

Mitchell H. Edwards, WSB 6-3880
Kenna J. Blaney, WSB 8-7098
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Attorneys for Petitioners

**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

PETITIONERS’ MOTION FOR SUMMARY JUDGMENT

Petitioners, David P. Schroeder and Bonnie L. Schroeder, (“Petitioners”) by and through their undersigned counsel, hereby file their Motion for Summary Judgment. There is no genuine issue of material fact, and the circumstances of the instant appeal are quite simple. In support thereof, Petitioners state the following:

I. INTRODUCTION

Petitioners, adjacent landowners to the subject quarry operations, brought this appeal to the Environmental Quality Council (“EQC” or “Council”) to seek a denial or revocation of the approval given by the WDEQ to amend authorization to the operator under ET0961, and to seek enforcement of a *Settlement Agreement and Consent Order* (hereinafter “*Consent Order*”),

encumbering ET0961 by restricting the operator's limited mining operation surface disturbance to the ten (10) acres for the duration of the mining operation or the life of Permit ET0961, which ever period is longer. The WDEQ's approval and authorization of an amendment to ET0961, authorizing disturbance of an additional five (5) acres, for a total of fifteen (15) acres, is contrary to its *Consent Order*.

II. STATEMENT OF UNCONTESTED FACTS

This appeal concerns a quarry operation being conducted by Peak Gravel under ET0961, located in the SW1/4 SW1/4 of Section 30, Township 24 North, Range 86 West in Platte County, Wyoming. (Exhibit 1). The quarry sits west of Wheatland, Wyoming, on the northeast side of the Jefferson Road and Sybille Creek Road intersection. ET0961 was originally issued by WDEQ to operator Tyler Dodge, approving ten (10) acres for the limited mining operation of a gravel pit. (Exhibit 2, ¶ 1). Later, the WDEQ found that the operator had repeatedly violated the ET0961 authorization, that the violations had not been corrected or remedied, and that the operator was subject to penalties for violation(s) of ET0961 and state law. (Exhibit 2, ¶¶ 5-7). In resolving the operator's violations, WDEQ and the operator entered into a *Consent Order*, concerning limited mining operations on the property. (Exhibit 2). By the *Consent Order*, it was agreed that the operator could not and would not disturb any additional land other than the original 10 acres "for the duration of his mining operation and/or the life of his permit, which ever period is longer." (Exhibit 2, ¶ 4). Specifically, the following condition is attached to the limited mining operations under ET0961:

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, which ever period is longer.

Since that *Consent Order* was entered, it has not been repealed, modified, or suspended.

ET0961 was transferred to Peak Gravel, LLC, (“Peak Gravel”) on or about January 27, 2023. As a result, Peak Gravel became the successor operator under ET0961, subject to the same terms, conditions, and stipulations as the prior operator. Peak Gravel recently submitted an application for an amendment to ET0961 for an additional five (5) acres, for a total of fifteen (15) acres. (Exhibit 1). The Administrator of WDEQ/LQD signed the application, with an approval date on August 5, 2024. (Exhibit 1). WDEQ also provided an “Approval of Amendment to Limited Mining Operation, Peak Grave, ET0961, TFN 7 6/211,” dated August 5, 2024. (Exhibit 1). In its administrative approval WDEQ stated: “The amendment of 5 acres in the SW1/4 SW1/4, Section 30, T24N, R86W, in Platte County is approved, for a total of 15 acres.” (Exhibit 1). No reference is made in the approval to the Consent Order or the stipulations and conditions of ET0961.

Petitioners own and occupy residential property located immediately adjacent, on the northern boundary line, to the parcel of land containing Peak Gravel’s quarry operations. (Exhibit 3).



¹ Petitioners’ land is outlined in orange and the number “457” is in the middle of their parcel. Peak Gravel, LLC’s land where it operates is highlighted in blue.

