

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

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

**ORDER DENYING BENTONITE PERFORMANCE MINERALS, LLC'S
MOTION TO LIMIT TESTIMONY AND EVIDENCE AT HEARING**

Petitioner, Bentonite Performance Minerals, LLC (BPM) filed a Motion to Limit Testimony and Evidence at Hearing on December 21, 2018. The motion requested the Council to exclude Respondent, 2U Ranch, LLC from submitting evidence at the final contested case hearing related to questions and topics that Mr. Ronald Ericsson refused to answer during his deposition. The Council heard oral argument on BPM's motion on January 16, 2019.

Having considered BPM's motion, 2U Ranch's response, and relevant filings and being fully advised, the Council unanimously finds and concludes as follows:

1. Ronald Ericsson refused to answer relevant questions during his deposition, and as a result, BPM requests the Council to prohibit 2U Ranch from submitting evidence related to the unanswered questions.
2. BPM alleges that because 2U Ranch and Mr. Ericsson disobeyed a discovery order, the Council has the authority to prohibit 2U Ranch from testifying about all matters related to the unanswered deposition questions. Although the Council sympathizes with BPM, the Council does not have the authority to prohibit 2U Ranch from testifying to those matters because no prior discovery order was violated. There was no prior discovery order from the hearing officer that compelled Mr. Ericsson to answer specific deposition questions.

3. Prior to filing this type of motion, BPM was required under the Wyoming Rules of Civil Procedure to seek a motion to compel from the hearing officer under rule 37(a)(3)(B) of the Wyoming Rules of Civil Procedure. This necessary step was not done.

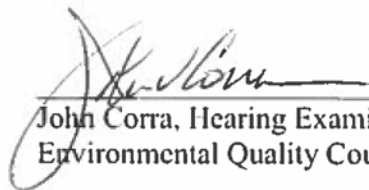
4. As a result, the Council is without authority to grant BPM its requested relief.

5. In addition, for the Council to fulfill its obligations under Wyoming Statute § 35-11-406(b)(xii), the parties must be able to present testimony and evidence at the contested case hearing about the existing and future uses of the subject lands and whether BPM's mining operations will impact those lands.

6. According, BPM's motion to limit testimony and evidence at the final contested case hearing is denied.

SO ORDERED.

DATED this 30 day of January 2019.



John Corra, Hearing Examiner
Environmental Quality Council

CERTIFICATE OF SERVICE

I, Jim Ruby, certify that at Cheyenne, Wyoming, on the 30 day of January 2019, I served a copy of the foregoing **Order Denying Bentonite Performance Minerals, LLC's Motion to Limit Testimony and Evidence at Hearing** by electronic mail to the following:

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