Yemington
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