

**FILED**

**Oct 17, 2012**

**Jim Ruby, Executive Secretary  
Environmental Quality Council**

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ATTORNEYS FOR STRATA ENERGY, INC.

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING

IN THE MATTER OF THE APPLICATION )  
OF STRATA ENERGY FOR AN IN SITU )  
MINING PERMIT FOR THE ROSS ISR ) Docket No. 12-4803  
URANIUM PROJECT FROM THE LAND )  
QUALITY DIVISION OF THE DEPARTMENT )  
OF ENVIRONMENTAL QUALITY FOR THE )  
STATE OF WYOMING )

**FINAL PRE-HEARING MEMORANDUM OF STRATA ENERGY, INC.**

COMES NOW the Applicant, Strata Energy, Inc. (“Strata”), by and through its attorneys, and hereby respectfully submits the following Pre-Hearing Memorandum:

**BACKGROUND**

On August 2, 2012, the Wyoming Department of Environmental Quality, Land Quality Division (“LQD”) found Strata’s Application for an In Situ Mining Permit for the Ross ISR Uranium Project “technically adequate’ and suitable for final publication”. See **Exhibit 1**, August 2, 2012 letter. After the LQD determined the Application was adequate and ready for publication, Strata published notice of the Application pursuant to Wyo. Stat. Ann. § 35-11-406(j) and Merit Energy Company, LLC, Merit Energy Partners, I, LP, Merit Energy Partners, III, LP, Merit Management Partners, I, LP, and Merit Management

Partners, III, LP, collectively (“Merit”), timely filed its *Protest and Request for Hearing of Merit Energy on Strata Energy Inc.’s Application for an In Situ Mining Permit for the Ross ISR Uranium Project* (“*Protest*”). Pursuant to Wyo. Stat. Ann. § 35-11-406(k), a public hearing will be held on October 22 and 23, 2012 in Cheyenne, Wyoming to address the objections to Strata’s Application raised in Merit’s *Protest*.

Merit, as the objector, has the burden of proof and must demonstrate that Strata’s Application fails to comply with one or more of the factors outlined in Wyo. Stat. Ann. § 35-11-406, fails to meet the Application requirements under Wyo. Stat. Ann. § 35-11-428, or is somehow inadequate under Chapter 11 of the Department of Environmental Quality, Land Quality, Non-Coal In Situ Mining, Rules and Regulations. If Merit cannot prove Strata’s Application is inadequate under Wyo. Stat. Ann. §§ 35-11-406, 428 or Chapter 11 of the Non-Coal Rules, the director of the Wyoming Department of Environmental Quality (“DEQ”) shall issue Strata an in situ mining permit for the Ross ISR Uranium Project.

## **UNCONTESTED ISSUES**

### ***Objection No. 1***

Merit claims that for the past fifteen (15) years, it has had an active oilfield operation in the Deadman Creek Field located in Crook County, Wyoming. According to Merit, the field is currently a waterflood-assisted field and consists of ten total oil, water and injection wells. Assuming everything in Merit’s Objection 1 is true, it has no bearing on whether Strata’s Application complies with Wyo. Stat. Ann. §§ 35-11-406, 428 or Chapter 11 and is an uncontested issue. Thus, there is nothing for the Environmental Quality Council (“EQC”) to decide regarding Objection No. 1.

### *Objection No. 2*

Merit states it uses the Fox Hills formation as a water source for the Deadman Creek Field's waterflood operation and for an upcoming project planned in conjunction with the University of Wyoming Enhanced Oil Recovery Institute ("EOR"). Again, assuming everything in Merit's Objection No. 2 is accurate, the statements have no bearing on whether Strata's Application complies with Wyo. Stat. Ann. §§ 35-11-406, 428 and Chapter 11. Thus, there is nothing for the EQC to decide regarding Objection No. 2.

### *Objection No. 3*

The scope of Strata's operations contained in its In Situ Mining Permit Application overlays Merit's Deadman Creek Field and requires the use of Fox Hills formation water. Strata has acknowledged that there may be a period of time when the water supply to Merit in the Fox Hills formation may be reduced because of Strata's mining activities. Merit's Objection No. 3 fails to identify any provision of the Non-Coal Rules or Article 4 of the Act that is violated by Strata's acknowledgment that there may be a period of time when the Fox Hills formation water supply is reduced. Again, there is nothing for the EQC to determine regarding whether Strata's Application satisfies the requirements of the Act with regards to Merit's Objection No. 3.

