

FILED**BY FAX (307) 777 - 6134**

DEC 14 2009

To: Jim Ruby, Executive Secretary EQC Fax
 Jim Ruby, Executive Secretary
 (307) 777-6134 Environmental Quality Council

From: Judith Bush tel / fax (613) 392 - 2313
 2313 County Rd 64 please phone before faxing
 Carrying Place ON Canada K0K 1L0

date: December 12, 2009

Re: **Objection to Mine Permit of Croell Redi-Mix, Inc. TFN 5 6/072**
Public Hearing in this matter Docket No. 09-
4806

Failure of EQC to provide public notice of contested public hearing noted above for two consecutive weeks prior to the hearing taking place Environmental Quality Act 35 - 11- 406 (k)

Request for change in the scheduled date of upcoming public hearing from December 21, 2009 until after the New Year.

Dear Mr. Ruby,

The Environmental Quality Act 35-11-406(k) requires that in contested hearings such as the hearing noted above, public notice of the hearing shall be published in a local publication (in this case the Sundance Times) once a week for two consecutive weeks immediately prior to the hearing taking place. Although there was ample time for this to have been arranged, timely notice regarding this contested public hearing did not occur.

(I believe that the LQD and the EQA should have been aware by mid November that public response to notices regarding the Croell Redi-Mix application would make this hearing a necessity. My letter dated December 5, 2009, was also faxed (with a faxed copy to you) in a timely manner.

Since the EQC failed to provide timely public notice of this public hearing, as required by law, I am requesting that this public hearing be rescheduled to take place in the New Year, and that this hearing be publicized in accordance with the requirements contained in the Environmental Quality Act as noted above.

I am further requesting that the contested public hearing noted above be held in Crook County, in Sundance. The Rogers Pit is located in Crook County. Most members of the public who have objected to the mine permit have Sundance addresses. All have ties to the Sundance area. There is no reason to hold the hearing in Gillette, and doing so makes it unnecessarily difficult for the public to attend this hearing, which is being held for their sake.

You mentioned budgetary constraints (Cheyenne and Sheridan being closer to Gillette than to Sundance) as the reason that the EQC scheduled the in Gillette instead of Sundance. I presume that a new budget beginning in the new year will make this a non issue. In addition, I am sure that many people in and around Sundance are also experiencing budgetary constraints at this time as well, and the expense of traveling to Gillette to attend a hearing concerning a Crook County problem makes no sense and constitutes a roadblock to public attendance at this hearing.

I telephoned your office last Friday at ~ 5:45 your time, hoping to speak with you. Joe Gerrardin (I am not sure if this name is spelled correctly) answered your telephone line. He told me that you were not there. I presume that you had already left for the weekend.

I told Mr. Gerrardin who I was and that I was calling in regard to the hearing scheduled to take place on December 21, 2009, in Gillette. Mr. Gerrardin confirmed that this hearing is open to the public. I asked if notice of the hearing had been published. Mr. Gerrardin told me that it had not been published.

The Sundance Times publishes weekly on Thursdays. The next edition will not be out until Thursday, December 17, 2009. Public submissions were received by the LQD of the DEQ in mid-November of 2009 regarding this matter. As such, it has been known for some time that a public hearing would take place according to the Rules governing the LQD in such matters. The EQC had to be aware of its legal responsibility to publish public notices for two consecutive weeks prior the hearing to inform the public that it would be taking place. Nevertheless, it failed to do so.

Chapter 2 (Rules of Practice and Procedure Applicable to Hearings in Contested Cases), Section 7 (a) of the Rules of Practice and Procedure (which apply in all proceedings before the Environmental Quality Council and its examiners) permit a person with good cause to request and be granted intervenor status at contested public hearings such as the one which will take place regarding the Croell Redi-Mix application.

