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BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

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IN THE MATTER OF THE OBJECTION TO THE MINE PERMIT OF
CROELL REDI-MIX, INC., TFN 5 6/072

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TRANSCRIPT OF HEARING PROCEEDINGS

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P R O C E E D I N G S

2 (Hearing proceedings commenced 1:00
3 p.m., December 21, 2009.)
4 CHAIRMAN SEARLE: I'm going to bring this
5 hearing to order. Just as a starting point, good
6 afternoon. I wrote down good morning. Good afternoon.
7 I'm Dave Searle. I'm a member of the Environmental
8 Quality Council. What we're here today is to have a
9 hearing on Docket Number 09-4806 in reference to Croell
10 Redi-Mix, Inc. That's Permit Number TFN 5 6/072. I've
11 been appointed by Chairman Boal of the EQC to serve as
12 the presiding officer.

13 Today is December 21st, 2009. The hearing is
14 being held at the Campbell County Library, 210 (sic)
15 South 4-J Road, Gillette, Wyoming. It is a little after
16 1:00 in the afternoon. And this proceeding is recorded
17 by -- being recorded by a court reporter.

18 As a little background, the comment period on
19 this permit concluded on December 7th, 2009. Pursuant to
20 statute, the Council must hold a hearing on this matter
21 within 20 days after the last day for comment unless all
22 of the parties agree to a continuance. The parties were
23 sent a notice of hearing and order on December 8th, 2009
24 and an amended notice of hearing and order on December
25 9th, 2009. The prehearing conference was held on

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1 December 16th, 2009. A motion to continue was filed by
2 Ms. Bush, one of the objectors. This motion was denied
3 on December 16th, 2009 at the prehearing conference in
4 this matter for the reason that the permittee would not
5 stipulate to the continuance.

6 Just as a reminder, this hearing is being held
7 pursuant to the Wyoming Environmental Quality Act, the
8 Wyoming Administrative Procedures Act and the rules of
9 practice and procedure of the DEQ.

10 To start some introductions, with us today
11 from -- up here from the Environmental Quality Council is
12 Jim Ruby to my right, who is our executive secretary, and
13 Joe Girardin, who is our paralegal and also our technical
14 wizard to keep all of our electronics operating. As we
15 heard on the phone, we also have Councilman Tim Flitner
16 from Greybull and Councilwoman Cathy Guschewsky of
17 Lander. Welcome to both of you.

18 Also present today is John Burbridge, who is
19 going to be representing the Department of Environmental
20 Quality, Land Quality Division, Roger Croell, who is
21 representing the permittee. Objectors that are present
22 today are Judith Bush and Les Turgeon. And on the
23 phone --

24 COMMISSIONER GUSCHEWSKY: Hey, guys,
25 everyone, before you kind of go on, I can't hear you.

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1 This is Cathy. I couldn't hear who the two objectors
2 were that were there.

3 MS. HAMM: It's really hard to hear

4 anybody there.

5 CHAIRMAN SEARLE: We're on a simple
6 speakerphone. I'm not sure there's going to be an easy
7 answer to this, guys. We will try.

8 Let me just start over with the objectors. We
9 have Judith Bush, Les Turgeon here in person, and we have
10 Judy Hamm on the phone.

11 The order of proceedings today will be as
12 follows. We'll start off with opening statements by each
13 party. You'll be limited to five minutes, just to
14 outline what they intend to show today. At the
15 conclusion of the evidentiary hearing, the parties will
16 be given five minutes to present their closing argument.
17 Obviously, most of the meeting will be the presentation
18 of your evidentiary evidence.

19 The order of the presentation for opening and
20 closing statements will be as follows. We'll start with
21 the objectors first, with Judith Bush, Les Turgeon, Judy
22 Hamm. Then we'll go with DEQ and then the permittee.
23 After the opening statements, we will start the
24 evidentiary portion of the hearing. We will change the
25 order up a little bit. In that one, we will have DEQ go

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1 first, followed by the objectors and then the permittee.

2 Just as a reminder, it's the objectors' burden
3 to show that the permit should not be issued by a
4 preponderance of the evidence. There is a presumption
5 that the Department has followed the statutes and rules
6 and regulations governing this permit process. While the
7 Department will be going first in the evidentiary
8 process, this is not indication that the burden of proof
9 is the Department's. The objectors will carry this
10 burden throughout this proceeding.

11 The Council has found that these proceedings
12 proceed more efficiently if the Department goes first and
13 places the Council -- places before the Council the
14 information as to what took place during the permitting
15 process. It is the objectors' burden to show where in
16 this process the Department committed error or was
17 arbitrary or capricious. The objectors need to establish
18 these facts by a preponderance of the evidence.

19 At this time we're going to go ahead and start
20 with -- are there any questions on this? I guess this is
21 informal enough, I can ask if we have questions.

22 Yes, Ms. Bush?

23 MS. BUSH: We would all like to raise
24 questions, procedural questions, leading up to the
25 hearing, errors that have been made in notices that have

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1 come out. Should we be doing that at this time before we
2 get into the opening statements?

3 COMMISSIONER GUSCHEWSKY: This is Cathy.
4 And I can't hear Mrs. Bush at all.

5 MS. BUSH: I'll try to talk louder. Can

6 you hear that?
7 COMMISSIONER GUSCHEWSKY: That's
8 wonderful. Thank you.
9 MS. BUSH: My question is that the entire
10 notice procedure has been irregular. Wrong information
11 has been given out. No attempt for timely information
12 that would reach me has been made. And this is something
13 that we have tried very hard to remedy prior to this
14 hearing taking place. And we have not really been heard.
15 We have stated our objections, and we have been told that
16 they don't count.
17 But we want to make sure that the procedural
18 record that has preceded us being here today, we want
19 people to know that we object to it, that we do not think
20 it was regular, that in terms of publishing newspaper
21 public notice, there was absolutely adequate time to do
22 so, and it was not done. The notices went out by mail on
23 December 8th and again on December 9th. So by that time,
24 people knew they had to advertise. And the regulations
25 are --
0010
1 COMMISSIONER FLITNER: Excuse me. This is
2 Tim Flitner. I think this is all in the record.
3 MR. BURBRIDGE: May I ask a question that
4 will clarify things a bit? Are all of my letters a part
5 of the record?
6 MR. RUBY: They are.
7 MS. BUSH: Okay. That helps.
8 Nevertheless, I think there are other people who know
9 things --
10 MR. RUBY: All of these issues were raised
11 at the prehearing and dealt with. They are a part of the
12 official record as of this point in time. Any further
13 arguments --
14 CHAIRMAN SEARLE: I think this --
15 MS. BUSH: I have to object to that. They
16 were dealt with to the extent --
17 CHAIRMAN SEARLE: Ms. Bush -- Ms. Bush,
18 I'm going to overrule that at this point. What we will
19 do is, you've stated it.
20 MS. BUSH: Yes.
21 CHAIRMAN SEARLE: It's been captured by
22 the court reporter that you have an objection on the
23 proceedings. And with that, it will be noted in the
24 record.
25 MS. BUSH: Okay. And Mr. Turgeon would
0011
1 like to make a point.
2 MR. TURGEON: I would like to, just for
3 the regulations and the rules, make a couple comments,
4 one on the procedure that in our Sundance paper, the
5 advertisement advertised just for Monday, December 23rd.
6 MR. RUBY: And it was correct.
7 MR. TURGEON: But not in my paper. I

8 mean, these things -- you know, in your letters and stuff
9 that come out, where we live in the country, are not
10 timely when you only give us a day notice. We might not
11 get our mail for two or three days.

12 I would also object, even though it may be
13 legal, to advertising this in the Casper paper 200 miles
14 and three counties away. These are procedurals that are
15 really ridiculous and a move to say, "You guys don't
16 count." Also, the meeting here instead of in Sundance,
17 when the mileage from your Cheyenne office to Sundance is
18 only 23 miles' difference. And you're telling us you
19 can't do it because of your budget. I wrote, in my
20 letter to the governor, just have to make sure he's got
21 enough money for you to get there next year. But I just
22 want this in the record.

23 CHAIRMAN SEARLE: Thank you.

24 MR. TURGEON: Also -- excuse me. One more
25 thing. In your last letter you just sent me -- and I

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1 think maybe you sent it and signed it, Dave. You signed
2 it. But in this meeting here today, you said it was 1:00
3 a.m. today. And when I got here this morning, nobody was
4 here. But those date changes and time changes makes it
5 heard for people to keep up with, especially if they're
6 not involved that much.

7 Thank you.

8 CHAIRMAN SEARLE: I did notice there was a
9 typo. Our apologies. Of course, we did talk on the 16th
10 and clarify that it was -- but I appreciate that. That's
11 how we're going to handle those objections. That's fair
12 enough. I know we did talk about some of that during the
13 prehearing conference.

14 With that being said, we're going to go ahead
15 and start with the opening statements. And as I said
16 before, this will be five minutes for you to kind of lay
17 out what you intend to bring during your evidentiary
18 deal.

19 And, Ms. Bush, we'll go ahead and start with
20 you. I think -- do we want people to come up here?

21 MR. RUBY: She's got a mike right there.
22 She'll be --

23 MR. GIRARDIN: No. It's just recording.

24 COMMISSIONER GUSCHEWSKY: This is Cathy.
25 It's very, very hard for us to hear.

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1 MS. HAMM: (Inaudible.) I know we have
2 five minutes for opening, but what about the meat of the
3 stuff?

4 MR. RUBY: Ms. Hamm, you'll have an
5 opportunity to call your witness and to testify yourself.
6 And that has unlimited time to it.

7 MS. HAMM: I see. Okay.

8 MS. BUSH: Thank you. This is Judy Bush.
9 I'm one of the owners of Bush Ranches. Bush Ranches is

10 going to share a long, long border with this mining site,
11 miles. I understood from speaking with people at the
12 prehearing conference that all of our obvious complaints
13 are inadmissible or insignificant or not relevant to how
14 people are going to decide this today. So I will be very
15 brief.

16 We have a beautiful, big ranch. We have timber
17 that we have let grow. We have some trees on the ranch
18 that have never been cut. We have never overmined our
19 ranch. We have never done anything to our ranch to
20 interfere with the uses that we knew it would be put to
21 at some point in time, which would be recreation, homes,
22 hunting, wildlife. And many of these sustainable
23 environmentally friendly activities are going to suffer
24 or either be curtailed and made impossible. So this is
25 our concern.

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1 In addition to that, our ranching operation has
2 been made more difficult. But Mr. Turbiville will let
3 you know about that.

4 So we were sent away on Wednesday saying sorry.
5 This doesn't make any sense. See if you can tie it up
6 with the statutes. And we had a few days to do that, so
7 I have tried. I believe that both the reclamation
8 statement and the mining statement are vague in terms of
9 detail and that this detail is mandatory in an
10 application.

11 I also believe that Croell Redi-Mix has a
12 record of dealing in bad faith with the Land Quality
13 Division up to and including their present application.
14 And I will be submitting exhibits to show that. And
15 there are laws that make it very clear that you don't
16 give out permits to people who deal in bad faith. So
17 that is going to be one of my arguments, as well.

18 We've already dealt with the notice. So we
19 have an incomplete application. We have a company that
20 deals in bad faith with the DEQ. Let me take one peek
21 here. I think that's -- that's about it. That's going
22 to be our arguments.

23 CHAIRMAN SEARLE: Okay. Thank you.

24 MS. BUSH: You're welcome.

25 CHAIRMAN SEARLE: Mr. Turgeon, if you'd

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1 give us your opening statement, please.

2 MR. TURGEON: I'm Les Turgeon. I live on
3 Rifle Pit Road.

4 One of the things that so far has got me kind
5 of concerned is, in the notice, basically, from the DEQ,
6 when they made the public notice and they said about
7 modifying the original pit, they did not mention that
8 this modification went from ten acres to over 600 acres,
9 which in the local vicinity is going to make quite a bit
10 of difference if you're going to modify it. They did say
11 they were going to add a hot mix plant and a cement mix

12 plant. They've got a river right close by which I draw
13 my water out of. I got springs on. And they're also
14 going to increase the volume of the tonnage. And I'm
15 very concerned about the water problem in this area.

16 I will have to go along with Mrs. Bush and the
17 value of theirs. But every bit of that drainage in that
18 area goes into Sundance Creek. And when we're looking at
19 a problem this massive, of 20 years, probably, we're
20 going to have a lot of settlement. And I'll make a
21 couple comments on that when we come.

22 Since Mr. Croell is not talking at the present
23 time, I will have to address his comments from the
24 meeting at DEQ on December 14th. But going to your
25 claims that's on your issue, Claim 1 and 3 seem to be

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1 legal questions. And I will be addressing a letter to
2 the governor asking him to check these out and make sure
3 they're correct. They're not applying, but I do think
4 they need to be correct.

5 Claim 2 is about being a public nuisance. And
6 I would like to address that. And Claim 3 also goes into
7 health safety and -- health and safety, I should say.
8 And I want to address both of those. Claim 4, I believe,
9 goes into the water. And I want to address those. Those
10 would be the areas that I want to talk about today.

11 Thank you.

12 CHAIRMAN SEARLE: Thank you, Mr. Turgeon.

13 Ms. Hamm?

14 MR. RUBY: Ms. Hamm?

15 MS. HAMM: Yes. I didn't hear you. I
16 thought I heard you, but I didn't, since we're having --
17 I could hear Les fine.

18 And I am going to talk about Claim 2, the
19 proposed operation (inaudible) endangers the public
20 health and safety. My concern is about the public
21 health. And I submitted pictures, and I submitted an
22 article that was approved, reviewed and approved by the
23 EPA. Do you have those? Because I was told that after I
24 submitted them, I was going to be given a number on what
25 they are.

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1 MR. RUBY: Yes, Ms. Hamm, we received your
2 exhibits. They are 1 through 5, I believe.

3 MS. HAMM: Those are the photographs?

4 MR. RUBY: Yeah. The photographs are
5 Exhibit 4 -- Exhibit 3 -- or, 2. I'm sorry. Exhibit 2.

6 MS. HAMM: And do you have the provisional
7 assessment of recent studies on health effects?

8 MR. RUBY: Yes. That's Exhibit 1.

9 MS. HAMM: That's all I have to say for my
10 opening statement.

11 CHAIRMAN SEARLE: Thank you.

12 MR. BURBRIDGE: It is my turn?

13 CHAIRMAN SEARLE: Mr. Burbridge, please.

14 MR. BURBRIDGE: Can everybody on the phone
15 hear me all right?

16 COMMISSIONER GUSCHEWSKY: Yes.

17 MR. BURBRIDGE: I really don't have much
18 for an opening, although it's my expectation that,
19 through the testimony of Glenn Mooney, we'll show that
20 the application is, in fact, complete and compliant with
21 Wyoming law and that it will be Mr. Mooney's testimony
22 that, in his opinion, the permit should issue.