### *Objection No. 16*

Strata is a subsidiary of Peninsula Energy, Limited. Thus, there is nothing for the EQC to decide regarding Objection No. 16.

## **CONTESTED ISSUES**

For Merit to prevail, it must show that one or more of the objections it raised prove Strata's Application fails to comply with either Wyo. Stat. Ann. §§ 35-11-406, 428 or Chapter

11 of the Non-Coal Rules. If Merit cannot prove the Application fails to satisfy Wyo. Stat. Ann. §§ 35-11-406, 428 or is inadequate under Chapter 11, the LQD's decision should be upheld.

***Objection No. 4***

As discussed in Strata Energy, Inc.'s Motion to Dismiss, Merit alleges that Strata's operations will violate Wyo. Stat Ann. § 41-3-906 and reduce the available water, which will limit Merit's ability to operate its waterflood-assisted oilfield operation. Any concerns Merit has about whether Strata's operations will reduce the available water supply should be addressed to the State Engineer's Office, not the EQC or LQD. Neither the EQC or LQD have any jurisdiction over water right issues and the Wyoming Environmental Quality Act prohibits the Department from interfering in the jurisdiction of the State Engineer or Board of Control. *See* Wyo. Stat. Ann. § 35-11-1104(a)(iii) (stating nothing in the act shall limit or interfere with the jurisdiction, duties or authority of the state engineer or the state board of control).

Strata has moved to dismiss Objection No. 4. However, in the event the Objection is not dismissed, Strata contends that Wyo. Stat. Ann. § 41-3-906 is not applicable because when Strata applies for industrial water rights it will not be proposing to change the use of any water to a preferred use.<sup>1</sup> Because Wyo. Stat. Ann. § 41-3-906 is not applicable, Merit's Objection fails to show how any possible reduction in the water supply violates either Chapter 11 or Wyo. Stat. Ann. §§ 35-11-406, 428. Objection No. 4 states no grounds for denial of Strata's Application.

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<sup>1</sup> Strata has committed to obtaining industrial water in the Adjudication File. *See* Adjudication File pg. A-78c.

### *Objection No. 5*

Merit asserts that during Strata's well tests, Merit personnel noticed an impact on Merit's ability to withdraw water from the Fox Hills formation. While performing well tests, Strata's total aquifer testing volume was 1,883 bbls/water (2.7 gpm) over a twenty day time period. Merit currently produces approximately 1,530 bwpd (44.6 gpm) or 30,600 bbl/water in a twenty day time period. Based on the amount of water Merit currently produces, Strata thinks it is highly unlikely that Merit would have been capable of detecting these brief, low stress aquifer tests.

However, even if Merit can prove it detected an impact on its ability to withdraw water, this does not show Strata's Application is deficient under either Chapter 11 of the Non-Coal Rules or Wyo. Stat. Ann. §§ 35-11-406, 428. Furthermore, Strata's permit requires it to "mitigate potential impacts to the three EOR water supply wells within the permit area by working with the oil production company (currently Merit Energy) to temporarily provide an alternate supply of water or alternate method of EOR that does not involve extracting water from the ore zone within the permit area until the portion of the ore zone aquifer affected by these water supply wells has been depleted of uranium. At that time, subject to approval by WDEQ and NRC, water removal from the ore zone for secondary oil recovery could resume, restoring the prior use of this water and possibly expediting aquifer restoration by enhancing groundwater sweep and providing another water disposal option." Mine Plan pg. 9-53. According to the Permit, Strata must mitigate impacts to Merit's water supply and Strata is committed to ensuring Merit has adequate water to conduct its operation for two reasons. First, Strata does not want to interfere with Merit's operations and, second, Strata must comply with its permit conditions or risk enforcement. Thus, Objection No. 5 fails to show that LQD erred in its decision to approve the Application.

### *Objection No. 6*

Merit claims Strata's mining operations will pollute the Fox Hills formation aquifer in violation of Wyo. Stat. Ann. § 35-11-301(a)(i) – (ii) and result in the groundwater automatically being classified as Class V (uranium commercial)<sup>2</sup>. In order for Strata to use water from the Fox Hills formation, it must first acquire a permit. If Strata is operating within the purview of its permit, it cannot be in violation of Wyo. Stat. Ann. § 35-11-301(a)(i)-(ii) and consequently it cannot be in violation of Wyo. Stat. Ann. §§ 35-11-406, 428 or Chapter 11 of the Non-Coal Rules. Merit's Objection No. 6 is erroneous and irrelevant and does not state any grounds on which Strata's Application should be denied.