III. ARGUMENT

a. EQC Has Subject Matter Jurisdiction

“Subject matter jurisdiction is the power to hear and determine cases of the general class to which the proceedings in question belong.” *Amoco Production Co. v. Wyoming State Bd. of Equalization*, 7 P.3d 900, 904 (Wyo. 2000). A tribunal has “subject matter jurisdiction when it has the authority to consider and decide ‘cases of the general class of which the proceeding belongs.’” *Trefren Construction Co. v. V&R Construction, LLC*, 2016 WY 121, ¶ 36, 386 P.3d 317, 326 (Wyo. 2016). “The concept of subject matter jurisdiction is applicable equally to courts and administrative agencies.” *Id.*

The plain language of the statute authorizes appeals of this nature. WYO. STAT. ANN. § 35-11-112. The relevant statutory provision states:

The council shall act as the hearing examiner for the department and **shall hear and determine all cases or issues arising under the laws, rules, regulations, standards or orders issued or administered by the department** or its air quality, land quality, solid and hazardous waste management or water quality divisions...

WYO. STAT. ANN. § 35-11-112(a) (emphasis added). Put simply, 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, regulations, and orders issued and administered by the department, specifically its land quality division. The same statutory section also authorizes the EQC to “order that any permit, license, certification or variance be granted, denied, suspended, revoked, or modified...” WYO. STAT. ANN. § 35-11-112(c)(ii). That is precisely the relief requested by Petitioners in this case. Petitioners are asking the EQC to act upon its power to hear the issue and to deny or revoke the Approval of Amendment to Limited Mining Operation, Peak Grave, ET0961, TFN 7 6/211,” dated August 5, 2024, issued by the WDEQ/LQD which authorized an increase in disturbance to 15 acres.

b. Relief Requested is Available from the EQC; EQC Should Grant Requested Relief

Petitioners request the following relief: Denial or revocation of DEQ's approval of the amendment to ET0961; and, Enforcement of the *Consent Order* stipulated condition for the duration of the mining operation or the life of the permit. (*Appeal of Approval of Amendment to Limited Mining Operation, Peak Gravel, ET0961, TFN 7 6/211*, pg. 5).

The statutes under which the appeal is brought explicitly authorize the EQC to grant Petitioners' requested relief. WYO. STAT. ANN. § 35-11-112(a) 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." WYO. STAT. ANN. § 35-11-112(c)(ii) further authorizes the EQC to "[o]rder that any permit, license, certification or variance be granted, **denied**, suspended, **revoked** or modified." In this case, Petitioners only request relief expressly authorized by statute: that the EQC deny or revoke the "Approval of Amendment to Limited Mining Operation, Peak Grave, ET0961, TFN 7 6/211," granted by WDEQ on August 5, 2024, and require the WDEQ to enforce the *Consent Order's* stipulated condition limiting Peak Gravel's operation to the original ten (10) acres.

There is no question of fact: Peak Gravel is the operator of a limited mining operation under ET0961, the operator and WDEQ stipulated to a condition on the limited mining operations – for the duration of the mining operations and the life of the permit – that there would not be any disturbance other than the original ten (10) acres under ET0961 pursuant to a *Consent Order*, and WDEQ/LQD has violated the law and the *Consent Order* by approving an amendment to ET0961 allowing an increase of the disturbance to fifteen acres.

WHEREFORE, Petitioners request that the EQC grant summary judgment revoking the Approval of Amendment to Limited Mining Operation, Peak Grave, ET0961, TFN 7 6/211, issued

by WDEQ on August 5, 2024, and require the WDEQ/LQD to enforce the *Consent Order's* stipulated condition limiting Peak Gravel's operation disturbance area to the original ten (10) acres.

DATED this 20th day of November 2024.