23 Just by way of how I anticipate this will go,
24 after Mr. Mooney testifies in that regard, I have -- am
25 obviously reserving the right to call rebuttal witnesses.

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1 And depending on what is raised by the objectors, we may
2 call Mark Rogaczewski, who is with me today. He's
3 Mr. Mooney's supervisor, who can testify in response to
4 any of the objections. And we also have Doug Emme with
5 us today, who is our blasting expert with the DEQ, in
6 case those issues should come up. And I would also
7 state, just for the record, so we all know, Don McKenzie,
8 the administrator of the Land Quality Division, is here
9 today. I do not expect to be asking him to testify in
10 any regard.

11 So I would anticipate we'll go first. And then
12 it's my full expectation, with the way things are sort of
13 shaping up, that we'll be sort of wrapping up the day, as
14 well.

15 Thank you.

16 CHAIRMAN SEARLE: Thank you,
17 Mr. Burbridge.

18 MS. HAMM: And who was that that was
19 speaking?

20 MR. RUBY: That was John Burbridge, the
21 attorney for the DEQ.

22 MS. HAMM: Okay.

23 CHAIRMAN SEARLE: Mr. Croell, do you have
24 an opening statement?

25 MR. CROELL: My statement will be rather

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1 short. I just want to inform everyone that we have
2 applied for this permit. We fulfilled all the
3 requirements of the State of Wyoming. We feel and I
4 contend that we have not operated in bad faith. We take
5 this very seriously. I live a half a mile away from this
6 pit. And I am not one to ruin the Wyoming environment or
7 the air or the water or any of those things. I live
8 right here. I'm not going to screw up the environment of
9 Wyoming. And we have complied with all of the rules and
10 regulations that apply to obtaining this permit, I feel.

11 That's all I have to say.

12 CHAIRMAN SEARLE: Thank you, Mr. Croell.

13 Okay, let's proceed. Let's start into the
14 evidentiary proceedings. DEQ.

15 MR. BURBRIDGE: Yes. And I'm going to

16 take a chair up here --
17 CHAIRMAN SEARLE: Yes, please.
18 MR. BURBRIDGE: -- and call Glenn Mooney
19 to the stand, or the chair.
20 MR. MOONEY: Which chair?
21 MR. BURBRIDGE: If you want to go over
22 next to the speakerphone on the other side of the table,
23 on the other side there where Jim is. And I'm going to
24 just come up here and sit across from you. Was my
25 original plan. I think this might work best.
0020
1 CHAIRMAN SEARLE: I appreciate that. I
2 think that will work better.
3 MR. BURBRIDGE: I call Mr. Mooney. He
4 needs to be sworn.
5 (Witness sworn.)
6 MR. BURBRIDGE: Just as a preliminary
7 matter, I see that the State's exhibit is marked as
8 Number 11. And am I to assume -- I'm going to offer this
9 unless it's been previously admitted in the prehearing
10 conference. If not, I would offer it now. It's the
11 application, the original -- a copy of the original
12 application from Croell Redi-Mix.
13 CHAIRMAN SEARLE: Is there any objections
14 to that exhibit --
15 MS. BUSH: No.
16 CHAIRMAN SEARLE: -- from any of the
17 parties? Okay. We will accept that.
18 MR. BURBRIDGE: I'm just going to go ahead
19 and put this next to the reporter.
20 MS. BUSH: There is one question, if I
21 may.
22 MR. RUBY: You'll just have to wait.
23 MS. BUSH: It's an objection, possibly.
24 CHAIRMAN SEARLE: Let us proceed with this
25 part of it, please. You have an objection with the
0021
1 exhibit?
2 MS. BUSH: No. I have an objection --
3 it's okay. Never mind.
4 GLENN L. MOONEY,
5 called as a witness by the DEQ, being first duly sworn,
6 on his oath testified as follows:
7 DIRECT EXAMINATION
8 BY MR. BURBRIDGE:
9 Q. Would you state your name and spell the last
10 for the record, please?
11 A. My name is Glenn LeRoy Mooney. That's M,
12 double O, N-E-Y.
13 Q. And what is your work address?
14 A. 1866 South Coffeen Avenue, Sheridan, Wyoming
15 82801.
16 Q. And who are you employed by?
17 A. The Land Quality Division of the Wyoming

18 Department of Environmental Quality.

19 Q. And how long have you worked for the Land
20 Quality Division?

21 A. Over 35 years.

22 Q. And have you worked with any other departments
23 of the state prior to that?

24 A. I was employed once upon a time by the
25 department of chemistry at the University of Wyoming.

0022

1 Q. Now, in your 30-plus years with the Land
2 Quality Division, can you describe the various positions
3 you've held, best you can remember, over that time
4 period?

5 A. Pretty much this position as an analyst and
6 then senior analyst or senior geologist. But it's been
7 pretty much the same job all along.

8 Q. As a senior analyst and geologist, can you
9 explain for everybody here today what your duties are?

10 A. My duty is in carrying out the permit reviews
11 of coal, uranium and aggregate-type mining, conducting
12 inspections of those and to conduct permit coordination
13 of permit reviews for coal, uranium and hard rock
14 aggregate mining, as in this case.

15 Q. And can you describe any specialized training
16 that you've had to be able to do those sorts of duties,
17 i.e., college background, any specific training you may
18 have had since then?

19 A. I have a bachelor's degree in geology from the
20 University of Wyoming. And I've taken numerous, dozens
21 of short courses and courses through the Office of
22 Surface Mining and other similar agencies.

23 Q. Now -- I hate it when I lose my train of
24 thought. It will come back to me here in a second. So
25 I'll move on to a general question. When you're in

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1 charge of reviewing a permit, can you describe generally
2 the procedures you go through in processing a permit?

3 A. First thing I do in a permit is to carry out a
4 completeness review to make sure that all of the major
5 components of the application are there, at least in
6 part. And once I determine that they are, sometimes I
7 have to go and write a letter or a review memo to the
8 operator or the operator's consultant, saying we need
9 this part or this part of whatever to ensure that the
10 application is complete enough that we can then proceed
11 to the full technical review.

12 And at that point, I write a letter to the
13 operator or the operator's consultant, saying it's ready
14 to go to the first completeness review, where they
15 publish once a week for two weeks. And also at that
16 point, I write a memo to the Land Quality staff, saying
17 we have this application. I need a review for your
18 particular discipline, whether it be soil, vegetation,
19 surface water hydrology, groundwater hydrology and also

20 adjudication.

21 Q. Now, can you describe -- you talk about
22 completeness review and the technical review. So you're
23 discussing two different phases of the application
24 process?

25 A. Yes.

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1 Q. Now, when you determine that the application is
2 complete, is there any public notification or any type of
3 notification that goes on?

4 A. Yes, there is. They have to publish once a
5 week for two weeks in a local paper.

6 Q. But that's not the public notice that allows
7 people to file objections or claim --

8 A. Right. That is just a notice that there is an
9 application under review.

10 Q. And I'm just -- just to remind you, we have to
11 speak one at a time. So even if you know where my
12 question is going, if you could wait for me to finish.
13 And that's not for my benefit. That's for the court
14 reporter here, who, unless he can do a conversation with
15 each hand, I think he only has the ability to transcribe
16 one of us at a time.

17 So that first notice isn't the time for people
18 to file objections. What is the purpose of that notice?

19 A. It's to let people know that there's an
20 application under review.

21 Q. Now, do you ever have people comment directly
22 with you at that stage in a permit -- application permit
23 proceeding?

24 A. Not a formal comment, no. They may rarely get
25 a phone call just asking about it, and I tell them it's

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1 on open file in our office. They're free to come in and
2 look at it.

3 Q. Now, at some point in time, is the application
4 filed at a place where the public can view it?

5 A. In the Cheyenne and Sheridan offices of the
6 Land Quality Division.

7 Q. And it's my understanding that it may be at the
8 county clerk's office, as well.

9 A. Not at that time.

10 Q. Not at that stage. Now, then you said you
11 proceed with -- to get to a technical completeness. Can
12 you describe again -- I think you did this a little bit,
13 but describe generally what -- what occurs during that
14 time frame in between the completeness, the determination
15 and the technical review?

16 A. I send out a memo to the staff, the Land
17 Quality staff, asking for reviews of the application.
18 And then I talk to them to find out when they can get the
19 reviews done, set a deadline. And then I get the reviews
20 together, their review memos, and then put together a
21 single review memo which goes out to the operator and the

22 operator's consultant, asking, we found that we need this
23 additional information.

24 Q. So what you're describing to me is perhaps
25 you've got a hydrologist or somebody that's an expert in
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1 water and groundwater or surface water, whatever. And
2 you may have somebody that's an expert in vegetation.
3 For instance, you would be the expert in geology. So
4 various aspects of this application go to those experts
5 in the Land Quality Division for their --

6 A. Right. Right. They're asked to review their
7 specific area of expertise and then also to look at the
8 mine plan and the rec plan portions, too.

9 Q. And you've got the experience, once you get
10 their reviews back, to be able to look at that and
11 make a -- determine as to whether or not, with their
12 comments satisfied, that you would have, then, a
13 technically complete action?

14 A. Yes.

15 Q. And likewise, are there occasions where perhaps
16 you aren't in charge of a certain application, but you
17 may be doing a review on the geology, for instance, for
18 somebody else that's doing an application review?

19 A. Not personally. Others in the office may do
20 that. But I personally only review the ones that I'm
21 involved with.

22 Q. So you've been around long enough that you
23 don't need -- you've been doing this long enough that you
24 don't have to do those individual reviews anymore? Or
25 you just don't do those?

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1 A. No, I just don't do those.

2 Q. Now, can you describe in general -- can you
3 describe in general after all of the comments have been
4 satisfied by the applicant, what happens to an
5 application at that time?

6 A. Once we get everybody signed off and they have
7 no further comments, then I would say this application is
8 now --

9 UNIDENTIFIED SPEAKER: Could you speak up?
10 We can't hear you very well.

11 A. Technically -- it is now technically complete.
12 And then I would write a letter to the operator and the
13 operator's consultant, saying it's now technically
14 complete. And I would put in the letter that you're now
15 to go to final publication, and I would enclose the
16 directions for doing the final publication and also the
17 notifications that go with that.

18 Q. (BY MR. BURBRIDGE) And in situations where --
19 and that's where you get into the public comment period
20 and have a certain period of time -- people have time to
21 object?

22 A. Yes.

23 Q. And is that when, in fact, the application

24 would not only be available in your Sheridan office and
25 the office in Cheyenne, but would it be available for

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1 inspection at the county clerk's office?

2 A. Yes. Usually the notification will say it's
3 available at the offices and at the county clerk's office
4 and sometimes at the office of the company requesting the
5 permit. There is that.

6 Q. And in situations, for instance, if you do not
7 receive any applications, then does the permit issue
8 after that?

9 A. You mean receive any objections?

10 Q. If you do not receive any objections, does the
11 permit issue?

12 A. We would then write -- we would write a certain
13 number of memos, saying we have this application.
14 They've gone through the procedure. And we would go to
15 the applicant and say, okay, it's time for the
16 reclamation bond. We get that together, send it all down
17 to Cheyenne. And then they would -- after
18 double-checking things, they would usually approve it.

19 Q. So you talked about the reclamation bond. Is
20 it standard procedure that if the bond has not yet been
21 completed for a particular application, does the permit
22 issue prior to the acquisition of bond or after?

23 A. Always after the bond. We make sure the bond
24 is in place before there is any permit assigned.

25 Q. And in general, the application itself will

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1 have already set forth what the appropriate bond amount
2 is?

3 A. Yes. We work with that and look at their
4 estimate and the amount of work that has to be done. And
5 then we have a Land Quality Division Guideline 12, where
6 we have the operating costs that we would apply to the
7 bond to determine if their estimate was adequate or not.

8 Q. So is it common, then, for an applicant to be
9 working on an acquisition of a bond and perhaps working
10 on an acquisition of other types of permits, i.e., air
11 quality permits, that they would need prior to receiving
12 their land quality permit?

13 A. I'm not sure I quite understand -- they
14 generally work on the air quality permit because they
15 also have their own review schedules. Hopefully, they
16 work on those in parallel and not -- we're not usually
17 aware of those at the time we're working on our permits.
18 Usually the applicants are experienced enough to know
19 that they have to have air quality permits and state
20 engineer permits or whatever other permits that might be
21 necessary.

22 Q. So, then, in general, an applicant is required
23 to be compliant with all federal and state law, and that
24 would also mean they would be required to get the various
25 permits they need to operate?

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1 A. Yes.

2 Q. But does that necessarily mean that they have
3 to have all of those in place before they apply with you?

4 A. We do not check -- for instance, we don't check
5 to see if they have an air quality permit before we issue
6 our permit. At least for the noncoal, we would not
7 check. That's their responsibility to make sure they
8 have those permits.

9 Q. And the same thing, for instance, if they
10 needed like an impoundment permit from the state engineer
11 or some sort of permitting for a well, they're verifying
12 to you that they will have all that in place and that
13 they'll comply, but you don't require them to get those
14 first before they apply with you?

15 A. No.

16 Q. In your position -- and I think we'll move to
17 this because I'm sure everybody's heard enough about
18 generally what's going on. Let's move to the issue at
19 hand today. Were you in charge of Croell Redi-Mix's
20 application for a mining operation outside of Sundance,
21 Wyoming?

22 A. Yes.

23 Q. Can you describe in general the procedures in
24 how you worked with Croell Redi-Mix in getting to a
25 completeness determination for this application?

0031

1 A. Well, it was pretty much as I described. We
2 got the application in, and I reviewed it for
3 completeness and found once it was complete -- generally,
4 I corresponded with Dennis McGirr of Environmental
5 Solutions, and then he would then go to Croell and get
6 the information from them.

7 Q. So is it -- what you're describing to me, to a
8 certain extent, he would present something to you. You
9 would look at it. And if there was some deficiencies,
10 you'd request more information?

