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Attorneys for Petitioners

**FILED**

AUG 30 2024

ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING

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

**IN THE MATTER OF APPEAL OF:** )  
 )  
**APPROVAL OF AMENDMENT TO** )  
**LIMITED MINING OPERATION, PEAK** )  
**GRAVEL, ET0961, TFN 7 6/211**

**APPEAL OF APPROVAL OF AMENDMENT TO LIMITED MINING OPERATION,  
PEAK GRAVEL, ET0961, TFN 7 6/211**

Petitioners, David P. Schroeder and Bonnie L. Schroeder, by and through their undersigned counsel, hereby petition the Environmental Quality Council for appeal from the final action or authorization of the Administrator of the Wyoming Department of Environmental Quality, Land Quality Division, dated August 5, 2024, approving, granting, or authorizing an amendment to Peak Gravel, LLC's Permit ET0961.

**I. NAME AND ADDRESS OF PETITIONERS AND PETITIONERS' ATTORNEYS**

Petitioners are:

David P. Schroeder and Bonnie L. Schroeder  
457 Sybille Creek Road  
Wheatland, WY 82201

Petitioners' Attorneys - Petitioners are represented in this matter by:

Mitchell H. Edwards, WSB 6-3880  
Kenna J. Blaney, WSB 8-7098  
NICHOLAS & TANGEMAN, LLC  
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Service of pleadings, correspondence, and other information related to this Petition should be served upon the undersigned counsel at the address provided above.

**II. THE ACTION, DECISION, ORDER, OR PERMIT UPON WHICH A HEARING IS REQUESTED**

The Administrator of the Wyoming Department of Environmental Quality, Land Quality Division, executed an “Approval of Amendment to Limited Mining Operation, Peak Gravel, ET0961, TFN 7 6/211,” (hereinafter, “Permit Approval”) dated August 5, 2024. By the Permit Approval, the Administrator approved “the amendment of 5 acres in the SW1/4SW1/4 Section 30, T24N, R68W, in Platte County ... for a total of 15 acres” and accepted a reclamation performance bond, relating to Permit ET0961. The Permit Approval is attached hereto as **Attachment 1**. Petitioners received a copy of the Permit Approval by email to the undersigned counsel on August 7, 2024.

**III. A STATEMENT IN ORDINARY BUT CONCISE LANGUAGE OF THE SPECIFIC ALLEGATIONS ON WHICH THE PETITION IS BASED, INCLUDING REFERENCES TO THE STATUTE, RULE, OR ORDER THAT THE PETITIONER ALLEGES HAS BEEN VIOLATED.**

1. WYO. STAT. § 35-11-801(d) provides that “[a]ny aggrieved party may appeal the authorization as provided in this act.”

2. WYO. STAT. § 35-11-112(a)(iii) authorizes the Environmental Quality Council (“EQC”) to “conduct hearings in any case contesting the administration or enforcement of any law, rule, regulation, standard or order issued or administered by the department or any division thereof.”

3. WYO. STAT. § 35-11-112(a)(iv) authorizes the EQC to “conduct hearings in any case contesting the grant, denial, suspension, revocation or renewal of any permit, license, certification or variance authorized or required by this act.”

4. WYO. STAT. § 35-11-112(c)(ii) authorizes the EQC to “[o]rder that any permit, license, certification or variance be granted, denied, suspended, revoked or modified.”

5. WYO. STAT. § 35-11-401(e)(vi) requires that limited mining operations, whether commercial or noncommercial, for the removal of sand, gravel, scoria, limestone, and etc. from an area of fifteen acres or less of affected land first be authorized by the Land Quality Division of the Department of Environmental Quality.

6. Peak Gravel, LLC is the successor/assignee of Permit ET0961, authorizing a limited mining operation on ten acres of affected land located in the SW1/4 of Section 30, T24N, R68W, Platte County, Wyoming of Sybille Creek Road. The prior permittee under Permit ET0961 was Tyler Dodge.