/s/ Mitchell H. Edwards
Mitchell H. Edwards, WSB 6-3880
Kenna J. Blaney, WSB 8-7098
Nicholas & Tangeman, LLC
170 North Fifth Street; P.O. Box 928
Laramie, Wyoming 82073-0928
(307) 742-7140
edwardsm@wyolegal.com
kblaney@wyolega.com
Attorneys for Petitioners

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on this 20th day of November 2024, a true and correct copy of the foregoing was served by mail to the addresses below:

Wyoming Environmental Quality Council
2300 Capitol Avenue
Hathaway Building, 1st Floor, Room 136
Cheyenne, Wyoming 82002

M. Gregory Weisz
Senior Assistant Attorney General
Wyoming Attorney General's Office
109 State Capitol
Cheyenne, Wyoming 82002
gregory.weisz@wyo.gov

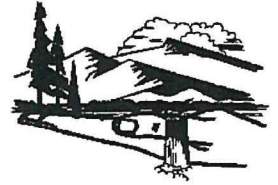
Peak Gravel, LLC
1557 South Street
Wheatland, Wyoming 82201

/s/ Mitchell H. Edwards
Mitchell H. Edwards



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

FILED

AUG 30 2024

ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

Will De Ryk
Peak Gravel, LLC
1557 South Street
Wheatland, WY, 82201

**RE: Approval of Amendment to Limited Mining Operation, Peak Gravel, ET0961, TFN 7
6/211**

Dear Mr. De Ryk:

The amendment of 5 acres in the SW1/4 SW1/4 Section30, T24N, R68W, in Platte County is approved, for a total of 15 acres. Your bond in the amount of \$30,000 was accepted as the reclamation performance bond under separate cover on November 27, 2023.

This operation is not within Sage Grouse Core Area or a Mule Deer and Antelope Migration Corridor, and has no stipulations related to the Governor's Executive Orders 2019-3 and 2020-1.

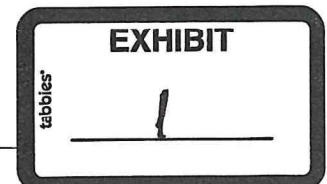
Pursuant to Land Quality Regulations, Chapter 10 Section 4, you are required to post a pit entrance sign clearly showing: 1) Operator Name, address, and telephone number, 2) Operator's local authorized agent, and 3) The assigned Limited Mining Operation number, ET0961.

Please be advised you must maintain Air Quality Division (AQD) and Water Quality Division (WQD) permits. Their contact information is listed below. You must also contact the State Mine Inspector for any compliance requirements: 2451 Foothill Blvd. Suite 101, P.O. Box 1094, Rock Springs, WY 82902 (307) 362-5222. If your operation involves excavation or placement of fill within a drainage or wetland, you must contact the U.S. Army Corps of Engineers for permitting information: 2232 Dell Range Blvd., Suite 210, Cheyenne, WY 82009 (307) 772-2300.

An annual report on your operation will be due on or within thirty (30) days prior to the anniversary date of this Limited Mining Operation. Copies of the Annual Report Form may be obtained by request from one of the LQD offices or you may access it on the LQD website at: <https://deq.wyoming.gov>.

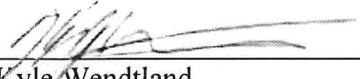
Copies of your accepted LMO Form, and the LQD General Performance Standards for Limited Mining Operations (Standards) are enclosed. You may also access the Standards at: <https://deq.wyoming.gov>.

If you have questions, please contact Blaise Hansen at (307) 777-7064 or blaise.hansen1@wyo.gov.



200 West 17th Street – Cheyenne, WY 82002 – <http://deq.wyoming.gov> – Fax (307) 635-1784

Sincerely,



Kyle Wendtland
Administrator, Land Quality Division

Date: 8/5/24

Enclosure

cc: Robin Jones, Cheyenne DEQ-LQD
deq-lqd.upload@wyo.gov
Kristy Kennedy, LQD Administrator's Administrative Assistant
Heather Kroupa, State Mine Inspector
Nick Meeker, AQD
Anita Rehner, WQD

Limited Mining Operations (LMO) Application Form

Under the Wyoming Environmental Quality Act W.S. §35-11-101(e)(vi), this form may be used only for mining Sand, Gravel, Scoria, Limestone, Dolomite, Shale, Ballast or Feldspar. The cumulative affected lands may not exceed fifteen (15) acres, excluding roads used to access the mining operation.