11 A. Right.

12 Q. And at some point in time, you determined that
13 it was complete?

14 A. Yes.

15 Q. Okay. And did this particular application go
16 out for publication at that point in time?

17 A. When it was -- yeah. The original
18 completeness, yes, it did go out for publication.

19 Q. And do you recall where that notice was
20 published?

21 A. I believe it was in the Sundance Times.

22 Q. And was it in the Casper paper, as well, or
23 just Sundance?

24 A. Just in the Sundance Times. The affidavit of
25 publication is from the Sundance Times.

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1 Q. And with this particular application, did

2 anybody contact you or anybody in your office at this
3 stage have any comments about the application?
4 A. I don't recall anybody contacting me. They may
5 have contacted people in my office. There was other
6 complaints about the ap. Whether they were contacting us
7 about the application or about the issues like with dust
8 with the application, they may have called about that,
9 but they didn't talk to me.

10 Q. So there may have been some air quality
11 concerns coming in, as well?

12 A. I believe there were, yes.

13 Q. After you decided the application was complete
14 and it went out for publication, can you describe what
15 you did then?

16 A. As I described earlier, I sent out a memo to
17 the people on our staff, requesting a technical review.

18 Q. And in what areas were you requesting technical
19 review? Vegetation?

20 A. Vegetation, soil, surface water, groundwater
21 and adjudication come to mind.

22 Q. And then you, I take it, got comments back from
23 those persons in your office?

24 A. Yes.

25 Q. And when you got those comments, what did do
0033

1 you?

2 A. I assembled together into a single document a
3 review -- consolidated review memo and sent that off to
4 Dennis McGirr.

5 Q. And he's the consultant for Croell Redi-Mix?

6 A. Yes.

7 Q. Do you recall off the top of your head and can
8 you describe what kind of comments you made?

9 A. There was some things to do with soil. I don't
10 have a good recollection of that. I've done a lot of
11 these at the same time. And I'm trying to remember who
12 was commenting on this application. I don't have any
13 direct memory of it.

14 Q. And when you receive the comments back -- well,
15 let me put it this way. When you originally deem that
16 the application be complete, how long does your staff
17 have to make its comments to get back to Croell Redi-Mix?

18 A. Usually more than a month, less than two
19 months. It depends on just how much time we have. You
20 know, go see what -- I talk to people and see, "When
21 could you get back to me on this?" and try to work up a
22 date that would be agreeable to all.

23 Q. And then once you send your comments to Croell
24 Redi-Mix or its consultant, how long do they have to
25 respond to you?

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1 A. As long as they want.

2 Q. So there's no time frame on that?

3 A. No. They don't have a deadline.

4 Q. And in this case, do you recall how long it
5 took Croell Redi-Mix to respond to your comments?
6 A. The first time around, it was fairly -- the big
7 length of time I think was from, I believe, January to
8 May, because they had to do some wetland surveys. After
9 that, the turnaround was quite rapid.
10 Q. When you say January to May, is that 2009?
11 A. That would be 2009, yes.
12 Q. And just for the record, when did -- when did
13 you originally get the application from Croell Redi-Mix?
14 Was that in January of '09?
15 A. No. It was in -- I'm looking here at the date.
16 We received it on December 8th, 2008.
17 Q. So it sounds to me that you sent out some
18 comments at the technical review stage, got a reply back
19 from Croell Redi-Mix on those. I trust, then, at that
20 stage you reviewed their reply?
21 A. Yes.
22 Q. And did that generate, then, additional
23 comments?
24 A. Yes.
25 Q. What do you recall that those were about?

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1 A. Some comments were relating to -- I remember
2 one of mine was that the archeologist put some
3 boilerplate information into the mine plan, that if they
4 found any archaeological material, that they would
5 automatically notify us. This is a boilerplate
6 requirement of SHPO, or request from SHPO, that I had
7 them fold into the mine plan so if they should encounter
8 archaeological material, that there would be a notice to
9 the appropriate authorities.
10 Q. And did Croell Redi-Mix reply to those
11 concerns?
12 A. Yes. They turned them in as I requested.
13 Q. And was that satisfactory to you?
14 A. Yes.
15 Q. And was there any further comments by your
16 office after that?
17 A. I believe there were by other people. There
18 was some confusion on some of the soils information and
19 all. That took a little bit longer than some of the
20 other issues. But by and large, I think it went pretty
21 well.
22 Q. So approximately, by your best guess, how long
23 did the technical aspect of the review take with the Land
24 Quality Division?

25 A. I believe it was declared complete on March

0036

1 22nd -- May 22nd, 2009, I declared it complete. And I
2 sent out the memo on the 26th asking for a technical
3 review.

4 Q. And the technical review was completed when?

5 A. August 10th.

6 Q. Of 2009?

7 A. 2009.

8 Q. And at that stage, there's another round of
9 public notice that goes on?

10 A. No. There was no public notice until later,
11 because we'd already done the completeness review
12 earlier -- I mean, the completeness publication was done
13 back, I believe, in May and June.

14 Q. Okay. Maybe I'm a little confused. After the
15 application is technically complete, it's my
16 understanding, then, that's when the notice goes out
17 to --

18 A. Right.

19 Q. -- objectors.

20 A. That was, I believe, in October. I declared it
21 technically acceptable on October 9th, 2009.

22 Q. Okay. And that's -- that's when the last
23 notice goes out. Did that occur with this application
24 with Croell?

25 A. That was when I notified Croell it was -- and

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1 Environmental Solutions that it was ready to go and gave
2 them permission and instructions on the final
3 technical -- or final publication and notifications.

4 Q. And did they do that?

5 A. Yes.

6 Q. And can you just -- would you describe what
7 that notice consisted of and where that notice was
8 published?

9 A. It was published in the Sundance Times. There
10 is an affidavit in the application, along with a copy of
11 the notice.

12 Q. And did that also notice in the Casper paper or
13 just the Sundance paper?

14 A. Just the Sundance paper, to my knowledge.

15 Q. And to the best of your knowledge, was the
16 application available for public viewing in the county
17 clerk's office?

18 A. Yes. And one of our people did check on it as
19 of a couple weeks ago, and it was still on file.

20 Q. Do you know if Croell Redi-Mix had a copy
21 available in their office?

22 A. I do not know. I don't have any knowledge to
23 that effect.

24 Q. And was there a copy of Croell's application in
25 the Land Quality Division Sheridan office?

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1 A. Yes, there was.

2 Q. And how about in Cheyenne? Do you know?

3 A. I believe there was.

4 Q. Okay. I'd like to, I guess, go through some
5 specific items with you. And I'm just going to -- for
6 ease of trying to comply with the statute, I'm basically
7 just sort of going to go through the statute itself. And

8 there are certain items in Wyoming Statute 35-11-406 that
9 I believe you would look at to determine whether or not
10 an application -- whether a permit should issue based on
11 the application. And I'm going to start with, has Croell
12 Redi-Mix paid the required application fees in this case?

13 A. Yes.

14 Q. Is any part of Croell Redi-Mix's proposed
15 operation, reclamation program or the future use of its
16 operation contrary to the law or policy of the state of
17 Wyoming or the United States?

18 A. No.

19 Q. And I'm just going to ask, your answers to
20 these questions, that is based on your review of this
21 application?

22 A. Yes.

23 Q. And just for a little bit more background, do
24 you have an estimate of how many applications you've
25 processed in 30-plus years of employment with DEQ?

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1 A. Probably hundreds.

2 Q. Hundreds. Okay. Will Croell -- based on your
3 review of this application, will Croell's proposed mining
4 operation irreparably harm, destroy or materially impair
5 any area that has been designated as rare or uncommon by
6 this council?

7 A. No.

8 Q. Does this area have any particular historical,
9 archaeological, wildlife, surface, geological, botanical
10 or other scenic values that it will irreparably harm?

11 A. None that was presented by the experts that
12 were involved in the review.

13 Q. And some of those experts -- for instance, did
14 the Wyoming Game and Fish look at this application?

15 A. Yes. And they commented on it.

16 Q. And what were their comments? Do you recall?

17 A. They didn't have any specific comments other
18 than just pretty much boilerplate comments that they
19 usually come up with.

20 Q. And you mentioned SHPO, which is the historical
21 preservation, which would also deal with the
22 archaeological aspects of this application. Did they
23 have comments?

24 A. The comment that they -- if any archaeological
25 material was encountered, that proper authorities should

0040

1 be notified.

2 Q. And with regard to botanical issues, that would
3 have been reviewed by in-house staff?

4 A. Yes.

5 Q. And there weren't any --

6 A. No.

7 Q. I guess I'll complete that question. There
8 weren't any adverse comments ultimately about the
9 botanical situation with this application?

10 A. No.
11 Q. And is that because of the reclamation plan
12 that was submitted by Croell satisfied those concerns?
13 A. It did.
14 Q. Did you -- did anybody in Land Quality look at
15 Croell's proposed mining operation and whether or not it
16 would cause pollution of any waters of the state of -- in
17 violation of the laws of the state of Wyoming or the
18 federal government?
19 A. They looked at it and determined that there was
20 not a problem.
21 Q. And those would be for both surface and ground
22 waters?
23 A. Yes.
24 Q. Are you aware if Croell Redi-Mix, or the
25 applicant, has had any other permit or license or any
0041 bond revoked?

2 A. I have no knowledge of that.
3 Q. In your application review, did you look for
4 nuisance concerns, i.e., dust, noise, light, hours of
5 operation? And if so, would this application constitute
6 a public nuisance or an endangerment of the public health
7 and safety?
8 A. I considered that. But since there were no
9 people living close by and since there are no regulations
10 relating to hours of operation, lights and noise, there's
11 really very little I could say or do about it.
12 Q. Now, with regard -- you said you looked at
13 nuisance issues. Was dust one of those issues you would
14 have looked at?
15 A. No. Because that's a concern of the Air
16 Quality Division.
17 Q. Did the application itself, though, set forth
18 any procedures that Croell had used for dust control?
19 A. They said they would do watering of the roads.
20 Q. And so you were satisfied with their
21 explanation of what they would do for dust suppression?
22 A. Yes.
23 Q. And is it your understanding that for dust
24 suppression for its crushing operations and for the site
25 in general, that's all regulated by the Air Quality

0042 Division?
1 A. It is, yes.
2 Q. And so those pieces of equipment would actually
3 be permitted with Air Quality?
4 A. Yes.
5 Q. And you said that they stated they were going
6 to use water for dust suppression. Did you then look at
7 and did the application provide any information as to
8 what Croell Redi-Mix was going to use for its water
9 supply?
10 A. Yes.
11

12 Q. And what did they describe?

13 A. They said initially they would bring in water
14 from outside, but also, there was a well that had been
15 drilled on site that they could use for dust control that
16 supplied water.

17 Q. And whether there's a sufficient supply of
18 water coming from that well, is that within the
19 jurisdiction of the State Engineer's Office?

20 A. Yes.

21 Q. And, in fact, a well like that would have to be
22 permitted through the State Engineer's Office?

23 A. Yes.

24 Q. Do the permit boundaries with this particular
25 operation of Croell's, is it within 300 feet of any

0043

1 occupied structure?

2 A. None that I could find.

3 Q. And can you discuss and describe the current --
4 the bond that this operator is going to be required to
5 have? And did this application discuss bonding
6 requirements?

7 A. Yes, it did.

8 Q. What's the current bonding at that site?

9 A. The amount that will be set, the new operation
10 would be, I believe, \$80,400 -- 83,400.

11 Q. And, in fact, Croell Redi-Mix is operating
12 under a ten-acre ET at this time?

13 A. Yes, they are.

14 Q. And what's the current amount of bond that they
15 have?

16 A. Croell Redi-Mix, I believe, has \$17,000. Plus,
17 there is another operation which is bonded for \$10,000,
18 which covers the two operations on site.

19 Q. So this is going to be approximately a \$52,000
20 increase in bonding?

21 A. About that, yes.

22 Q. And the operator's currently acquiring that
23 bond?

24 A. I hope so.

25 Q. And if he hasn't already acquired it, the

0044

1 permit wouldn't issue from your office even if granted --
2 even if the application was approved today by the EQC,
3 that would -- the permit itself wouldn't issue until a
4 bond was fully secured?

5 A. That is correct.

6 Q. And we're talking -- I think I already said
7 this -- a \$52,000 increase, approximately?

8 A. Yes.

9 Q. Does this -- does this application present a
10 reclamation plan for the site?

11 A. Yes.

12 Q. And does the application show that the
13 reclamation, in fact, can be accomplished?

14 A. Yes.

15 Q. Has this -- is this applicant currently in
16 violation of the Act?

17 A. Not with the operations that I'm familiar with.

18 Q. Are you aware whether or not Croell Redi-Mix
19 has been issued NOV's in the past?

20 A. They were for this operation a year ago, yes.

21 Q. But are they currently in compliance with the
22 law even -- and have they come in compliance with the
23 NOV's that were issued to them?

24 A. Yes.

25 Q. Just as a matter of clarification, I've heard a

0045

1 couple of different -- I think I've heard a number, and I
2 think I've read a number. Is the actual mining area of
3 this particular application 600 acres, or is it something
4 smaller than that?

5 A. Something smaller than that.

6 Q. Could you describe that for the record?

7 A. I'd have to look at the affected area. I don't
8 recall that number. But it isn't going to affect the
9 entire permit area because of several reasons. One is
10 there's some areas where the rock is too deep to be
11 mined, I believe is the reason they're not mining there.
12 Another reason is there is a tract of BLM mineral
13 incorporated within the proposed permit area that they
14 currently do not have the right to mine on. The Form 1
15 states that 387.78 acres would be affected by the
16 operation life of mine.

17 Q. Now, can you describe two things? Can you
18 describe what Form 1 is? And is Form 1 part of the
19 Exhibit Number 11 that's been submitted?

20 A. It should be. It's the form that actually
21 attests that they have the right to mine and that they
22 have complied with certain parts of the law. And it is
23 an integral part of the permit. It's actually where they
24 are saying they essentially have the right to mine.

25 Q. And so it's not 600 acres. It's about half of

0046

1 that?

2 A. A bit more than half, yes.

3 Q. I'm going to ask you, you know, about the
4 amount of material they're going to mine and the length
5 of the mining operation because I know that's always
6 somewhat of an issue. Can you explain that situation
7 with regard to Croell's application?

