



Department of Environmental Quality

To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.



Mark Gordon, Governor

Todd Parfitt, Director

Mike Thomas
Black Hills Bentonite
P.O. Box 9
Mills, WY 82644

RE: Black Hills Bentonite, LLC, Application for a Surface Bentonite Mine Permit TFN 7 1/018

I have received and reviewed the recommendation provided by the Land Quality Division Administrator regarding the Black Hills Bentonite (BHB), LLC, application for a Surface Bentonite Mine Permit TFN 7 1/018. The applicant has applied for a bentonite surface mining operation located in Section 16, Township 50 North, Range 66 West in Crook County, Wyoming. The proposed permit area will cover 317 acres and BHB intends to affect approximately 140 acres within the permit boundary. I accept the recommendation of the LQD Administrator and as the Wyoming Department of Environmental Quality Director approve the issuance of this permit in accordance with W.S. 35-11-406(q)(ii). I also accept the recommendations of the LQD Administrator as a requirement of the permit issuance as follows:

- 1) Air Quality Permit: An Air Quality permit from the AQD will be required prior to the initiation of construction and operation of the mine site.
- 2) Water Quality Permit: A Mineral Mining General Permit authorization and associated Storm Water Pollution Prevention Plan (SWPPP) will be required from the WQD prior to the initiation of construction and operation of the mine site.
- 3) Land Adjudication: It has come to my attention that the original application did not contain documentation from the Bureau of Reclamation (Bureau) permitting the construction and use of an access road across federal lands at Keyhole Reservoir. The LQD failed to identify this omission during its completeness review process. BHB supplied additional documentation to the LQD on September 6, 2022 that contains the Bureau's approval of a Supplemental Use Permit for the construction and use of the road across federal lands. The Supplemental Use Permit was granted on September 28, 2021. This documentation was technically required in the original application. However, the deficiency associated with the absence of this documentation has been rectified with BHB's subsequent submission. The Bureau does not appear to have been harmed by the omission of this documentation in the original application, since it had knowledge of the construction and access issue, and since permitted construction and access to the project has existed for nearly a year since the time the Bureau approved the permit. Furthermore, none of the interested parties were prejudiced or harmed by the omission, as the subject access runs on federal land, and the Bureau has consented to such construction and access. I acknowledge the documentation was omitted and that the LQD failed to identify the omission, but I have determined that the subsequent submission of the information does not constitute a significant modification of the original application for the reasons stated herein.
- 4) Topsoil Salvage: As part of a Settlement Agreement to Notice of Violation Docket Number 5377-14 issued by the LQD to BHB in 2014, a requirement was placed on BHB to not salvage topsoil during frozen ground or muddy conditions. The LQD failed to identify this omission during its completeness review process. BHB supplied additional documentation on September 9, 2022, to the LQD that contains the required topsoil salvage language. This documentation was also technically required in the original application. However, the deficiency associated with the absence of this documentation has been rectified with BHB's subsequent submission. The topsoil resource has not been harmed and material damage has not been caused

DEQ Exhibit 12

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by the omission of this additional topsoil salvage language, since no on site construction has occurred or will occur until the LQD, AQD, and WQD permits are issued. Furthermore, none of the interested parties were prejudiced or harmed by the omission, as no topsoil salvage activities have or will occur until all required permits have been issued. I acknowledge the documentation was omitted and that the LQD failed to identify the omission, but I determine that the subsequent submission of the information does not constitute a significant modification of the original application for the reasons stated herein.

- 5) Site Security: It is recommended that the company cross-fence the mine operations in order to limit ingress and egress to the site. This fencing is recommended to include three to five years of projected mining cuts in order to provide notification and protection to the public of the mining activities. This is a recommended update to the permit and would not constitute a significant modification of the original application for the reasons stated herein.
- 6) Bentonite Debris from Truck Haulage: It is recommended that the company install an aggregate strip “rumble strip” of not less than 100 feet prior to the truck’s leaving the permit to limit the transfer of mud or bentonite debris onto the public roadways. This is a recommended update to the permit and would not constitute a significant modification of the original application for the reasons stated herein.
- 7) General Provision: If approval or appeal of the LQD, AQD, and WQD permits results in a substantive delay in mine development, the applicant will be required to update the mine plan sequence to reflect the correct timing of mine development and operation. I determine that the subsequent submission of the information if necessary, does not constitute a significant modification of the original permit.

A copy of this letter and the Administrators report and recommendations will be mailed to the objectors of record. The applicant or any other objector who filed an objection on or before August 13, 2022, may appeal this decision to the Environmental Quality Council within 30 days after this notification of agency action.

Sincerely,



Todd Parfitt
Director

cc: Randall Luthi, Chief Energy Advisor
Kyle Wendtland, Land Quality Division Administrator
David Dewald, Senior Assistant Attorney General
Nancy Vehr, Air Quality Administrator
Jennifer Zygmunt, Water Quality Administrator
Mark Rogaczewski, LQD District 3 Supervisor