

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

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

**ORDER GRANTING IN PART BENTONITE PERFORMANCE
MINERALS, LLC'S MOTION TO COMPEL COMPLIANCE
WITH DISCOVERY REQUESTS AND DEPOSITION INTERROGATORIES**

Petitioner, Bentonite Performance Minerals, LLC (BPM) filed a Motion to Compel Compliance with Discovery Requests and Deposition Interrogatories on January 17, 2019, asking this hearing officer to: 1) require Respondent, 2U Ranch, LLC to respond to BPM's requests for production; and 2) require 2U Ranch to respond to unanswered deposition interrogatories. On January 18, 2019, BPM filed an errata to its motion to compel.

Having considered BPM's motion and relevant filings and being fully advised, I find and conclude as follows:

1. On November 5, 2018, BPM served upon 2U Ranch a notice of deposition duces tecum of Mr. Ronald Ericsson. Attached to the notice of deposition were eight requests for production of documents.
2. Mr. Ericsson sat for the deposition on December 12, 2018. The deposition was conducted telephonically.
3. It is unknown what specific documents Mr. Ericsson or 2U Ranch provided to BPM in response to each request for production. However, according to the deposition transcript of Mr. Ericsson, 2U Ranch or Mr. Ericsson produced some documents to BPM.
4. During the deposition, Mr. Ericsson repeatedly failed to answer BPM's counsel's questions related to this matter, specifically, questions asked about 2U Ranch's existing and future uses of the subject lands and how the subject lands would be impacted by BPM's mining

operations. Further, Mr. Ericsson would not answer questions about 2U Ranch's objections to BPM's proposed reclamation plan and would not answer questions about 2U Ranch's ownership and corporate structure. Mr. Ericsson repeatedly objected to the questions by stating "beyond the scope of the proceedings."

5. Under rule 37 of the Wyoming Rules of Civil Procedure, BPM has the burden to prove that Mr. Ericsson failed to answer a deposition question. If Mr. Ericsson failed to answer a proper deposition question, this hearing officer has the authority, under rule 37, to order Mr. Ericsson and 2U Ranch to answer that question.

6. Based upon my review of the deposition transcript, Mr. Ericsson repeatedly failed to answer deposition questions that were relevant to this matter and no valid legal objection applied to those questions.

7. Accordingly, BPM has met its burden by providing evidence showing that Mr. Ericsson did not answer relevant questions during his deposition. Further, Mr. Ericsson's objections to the questions were improper and without merit. The unanswered questions were relevant to this proceeding and Mr. Ericsson was required to answer those questions and he failed to do so.

8. As a result, Mr. Ericsson and 2U Ranch must answer in writing the seven deposition interrogatories outlined in BPM's motion. Although I could require Mr. Ericsson to sit for another deposition and answer the questions at that time, BPM has requested that I require 2U Ranch to answer in writing the seven deposition interrogatories outlined in its motion. Based upon rule 37 of the Wyoming Rules of Civil Procedure, I have the authority to require Mr. Ericsson and 2U Ranch to answer in writing those unanswered deposition interrogatories.

9. In addition, BPM requests this hearing officer to require 2U Ranch to respond to the requests for production attached to the notice of deposition. As I stated earlier, BPM bears the burden to prove that 2U Ranch has failed to respond to the requests for production.

10. As it relates to the requests for production, BPM has failed to meet its burden. Based upon the evidence before me, this hearing officer does not know what documents have been produced by 2U Ranch. Further, it is unknown what requests for production have been responded to. Indeed, based upon the deposition transcript of Mr. Ericsson, it appears Mr. Ericsson or 2U Ranch produced some documents in response to the requests for production. Without specific evidence, I cannot determine what requests have been complied with and cannot determine if 2U Ranch has failed to respond to a specific request for production. As a result, I must deny BPM's requested relief that 2U Ranch respond to BPM's requests for production.

11. As a result, BPM's motion to compel is granted in part and denied in part.

12. 2U Ranch must answer in writing BPM's seven deposition interrogatories outlined in BPM's motion to compel and serve its responses upon BPM's counsel no later than February 1, 2019.

13. Although I am denying BPM's motion to compel as it relates to its requests for production of documents, this hearing officer reminds 2U Ranch and BPM that they have a continuing obligation under the Wyoming Rules of Civil Procedure to timely supplement responses to discovery, including requests for production of documents.

SO ORDERED.

DATED this 24th day of January 2019.



John Corra, Hearing Examiner
Environmental Quality Council

CERTIFICATE OF SERVICE

I, Joe Girardin, certify that at Cheyenne, Wyoming, on the 24th day of January 2019, I served a copy of the foregoing **Order Granting in Part Bentonite Performance Minerals, LLC's Motion to Compel Compliance with Discovery Requests and Deposition Interrogatories** by electronic mail to the following:

Samuel Yemington
Holland and Hart
sryemington@hollandhart.com

Matt J. Micheli
Holland and Hart
mjmicheli@hollandhart.com

Ronald Ericsson
Petitioner
ericsson@childselect.com

Roland Ericsson
roalericsson@cox.net

Scott Ericsson
scottaericsson@gmail.com



Joe Girardin
Environmental Quality Council
First Floor Hathaway Building
2300 Capitol Ave.
Cheyenne, WY 82002
Phone: 307-777-7170