8 A. Well, Croell does lay out in the mine plan how
9 many tons per year they plan on mining. But, of course,
10 they set out mining blocks based on that production, for
11 each year, that they would mine so many tons in a certain
12 area. But that's speculative because it's dependent on
13 the economy, the local economy in particular, and just
14 how much -- and how successful they are at bidding out
15 certain jobs. So that could be high or low. It's a

16 prediction of the future. And, of course, that's
17 speculative at best.

18 Q. Do you recall around how many tons per year
19 Croell Redi-Mix represented in their application?

20 A. I'll have to look that up. It is in here.

21 Q. Take your time.

22 A. There is a table here. On Table MP 1, they
23 state production of 500,000 tons per year for the next --
24 up to 2013. And I believe it's pretty much 500,000 tons
25 per year life of mine.

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1 Q. Through 2013?

2 A. Well, actually, through 2013. And then 2014
3 through 2018, they say two thousand -- 2,500,000 ton
4 would be mined, which still comes out to be 500,000. So
5 it's pretty much 500,000 tons per year.

6 Q. And what are they estimating the life of this
7 mine will be total?

8 A. According to this, it goes up to the year 2027.

9 Q. And as part of -- now, you were sort of talking
10 about a phasing of the mining operation. Do they -- are
11 they expected -- have they represented that they'll be
12 reclaiming areas at the same time they --

13 A. Yes.

14 Q. -- may be mining other areas? And your review
15 of their estimates in that regard, is -- is that
16 reasonable in this application for this type of
17 operation?

18 A. Yes.

19 Q. Now, these applications are required to have
20 landowner consent. Does Croell Redi-Mix have consent to
21 mine on this property?

22 A. Yes.

23 Q. In fact, it's owned by Roger Croell himself?

24 A. That's my understanding, yes.

25 Q. And are there -- it's my understanding that

0048

1 there's been a new access road built for this particular
2 site. Can you describe your understanding of the history
3 of the access to this particular site and where it stands
4 today?

5 A. When the operation was first permitted under
6 the limited mining operation law, the access was on an
7 existing ranch road. It was actually not much more than
8 a two-track. And that's what they used for access until
9 quite recently. When the --

10 Q. Let me just stop you right there. When you
11 talk about that shared road, that, in fact, is the road
12 that goes through the Bush property?

13 A. Yes. It exits Rifle Pit Road and crosses over
14 a stretch of land that we later learned belongs to the
15 Bush ranch. And this was not known to us until when they
16 came in with the application last year. And I looked at
17 the map, and I immediately spotted that you're crossing

18 somebody else's property, and you'll need consent from
19 them.

20 Q. And so what happened after that?

21 A. Well, they did come in with a different map
22 showing that they would access the property a bit to the
23 west, where the Croell property actually was in immediate
24 contact with the right-of-way of the Rifle Pit Road,
25 county road.

0049

1 Q. And so this new access, in fact, was solely
2 going through the Croell property?

3 A. That's my understanding.

4 Q. And because I expect this may come up, at the
5 time of the filing of the application that it was deemed
6 complete, do you know if the new access road was, in
7 fact, completed?

8 A. I really didn't have -- I know they started
9 work on it. And I didn't know when it was completed.

10 Q. So it's possible it could have been completed
11 after the filing of the application?

12 A. It's possible.

13 Q. And do you know if that road is completed
14 today?

15 A. I believe I heard secondhand that it has been
16 completed, but I have not personally seen it myself.

17 Q. So, to the best of your knowledge, it is done?

18 A. Best of my knowledge.

19 Q. Now, and just because I'm sure somebody on the
20 Council is probably thinking, are they doing this without
21 a permit, are there other reasons that Croell would need
22 access to his property other than the mining operation?

23 A. Yes. He has an extensive number of hayfields
24 surrounding the current mining operation.

25 Q. So whether or not there was a mining operation

0050

1 being proposed here or ongoing, he needs access for his
2 property for his agricultural concerns, as well?

3 A. Yes.

4 Q. And so this new access was needed, I presume,
5 at some point in time because he was having trouble doing
6 the shared access with the Bushes? Or do you know?

7 A. I don't have direct knowledge of that.

8 Q. But this is actually a dual-purpose road?

9 A. Yes.

10 Q. And are you aware, from your review of the
11 application, this new access road, does it lengthen or
12 shorten the distance that the Croell Redi-Mix vehicles
13 would have to travel to State Highway 90?

14 A. Yes. Yes. It enters the Rifle Pit Road
15 somewhat to the west of the original access point. So it
16 would be less distance traveled on the Rifle Pit Road.

17 Q. And that's the county road?

18 A. That's the county road.

19 Q. Now, after your review of the application, is

20 it your opinion that the application is, in fact,
21 complete and technically complete today?
22 A. Yes.
23 Q. Is the applicant in compliance with all federal
24 and state and local laws with regard to the requirements
25 of this application?

0051

1 A. Yes.
2 Q. Is it your opinion as to whether -- or do you
3 have an opinion as to whether or not this permit should
4 issue to Croell Redi-Mix after approval of the bond?
5 A. Yes.
6 Q. And that opinion is what?
7 CHAIRMAN SEARLE: Mr. Burbridge, can we
8 take a five-minute?

9 MR. BURBRIDGE: Did we have some people
10 drop off?

11 MR. GIRARDIN: They're not on the phone
12 anymore.

13 (Hearing proceedings recessed
14 2:02 p.m. to 2:11 p.m.)

15 CHAIRMAN SEARLE: Let's bring this back to
16 order. Welcome back, folks on the phone. As Jim said,
17 we will try and -- I think Mr. Burbridge is going to ask
18 a couple of questions that he had Mr. Mooney discuss
19 prior to, we think, when we lost you.

20 So, Mr. Burbridge, it's your floor again.

21 MR. BURBRIDGE: Could you all hear
22 Presiding Officer Searle explain how we're proceeding
23 here?

24 COMMISSIONER COVERDALE: Sort of.

25 MR. BURBRIDGE: Do you want me to just

0052

1 rehash that real quickly?

2 COMMISSIONER GUSCHEWSKY: Thank you.

3 MR. BURBRIDGE: This is John Burbridge.
4 It's our understanding you were off the line for ten to
5 fifteen minutes. And we covered a couple of areas in
6 Mr. Mooney's testimony that we're going to attempt to
7 re-cover now so that you can all be up to speed up to the
8 point where you dropped off. Could you -- just for my
9 edification, where were we in the testimony when we lost
10 our connection?

11 COMMISSIONER GUSCHEWSKY: The last thing I
12 had written down -- this is Cathy, John. And we were
13 talking about the tons per year that this mine would put
14 out. And we were talking about the 2014 to 2018 year,
15 which would still come out to about 500 tons -- 500,000
16 tons per year.

17 MR. BURBRIDGE: Okay. Thank you.

18 Q. (BY MR. BURBRIDGE) Mr. Mooney, based on that,
19 I'm going to go ahead and ask you again. And these
20 questions won't be in exactly the same order because I
21 don't write them down myself. Does the application

22 presented by Croell Redi-Mix give you an estimated life
23 of mine?

24 A. Yes.

25 Q. And how long is that time period? And I

0053

1 understand you may have to look it up in the application.

2 What does Croell Redi-Mix -- what was their estimation of
3 the length of the mining operation?

4 A. They estimated it would run until 2027.

5 Q. And I also asked you during -- you had
6 described that the mining operation, they break those
7 down in years, and they break the mining operation down
8 in phases. Is that because they are reclaiming at the
9 same time that they're operating their mine?

10 A. Yes.

11 Q. Are there situations or conditions where the
12 life-of-mine estimate may change, and can you describe
13 that?

14 A. Yes.

15 Q. Could you describe what circumstances might
16 change it?

17 A. Well, it's dependent on the economy. Until
18 recently, the economy -- the Gillette area economy was
19 booming. We had a major contract for rock to supply the
20 Dry Fork Power Station. And the demand for rock goes up
21 and down as the economy goes up and down.

22 Q. And if their estimates as presented in today's
23 application were to significantly change, would they be
24 expected to amend their permit?

25 A. Yes.

0054

1 Q. And so if there is a change and if it's a major
2 modification with those amendments, the public might have
3 another opportunity to comment or object?

4 A. Yes, it's possible.

5 Q. Is that dependent on whether or not it's a
6 major modification or a minor modification?

7 A. Yes.

8 Q. And just for the record, can you describe the
9 difference between a major and a minor permit
10 modification?

11 A. It's laid out in the regulations. I don't have
12 it right at hand. But it's specified in the regulations
13 what the difference is and when publication might be
14 required.

15 Q. Okay. Thank you. We also discussed that -- I
16 can't remember if we discussed this before or after.
17 Croell Redi-Mix is to demonstrate a right to mine and
18 that they've got permission to mine on that property.
19 Did they do this in this application?

20 A. Yeah.

21 Q. In fact, Mr. Croell owns this property?

22 A. Yes.

23 Q. In addition, Croell Redi-Mix is to demonstrate

24 access to the mining site. Does this application do
25 that?

0055

1 A. Yes.

2 Q. Now, there's some history with regard to access
3 to this site. It's my understanding that the original
4 access was a shared road on the Bush ranch property. Can
5 you describe your understanding for the record of that
6 situation?

7 A. The original access to the property was by a
8 light-duty road that ran some distance off the Rifle Pit
9 Road to the Croell property. But this wasn't recognized
10 at the time until they came in with the mine plan map for
11 the mine plan -- or the mine permit application that's
12 currently under consideration. And at that time I
13 recognized that they were crossing somebody else's
14 property to get to the Croell property, between the Rifle
15 Pit Road and Croell property. And I suggested that they
16 needed to correct this.

17 Q. And so that one of -- part of your commenting
18 on the completeness or technical completeness of this
19 application?

20 A. Yes.

21 Q. And as a result of that, did Croell Redi-Mix
22 present an alternative access in their application?

23 A. They did.

24 Q. And can you describe that?

25 A. They -- a short distance to the west, where the

0056

1 Croell property was immediately adjacent to the Rifle Pit
2 Road right-of-way, they constructed -- or they came in
3 with a map showing that they would access the property
4 that way.

5 Q. And so the application showed another access
6 road. Do you know, at the time that the application was
7 filed with you, whether or not that alternate access had
8 been constructed?

9 A. I had no knowledge of that, no.

10 Q. Do you have any knowledge as to whether that
11 access is completed -- the new access is completed today?

12 A. No direct knowledge, no.

13 Q. What's your understanding?

14 A. I understand it has been completed.

15 Q. So what's been represented to you in the
16 application, to the best of your knowledge, is what's out
17 there today on the ground?

18 A. Yes.

19 Q. Mr. Mooney, is it your opinion at this point in
20 time that the application today is compliant with all
21 local, state and federal law?

22 A. Yes.

23 Q. Is it your opinion that this application is
24 complete in all regards and satisfies the requirements --
25 requirements of the Environmental Quality Act?

0057

1 A. Yes.

2 Q. Do you have an opinion as to whether or not a
3 permit should issue to Croell Redi-Mix after bonding for
4 the site is fully secured?

5 A. It should be, yes.

6 MR. BURBRIDGE: Is there anything in your
7 notes, Presiding Officer Searle, that you have that we
8 covered prior to -- that I need to rehash again?

9 CHAIRMAN SEARLE: No, Mr. Burbridge.
10 Those were the topics that I had.

11 MR. BURBRIDGE: With that, then, I would
12 tell you that I have no further questioning and would
13 offer Mr. Mooney up for cross-examination.

14 CHAIRMAN SEARLE: Okay. Thank you,
15 Mr. Burbridge.

16 MR. BURBRIDGE: And I think we'll probably
17 want people to come up here and cross-examine, as well.

18 CHAIRMAN SEARLE: We'll start with the
19 protestants.

20 Ms. Bush, would you like to come forward and
21 ask any questions of Mr. Mooney?

22 MS. BUSH: Yes. Do you want me to come
23 over there?

24 CHAIRMAN SEARLE: Yes, so everybody can
25 hear you.

0058

1 MS. BUSH: Just give me a minute, please.
2 Just give me a second to organize my thoughts.

3 CROSS-EXAMINATION

4 BY MS. BUSH:

5 Q. Mr. Mooney, when you're considering an
6 application, do you consider it in light of all of the
7 rules and the time sequence in which things should be
8 accomplished according to the --

9 A. Yes.

10 Q. -- Environmental Quality Act?

11 A. We use the Land Quality Division noncoal rules
12 and regulations as our guide, along with Guideline Number
13 6, which spells out the contents of a noncoal mining
14 application.

15 MS. BUSH: I'm sorry. I have to get
16 something I don't have. I'm sorry. I'm just going to
17 have to take a minute.

18 Q. (BY MS. BUSH) So if you're regarding things in
19 the time frame that they're supposed to occur, in the
20 noncoal Land Quality Division rules and regulations,
21 Chapter 2 -- is it Section B? I'm not sure how you
22 would -- it states that information set forth in
23 applications shall be current.

24 A. Yes.

25 Q. Now, did you have any firsthand knowledge, at

0059

1 the time you were considering this application, that the

2 assertions of Croell Redi-Mix that the new access road
3 was complete was incorrect?

4 A. What's in the application now is, I believe
5 it's changed. They did change it. I believe they
6 revised that page.

7 Q. The page that I have had dates from August of
8 2009.

9 A. Right.

10 Q. And it states in two separate places, one, that
11 the road -- the road that went through our property had
12 been -- was no longer being used and that the new road
13 had replaced that road. Now, that -- were you aware at
14 the time that that was not the case?

15 A. No.

16 Q. And it also described further on measures that
17 they had taken to make the road safe. That's, I think --
18 I think that's in the very final page of the mine plan.
19 Let me check. It says on page 17 of the mine plan the
20 new access road was constructed to maximize site
21 distances and traffic merge areas. And then it goes on.
22 Were you aware at the time that that road -- it was not
23 constructed at that time?

24 A. No. I had --

25 Q. Had you been aware --

0060

1 CHAIRMAN SEARLE: Hold it. Let him answer
2 the question.

3 Q. (BY MS. BUSH) Oh, I'm sorry. Go ahead.

4 A. No, I was not aware. I have not been to the
5 site since December of 2008.

6 Q. So if you had been aware that what was in this
7 application was not -- how do they phrase that? -- was
8 not current -- because information contained in
9 applications have to be current according to Chapter 2,
10 Section B of the noncoal Land Quality rules and
11 regulations -- what would you have done at that point?

