

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING

IN THE MATTER OF APPEAL OF: )  
 )  
LIMITED MINING OPERATION, ) DOCKET NO. 24-4801  
PEAK GRAVEL, ET0961, TFN 7 6/211 )

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REPLY TO “RESPONSE TO MOTION TO DISMISS FOR WANT OF SUBJECT  
MATTER JURISDICTION”

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THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY-LAND QUALITY DIVISION (hereinafter “DEQ-LQD”) replies to Appellants’ “Response to Motion to Dismiss For Want of Subject Matter Jurisdiction” filed by Appellants, as follows:

*DEQ-LQD Does Not “Approve” a Limited Mining Operation Notification*

Appellants state “an approval or authorization of a limited mining operation (LMO) or amendment to such Permit-as is the case here-is an issue arising under the laws, rules, regulation, and orders issued and administered by the Department.” Appellants’ Response at 4. Under Wyoming Environmental Quality Act (WEQA) Article 4 (of which Appellants make no mention), the Department does not approve or authorize an LMO notification. This is made clear by reference to the language of the LMO statute in Article 4, Wyoming Statute § 35-11-401(e). The Department urges the Council to read the LMO statute, which plainly states the “provisions of this article [WEQA Article 4] shall not apply to any of the following activities: . . . (vi) Limited Mining Operations . . . .” As noted below, the Wyoming Legislature purposely exempted LMOs from the usual WEQA permitting processes.

*Wyoming’s Limited Mining Operation Statute Requires Only a Notification*

DEQ-LQD stands by its earlier careful description of Wyoming’s LMO statute found at Wyoming Statute § 35-11-401(e)(vi). A LMO notification is a process exempt from typical DEQ-

LQD permitting processes, as is commonly understood: the LMO statute has generated considerable controversy of late in Natrona County, Wyoming, where a sand and gravel company submitted a LMO notification to DEQ-LQD to carry out limited mining operations on land owned and managed by the Wyoming Office of State Lands and Investments. The news media organization known as “*WyoFile*” reported on the Natrona County LMO situation, and properly described how the LMO process is “exempt” from DEQ-LQD permitting processes, and that the “**exemption**, which does not include public notification, allows a permittee to establish and operate a gravel mine smaller than 15 acres.”<sup>1</sup>

While the *WyoFile* article calls the LMO process “a permitting loophole,” DEQ-LQD notes that the Wyoming Legislature crafted the LMO process (a statutory process), not DEQ-LQD. If this Council were to attempt to vest itself with appellate jurisdiction when there is no statutory or regulatory grant of appellate jurisdiction, the Council would have to entirely disregard the LMO processes crafted by the Legislature.

Moreover, given that Wyoming Statute § 35-11-112(c) does not give the Council the jurisdiction to set aside an LMO notification (as explained in the Motion to Dismiss), the Appellants should have (and could have) sought *judicial review* under Wyoming’s Administrative Procedures Act, Wyoming Statute § 16-3-114. Instead, the Appellants now try to elicit support from this Council to exercise appellate jurisdiction it plainly does not possess.

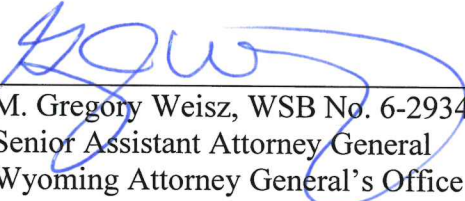
The Council must dismiss this appeal. Any action short of dismissal would improperly subject the DEQ-LQD to the Council’s processes, when the LMO statute makes it clear that LMOs are exempt from WEQA permitting processes. Moreover, an Environmental Quality Council

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<sup>1</sup> Dustin Bleizeffer, *Natrona County moves to block controversial gravel mine in latest battle of state, county control*, (Oct. 7, 2024) <https://wyofile.com/natrona-county-moves-to-block-controversial-gravel-mine-in-latest-battle-over-state-county-control/> (emphasis added).

contested case hearing would blatantly interfere with the exemption process set forth in the LMO statute. It simply is not the prerogative of Appellants to ask the Council to exercise appellate jurisdiction over an LMO notification. The Wyoming Legislature exempted LMOs from permitting processes, and with due respect to the Council, the Council cannot disregard the Legislature's clear intent.

RESPECTFULLY SUBMITTED this 30<sup>th</sup> day of October, 2024.



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M. Gregory Weisz, WSB No. 6-2934  
Senior Assistant Attorney General  
Wyoming Attorney General's Office  
109 State Capitol  
Cheyenne, WY 82002  
(307) 777-7823 (phone)  
(307) 777-3542 (fax)  
[gregory.weisz@wyo.gov](mailto:gregory.weisz@wyo.gov)

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing document was served by email or mailing a true and correct copy on the 30<sup>th</sup> day of October, 2024, addressed to the following:

Wyoming Environmental Quality Council  
2300 Capitol Avenue  
Hathaway Bldg., 1<sup>st</sup> Floor, Room 136  
Cheyenne, WY 82002

Mitchell H. Edwards  
Kenna J. Blaney  
Nicholas & Tangeman, LLC  
P.O. Box 928  
Laramie, WY 82073  
[edwardsm@wyolegal.com](mailto:edwardsm@wyolegal.com)  
[kblaney@wyolegal.com](mailto:kblaney@wyolegal.com)

Peak Gravel, LLC  
1557 South Street  
Wheatland, WY 82201

  
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Carrie Mays, *Certified Paralegal*  
Wyoming Attorney General's Office