

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

**IN THE MATTER OF THE APPEAL FROM)
APPROVAL OF AMENDMENT TO LIMITED) Docket No. 24-4801
MINING OPERATION PERMIT NO. ET0961)
DAVID AND BONNIE SCHROEDER)**

**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). The parties appeared for a scheduling conference on October 1, 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 **January 15, 2025 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. Petitioners contend that there are two main issues. First, Petitioners contend that the initial issue is whether the Council has subject matter jurisdiction over their appeal. If the Council has jurisdiction over their appeal, Petitioners believe the issue is whether or not the Department of Environmental Quality erred by authorizing the amendment to the limited mining operation, which added an additional five acres, in light of the current consent order which they assert limits the limited mining operation to the original ten acres. Similarly, the Department contends that the initial issue is whether Petitioners have the ability to

appeal the amendment to the limited mining operation to the Council. If the Council has jurisdiction over Petitioners' appeal, the Department believes the main issue is whether or not any relief can be provided by the Council.

3. The parties agree that the Petitioners bear the burden of proof at the contested case hearing.
4. A prehearing conference will be held on **January 8, 2025 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.
5. In accordance with DEQ Practice and Procedure Rules, Chapter 2, Section 18, on or before **January 3, 2025**, 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 Petitioners' 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."
 - f. You must also file all of your proposed exhibits on the Council's electronic docket system. 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.
 - g. **In addition to the electronic filing, the parties shall provide the Council with the original and eight (8) identical physical copies of the Prehearing Disclosure Statement and exhibits.** The Prehearing Disclosure Statement and exhibits shall be bound in a spiral or ring binder (that holds 8.5 by 11 inch paper). 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.
6. 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.
 7. 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.
 8. Failure to file a Prehearing Disclosure Statement may result in the hearing officer striking witnesses, exhibits, claims and defenses, or dismissing the contested case.

9. All discovery must be completed on or before **December 26, 2024**. Requests for written discovery must be served at least thirty (30) calendar days prior to this discovery cutoff date. 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.
10. 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 **November 13, 2024**. All expert witness designations must comply with Wyo. R. Civ. P. 26(a)(2)(B)-(C).
11. 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 **November 20, 2024**. A response to a motion must be filed and served within ten (10) business days after service of the motion, and a reply must be filed within five (5) business days after service of the response.
12. A hearing will be held on **December 18, 2024 at 10:00 a.m.** by videoconference to address any outstanding dispositive motions. Invitations to this hearing will be sent to all parties by Council staff. The Council will record this hearing.
13. 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.
14. The parties shall make appropriate arrangements for the attendance of their witnesses at the contested case hearing. Parties or their witnesses may be allowed to participate in any hearing by videoconference if attendance in person is not feasible.
15. 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.

16. 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.

ORDERED this 9th day of October, 2024

JD Radakovich

JD Radakovich (Oct 9, 2024 07:18 CDT)

JD Radakovich, Hearing Examiner
Environmental Quality Council