12 A. I would not have done anything, because this
13 application talks about what they're going to do once the
14 permit is issued, not what's, you know, happened in the
15 past.

16 Q. Well, this application, I believe, says this
17 new access road was constructed. And it was not
18 constructed at that time. So that was not current
19 information. So I'm just wondering, according to --
20 according to the Land Quality rules and regulations,
21 if --

22 A. I fail to see a problem here, because they said
23 that they're going to build a new access road for this
24 mining permit once they had it approved. And our only
25 concern would be that it would be in place in time to be

0061

1 used when this permit issued.

2 Q. So you would have no concern with the fact that
3 they said it was already complete when it wasn't?

4 A. Well, I had no information.
5 Q. You didn't know. I understand you didn't know.
6 But what I'm asking you is, if you had known, would you
7 have considered that -- would you, in light of --
8 A. Many times we get applications that propose
9 that something will be done when the permit is issued.
10 Q. And that's fair enough, but that's --
11 A. And we don't really -- we just make sure it's
12 in place at the time they start mining under the permit
13 that we issue.
14 Q. And I don't have any problem with that. But if
15 somebody tells me something is done, my thought is I
16 would. And so what I'm asking is how does the Land
17 Quality Division view what it says here, which says,
18 basically, that it has to be -- what's contained in the
19 application shall be current? Here's another way to --
20 CHAIRMAN SEARLE: Ms. Bush, I'd just
21 suggest that I think the witness has answered the
22 question.
23 MS. BUSH: Okay. Well, maybe one could
24 rephrase it here.
25 CHAIRMAN SEARLE: You're crossing the line
0062
1 between testifying yourself --
2 MS. BUSH: I am. Right.
3 CHAIRMAN SEARLE: -- and just asking the
4 question. I think, for better or worse, he answered the
5 question.
6 MS. BUSH: May I try one -- one other
7 thing?
8 CHAIRMAN SEARLE: Oh, you can ask
9 questions.
10 MS. BUSH: Thank you.
11 Q. (BY MS. BUSH) Given -- given that it is stated
12 this way in the application, had you known, would you
13 have been still saying that the application was complete?
14 A. I would have not changed my outlook on that at
15 all, because I knew that they had intended to construct
16 this road, and they ran into some difficulties with the
17 highway department for permission and so on. I had heard
18 that. So what they said in there was their plans, and
19 sometimes plans get held up for things outside their
20 control, which apparently was the case here.
21 Q. You mentioned earlier -- and this makes perfect
22 sense -- that when you get an application, you don't --
23 people haven't done everything that they're going to do.
24 And so they may not have all the permits they need from
25 other government organizations to do what they're going
0063
1 to do. So you don't request or have that information at
2 the time when you're first considering the application.
3 Is there a stage of the application when you do request
4 applicants to show that they have permits for what they
5 intend to do in order to show that it's feasible?

6 A. It depends on the permit -- the type of permit.
7 I mean, the air quality permit, we assumed -- and water
8 quality permits, too. That's the applicant's
9 responsibility to take care of. We don't hold their hand
10 and say, no, you can't have your permit. In fact,
11 there's no statutory, regulatory authority for us in this
12 case to hold up approval of these -- a mining plan
13 because they don't have an air quality permit. It's
14 their responsibility.

15 Q. Is it -- is it Land Quality's responsibility to
16 see whether or not they do have a permit before you
17 recommend issuing? In other words, when you issue the
18 permit, are you assuming that everything is as it's
19 stated in the application?

20 A. They're swearing it's true. I mean, they're
21 essentially swearing that everything that they've
22 submitted is true to the best of their knowledge.

23 Q. Okay. Tell me if I ask you any questions that
24 you're not the right person to ask.

25 A. Okay.

0064

1 Q. Because I'm not really sure. I've read in the
2 regulations that information is required on the depth
3 that you have to go down for water.

4 A. Yes.

5 Q. Is that your department who wants that
6 information?

7 A. Yes. We would ask what the depth of water was.
8 And they said it was more than 20 feet, which would be
9 the depth -- maximum depth that they're proposing to
10 mine.

11 Q. Now, is there anything in their application to
12 limit them to that depth that gives you authority to
13 limit them to the depth that they're estimating they will
14 use?

15 A. They get the proposal that they will mine a
16 certain limestone formation which is 20-odd-feet thick.
17 And if they were to mine that, they would not go much
18 deeper than 20 feet because there's simply no rock below
19 the limestone layer that's economic. If they were to
20 come in and say, oh, we want to mine another formation 50
21 feet deeper, they would have to do a major mine claim
22 revision. But that's supposition. So if they're mining
23 their formation they say they're going to mine -- we have
24 no evidence that they would do otherwise -- their depth
25 of mining is limited around 20 feet.

0065

1 Q. I've read -- is there something in their permit
2 that should be limiting them to a depth, rather than
3 saying that's just what they're going to do?

4 A. I don't see the requirement to do that. I
5 don't see the need to do that, because they say they're
6 going to mine this certain rock formation.

7 Q. I'm sorry. I didn't say that correctly. Is

8 there something in the rules and regulations that you
9 have to follow in a permit that specifies a maximum depth
10 of mining for this type of mine?

11 A. No.

12 Q. There is for -- there is for an LMO. Am I
13 correct?

14 A. As long as it's a surface mine, they can go
15 pretty much as deep as is feasible in a ten-acre tract
16 for LMOs.

17 Q. I haven't been able to find anything that would
18 limit them in the regular mining permit. However, for an
19 LMO, I have found statements that say you limit it to a
20 maximum depth. And my -- I'm just wondering, if that's
21 the case, wouldn't that be the case for this, as well?

22 A. No. They -- they could go as deep as -- if
23 they came in with a mine plan that stated they wanted to
24 go a thousand feet, we would -- and they had a feasible
25 mine plan, they could go a thousand feet deep. They

0066

1 would have to show how they address all the environmental
2 problems with that and all the engineering problems with
3 that. But there is no set limit to the depth they can
4 go.

5 Q. So at what point would you step in, the Land
6 Quality Division?

7 A. For?

8 Q. If they were mining, at what depth would you
9 step in and say, "That's not in your permit"?

10 A. Well, if they started mining a limestone
11 formation other than what's specified in their current
12 permit application.

13 Q. And the estimated depth of this limestone is
14 based on what?

15 A. The thickness of it.

16 Q. But as far as exploration, what data were you
17 given?

18 A. There is some drilling data in there, yes.

19 Q. And how large of an area is that based on?

20 A. Well, the permit area.

21 Q. The original permit area?

22 A. The permit area that's being applied for here.

23 Q. Have they done drilling outside of the area of
24 the LMO?

25 A. Yes.

0067

1 Q. What I read in the application is that the
2 depth of the limestone was based on -- based on drilling
3 within that small ten-acre area.

4 A. I believe it was continuing outside of that
5 area. I think it's in the geology section, the D.5.

6 MR. BURBRIDGE: I don't think it's in the
7 application.

8 Q. (BY MS. BUSH) I apologize. So there is -- you
9 believe that they did -- are you looking at that now, by

10 any chance?

11 A. Yes.

12 Q. And does it have --

13 A. Yes. On paragraph 3 of page D.5-5, it states
14 there were 27 individual drill holes ranging in depth
15 from ten and a half to 40 feet, with an average depth of
16 24.3 feet, drilled on the proposed permit area.

17 CHAIRMAN SEARLE: Just for clarity,
18 Mr. Mooney, that's Exhibit 11?

19 THE WITNESS: Whatever the permit
20 application is. This is the District copy here.

21 Q. (BY MS. BUSH) And does it specify where they
22 were --

23 A. If your question was, did it specify where
24 those holes were drilled, yes. There is a map on page
25 D.5-1-2 which shows the location of those drill holes.

0068

1 Q. (BY MS. BUSH) I can't tell how big of an area
2 we're covering here. Is this the entire new area in
3 here, or is this the original LMO?

4 A. We're up at the top there. No. It's more than
5 the LMO area.

6 Q. So this is the northern boundary of the new
7 mine site. Is that correct?

8 A. No. North is up this direction (indicating).

9 Q. Okay. So does this specify acreage? I
10 can't -- I can't make this out right now. I don't know
11 what I'm looking at, but I'm sure you do.

12 A. Well, this map is -- the location of it's hard
13 to tell. It's, I have to say, not a very good map. But
14 it was the best one I could get them to supply. But it
15 does show that they did do a considerable number of
16 holes.

17 Q. They did. I just -- I can't tell considerable
18 number of holes under -- now, where is the access road?
19 That might help us to see something.

20 A. It's somewhere up here (indicating).

21 Q. Is there a scale on here that we could tell?

22 A. I don't believe so.

23 CHAIRMAN SEARLE: Perhaps this is a
24 question for the acreage area we could save, Ms. Bush.
25 Because you'll have a chance -- when Mr. Croell

0069

1 testifies, he may have more specific information.

2 MS. BUSH: All right. Thank you.

3 Q. (BY MS. BUSH) You were -- you were mentioning
4 that the actual affected area of the 600-acre site would
5 be less than the 600 acres that they are applying to
6 have --

7 A. Yes. I believe they have 300-and-some, based
8 on the Form 1 affected area, which is shown on the Form
9 1.

10 Q. So why are they applying for the 600 -- why are
11 you granting the 600-hundred-acre site for 300 --

12 A. Well, because there's all these areas that we
13 need extra area and lay-back areas. They don't want to
14 mine right up to the fence line.

15 Q. But that is what a mine site includes. It
16 includes everything, doesn't it, so it's not just the
17 hole they're digging in the ground?

18 A. Yes.

19 Q. It's where they have to put all the stuff that
20 comes out of the hole?

21 A. Right.

22 Q. And even in that circumstance, we're still
23 talking about 380 acres affected?

24 A. Yes.

25 Q. And so, then, I'm lost again. So, then, why

0070

1 apply for 600?

2 A. Well, there's -- they felt they needed that
3 many acres. They had to write the mine that number of
4 acres, and they came up with a mine plan for that number
5 of acres, a reasonable mine plan for that number of
6 acres.

7 Q. Well, I won't belabor it. But according to the
8 permit that they're getting, if they want to mine more
9 acres than that, than the 380, give or take, that you
10 mentioned, this permit will allow them to do that. Is
11 that correct?

12 A. If they revise it and get the lease from the
13 Bureau of Land Management for that.

14 Q. Well, that's only 40 acres. Right?

15 A. Yes.

16 Q. So there's still a lot of acres.

17 A. Well, again, as I said, they don't -- a mining
18 operation rarely mines right up against the boundary
19 fences. It's undesirable to do that. I'm sure you,
20 being the boundary owner, would agree there's areas
21 inside the permit area where the rock is perhaps too deep
22 or missing to be mined. So they would not mine those
23 areas.

24 Q. I know they make references in here to -- well,
25 what it sounds like is they say that they don't

0071

1 necessarily know what they're going to find when they
2 explore more and that their plans will be modified by
3 that. I'm just trying to find out how -- in other words,
4 basically, regardless of whether their plan now says
5 they're going to be mining only 380, there will be 380
6 affected acres, that has nothing to do with your ability
7 to regulate. They could, in fact -- they will, with this
8 permit, have the right to mine within that 600 acres
9 wherever they want. Is that correct?

10 A. They have to mine in accordance with their
11 approved mine plans.

12 Q. And then you mentioned earlier -- you were
13 asked, under what circumstances would an amended plan

14 kick in? And you mentioned that it was contained in
15 regulations.
16 A. Yes.
17 Q. But you didn't say what it was.
18 A. No. I don't have those right at hand.
19 Q. Do you have them at the top of your head?
20 A. No.
21 Q. Approximately?
22 A. No, I do not. But if they were to change the
23 type of mining they were to use, for instance, if they
24 were -- and this is not -- if they were to go to
25 underground mining, that would trigger -- if you go to a
0072
1 different type of mining method, it would trigger that.
2 Q. Well, that's for sure. But to go to -- if they
3 were just doing their limestone mining, would anything be
4 triggered by them operating on other acres within their
5 designated 600-acre mine site?
6 A. That, we'd probably have to address at the
7 time -- I mean, it seems very speculative here.
8 Q. No, I wasn't. It's been advertised --
9 A. They'd easily have regulations.
10 Q. -- as a 600-acre.
11 A. Yes.
12 Q. And basically, you're saying, well, it's not
13 really 600 acres. It's 380, give or take. And I'm just
14 trying to find out to what extent that is governed by the
15 permit.
16 A. Well, they are responsible for all mining
17 activities within that 600-acre tract.
18 Q. And you're not sure when -- as long as they're
19 still just mining limestone, if they -- if they mine more
20 than -- if they disturb -- if they disturb the entire 600
21 acres, would Land Quality Division have the ability to
22 come in and say that's not consistent with your permit?
23 A. Possibly. I mean, that's, again, very
24 speculative. I'm not sure what would trigger such an
25 event.
0073
1 Q. Well, I was -- I was asking specifically if
2 they were -- if they were just -- if I were to call up
3 and I could say they're not -- you know, they're not
4 mining on their 300 acres, but they're mining on much
5 more, but they've been permitted for it, what would you
6 say? Would you say they can't do that, or would you say
7 they have their permit, so they can do it?
8 A. We would look at the regulations and if it
9 were -- determine whether a mine plan revision might be
10 required. And that revision might or might not require
11 public notice.
12 Q. And there are regulations for that?
13 A. Yes.
14 Q. Is there anybody here who might have that
15 information on the top of their head for later?

16 A. My supervisor might have a little bit more
17 knowledge of the -- firsthand knowledge of regulations in
18 the noncoal rules and regulations relating to permit
19 revisions. I'm much more familiar with the ones for
20 coal. And they don't apply here.

21 Q. Yeah. Okay. Okay. And the life of the mine,
22 that will essentially go until they stop mining,
23 regardless of -- is that correct, regardless of economic
24 conditions?

25 A. Well, right now they're planning to go to, I
0074

1 think, 2023. But it may be longer than that or it may be
2 shorter than that, depending on when they run out of rock
3 or run out of customers.

4 Q. That's what I wanted to know. I'm not sure I
5 understood -- you were mentioning technically complete.

6 A. Yes.

7 Q. Is there another kind of complete? And how do
8 you differentiate them?

9 A. The original -- there's two sections of the
10 law. The original completeness is, we just look to see
11 if the application is complete enough that all the
12 essential components are there so that we can do a
13 detailed review. And then the technical completeness is
14 when we're satisfied that all parts of the permit
15 application are in compliance with the Act and guidance
16 documents and the regulations, and then the applicant is
17 allowed to go to public notice.