### *Objection No. 7*

Merit contends the permit Application does not contain adequate information about the mining process and the aquifers affected by the mining process, including overlying and underlying aquifers, as required by Ch. 11, § 3(a)(xiii) of the Department of Environmental Quality, Land Quality, Non-Coal, Rules and Regulations. Strata believes the Application does contain adequate information, and directs the EQC to Appendix D6 Figures D6-18, 19, 21, and 22 (potentiometric surface maps). The burden is on Merit to demonstrate the information fails to meet the requirements of the Non-Coal Rules.

### *Objection No. 8*

Merit alleges the Application does not contain adequate information about the aquifers which may be affected by the mining process, the extent of hydraulic connection between the receiving strata and overlying and underlying aquifers, and the hydraulic characteristics of any influencing boundaries in or near the proposed well field area(s), as required by Ch.11, § 3(a)(xiv) of the Department of Environmental Quality, Land Quality,

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<sup>2</sup> The groundwater is currently classified as Class IV, industrial use only.

Non-Coal, Rules and Regulations. Strata believes the Application contains adequate information and direct the EQC to Appendix D6 Table 20 (characteristics of the receiving strata, OZ); Appendix D6.2.3 (recharge zones, potentiometry, and hydraulic gradients of aquifers of concern); Addendum D6-7 Table 2 (pumping test results demonstrating hydraulic confinement); D6.2.2.3: The upper confining interval has a vertical hydraulic conductivity of  $6.5 \times 10^{-6}$  ft/day and the lower confining interval vertical hydraulic conductivity is similar to that of the Pierre shale,  $5 \times 10^{-4}$  ft/day or less; and, Mine Plan Addendum 2.4 (internal and external hydraulic boundary discussion). The burden is on Merit to demonstrate the information fails to satisfy the regulatory requirements.

***Objection No. 9***

Merit alleges that the Application contains insufficient information regarding the characterization of the production zone and aquifers that may be affected by the proposed mining activities, in violation of Wyo. Stat. Ann. § 35-11-428(a)(ii)(B). Strata contends the Application contains sufficient information and directs the EQC to Appendix D6.2.3 (hydraulic gradients, recharge, potentiometry data); Appendix D6-18, 19, 21, 22 (potentiometric maps of aquifers of concern); Addendum D6-7 Table 2 (hydraulic confinement demonstration); Appendix D6.2.5.2.2 (discussion of water quality data) and specifically, reference figures D6-23 through 28 and reference tables D6-27, 29 through 41; and Mine Plan 9.5.2; 9.5.4 (potential groundwater impacts and mitigation). Strata believe the above-referenced data is sufficient to comply with Wyo. Stat. Ann. § 35-11-428(a)(ii)(B) and, again, the burden is on Merit to demonstrate the Application is inadequate.

### *Objection No. 10*

Merit asserts that the Oshoto Reservoir is an inadequate alternative water resource for its operations. Because Merit finds the Oshoto Reservoir inadequate, Strata will not offer the Oshoto Reservoir as a replacement source. However, Strata is committed to finding a suitable source for Merit as it guaranteed in its Ross ISR DEQ Mine Permit Application. According to Strata's Application, "Strata will mitigate potential impacts to the three EOR water supply wells within the permit area by working with the oil production company (currently Merit Energy) to temporarily provide an alternate supply of water or alternate method of EOR that does not involve extracting water from the ore zone within the permit area until the portion of the ore zone aquifer affected by these water supply wells has been depleted of uranium. At that time, subject to approval by WDEQ and NRC, water removal from the ore zone for secondary oil recovery could resume, restoring the prior use of this water and possibly expediting aquifer restoration by enhancing groundwater sweep and providing another water disposal option." Mine Plan pg. 9-53. In addition, Strata has continuously communicated its commitment to finding Merit a suitable alternative water source. See **Exhibit 2**, Communication Log between Merit and Strata.