7. Petitioners are the owners and residents of residential property located immediately adjacent, on the north boundary line, to the parcel of land operated by Peak Gravel, LLC for sand and gravel mining in Section 30. Petitioners are surface owners located well within one mile of the boundary of the mining operation.

8. The operator under Permit ET0961 previously violated the provisions of the Environmental Quality Act and was issued notices of violation by the Department of Environmental Quality.

9. WYO. STAT. § 35-11-901(a)(ii) provides that penalties and injunctive relief are to be determined by a court of competent jurisdiction in a civil action, provided that nothing therein precludes the department from negotiating stipulated settlements involving the payment of a

penalty, implementation of compliance schedules or other settlement conditions in lieu of litigation.

10. *In the Matter of the Notice of Violation* issued to Tyler Dodge, Docket Number 3500-03, the Department of Environmental Quality and the operator/permittee entered into a *Settlement Agreement and Consent Order* (attached hereto as Attachment 2). As part of the Consent Order a condition was placed on Permit ET0961 for the duration of the mining operation and/or life of the permit, which ever is longer, requiring that the operator/permittee not disturb any additional land, after reclaiming the disturbed area to ten acres:

4. Tyler Dodge agrees not to disturb any additional land, after reclaiming the disturbed area to ten (10) acres, for the duration of his mining operation and/or the life of his permit, whichever period is longer.

11. This Consent Order has not been repealed, modified or suspended by the EQC.

12. Pursuant to the Consent Order a condition exists upon Permit ET0961, limiting the disturbed acres for the life of the permit to the original ten acres.

13. Peak Gravel applied to the Land Quality Division for an amendment to Permit ET0961 to increase the disturbed acres beyond the original ten acres.

14. The Land Quality Division and Department of Environmental Quality was notified of the existing Consent Order stipulated condition, ignored the Consent Order stipulated condition, and issued an authorization for the permittee to disturb an additional 5 acres, up to 15 acres, under Permit ET0961.

15. By its Permit Approval the Land Quality Division and Department of Environmental Quality refuses to enforce a valid Consent Order, and has authorized the disturbance of additional lands in violation of law.

#### **IV. REQUEST FOR HEARING BEFORE THE COUNCIL (AND REQUESTED RELIEF).**

Petitioners hereby request a hearing before the EQC.

Petitioners further request that the EQC deny or revoke the Permit Approval in its entirety and require the Land Quality Division and Department of Environmental Quality to enforce the Consent Order stipulated condition applicable during the life of the Permit ET0961.

Dated this 29th day of August 2024.

  
Mitchell H. Edwards, WSB 6-3880  
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*Attorneys for Landowners*


#### CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the 29th day of August 2024, I caused a true and correct copy of the foregoing document to be served as follows:

Wyoming Environmental Quality Council	<input checked="" type="checkbox"/>	U.S. Mail (Registered Return Receipt)
2300 Capitol Avenue	<input type="checkbox"/>	Fed Ex/UPS
Hathaway Bldg., 1 <sup>st</sup> Floor, Room 136	<input type="checkbox"/>	Hand-Delivered
Cheyenne, WY 82002	<input type="checkbox"/>	E-Mail

Todd Parfitt, Director	<input checked="" type="checkbox"/>	U.S. Mail (Registered Return Receipt)
Wyoming Dept. of Environmental Quality	<input type="checkbox"/>	Fed Ex/UPS
200 West 17 <sup>th</sup> Street	<input type="checkbox"/>	Hand-Delivered
Cheyenne, WY 82002	<input type="checkbox"/>	E-Mail

Peak Gravel, LLC	<input checked="" type="checkbox"/>	U.S. Mail (Registered Return Receipt)
1557 South Street	<input type="checkbox"/>	Fed Ex/UPS
Wheatland, WY 82201	<input type="checkbox"/>	Hand-Delivered
	<input type="checkbox"/>	E-Mail

  
Mitchell H. Edwards