18 Q. So when -- the original completeness, is that
19 when it was published back in June?

20 A. Yes.

21 Q. And who approves notices for -- I know the
22 applicant writes the notice, and they send it to the DEQ.

23 A. Uh-huh. Well, no. The applicant is sent a --
24 there is a format for public notices which I believe the
25 Environmental Quality Council has and their lawyers have
0075

1 come up with over the years, because it's changed
2 somewhat over the years. And we have this format that
3 you're supposed to follow. We would send a copy of that
4 saying, essentially, insert the applicable information
5 into this format, and then that's public.

6 Q. Now, what Mr. Driscoll mentioned earlier, I had
7 thought, as well, was that a reasonable first notice that
8 came out that really described nothing as far as the
9 scale of the modification that was going to take place?
10 Is that --

11 A. The applicant simply -- the first completeness
12 publication merely is to the point that there is an
13 application been submitted by a certain company to the
14 Land Quality Division for the mining of whatever
15 material, and it's under review.

16 Q. And it's not required to contain any specific
17 information that --

18 A. No more than what was in the notice. This has
19 been specified by, I believe, the Council's attorneys.
20 Q. And do you have any idea why you could look at
21 the new application for the extended mine and see
22 immediately that it was crossing our land, when it
23 evidently escaped the attention of everyone back in 2006?

24 A. Well, I can't speak to -- they came in with a
25 map, and I saw that it looked like it was. And I

0076

1 suggested maybe you need to do a survey, first of all,
2 because I don't know where that property line is.

3 Q. When was that that they needed to do a survey?

4 A. Well, now, I said that was one of my
5 recommendations. It looks like you've got a problem
6 here. You're crossing -- the map as presented, I showed
7 that they were crossing a short piece of the Bush ranch
8 between the county road and the --

9 Q. And the Rifle Pit?

10 A. -- and the Rifle Pit Road. Right.

11 Q. Yeah.

12 A. So that there -- and I said, it looks like you
13 have a problem here. You better fix it, get permission
14 or whatever it takes.

15 Q. Now, did you have a copy of the survey at that
16 time?

17 A. No. No.

18 Q. And that was in when?

19 A. That was December of 2008 that I sent that.

20 MR. BURBRIDGE: Just as a point of
21 clarification, I don't believe it's been established that
22 there was ever a survey done, but that that was a
23 potential solution to the problem.

24 Q. (BY MS. BUSH) I'm just wondering why -- I know
25 that -- do you work on LMOs, as well?

0077

1 A. Yes.

2 Q. Because I've read the regulations for that, and
3 they have some -- even without a survey, they have some
4 fairly stringent methods required to identify the land
5 that is going to be contained within the LMO.

6 A. I would have to say they're not stringent. I
7 wish they were more stringent, but they're not.

8 Q. May I read?

9 A. They give the legal description, but --

10 Q. Well, they said they had to have -- I have to
11 have it in front of me to have it perfectly. But you
12 needed it done on -- let me find it.

13 CHAIRMAN SEARLE: Ms. Bush, make sure
14 you're asking the witness questions. I don't want you to
15 be testifying on the regulations under the LMO.

16 Q. (BY MS. BUSH) All right. So you're saying
17 that for an LMO, the only thing that's required is a
18 legal description?

19 A. They have to give legal descriptions of the

20 road and the access road.

21 Q. And the access road actually has to be included
22 in the mine site. Correct?

23 A. Not always. If it's an existing road, they
24 don't have to include it.

25 Q. And they do have to ask -- well, a legal

0078

1 description would include 40-acre sections, would it not?

2 A. It would be at least a 40-acre section. I
3 prefer it down to a ten-acre section. But sometimes it's
4 difficult to --

5 Q. And does Land Quality examine this, and do they
6 look at a map where the land is broken down into 40-acre
7 sections?

8 A. Yes.

9 Q. And would it have shown the Rifle Pit Road?

10 A. Yes.

11 Q. So I'm just wondering, how easy is it to miss
12 that that land was crossing through our property?

13 A. Those maps don't show the surface ownership.

14 Q. No. But I -- but the applicant would have to
15 say what land he owned, would he not?

16 A. Yes, or had the right to cross.

17 Q. And when an applicant says they have the right
18 to cross property, do they not require written consent in
19 order to do that according to -- in order to get a
20 permit?

21 A. To get an LMO, yes, they would have -- they
22 should have submitted a signature of all the surface
23 owners involved.

24 MR. BURBRIDGE: I'm going to object to the
25 line of questioning regarding limited mining operation

0079

1 because that particular exempt activity is not before the
2 Council today. What's before the Council today is the
3 mining permit that's been applied for by Croell Redi-Mix.
4 And that's a different procedure and requires different
5 information. And so the LMO requirements just aren't
6 relevant to this particular application.

7 CHAIRMAN SEARLE: Ms. Bush --

8 MS. BUSH: I'm asking -- may I explain why
9 I'm asking? Is that --

10 CHAIRMAN SEARLE: That would be fine.

11 MS. BUSH: This -- as I mentioned earlier,
12 I'm going to bring forward evidence that I believe shows
13 that the applicant has dealt in bad faith with the Land
14 Quality Division over time. And according to statutes
15 contained in various documents, which I'll bring forward,
16 that's considered a serious matter and cause for denying
17 permits. So in that regard, I believe this is relevant,
18 and because I have tried so hard to get the information
19 over time on what information was supplied for that
20 application and why it wasn't caught. Because, clearly,
21 from what I've read, Croell Redi-Mix had to swear to the

22 accuracy of what they submitted. They had to supply a
23 legal description of their land.

24 CHAIRMAN SEARLE: Well, let me just ask
25 you this question. On this line of questioning on LMOs,
0080

1 are you about done with this one? You realize we're not
2 talking about an LMO today?

3 MS. BUSH: No. But I am talking about an
4 LMO as a circumstance in which I believe Croell Redi-Mix
5 has not dealt in good faith with the Land Quality
6 Division. That goes back before this permit by
7 necessity, because this permit is only now.

8 CHAIRMAN SEARLE: Mr. Mooney, did you have
9 any dealings with the LMO that was --

10 THE WITNESS: I reviewed it, yes.

11 CHAIRMAN SEARLE: So you have reviewed it?

12 THE WITNESS: Yes, the application for the
13 LMO. And it seemed to be in order, because it was not
14 obvious from the material submitted that there were more
15 than one surface owner involved here. It didn't identify
16 any -- the map that was submitted is simply a USGS
17 topographic map which shows the Rifle Pit Road and the
18 place that they wanted to mine.

19 MS. BUSH: In 40-acre sections.

20 CHAIRMAN SEARLE: Ms. Bush -- I'm going to
21 overrule your objection, Mr. Burbridge. But I'm just
22 going to advise you we're not dealing with the LMO today.

23 MS. BUSH: No.

24 CHAIRMAN SEARLE: Today we're dealing with
25 a different permit.

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1 MS. BUSH: And that's the only -- and that
2 is only in that regard that I was asking.

3 CHAIRMAN SEARLE: So if you're --

4 MS. BUSH: So, okay. Okay.

5 CHAIRMAN SEARLE: Okay?

6 MS. BUSH: Okay. Although I would like to
7 ask one question. This is general, not specific.

8 Q. (BY MS. BUSH) To what extent, in general, is
9 the application for a regular mining permit such as this
10 facilitated by already having an LMO on the site?

11 A. Would you please repeat the question?

12 Q. To what extent is a regular mining permit such
13 as the one that we're looking at today facilitated if an
14 applicant already has an LMO operating on the same site?

15 A. I would have to say that the permit application
16 itself is not facilitated at all by an LMO application.
17 The operation -- separating that from the operation, the
18 operator gets a head start because he can start operating
19 up to ten acres with very little notice, very little
20 delay. But as far as having a regular mining permit on
21 the site, I don't see that that gives a great advantage,
22 I mean, other than simply letting the operator mine ten
23 acres quickly.

24 Q. So I see what you're saying. Okay. So just to
25 review quickly, there's no -- you can't be specific about
0082

1 the circumstances in which this mining permit might
2 require a new public process?

3 A. It calls for a supposition. I have no --

4 Q. What about -- what about if more land were
5 added to it, is that a surefire thing?

6 A. Yes.

7 Q. How much more land?

8 A. Well, that's not -- to be more specific, he can
9 add up to -- Croell Redi-Mix can add up to 20 percent
10 more by the amendment process without going to public
11 notice. So that would be -- any more than 20 percent of
12 the 600 acres would require a public notice, and that
13 would be through the amendment process which is spelled
14 out in the Environmental Quality Act.

15 Q. You also looked at the reclamation plan?

16 A. Yes.

17 Q. And you found that -- I didn't -- I'm not --
18 I'm not an expert on this. But I didn't see anything
19 regarding contouring.

20 A. There is a map in there that specifies what the
21 contours are going to be, and it's also in the checklist
22 statement saying how they'll replace the -- cut down the
23 slopes and mark around the edges of the quarry.

24 Q. Is the land that is going to be mined going to
25 be put back close -- is the specific land that's going to
0083

1 be mined going to be put back close to where it was
2 before? Because I -- or is it, as it states in here,
3 that the holes that are going to be left, at least the
4 slopes, are justified because other parts of the property
5 are rugged? And what are the requirements of Land
6 Quality as far as what has -- to what extent the specific
7 sites which are mined have to be returned to their
8 original state?

9 CHAIRMAN SEARLE: Just for clarity, it
10 sounded like you asked several questions there. For my
11 clarity, maybe break it down into a simpler --

12 MS. BUSH: Yes. Let me try.

13 Q. (BY MS. BUSH) Okay. Is the proposal, as you
14 understand it, to restore the land that is being mined,
15 specifically the pits, to a condition resembling what
16 they were before the mining took place?

17 A. Yes. If you'll look in the reclamation plan,
18 they talk at some length about trying to restore the
19 hayfields back to hayfields, in fact, even putting extra
20 topsoil on those hayfields so that they can once again be
21 used as hayfields.

22 Q. But I'm talking specifically about the --

23 A. The contours?

24 Q. -- the contours of the land.

25 A. Well, that's shown on the reclamation map, what

0084

1 the contours are proposed to be.

2 Q. I understand. I wanted your opinion on whether
3 they are going to be -- they're going to resemble what
4 they are before -- were before. And is that required?

5 A. It's not required to resemble -- the land use
6 has to be restored, but not necessarily the contours. If
7 there was a hill out there, they don't have to restore it
8 to a hill.

9 Q. Thank you. I noticed in here that it was
10 mentioned that there's some surface bentonite, as well.

11 A. I'm not aware of any bentonite on the property.

12 Q. It's mentioned, I believe, in here somewhere.
13 If there were, I believe it was mentioned in the context
14 of open rock and bentonite. Doesn't ring a bell?

15 A. No.

16 MS. BUSH: Okay. Thank you.

17 CHAIRMAN SEARLE: Thank you, Ms. Bush.

18 Mr. Turgeon, do you have any questions?

19 MR. TURGEON: I do have a couple.

20 CROSS-EXAMINATION

21 BY MR. TURGEON:

22 Q. In the application form here, it's stating that
23 they're going to install a hot mix plant and a cement
24 plant. Is there anything in the plan that says where
25 they have to locate these?

0085

1 A. No.

2 Q. They can just put them anyplace in the 600
3 acres they want to?

4 A. I don't recall that there was any specific
5 areas that it would be -- for instance, the crusher and
6 all, the mine plan recognizes that would be moved
7 occasionally to be closer to the rock face.

8 Q. But no control on the hot mix plant or the
9 cement plant?

10 A. I believe they just mentioned there might be a
11 hot mix plant.

12 Q. It says in here there will be. That's why --

13 A. Well, I think you're looking at the air quality
14 application, too, aren't you?

15 Q. Well, but I think we have to look at -- you
16 know, they're public notice.

17 A. Yes.

18 Q. And so if they're advertising there's going to
19 be one, then that's all we can go by, you know.

20 A. Yeah.

21 Q. The one thing, I guess, as I hear, which goes
22 right back to this, is, well, this is their
23 responsibility, and this is supposed to do this. Is
24 there anybody that checks up on any of this?

25 A. They're inspected by the Land Quality Division

0086

1 once a year by statute.

2 Q. But none of this is checked up while you're
3 doing the application?
4 A. Exactly what is checked up?
5 Q. Well, you talked about water and what have you
6 and flow and the right-of-ways. None of this -- you just
7 take his word for everything?
8 A. We do a field visit, too.
9 Q. Have you been at the site?
10 A. I've been to the site, yes.
11 Q. And that was the last time, when?
12 A. December of 2008. Other people in the office
13 have been out there since then, not myself.
14 Q. On this -- on these permits -- and you'll have
15 to excuse me, because I'm not up on that. But how much
16 dust and stuff are allowed on these permits?
17 A. That's an air quality concern and not mine.
18 Q. Well, but don't they tie together? See, this
19 is the thing, I guess, I get. When I ask them questions,
20 they say, well, it's your problem. And when I ask you,
21 it's their problem. But it's the total problem I'm
22 concerned about. How much runoff can we have on the
23 land, then? What effect does this have?
24 A. The runoff would be -- the main thing we would
25 have concern about there is of any sedimentation runoff,
0087

1 that they would not be -- Water Quality Division also has
2 concern about that. But we would be concerned that
3 there's not a degradation of downstream water resources
4 through sedimentation.

5 Q. Are you aware, of that total piece of property,
6 the drainage all goes into Sundance Creek?

7 A. I believe it does, yes.

8 Q. And what do you suppose the variation of
9 settlement would be from 100,000 ton a year to 500,000
10 ton a year?

11 A. I couldn't say.

12 Q. Would you -- five times that would be within
13 reason?

14 A. Depends on the control features that they put
15 in to control sediment runoff.

16 Q. And what controls do we have in the
17 application?

18 A. I'm not currently aware of that, because under
19 noncoal rules, regulations, sediment ponds and such are
20 not required for noncoal.

21 Q. Okay. And this is where my concern comes,
22 because I'm afraid that all the settlement is going to
23 end up affecting my water supply. What happens -- when
24 do the mining permit become -- or change become minor or
25 major? Volume or type of mining or what?
0088

1 A. Probably not volume, no. It would be the --
2 because this is a -- this is a regular mining permit. So
3 they can mine -- there's really no limits on the amount

4 of acreage they could affect per year.