Before Strata can initiate mining activities, "a permit condition will require submittal of a wellfield data package for each mine unit in order to initiate mining activities. The wellfield data package will be a comprehensive hydrologic evaluation of the initial mine unit, detailing wellfield condition as they exist prior to subsurface disturbance and will be much more specific to the actual conditions within the proposed mining area than the information presented thus far." Mine Plan 4.1 In other words, when Strata submits a wellfield data package with the potential to affect the Merit supply wells, the package must also meet the requirements for mitigation stated in the Mine Plan on pg. 9-53. However, in the unlikely



event a suitable alternative water source cannot be located, per the terms of the permit, Strata would be unable to mine the ore zone that would result in interference with Merit's water supply. *See* MP Addendum MP-2, pg. ES-12. Merit will be able to continue operating throughout Strata's mining operations and, therefore, Merit's Objection No. 10 fails to show a violation of either Wyo. Stat. Ann. §§ 35-11-406, 428 or Chapter 11.

***Objection No. 11***

Merit alleges Strata's proposed mining activities constitute a safety hazard, will pollute ground and surface water, degrade soils and vegetation, and pose a threat to human and animal health and safety that has not been sufficiently addressed in the Application, as required by Ch. 11, § 4(a)(vii) of the Department of Environmental Quality, Land Quality, Non-Coal, Rules and Regulations. Merit has asserted no factual basis for this claim. Furthermore, Strata directs the EQC to Mine Plan 9.5.1; 9.5.3 (Surface water potential impacts and proposed mitigation); Mine Plan 9.5.2; 9.5.4 (Groundwater potential impacts and proposed mitigation); Mine Plan 9.2 (Potential soil impacts and proposed mitigation); Mine Plan 9.3 (Potential vegetation impacts and proposed mitigation); and Mine Plan 9.4 (Potential wildlife impacts and proposed mitigation). For a detailed discussion regarding potential impacts to the health and safety of humans and the environment from the mining process and proposed impact mitigation, Strata directs the EQC to Mine Plan 6.2 (Occupational and Environmental Safety Considerations); Mine Plan 7.0 (Effluent Control Systems); Mine Plan 8.0 (Radiation Program); and, Mine Plan 9.6 (Wetland Encroachment), 9.7 (Mitigation of Potential Air Quality Impacts), and 9.8 (Mitigation of Potential Noise Impacts). Again, the Application adequately addresses the regulatory requirements for safety and the LQD's decision to approve the Application should be upheld.

*Objection No. 12*

Merit asserts Strata's proposed mining activities will affect water resources and rights inside Merit's permit area and on adjacent lands and the steps proposed to mitigate these impacts are insufficient under Ch. 11, §4(a)(xxi) of the Department of Environmental Quality, Land Quality, Non-Coal, Rules and Regulations. Strata again believes the Application contains adequate information and directs the EQC to Mine Plan 9.5 (Surface and Groundwater potential impacts and mitigation). Once again, Merit must prove the Application fails to comply with Chapter 11 of the Non-Coal Rules or else LQD's decision should be upheld.

*Objection No. 13*

As discussed in Strata's Motion to Dismiss, Strata acknowledges its use of the roads in the Deadman Creek Field area; however, any disputes over road use are private matters outside the permit area and beyond the scope of LQD or EQC authority. LQD has no jurisdiction over Merit or its operations and thus, could not order Merit to take any action to maintain the roads. To the extent there may be air emission issues related to the use of the roads required for the permit, they fall within the scope of the jurisdiction of the Air Quality Division and outside the authority of the LQD.

Furthermore, Strata already acknowledged that it is committed to maintaining the roads so it can access its wells. Strata could have chosen to construct its own roads, but instead opted to minimize surface disturbance and utilize Merit's roads while assisting Merit with maintenance expenses. *See Exhibit 3*, Log of Communications Related to Road Maintenance and Invoices; *see also*, Mine Plan 2.5 and Exhibits MP.2-2 and MP Figure 2-1.

Nothing in Objection No. 13 demonstrates Strata's Application fails to meet the requirements of Wyo. Stat. Ann. §§ 35-11-406, 428 or Chapter 11 of the Non-Coal Rules.