1. Location of lands to be affected by the mining operation.
- A. Pit, Stockpile and equipment storage areas: enter quarter-quarter or equivalent description (must be no more than 15 acres)
 SWSW Section 32 T. 24 N. R. 65 W., Acres 15
 Section T. N., R. W., Acres
- B. Haul and access roads: enter quarter-quarter or equivalent description for bonding purposes only. List those portions of newly constructed or upgraded private roads, which provide access to the limited mining operation.
 Section T. N., R. W., Acres
 Section T. N., R. W., Acres
- C. All listed lands are located in PLATTE County, WY and the Total Acres are 15.00.

2. List operator defined in W.S. §35-11-103(e)(ix) as "...any person...engaged in mining, either as a principal who is or becomes the owner of minerals as a result of mining, or who acts as an agent or independent contractor on behalf of such principal in the conduct of mining operations."

Operator for the Limited Mining Operation.

PEAK GRAVEL (Individual or Company Name) LLC (Type of Business Entity)
 (307) 331-0383 (307) 322-2426 1557 SOUTH STREET (Mailing Address)
 WHEATLAND WY 82201 (City) (State) (Zip Code)

3. Description of affected lands.
- A. The mineral to be mined is SAND AND GRAVEL and mineral ownership is PRIVATE (Type) (Private, State, Federal)
- B. Premining Land Use: GRAZING AND WILDLIFE Postmining Land Use: GRAZING AND WILDLIFE
- C. The maximum depth of mining will be 25 feet and the estimated depth to groundwater at the pit is 75 feet.
- D. Do the affected lands lie within 300 feet of any existing occupied dwelling, home, public building, school, church, community or institutional building, park or cemetery? NO if yes, attach a copy of the instrument of consent from the landowner(s).

4. Bond amounts for acres currently bonded (if applicable):
- | | | | | |
|------------------|---------------------------------------|---------|--------------------|-----------|
| Number of Acres: | Bond Amount/acre (prior to 7/1/1993): | 200.00 | Total Bond Amount: | 0.00 |
| Number of Acres: | Bond Amount/acre (prior to 7/1/2013): | 1000.00 | Total Bond Amount: | 0.00 |
| Number of Acres: | Bond Amount/acre (after 7/1/2013): | 2000.00 | Total Bond Amount: | 30,000.00 |
| | | | Total Amount: | 30,000.00 |

A Reclamation Performance Bond in the amount of \$ 30,000.00 calculated at the rate of \$2,000 per acre or \$3,000 per acre for quarry type operations for the total acres listed in 1 A and B. above, or if acres are being added an existing limited mining operation the bond amount shall be equal to the amount of the previous bond plus \$2,000 per acre or \$3,000 per acre for quarry type operations. The bond is CEK 195537 (C.D. No., Surety Bond No., Letter of Credit No.)

5. A copy of this Notification was sent 30 days prior to commencing operations to all surface owners within one mile of the boundaries of the proposed operation on (date) 2-1-2024. Attach a list of all surface owners located within one mile of the operation to whom notice was sent.
6. Under penalties of perjury, we declare that we have examined this Notification and consent and the information contained herein, and to the best of our knowledge it is true, correct and complete, and that the location of the proposed operation is accurately shown in the original U.S.G.S. quadrangle map accompanying this consent, and this LMO will not be used in conjunction with any other adjacent LMO to circumvent the permitting requirements of the Wyoming Environmental Quality Act. Further, it is agreed that the reclamation of the lands affected by the operator shall be in compliance with applicable Land Quality Division (LQD) Rules and Regulations and that the operator has the right to mine the minerals.