5 Q. That has nothing to do with major or minor,
6 then?

7 A. Right.

8 Q. I believe you mentioned something about that
9 approach on the county road. Did you mention that when
10 you were being asked?

11 A. We discussed it.

12 Q. But I believe that exit comes onto the state
13 road at that point. I believe that --

14 A. It joins the -- my understanding is that it
15 runs into the Rifle Pit county road.

16 Q. And my understanding, that section of the
17 ground is State-controlled. No reason for argument. And
18 maybe it doesn't make any difference. But, you know, for
19 clarity --

20 A. The permit does not show that.

21 Q. On this approach road, is there any requirement
22 as far as safety goes?

23 A. That would be, the county has -- would have to
24 have rules on that.

25 Q. Even on your -- even on their property?

0089

1 A. Even on --

2 Q. On Mr. Croell's property. So before he got to
3 the county or state road, whichever it is, as far as
4 coming off his land and the mine, would there have to be
5 some control, as far as you're concerned, for safety of
6 that approach?

7 A. Safety issues on the mine site are the
8 responsibility of the state mine inspector and of the
9 federal MSHA people.

10 Q. And so, here again, we're getting into a whole
11 different department that we get the runaround again.
12 When they run this notification, when they talk
13 about modifying that pit, is there any requirement to
14 tell them what the modification is as far as size? You
15 know, when you're going from a ten-acre plot to a
16 600-acre plot, you're going to create a lot more interest
17 on what's going on.

18 A. Well, and that's why we're here. Because there
19 was no public notice required on this limited mining
20 operation. Under a regular mining permit, we talked
21 extensively about the public notice that was required and
22 has been carried out.

23 Q. On the public notice, is there any requirement
24 on the closeness to where the facilities are? For
25 example, it was brought up about the Casper paper. Is

0090

1 that --

2 A. I believe it specifies that you have to publish
3 notice in the paper of general circulation in the area
4 where it's being -- the location where the operation will
5 take place.

6 Q. And what would be considered, then, a general
7 publication when it's 200 miles and three counties away
8 and I've never even seen the Casper paper, let alone --

9 A. Well, I know for a fact that the Casper
10 Star-Tribune is available to vending machines outside
11 of both restaurants in downtown Sundance, because I
12 bought from them this summer.

13 Q. But you see where I'm coming from, that as far
14 as notifying us, that does not do the job?

15 A. Well, I've seen many more copies of the Casper
16 paper around Sundance than I have the Sundance Times,
17 personally speaking.

18 Q. And I assume this is probably the State or the
19 County, the dust control off the trucks as they hit the
20 state highway, I assume, and again, we've got to take
21 this to the State Department?

22 A. Yes.

23 Q. And that's no concern of yours. How about on
24 these trucks as they leave the property, are there any
25 requirements on the safety board here as far as having to

0091

1 gravel off the --

2 A. That is not a Land Quality concern.

3 Q. That's not a safety --

4 A. We have no regulations relating to that.
5 That's the highway department and possibly the counties'
6 jurisdictions.

7 Q. And you mentioned once about the distance of
8 the nearest resident. Do you have any idea what that is?

9 A. Not offhand, no. I know that there's none
10 within 300 feet.

11 MR. TURGEON: All right. Thank you.

12 CHAIRMAN SEARLE: Thank you, Mr. Turgeon.

13 Ms. Hamm, do you have any questions for
14 Mr. Mooney?

15 MS. HAMM: No, I don't.

16 CHAIRMAN SEARLE: Thank you. Mr. Tomer
17 joined us. You've been here for most of it.

18 Mr. Tomer, do you have any questions?

19 MR. TOMER: Yes, I do.

20 CROSS-EXAMINATION

21 BY MR. TOMER:

22 Q. Mr. Mooney, is there a section in the mining
23 permit that talks about hours of operation?

24 A. I believe -- I don't think they specify that,
25 but we can certainly check that.

0092

1 COMMISSIONER FLITNER: I think that came
2 up earlier, and it was 7:00 to 11:00.

3 A. That's my recollection, generally. I know they
4 didn't hold themselves to certain hours. But there may
5 be a general section on that. That might be something
6 you'd want to pose to the Croell people.

7 Q. (BY MR. TOMER) A copy of the permit that I

8 read in the Sundance clerk's office mentions something
9 about hours of operation. It was like part of a form
10 that was filled out.
11 A. That may have been the air quality permit, too.
12 Q. That could have been.
13 A. I don't recall a specific -- I don't believe
14 they committed the hours of operation in the permit, as I
15 remember.
16 Q. Does blasting fall under your jurisdiction?
17 A. To a certain extent. We do have our blasting
18 engineer here that can answer specific blasting
19 questions. But there aren't any specific regulations for
20 blasting on noncoal operations like there are on coal.
21 Q. So they can just blow up whatever they want to?
22 Is that pretty much --
23 A. Well, that --
24 Q. The reason I ask is I hear the blast at the
25 Croell pit in their limited mining operation at my
0093

1 location, which is some eleven miles away as the crow
2 flies. My wife's a licensed blaster in the state of
3 Wyoming, and she assures me that that's not a normal
4 situation.

5 CHAIRMAN SEARLE: Mr. Tomer, I think
6 you're testifying. You just need to ask him questions.
7 I think he answered the question.

8 You have no specific regulations. Is that
9 correct?

10 THE WITNESS: Yeah. Unlike coal, we have
11 no specific regulations relating to blasting for
12 noncoals.

13 MR. TOMER: Okay. Thank you.

14 CHAIRMAN SEARLE: Thank you.

15 Mr. Croell, do you have any questions for
16 Mr. Mooney? I need you to come up here if you do,
17 please.

18 MR. CROELL: I have to think whether I
19 have any here or not.

20 CROSS-EXAMINATION

21 BY MR. CROELL:

22 Q. Mr. Mooney, my name's Roger Croell. There are
23 some answers that I can explain about the driveway.
24 We'll do that in cross-examination with someone else.
25 You stated that there were no wetlands in this area. Is
0094

1 that correct?

2 A. There was a wetland study done, and I believe
3 that was essentially the finding, none of concern to the
4 Corps of Engineers, at least.

5 Q. And the Corps of Engineers was not concerned
6 about any water problems with any of the wells. Is that
7 correct?

8 A. That would be outside of their jurisdiction,
9 anyway.

10 Q. But there was a determination by the Corps of
11 Engineers that there would not be any problem with
12 filtration or sedimentation in any of the wells in the
13 area?

14 A. I don't believe -- the Corps generally does not
15 discuss effects on wells. I don't see that in their
16 letter here to them.

17 Q. Okay. The Wyoming Game and Fish, did they do a
18 survey about the wildlife in the area?

19 A. No. But there was one done. It was -- I think
20 Jim Orr that did a study here. I could be wrong about
21 that. There's an extensive amount of information here on
22 this from the Game and Fish Department. And, also, I
23 believe there's some letters in here from the U.S. Fish
24 and Wildlife Survey relating to endangered species.

25 Q. And it's your understanding there was no

0095

1 problem with endangered species in the area?

2 A. That's right. That's right.

3 Q. Did you ever see any wildlife -- abundant
4 wildlife out there while you were out there inspecting
5 the place?

6 A. No.

7 Q. You didn't see the elk?

8 A. No.

9 Q. The deer?

10 A. I may have seen a deer before you started
11 operation, but I don't recall.

12 MR. CROELL: I guess I have no other
13 questions. Thank you.

14 CHAIRMAN SEARLE: Thank you. Let's go to
15 the phone and ask the councilmembers -- what were you
16 going to say, Jim?

17 MR. RUBY: Wasn't going to say a word.

18 COMMISSIONER GUSCHEWSKY: This is Cathy.
19 And I have one question.

20 CHAIRMAN SEARLE: Go ahead, Cathy.

21 EXAMINATION

22 BY COMMISSIONER GUSCHEWSKY:

23 Q. Mr. Mooney, my name is Cathy Guschewsky. My
24 question for you is, you talked about getting it to a
25 technically complete application, and this one took

0096

1 approximately eight months. What would you say is the
2 average to get a mine to technically complete?

3 A. I'd have to say this is about average.

4 COMMISSIONER GUSCHEWSKY: Okay. Thank
5 you.

6 CHAIRMAN SEARLE: Mr. Flitner, do you have
7 any questions?

8 EXAMINATION

9 BY COMMISSIONER FLITNER:

10 Q. Yeah, a couple. First one, this thing has been
11 bouncing around all afternoon. And I still don't have an

12 answer. At least, I haven't picked it up over the phone.
13 Have we satisfied the requirements for notifications?
14 And I want a simple answer, yes or no. Are they or are
15 they not legally satisfied? And I don't care who answers
16 it, whether one of the lawyers speaks up or whoever. But
17 is that done?

18 MR. RUBY: Yes.

19 Q. (BY COMMISSIONER FLITNER) Okay. The other
20 thing is --

21 CHAIRMAN SEARLE: Let me just -- hold it,
22 Tim. Before you move on --

23 Q. (BY COMMISSIONER FLITNER) -- there was a lot
24 of talk about the depth.

25 CHAIRMAN SEARLE: Tim?

0097

1 Q. (BY COMMISSIONER FLITNER) I'm assuming that
2 the DEQ is satisfied that they will go no deeper than the
3 24-point-some feet and that that is the deepest that this
4 limestone formation goes. Anything deeper than that, and
5 they will have to change that permit. Is that correct?

6 A. That is correct.

7 Q. The other thing, the road -- there's a new road
8 proposed for this permit. Is that correct? Not the one
9 that's been in use for so many years.

10 A. Yes, there has been a new road constructed.

11 Q. Okay. That's all I have, except for the fact
12 that, again, the DEQ is satisfied that, in this permit,
13 that the protection of the water in Sundance Creek is
14 adequate, that those -- that those are going to be in and
15 checked and that there's not a deterioration of the water
16 quality in that creek. Is that correct?

17 A. Yes.

18 COMMISSIONER FLITNER: Thank you. That's
19 all I've got.

20 CHAIRMAN SEARLE: Thank you, Mr. Flitner.
21 Let me just ask you one question, Tim, before you go.
22 Your first question regarding notification, we're dealing
23 with two sets of notification here. One was a set that
24 was done as part of this permit application process. The
25 other part was the part that was done by the EQC in

0098

1 setting this hearing. Which one were you referring to?

2 COMMISSIONER FLITNER: Both. I want to
3 know that we are -- that if this permit gets issued, that
4 it's legal, that nobody can come back later and say,
5 "This is illegal. This permit should not have been
6 issued. The proper notification was not given in any
7 area." So I want all bases covered.

8 CHAIRMAN SEARLE: Just to make sure -- and
9 I'll let Mr. Mooney -- he can answer for the DEQ
10 notification. And your answer would be?

11 THE WITNESS: Based on the information
12 supplied to me, I find that all notifications have been
13 carried out as per the regulations and the statute.

14 CHAIRMAN SEARLE: And, Tim, as you heard
15 earlier, the response you got the yes was from Mr. Ruby
16 and as far as the EQC notifications. Okay?

17 COMMISSIONER FLITNER: Thank you.

18 CHAIRMAN SEARLE: Mr. Coverdale, are you
19 still with us?

20 COMMISSIONER COVERDALE: Yeah, I am.

21 CHAIRMAN SEARLE: Any questions?

22 EXAMINATION

23 BY COMMISSIONER COVERDALE:

24 Q. Just one. And it's kind of a follow-up to
25 Tim's question. If the limestone deposit doesn't follow

0099

1 the surface topography, they can't mine deeper to get all
2 the limestone. They have to stop at 24.7 feet or
3 whatever it is. Is that correct?

4 A. They do propose to follow the limestone deposit
5 to a certain depth, although I believe they will be
6 removing some overburden that covers the limestone.

7 Q. Right. But, I mean, the surface topography as
8 the limestone layer dips down. I don't know that it does
9 that, but I'm just saying if it does, if it dips down 40
10 feet, they're done at that point. They can't go any
11 deeper?

12 A. They can. The economics dictate that. But I
13 would suggest to you that would be a question you'd want
14 to pose to coal, because they'd have a lot more feeling
15 on just what the economics of the situation are.

16 Q. So the permit itself doesn't limit it to 24
17 feet, does it?

18 A. Not strictly, no. I think the permit does say
19 they would go that deep. But if they're following the
20 limestone somewhat deeper -- and I don't think it would
21 be appreciably too much deeper, because most of these
22 operations don't involve removal of a lot of overburden.

23 COMMISSIONER COVERDALE: Thank you.

24 CHAIRMAN SEARLE: Thank you, Tom.

25

0100

1 EXAMINATION

2 BY CHAIRMAN SEARLE:

3 Q. I have a couple questions. Mr. Mooney, I know
4 there have been some issues, questions asked about air
5 quality permits, in general, the interaction with other
6 agencies.

7 A. Yes.

8 Q. And I realize Land Quality Division, you're
9 responsible for --

10 COMMISSIONER COVERDALE: Hey, Dave, could
11 you speak up? I can't hear you.

12 CHAIRMAN SEARLE: You must think I'm going
13 to ask a good question for a change, huh, Tom?

14 COMMISSIONER COVERDALE: Ones of those
15 occasions.

16 Q. (BY CHAIRMAN SEARLE) What I was trying to get
17 to is if, for example -- you said they have certified
18 that they are going to get all the necessary permits and
19 be in compliance. That's a part of this application
20 approval. Is that correct?

21 A. Yes.

22 Q. You said that to visit the site once a year?

23 A. Annual inspection, yes.

24 Q. Annual inspection. If you got word that they
25 did not have an air quality permit, what would be the

0101

1 significance to their land quality permit?

2 A. I don't think it would affect their land
3 quality permit directly. I don't know of any permit --
4 land quality permit that's ever been suspended because
5 they didn't have an air quality permit, for instance.

6 Q. The annual production rate, basically, you kind
7 of come to an assumption it's a 500,000-ton-per-year
8 mine. But it sounded like in the last few years, it's
9 just like two and a half million over five years.

10 A. Yes.

11 Q. Could they mine two and a half million in one
12 year?

13 A. If the air quality permit -- the air quality
14 permit has --

15 Q. Under the land quality permit.

16 A. Under the land quality permit, possibly. I
17 don't think that under the criteria for a permit
18 revision, for instance, they would -- a maximum amount of
19 production would kick it into a public notice.