*Objection No. 14*

Merit claims that because the uranium and oil in the Deadman Creek Field are subject to federal mineral leases, the Mineral Leasing Act of 1920 and General Mining Act of 1872 apply and, Strata, as the second claim, must accommodate the first claim. Under Wyo. Stat. Ann. 35-11-406(a)(ii), Strata must provide a "sworn statement stating that [it] has the right and power by legal estate owned to mine from the land for which the permit is desired." Merit does not challenge Strata's compliance with this provision. Instead Merit asks the EQC to apply federal law regarding accommodation of allegedly competing mineral claims. The EQC is not the proper forum for resolving such a dispute and its authority is limited to issues arising under the Wyoming Environmental Quality Act.

In any event, Merit's reliance on the Mineral Leasing Act of 1920 and the General Mining Act of 1872 for its position that the first established mining claim has a valid and existing right that the second claim must accommodate is outdated. This position has been replaced by the Multiple Mineral Development Act of 1954, discussed below, which promotes simultaneous use of lands for compatible operations. Pursuant to the Multiple Mineral Development Act of 1954, if Merit believes it cannot simultaneously conduct operations with Strata, Merit should petition a court of competent jurisdiction. The EQC does not have jurisdiction under the Multiple Mineral Development Act of 1954 and this is why Strata petitioned the EQC to dismiss this claim. Furthermore, only a small portion of Strata's acreage is Federal. The majority of Strata's acreage is either owned by the State of Wyoming or is privately held and thus not subject to the Federal Acts.

Regardless of the fact that the ECQ does not have jurisdiction to determine compatibility, the operations are compatible. The Application is designed to protect Merit and allow it to continue to operate while Strata conducts its mining operations. Per the terms of the permit, Strata will either provide Merit with a suitable alternative water sources, *see* Mine Plan pg. 9-53, or choose to not mine a portion of its ore reserve so as to avoid interfering with Merit's operations. *See* MP Addendum MP-2, pg. ES-12. Strata will ensure that Merit can continue its operations so it does not violate its permit. Therefore, nothing in Objection No. 14 shows Strata's permit fails to comply with Wyo. Stat. Ann. §§ 35-11-406, 428 or Chapter 11.

***Objection No. 15***

Strata agrees that the Multiple Mineral Development Act of 1954, specifically 30 USC 526, governs concurrent mining and leasing act operations and, pursuant to the Act, the operations of Merit and Strata must be conducted, so far as reasonably practicable, in a compatible manner. It is Strata's position that Merit's and Strata's operations are compatible; however, if Merit believes Strata cannot simultaneously conduct operations Merit must petition a court of competent jurisdiction for a determination regarding the compatibility of the operations. 30 USCA § 526(d). As discussed in Strata's Motion to Dismiss, Strata asserts that the EQC does not have jurisdiction to determine whether Strata's and Merit's operations are compatible.

As discussed in Objection No. 14, above, Strata's and Merit's operations are compatible. The permit is designed to protect Merit and allow it to continue its operations throughout Strata's mining project. Thus, if Objection No. 15 is not dismissed nothing in the Objection substantiates denial of Strata's Application pursuant to Wyo. Stat. Ann. §§ 35-11-406, 428 or Chapter 11 of the Non-Coal Rules.

### *Objection No. 17*

Merit alleges that the United States Nuclear Regulatory Commission's ("NRC") regulation of Strata's facility will interfere with its operations. How the NRC regulates Strata's operations is not a matter for the EQC or LQD and certainly not a basis for rejecting Strata's LQD permit. As discussed above in Objection No. 15, the compatibility of Merit's and Strata's operations should be determined by the court upon petition of Merit if it believes both operators cannot simultaneously operate. Compatibility of operations does not fall under the jurisdiction of the EQC.

Furthermore, the NRC only restricts access at the in situ mining site, i.e. Strata's facility, which is not located in the field where Merit operates. The NRC does not regulate access to roads or limit an oil and gas operator's access to its field. Merit personnel will have the ability to access and operate within Merit's field as necessary for Merit to conduct its operations. Moreover, any concerns Merit may have regarding the NRC's licensing proceeding for Strata's uranium facility should be submitted to the NRC not the EQC. There is no basis for the EQC to deny Strata's Application based on the issues raised in Merit's Objection No. 17.

### **WITNESSES**

The following witnesses will be called to testify at the hearing in this matter:

1. **Ben Schiffer**, WCC Engineering, c/o Mary Throne, Throne Law Office, P.C., 211 W. 19<sup>th</sup> St., Cheyenne, WY 82001. Mr. Schiffer will be called to testify about the collaboration between Strata and LQD throughout the permitting process. He will also testify about the adequacy of the Application and address the specific objections raised in Merit's *Protest and Request for Hearing of Merit Energy on Strata Energy Inc.'s Application for an In*

*Situ Mining Permit for the Ross ISR Uranium Project.* In addition to factual testimony, Mr. Schiffer may also provide expert testimony.