Such persons may request intervenor status at any time up to and including the day of the hearing. This includes persons who have not responded to public notices regarding this application in the past. (My understanding is that a response to the notices trigger the public hearing, but that participation in the hearing is not necessarily limited only to those who have responded to notices regarding Croell Redi-Mix's LQD application in the past, and (to whom the EQC sent out notices on the afternoon of Wednesday, December 9 by registered US post). As well, other interested people may wish to attend the public hearing without participating directly. People such as these are entitled to the public notice which is required by law.

The EQC has not fulfilled its legal obligation to provide timely notice to the public regarding the Public Hearing. There was ample time for the EQC to have done so.

I am requesting that the public hearing scheduled to take place in Gillette on December 21, 2009, be rescheduled in the New Year, with public notice of this

hearing being published in the Sundance Times as required in the Environmental Quality Act as noted above

I am further requesting that the hearing be held in Sundance (in Crook County, where the Rogers Pit is located). Requiring local people to make a 120 mile round trip to attend a hearing regarding a local matter is unreasonable. There is no good reason to hold the hearing in Gillette, and it makes participation in any public process more difficult.

It is also possible that county and locally stationed state officials may be required to present evidence to the EQC regarding matters relating to this application as well.

On a second subject, I would like to point that the Croell Redi-Mix application to the LQD was incomplete regarding matters relating to access to the crushing site when the notice was published in the Sundance Times on June 4 and June 11 of this year. The application was still incomplete regarding matters relating to access to the crushing site when public notice regarding the Croell Redi-Mix application to the LQD was again published in the Sundance Times on October 15, October 21, October 28 and November 4 of this year. As such, it was premature to place these public notices in the Sundance Times at the times when they appeared in that newspaper.

(Environmental Quality Act 35-11-406 (g)).

In addition, information regarding the access road to the Rogers Pit which was provided by Croell Redi-Mix to the LQD in a document dated August of this year was inaccurate, giving the false impression that the matters relating to access were complete when they were not. (The August 109 document states that the new access road had been constructed and was in use, when it was not. It also states that the old access road, which passes through our property without our consent, had been closed when in fact it was still being used for all access and egress from the Rogers Pit at that time.)

Publishing the public notices in the Sundance Times prematurely, before the application was complete regarding matters related to the new access road, with the final notice appearing in the Sundance Times on November 4, 2009, set the clock ticking on a public process which it would have been clear to anyone familiar with the process resulted in the deadline for a public hearing falling on Christmas Day.

The issue of access is a safety issue that needs to be seriously considered before this application is approved. It is not at all clear that the new access road is suitable to handle truck traffic to and from the Rogers Pit. This is not a question that should be left to resolve later, after the application has been otherwise approved. All necessary documentation and approval from any and all levels of government required to approve or otherwise consent to the use of this road as the access road for the Rogers Pit should form a part of the application at the time that the hearing is held. Those who are on record as having objected to this application, should be sent copies of all such consents and approvals prior to the hearing taking place.

Once again, by law any and all approvals necessary to designate this road as the access road into and out of the Rogers Pit should have been in place prior to public

notice ever having been published and the public should have had time to consider information relating to such documents at the time when other information regarding the application was available for the public to review at the County Clerk's office in Sundance during the period of public notice. Under no circumstances should public input into matters relating to this application be terminated by a premature hearing, with the issue of safe access to the site left hanging.

While the EQC has failed to fulfill its own obligations regarding public notice of the hearing it has nevertheless placed demands upon those who have objected to this LDQ application which it is unreasonable to expect can be met in the time which these people have been allotted to do so.

Notice and Orders sent out by registered mail from the EQC on the afternoon of Wednesday, December 9, 2009 to all prospective parties to notify them of the scheduled date of the public hearing (December 21, 2009) stipulate that by noon on the following Monday, December 14, 2009, all persons to whom these notices have been sent out must have their cases, arguments, motions, witnesses and exhibits lined up, complete, documented, and in the hands of all other parties served by that notice. Documents sent to the EQC are to be in triplicate. Only certain forms of e-mail are acceptable.