7. We, the surface owner and operator, are aware that the LQD may conduct inspections of the operation and by our signatures below we give our consent to the conduct of such inspections.

[Signature] 5-1-2024
 Signature - Surface Owner Date
 1557 SOUTH STREET
 Mailing Address - Surface Owner
 WHEATLAND WY 82201
 (City) (State) (Zip Code)
 (307) 331-0383
 Phone Number - Surface Owner

[Signature] 5-1-2024
 Signature - Operator Date
 PEAK GRAVEL, LLC
 Print or type name of Operator

-----MAKE NO ENTRIES BELOW-----FOR LQD USE ONLY-----

TFN 76211
 LMO No. 0961
 District 1
 LMO Application Form - 12/2013

Approved: [Signature]
 Administrator, L QD
 Approval date: 8/5/24

FILED

AUG 30 2024

ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

BEFORE THE
DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF WYOMING

IN THE MATTER OF THE NOTICE OF)
VIOLATION ISSUED TO:)

TYLER DODGE)
1256 SYBILLE CREEK ROAD)
WHEATLAND, WY 82201)
961ET)

DOCKET NUMBER 3500-03

SETTLEMENT AGREEMENT AND CONSENT ORDER

STIPULATED FINDINGS OF FACT

1. Tyler Dodge is the owner of a limited mining operation located west of Wheatland, Wyoming on the northeast side of the Jefferson Road and Sybille Creek Road intersection.
2. The Annual Inspection alleges that the operator/permittee has conducted no mining activity during the past Annual Report period. As required by the Department of Environmental Quality/Land Quality Division Non-coal Rules and Regulations, Chapter 10, Section 5. (a) "...within 30 days after the abandonment of the mining operation, the operator shall notify the Administrator of such fact and commence reclamation and restoration."
3. The Annual Inspection alleges that the operator/permittee has not protected the topsoil resource as defined by the Department of Environmental Quality/Land Quality Division Noncoal Rules and Regulations, Chapter 10, Section 4.(b).
4. The operator/permittee failed to file the required 2002-2003 Annual report within thirty (30) days of the anniversary of beginning date of mining. This is a violation of W.S. '35-11-401(k).
5. The operator/permittee allegedly disturbed 12.3 acres. This is 2.3 acres more disturbance than allowed under W.S. § 35-11-401(e)(vi).
6. The aforementioned allegations in paragraphs 3 and 5 have not been corrected or remedied, nor has the operator/licensee provided any information concerning those violation.
7. Wyoming Statute '35-11-901(a) provides that any person who violates any provision of the Environmental Quality Act or any rule, standard, permit, license or variance adopted there under is liable to a penalty of ten thousand dollars (\$10,000.00) for each day of violation, which penalty may

EXHIBIT
tabbles
2

be recovered in a civil action brought by the Attorney General in the name of the People of the State of Wyoming.

CONCLUSIONS OF LAW

1. The DEQ, pursuant to W.S. § 35-11-104, is a department in the executive branch of the state government of Wyoming and is principally situated in Cheyenne, Wyoming. DEQ/LQD is the agency vested by statute W.S. § 35-11-110(a) with the responsibility for administering the environmental laws of the State of Wyoming and for administering all provisions of the Wyoming Land Quality Rules and Regulations.

2. Pursuant to W.S. 35-11-901(a), any person who violates any provision of the Environmental Quality Act, or any order, rule, standard, permit, license, or variance adopted thereunder, is subject to a penalty not to exceed ten thousand dollars (\$10,000) for each violation for each day during which the violation continues. The penalty may be recovered in a civil action brought by the Attorney General in the name of the People of the State of Wyoming.

3. W.S. § 35-11-901(a)(ii) authorizes stipulated settlement, including payment of a penalty, in lieu of litigation. To that end, Tyler Dodge and the DEQ/LQD hereby stipulate and agree as follows:

CONSENT ORDER

1. Tyler Dodge agrees and shall pay to the Department of Environmental Quality, Land Quality Division, the sum of one-thousand dollars (\$1,000.00) as administrative penalty on or before March 31, 2004.