2. **Ralph Knode**, CEO Strata Energy, Inc., c/o Mary Throne, Throne Law Office, P.C., 211 W. 19<sup>th</sup> St., Cheyenne, WY 82001. Mr. Knode will be called to testify generally about Strata and its operations and Strata's specific plans regarding the Ross IRS Uranium Project. In addition to factual testimony, Mr. Knode may also provide expert testimony.

The following witness may be called to testify at the hearing in this matter:

3. **Doyle Fritz**, WCC Engineering, c/o Mary Throne, Throne Law Office, P.C., 211 W. 19<sup>th</sup> St., Cheyenne, WY 82001. Mr. Fritz may be called to testify regarding issues related to the regulation of water in Strata's operations. In addition to factual testimony, Mr. Fritz may also provide expert testimony.

4. **Ray Moores**, WCC Engineering, c/o Mary Throne, Throne Law Office, P.C., 211 W. 19<sup>th</sup> St., Cheyenne, WY 82001. Mr. Moores may be called to testify regarding the groundwater modeling he conducted in support of the Ross ISR Uranium Project, Permit to Mine Application. In addition to factual testimony, Mr. Moores may also provide expert testimony.

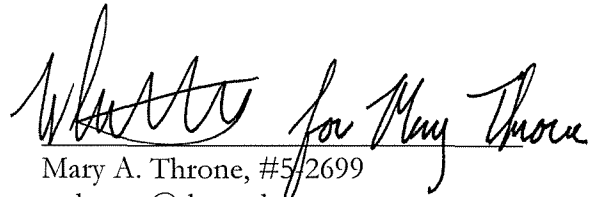
Strata reserves the right to call any witness listed by any other party to this matter, as well as all witnesses required for rebuttal and to lay foundation for any exhibit. Strata reserves the right to supplement this list as identity of additional witnesses may become known or discovered upon reasonable notice to the parties.

**EXHIBITS**

A copy of Strata's Exhibit List is attached hereto as Exhibit 1.

Strata reserves the right to use any exhibit for demonstrative purposes. Strata may offer any or all of the exhibits designated by any other party, and specifically reserves the right to offer any exhibit required for rebuttal purposes. Strata also reserves the right to supplement its list of exhibits upon reasonable notice to the parties hereto.

DATED this 17 day of October, 2012

A handwritten signature in cursive script that reads "Mary A. Throne" followed by "for Mary Throne". The signature is written in black ink and is positioned above the typed contact information.

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## CERTIFICATE OF SERVICE

I certify the foregoing pleading was served on the 17 day of October, 2012, and that copies were served via electronic mail to the following:

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A handwritten signature in black ink that reads "Mary A. Throne" with a flourish at the end.

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## Exhibit 1

- **Strata Exhibit #1:** August 2, 2012 Letter from DEQ to Ralph Knode
- **Strata Exhibit #2:** Communication Log between Merit and Strata
- **Strata Exhibit #3:** Log of Communications Related to Road Maintenance
- **\*Strata Exhibit #4:** *Strata's Response to Merit's First Set of Combined Interrogatories, Requests for Production and Requests for Admissions to Strata Energy, Inc.* and accompanying Exhibits
- **\*Strata Exhibit #5:** *Merit's Response to Strata's First Request for Admissions, Production of Documents and Interrogatories to Merit Energy Company* and accompanying Exhibits
- **\*Strata Exhibit #6:** Deposition Transcript of Merit's witnesses
- **Strata Exhibit #7:** Letter from Alfred J. Reynolds and Florence P. Reynolds in support of Strata's project
- **Strata Exhibit #8:** Letter from Kenneth Schuricht in support of Strata's project
- **Strata Exhibit #9:** Email chain between Ralph Knode and Chris Heavner
- **Strata Exhibit #10:** Comments and Responses between Strata and DEQ
- **Strata Exhibit #11:** August 24, 2011 Letter from Ray Moores to Eric Williams

\* Because of the tight timeframe, Strata does not currently have these Exhibits. Strata will provide the Environmental Quality Council with these Exhibits as soon as possible.