The EQC made no attempt to facilitate delivery of the Amended Notice and Order mailed on the afternoon of December 9, 2009 either to Judy Hamm, whose winter address is in Florida, or to me in Canada. The EQC had to be aware that letters sent by US post (albeit registered) would be unlikely to reach either of us in time for any response by noon on December 14, 2009.

To my knowledge, none of the people who have expressed concern to the DEQ LQD regarding this application (and the proliferation of crushing pits in Crook County in general, and the seeming inability of the DEQ to enforce the terms of the permits they grant) are lawyers, nor do they have administrative assistants to assist us with these demands (to be completed by noon on December 14, 2009).

Also scheduled for Monday, December 14, 2009 (at 5:30 pm) is the meeting relating to the application of Croell Redi-Mix to the DEQ Air Quality Division, which also concerns matters relating to the expansion of the Rogers Pit.

Most people cannot put their entire life on hold in order to comply with these demands in the limited time they have been given, nor should they have to do so. The threat that they will lose standing if they fail to comply with the pre-hearing requirements within such a short time frame is also unreasonable.

It is not the choice of those who have objected to the approval of this application that an adversarial public hearing follow immediately upon the heels of our letters. An adversarial public hearing is being imposed upon us by the policies and regulations of the DEQ LQD.

The adversarial nature of the process presented to the public as their only venue of recourse does not in any way lessen the responsibility of government, including the

DEQ and the EQC, to play a facilitating role in helping the public with the unfamiliar and arduous hearing process. Instead, it seems that the government is using the power of the legal system, and exploiting an understandable lack of familiarity with this legal system, to discourage public participation and input regarding the Croell Redi-Mix application to the LQD

When I phoned last Wednesday to ask if you could walk me through the Orders contained in the Amended Notice (which was faxed to me by the LQD, no thanks to the EQC), your reply was that you could not give me any legal advice. When I told you that it was not possible for me, in Canada, to comply with all of the demands outlined in the Notice and Order, you agreed and then noted that I could nevertheless lose standing at the hearing if I failed to do so.

When I requested information from the AQD division regarding documentation concerning the total production of limerock from the Rogers Pit from all companies who have operated in the Rogers Pit since it became operational in 2007 (Croell Redi-Mix, Bruening Rock Products and Frost Rock Products), I received a faxed reply from the DEQ stating that the AQD had no information regarding my request, that in future if I wanted photocopies of any information from the AQD I could hire someone to come in and copy them for me, and that the AQD would no longer provide me with documentation.

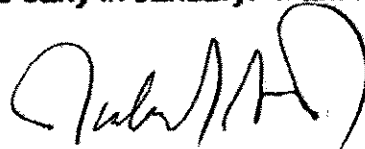
None of what I have just described could be characterized as government at its best.

The General Rules of Practice and Procedure allow for remedy when the rules set out in that document result in situations which are inherently unreasonable. Section 12 (a) (Deviation and Amendment) states, "The Council may permit deviations from these rules insofar as it may find compliance therewith to be impossible or impracticable." I believe this to be the case with respect to the demands that have been placed upon those who have objected to the Croell Redi-Mix application.

I understand that complete copies of the Croell Redi-Mix file will be made for government personnel for the upcoming public hearing. If this is the case, any member of the public planning to participate in that hearing who requests a copy of the file and is willing to purchase the copy at cost should be able to do so. These are public documents. If this is possible, please let me know. I would like to order a copy.

Once again, I am requesting that the public hearing be postponed until the New Year. This will provide adequate time for the EQC to place two public notices in the Sundance Times during the two weeks leading up to the public hearing as the law requires. The application will hopefully be complete regarding issues concerning the access to the site, so that the hearing can take place early in January. I am requesting that the public hearing take place in Sundance.

Yours truly,



Judith Bush
Managing Partner, Bush Ranches