

**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)

AFFIDAVIT OF KYLE WENDTLAND

STATE OF WYOMING)
) ss.
COUNTY OF LARAMIE)

BEFORE ME, the undersigned Notary Public, on this day personally appeared Kyle Wendtland, who, being by me duly sworn, deposes and says as follows:

1. My name is Kyle Wendtland. I am over twenty-one years of age and I am fully competent and duly authorized to make this affidavit. The facts contained in this affidavit are based on my personal knowledge and information related to performance of my official duties.
2. I am the Administrator of the Land Quality Division of the Wyoming Department of Environmental Quality.
3. I have been the Land Quality Division Administrator for over nine years. Prior to that, for decades I was employed in the mining industry, environmental-engineering related positions, and in government environmental regulation. I consider myself an expert in mined-land reclamation, bonding, mining, and environmental regulation from both the private and regulatory perspectives.
4. As Land Quality Division Administrator, my duties include administration of the Land Quality Division program, which regulates all solid mineral types, degrees, and magnitudes of mining in Wyoming, ranging from small acreage sand and gravel mines to large-scale industrial surface coal mines, and everything in between.
5. In my role as Administrator, I am routinely involved in all aspects of administration of the Wyoming Environmental Quality Act (“WEQA”) pertaining to mining, including limited mining operations, small permit mining operations, and regular mining operations. I have detailed knowledge of Article 4 of the WEQA, which contains the mining administration statutes.
6. As Administrator, I routinely administer the portion of the WEQA that pertains to limited mining operations, which is found at Wyoming Statute § 35-11-401(e)(vi).

7. Having been employed in the environmental regulatory arena for decades, I am familiar with general permits issued under the WEQA. The portions of the WEQA pertaining to land quality and mining regulation in Article 4 of Title 35, Chapter 11 do not contain any provisions for issuance of general permits for mining.

8. The limited mining operations (hereinafter “LMO”) statute at Wyoming Statute § 35-11-401(e)(vi) is a notification-only statute, under which the mining operator is required only to notify the Land Quality Division of the operator’s intention to carry out a LMO. Unlike other portions of the WEQA pertaining to small mining operations and regular mining operations, the process to administer the LMO statute is exempt from normal permitting processes.

9. When administering the WEQA relating to small permit mining operations and regular mining operations, the mining operator is required to submit detailed permitting information to the Land Quality Division, including but not limited to a proposed mining operations plan and a reclamation plan.

10. The Land Quality Division administers permits for small mining operations pursuant to Wyoming Department of Environmental Quality, Land Quality Division Rules Chapter 9, in addition to the requirements of the WEQA.

11. The Land Quality Division administers permits for non-coal regular mining operations pursuant to Wyoming Department of Environmental Quality, Land Quality Division Rules Chapter 2, in addition to requirements of the WEQA.

12. The Land Quality Division does not issue any permits for LMO activities, but the Wyoming Department of Environmental Quality Rules Chapter 10 sets forth the information a LMO operator must submit to the Land Quality Division.

13. Unlike Chapter 2 and Chapter 9 of the Land Quality Division’s rules, the Land Quality Division rules in Chapter 10 for LMOs do not require the mining operator to apply for a permit, but to instead simply notify the Land Quality Division and submit certain information about the mining operation, at least thirty-days before commencing operations.

14. For LMOs, the Land Quality Division rules at Chapter 10 do not require an operator to submit a mining operations plan or a reclamation plan, and the Land Quality Division does not exercise any approval authority over LMO mining operation plans or LMO reclamation plans.

15. I am familiar with Wyoming Statute § 35-11-405, which defines a “mining permit.” The statutory definition of a “mining permit” includes a specification that with respect to permit applications that the Land Quality Division provide an approval of the mining operations plan and the reclamation plan. However, the Land Quality Division does not review or approve any mining operations plan or a reclamation plan for LMOs, which are exempt from such permitting requirements.

16. Thus, the LMO process is a notification-only process, and the only approval the Land Quality Division provides for a LMO is an approval of the reclamation bond amount

submitted. However, the Land Quality Division's designated "approval" of the reclamation bond is only an acknowledgement that the bond monies submitted by the operator match the statutory per-acre reclamation bond amount of \$2,000.00 (or \$3,000.00 for quarries) multiplied by the number of acres of land to be disturbed by the LMO activity.

17. The Land Quality Division's rules at Chapter 10 for LMOs do not contain any mention of the word "permit." Rather, the LMO rules at Chapter 10 contain nine (9) references to LMO "notifications."

18. The Land Quality Division does not treat LMO notifications as "permits," and it is entirely inappropriate to call a LMO notification a "permit." If the Land Quality Division were to treat a LMO notification as a permit, doing so would be contrary to the definition of a mining permit as set forth in Wyoming Statute § 35-11-405.

19. The LMO Chapter 10 rules do not describe any review and approval process for a LMO: Wyoming Statute § 35-11-401(e)(vi) does not allow the Land Quality Division to exercise any discretion over approval of a LMO notification. So long as the LMO notice contains the information required by the LMO Statute and the Chapter 10 rule, the Division does not have the discretion to approve or deny a LMO notification. Only if a LMO notification were to show that the operation in question did not qualify as a limited mining operation would the Land Quality Division have the ability to deny the LMO the ability to go forward by denying the tender of a submitted reclamation bond.

20. As Administrator of the Land Quality Division, I am familiar with the WEQA and corresponding Department of Environmental Quality rules governing appeals to the Wyoming Environmental Quality Council. The WEQA and Department of Environmental Quality rules do not contain any provision authorizing an appeal of a LMO notification to the Council. The WEQA and Department of Environmental Quality rules do however contain provisions allowing appeals of certain types of mining permits to the Council. But no such provisions exist that authorize an appeal of a LMO notification to the Council.

Further Affiant sayeth naught.

DATED this 26th day of September, 2024.



Kyle Wendtland, Administrator
Land Quality Division
Wyoming Department of Environmental Quality

STATE OF WYOMING)
) ss.
COUNTY OF LARAMIE)

The above and foregoing affidavit was acknowledged, subscribed, and sworn to before me by Kyle Wendtland on this 26th day of September, 2024.

Witness my hand and official seal.

Karin Quigley

Notary Public

My Commission Expires:
February 6, 2029