2. Tyler Dodge agrees and shall timely file required annual reports with the Department of Environmental Quality, Land Quality Division for the duration of his mining operation and/or the life of his permit, which ever period is longer.

3. Tyler Dodge agrees and shall reclaim the disturbed area disturbed by his mining operation to ten acres (10) or less following the reclamation guidelines set forth by the LQD and its administrative rules and regulations.

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, which ever period is longer.

5. Tyler Dodge waives any statute of limitations which may apply to an enforcement action by the DEQ involving the specific matters described in Notice of Violation No. 3500-03 in the event that Tyler Dodge fails to fulfill its obligations under this Settlement Agreement.

6. Nothing in this agreement precludes DEQ/LQD from taking additional enforcement action, including the issuance of a Notice of Violation, Order and/or pursuing additional penalties, should

Tyler Dodge violate the Wyoming Land Quality Act or applicable rules and regulations in the future.

7. This Settlement Agreement shall be admissible by either party without objection by the other party in any action between these parties.

8. Each party shall bear its own attorney fees and costs, if any, incurred through the date this Settlement Agreement is signed by both parties.

9. The persons signing this Settlement Agreement certify that they are duly authorized to bind their respective parties to this Settlement Agreement.

TYLER DODGE :

Signed: Tyler Dodge
Typed: _____

Date: Mar. 11 - 04

Title: _____

FOR THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY:

John V. Corra
John Corra, Director

Date: 3/27/04

Richard Chancellor
Richard Chancellor, Administrator
Land Quality Division

Date: 25 March 04

WARRANTY DEED

ARNOLD L. ARRINGTON and CHERYL A. ARRINGTON, as husband and wife, Grantors, in consideration of Ten Dollars (and other good and valuable consideration) in hand paid, CONVEYS AND WARRANTS to DAVID P. SCHROEDER and BONNIE L. SCHROEDER, as husband and wife, as tenants by the entirety, Grantees, whose address is 1157 FRONTERA DR. LARAMIE 82072 Wheatland, WY 82201, the following described real property, to-wit:

Township 24 North, Range 68 West of the 6th P.M., Platte County, Wyoming:

A portion of the Lot 2 (SW¼NW¼) of Section 30, Township 24 North, Range 68 West of the 6th P.M., Platte County, Wyoming, more particularly described as follows: Beginning at the southeast corner of Lot 2; thence N89°34'38"W, along the south line of Lot 2, a distance of 655.98 feet; thence N09°06'17"E, a distance of 374.82 feet; thence S87°44'05"E, a distance of 596.34 feet to the east line of Lot 2; thence S00°07'38"E, along the east line, a distance of 351.37 feet to the point of beginning.

Together with all improvements thereon and rights thereunto appertaining, but subject, however, to all easements, rights of way, restrictions, zoning and building ordinances, questions of survey, covenants, conditions, special improvement district assessments, liens of taxes and mineral reservations of record in the office of the County Clerk and Ex-Officio Register of Deeds of Platte County, Wyoming.

Dated this 2nd day of November, 2022.

Grantors:

Arnold L. Arrington
Arnold L. Arrington

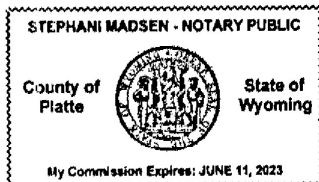
Cheryl A. Arrington
Cheryl A. Arrington

STATE OF WYOMING)
) SS
COUNTY OF PLATTE)

703887 Book - 560 Page - 898
Recorded 11/2/2022 At 3:02 PM
Malcolm Ervin, Platte County Clerk and Recorder

The foregoing instrument was acknowledged before me by Arnold L. Arrington and Cheryl A. Arrington this 2nd day of November, 2022.

Witness my hand and official seal.



Stephani Madsen
Notary Public