

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

IN THE MATTER OF BLACK HILLS)
BENTONITE PERMIT TO MINE NO. 248C) **Docket No. 24-1601**
MURPHY CREEK UPDATE AREA)
)

**ORDER SETTING PREHEARING CONFERENCE,
FINAL HEARING, AND REQUIRING DISCLOSURE**

THIS MATTER has been referred to the Environmental Quality Council (Council) to conduct an administrative contested case hearing pursuant to Wyo. Stat. Ann. §§ 35-11-112(a) and 35-11-406(b)(xii). The parties appeared for a scheduling conference on June 4, 2024. In consultation with the parties, the hearing officer hereby issues this Order with the following deadlines:

1. This Order constitutes the notice of administrative contested case hearing. The parties, counsel, and all witnesses shall appear for the final contested case hearing on **August 15, 2024 at 9:00 a.m.**, at the Hathaway Building, 2300 Capitol Ave, Cheyenne, WY 82002. The contested case hearing will be one (1) day. A court reporter will report the hearing.
2. A prehearing conference will be held on **August 8, 2024 at 10:00 a.m.** by videoconference. Invitations to this call will be sent to all parties by Council staff. The purpose of the prehearing conference is to address all pending motions, challenges to admissibility of exhibits or the testimony of witnesses, and all other matters raised by the parties. The Council will record the prehearing conference.

3. In accordance with DEQ Practice and Procedure Rules, Chapter 2, Section 18, on or before **August 1, 2024**, each party shall file and serve upon all other parties and this Council a Prehearing Disclosure Statement setting forth:
 - a. A complete list of all witnesses (lay and expert) who will or may testify, together with information on how each witness may be contacted and a brief description of the testimony the witness is expected to give in the case. If a deposition is to be offered into evidence, the original shall be filed with the Council;
 - b. A statement of the specific claims, defenses, and issues which the party asserts are before the Council, based on the party's initial filing;
 - c. A statement of the burden of proof to be assigned in the contested case with reference to specific regulatory, statutory, constitutional, or other authority established by relevant case law;
 - d. A statement of stipulated facts. If the parties are unable to stipulate to facts, the parties shall indicate what efforts have been made to stipulate to facts and the reasons facts cannot be stipulated; and
 - e. A complete list of all documents, statements, etc., which the party will or may introduce into evidence. The Petitioner's exhibits shall be identified by letters beginning with "A" and going through "Z." If necessary, additional exhibits shall begin with "AA" and continue alphabetically. Respondent's exhibits shall be identified by numbers beginning with "1." When filing exhibits on the Council's electronic docket system, identify them as Final Exhibits and not Pleading Exhibits. The parties shall be prepared to address their exhibits at the above-scheduled prehearing conference. Each exhibit shall be tabbed, and each page shall be numbered so that every page presented to the Council can be specifically identified.

Exhibits containing multiple pages must be individually numbered. The parties shall include a separate index list of all exhibits, which identifies each exhibit and corresponding page number. Each party's Prehearing Disclosure Statement and exhibits shall be bound in a spiral or ring binder (that holds 8.5 by 11 inch paper) with all exhibits tabbed. The parties shall provide the Council with the original and eight (8) identical physical copies of the Prehearing Disclosure Statement and exhibits bound as described above.


4. The information provided in the Prehearing Disclosure Statement shall be binding on each party throughout the course of the contested case unless modified for good cause.
5. Additional witnesses or exhibits may be added only if the need to do so was not reasonably foreseeable at the time of filing the Prehearing Disclosure Statement, it would not unfairly prejudice other parties, and good cause is shown.
6. Failure to file a Prehearing Disclosure Statement may result in the hearing officer striking witnesses, exhibits, claims and defenses, or dismissing the contested case.
7. All discovery must be completed on or before **July 25, 2024**. The taking of depositions and discovery shall be conducted in accordance with Wyo. Stat. Ann. § 16-3-107(g). Parties shall not file discovery requests, answers, and deposition notices with the Council.
8. In addition to listing all witnesses as part of the Prehearing Disclosure Statement, the parties must also serve upon the other party a list identifying all expert and lay witnesses by **July 8, 2024**. All expert witness designations must comply with Wyo. R. Civ. P. 26(a)(2)(B)-(C).
9. All prehearing motions, including motions for continuance and dispositive motions, shall be filed and served upon all other parties and this Council on or before **July 15, 2024**. A response to a motion must be filed and served within seven (7) business days after service

of the motion, and a reply must be filed within three (3) business days after service of the response.

10. All original documents and copies filed in this proceeding must be mailed to the Office of the Environmental Quality Council, attention of Joe Girardin, Business Office Coordinator.
11. The parties shall make appropriate arrangements for the attendance of their witnesses at the contested case hearing. Parties or their witnesses shall be allowed to participate in any hearing by videoconference if attendance in person is not feasible.
12. All parties are encouraged to continue to make reasonable efforts to resolve the case throughout the duration of this matter. The parties shall promptly notify the hearing officer of all settlements, stipulations, agency orders, or other action eliminating the need for a contested case hearing.
13. If any party, attorney, or witness requires special accommodations, this Council shall be notified as soon as possible so the necessary arrangements may be made.

So **ORDERED**.

Dated 06/11/2024


Ryan Greene (Jun 11, 2024 13:13 MDT)
Ryan Greene, Hearing Examiner
Environmental Quality Council