20 Q. Well, I'm just saying under the current permit
21 that you're proposing, where it has a five-year period
22 that says you're going to mine up to two and a half
23 million tons during five years. Isn't that what you
24 said?

25 A. Yes.

0102

1 Q. So could they literally do that in a year and
2 still be -- and do zero for --

3 A. Under the land quality permit?

4 Q. Under that permit.

5 A. Yes. I think the potential is there, yes. We
6 would -- the one thing we would be concerned about, does
7 their bond cover that amount of disturbance?

8 Q. They sent you a pile of material in the
9 application. Is that all considered to be part of the
10 final permit?

11 A. Everything in this binder is, plus the Form 1
12 and the Form 3 and the bond.

13 Q. Anything they describe and commit to --
14 anything they describe as their operation in this
15 document is basically binding and enforceable?

16 A. Yes. It is a contract between us and Croell,
17 between the State and Croell. That's the way we consider

18 it.
19 CHAIRMAN SEARLE: Thank you.
20 Mr. Burbridge, do you have any questions on
21 redirect?
22 MR. BURBRIDGE: I do not.
23 MS. BUSH: Is it possible to ask another
24 question?
25 COMMISSIONER GUSCHEWSKY: Mr. Presiding
0103

1 Officer, this is Cathy.
2 CHAIRMAN SEARLE: Yes, Cathy.
3 MS. GUSCHEWSKY: I'd like to go back to
4 the air quality permit. I'm a little confused. So if
5 they -- if their air quality permit, if they fail to
6 adhere to that, what are the ramifications for that, and
7 why are they not connected with the land quality permit?
8 Because I would think in something like this, it should
9 go hand in hand. It's all under the DEQ. And I guess I
10 just need someone from the DEQ to maybe explain that to
11 me.
12 MR. BURBRIDGE: If I may -- this is John
13 Burbridge. I have another witness here, Cathy, that will
14 be able to address it, I think, more clearly.
15 COMMISSIONER GUSCHEWSKY: Thank you.
16 CHAIRMAN SEARLE: Okay. Thank you,
17 Mr. Mooney.
18 MR. BURBRIDGE: Is it possible to ask
19 another question?
20 CHAIRMAN SEARLE: I think we've moved on.
21 We've been at it about an hour and a half since
22 we took our last break, so why don't we take -- we'll
23 shoot for five minutes and try to save a little time. By
24 that clock, 3:30 we'll be back.

25
0104

1 (Hearing proceedings recessed
2 3:25 p.m. to 3:32 p.m.)
3 CHAIRMAN SEARLE: Okay. I'll call this
4 meeting back to order.
5 Mr. Burbridge, do you have any other witnesses
6 you'd like to call?
7 MR. BURBRIDGE: I would call Doug Emme to
8 the stand. Can everybody on the phone hear me okay?
9 COMMISSIONER GUSCHEWSKY: Yes.
10 MS. HAMM: Yes.
11 COMMISSIONER COVERDALE: Yes.
12 COMMISSIONER FLITNER: Yes.
13 DOUG EMME,
14 called as a witness by the DEQ, being subsequently duly
15 sworn, on his oath testified as follows:
16 DIRECT EXAMINATION
17 BY MR. BURBRIDGE:
18 Q. Could you spell your name -- or say --
19 introduce yourself and spell your name for the record,

20 please.

21 A. My name is Doug Emme, E-M-M-E. I'm the
22 blasting engineer for Land Quality.

23 Q. And what are your duties as the blasting
24 engineer for Land Quality?

25 A. I train and license blasters. I investigate

0105

1 blasting complaints. I do blasting inspections. I also
2 do oversight inspections. I do a lot of reclamation
3 bonding for District 3 and also other districts in the
4 state. I inspect coal mines, small mines, ETs, about
5 everything that all the other Land Quality employees do,
6 permit reviews, revisions, things like that.

7 Q. How long have you been with the Land Quality
8 Department?

9 A. Just over 20 years.

10 Q. Now, you've heard testimony here today about
11 the Croell Redi-Mix application and the site. Are you
12 familiar with this operation?

13 A. Yes, I am.

14 Q. Can you describe how you're familiar with this
15 operation?

16 A. I have looked at the permit. I reviewed their
17 reclamation bond. I have been to the site on an
18 inspection. I have familiarized myself with the permit
19 again prior to this hearing.

20 Q. Now, are you aware that, in fact, there is
21 blasting and will be blasting going on at this particular
22 site?

23 A. Yes.

24 Q. And could you describe your experience with
25 that?

0106

1 A. Typical limestone operation, shots will be
2 relatively small, well controlled, not much of a concern
3 unless people live really close to the operation.

4 Q. And what kind of oversight and enforcement
5 activities would you engage in in a noncoal operation
6 such as this?

7 A. None unless there were a blasting-related
8 complaint.

9 Q. Do you -- would you have any concern and do you
10 have any enforcement activities regarding blasting that
11 might be going on at that site by somebody who is not a
12 certified blaster in the state?

13 A. John, would you repeat the question?

14 Q. I think I might have to. Is Croell Redi-Mix
15 required to use certified blasters at this site?

16 A. Yes, they are.

17 Q. If they were not doing that and you found out
18 about it, what would you do?

19 A. I would have to investigate, and I would
20 probably turn it over to the state mine inspector because
21 that is more their responsibility to enforce that type of

22 activity at this mine. But I would definitely be
23 involved in the investigation.

24 Q. And do you know, does Croell Redi-Mix have its
25 own certified blasters, or does Croell Redi-Mix contract
0107

1 that work out to somebody who is certified?

2 A. To my knowledge, they contract it out.

3 Q. And just because this was an issue brought up
4 by one of the objectors, do you have any training or
5 experience that would allow you to testify as to how the
6 sound of a blast may carry differently in different
7 situations?

8 A. I have a lot of training and experience.

9 Q. Could you describe -- could you go ahead and
10 testify and tell the Council what occurs when there's a
11 blasting, how that sound carries?

12 A. Usually there is an air blast from the shots.
13 Some of it is nonaudible from the air pressure pulse,
14 movement of the rock leaving the mine site. Some of it
15 audible portion. Depending on the weather conditions,
16 topography, wind speed and direction, it's not uncommon
17 to hear blasts for several miles in the distance.

18 Q. And could there be conditions -- and you've
19 been to this particular area in the past. Could there be
20 conditions that would exist around the Croell mine site
21 that would allow sound to carry up to twelve miles or
22 better?

23 A. Perhaps. The topography alone could focus the
24 sound down the valley. The wind could also focus it.
25 So, perhaps.

0108

1 Q. And I know this wasn't brought up, but it may
2 be a point of interest for the Council and everybody else
3 here. If an operation is blasting to loosen up rock, are
4 they required to make sure that any materials that fly in
5 the air stay within the permit boundaries?

6 A. For noncoal operations, there are no specific
7 blasting regulations that control clouds.

8 Q. So it may not be your area of expertise to make
9 a determination that if the fly rock goes beyond a permit
10 boundary, that it might be disturbing areas outside the
11 permit or not? That wouldn't be an area you would
12 investigate?

13 A. If we saw evidence of that or had a complaint
14 to that effect, we would investigate it. But there are
15 no regulations to cite for a noncoal operation.

16 Q. And there aren't any restrictions that you're
17 aware of that would -- any restrictions with regard to
18 the distance sound would carry from a blast?

19 A. No. There are -- there are, for coal
20 operations, limits on how much air blast, how much a mine
21 blast can produce at a neighbor's house, but not for
22 noncoal operations.

23 Q. And if blasting were to affect somebody's water

24 well, do we have -- does the Land Quality Department have
25 jurisdiction to at least investigate that sort of

0109

1 complaint?

2 A. Yes.

3 Q. And is that something you would be involved in,
4 as well?

5 A. Yes.

6 MR. BURBRIDGE: I don't believe I have any
7 further questions. Thank you.

8 I would leave Mr. Emme here to withstand the
9 questions of the objectors and the Council.

10 CHAIRMAN SEARLE: Thank you,
11 Mr. Burbridge.

12 Ms. Bush, do you have any questions for
13 Mr. Emme?

14 MS. BUSH: Way out of my field of
15 expertise.

16 CROSS-EXAMINATION

17 BY MS. BUSH:

18 Q. How far does the effective blasting extend?

19 A. Again, it depends a lot on the weather
20 conditions, the wind speed, the wind direction.

21 Q. Oh, I'm not -- I'm sorry. I didn't say that
22 quite correctly. I'm talking about, the blasting is
23 taking place to break up the rock underground. Yes? I'm
24 talking about the underground effects.

25 A. The ground vibration from the blast can travel

0110

1 for miles from the shock.

2 Q. Is there any possibility that it could have an
3 effect on the canyon wall, which is not miles away?

4 A. It my professional opinion, no.

5 Q. And there are no noise regulations. So
6 that's -- I don't know enough about this to ask you any
7 more.

8 MS. BUSH: Thank you.

9 CHAIRMAN SEARLE: Thank you.

10 Mr. Turgeon, do you have questions?

11 MR. TURGEON: Yeah. I just got one.

12 CROSS-EXAMINATION

13 BY MR. TURGEON:

14 Q. Was I correct in hearing you say that the shock
15 of this on the ground could travel for miles?

16 A. The ground vibrations can travel for miles from
17 the shot.

18 Q. And when you're in an area with a lot of
19 caverns and breakaway, could this have an effect on the
20 ground miles away?

21 A. The caverns that you typically get in limestone
22 would actually have to dissipate the ground vibration.

23 Q. That vibration, if you're feeling it and
24 hearing it, could it have an effect on a well, shallow
25 well?

0111

1 A. Potentially.

2 Q. So there's no way to tell, once that shocks

3 you, what it could do down there. Is that correct?

4 A. There are very few blast-related damages to

5 wells nationwide from blasting.

6 Q. But it can happen?

7 A. Potential is there for it to happen.

8 MR. TURGEON: Thank you.

9 CHAIRMAN SEARLE: Mr. Tomer, do you have

10 any questions?

11 MR. TOMER: Yes, I do.

12 CROSS-EXAMINATION

13 BY MR. TOMER:

14 Q. Are there any exact regulations on how shots

15 are loaded, or is that left up to the blasters?

16 A. That is pretty much to the blaster's

17 discretion.

18 Q. So, for instance, from my place some eleven

19 miles from this property, some blasts I can feel and

20 hear. Other ones -- I mean, I understand about the way

21 sound waves travel. But why would it be that I can't

22 feel the same vibrations coming from the same pit?

23 A. Some of it's related to where the shot's

24 initiated, how it progresses. Could be the shot size,

25 how many pounds of shot per delay period, again, you

0112

1 know, the wind speed, overcast skies, snowing,

2 temperature inversions. All those things can focus the

3 air blast. Oftentimes what you're feeling probably is

4 the air blast, maybe rattling windows, things like that,

5 and it's not actually the ground vibration.

6 Q. Is there any effect on groundwater from the

7 seismic vibrations from blasting?

8 A. The actual groundwater reservoir? No.

9 Q. No.

10 MR. TOMER: Okay. Thank you.

11 CHAIRMAN SEARLE: Thank you.

12 Ms. Hamm, do you have any questions?

13 MS. HAMM: Yes. I would like to have him

14 clarify when he says underground vibration can travel for

15 miles.

16 CROSS-EXAMINATION

17 BY MS. HAMM:

18 Q. Could you please be more specific? Like five

19 miles, ten miles?

20 A. You know, it depends on the shot size. Some of

21 the large shots that the coal mines have in the Powder

22 River Basin are felt or monitored from seismographs

23 halfway around the world. Some of these --

24 Q. Okay.

25 A. Some of these cast blasts, you can feel the

0113

1 ground vibration, and I've monitored the ground vibration

2 with my seismographs eight, nine, ten miles away. It
3 tends to dissipate with distance. And again, a lot is
4 dependent on shot size. The size of shots that most
5 limestone operations, this one included, has, they're
6 small. There's not a lot of total pounds in the shot.
7 Usually they're well delayed. And the ground vibration,
8 you might be able to feel it a couple miles away, but
9 it's so low that there's absolutely no possibility to do
10 any structural damage to a house or similar-type
11 building.

12 MS. HAMM: Thank you.

13 CHAIRMAN SEARLE: Thank you.

14 Mr. Croell, do you have any questions?

15 MR. CROELL: Yes. I just have one
16 question. And I think you can hear me, can't you? Can
17 you hear me on the phone?

18 MS. HAMM: Yes.

19 COMMISSIONER GUSCHEWSKY: Yes.

20 CROSS-EXAMINATION

21 BY MR. CROELL:

22 Q. Would a 30,000-ton blast 20 foot deep be
23 conceivably a dangerous noise or vibration to somebody
24 ten miles away?

25 A. I wouldn't say it would be dangerous. Again,

0114
1 depending on the weather and wind and stuff, Roger, they
2 could perhaps hear it.

3 MR. CROELL: That's the only question I
4 had.

5 CHAIRMAN SEARLE: Thank you.

6 Cathy, do you have any questions?

7 COMMISSIONER GUSCHEWSKY: Yes,
8 Mr. Presiding Officer. I've got a couple.

9 EXAMINATION

10 BY COMMISSIONER GUSCHEWSKY:

11 Q. Mr. Emme, my name is Cathy Guschewsky. And you
12 said they'd be relatively small blasts. How often would
13 they be occurring? I know that there's no regulations
14 here. But in a mine such as this, how often would this
15 be -- and I'm looking at usually would it be once a day
16 or six times a day? Would that be considered small?

17 A. It would be dependent on production. My guess,
18 it would be two to three shots per week.

19 Q. Thank you. And because the blasting engineer
20 is registered with the State, so if there were
21 complaints, and because there's no regulations, there's
22 really no recourse for someone who is complaining, as
23 long as the engineer is licensed with the State, and, I
24 guess, unless they're doing -- am I correct with that
25 statement?

0115
1 A. Yes, you're correct, although, you know, if
2 they complained about structural damage to a house, we
3 would investigate because blasting is a pretty

4 contentious issue statewide. And if we found evidence
5 that there was, in fact, problems from the blast, we
6 would take some action.

7 Q. Thank you. So if I called and said I've got a
8 crack in my wall and I think it's from the blasting, how
9 could you tell it wasn't just a structural change in my
10 house from settling purposes that happens all over
11 Wyoming, as all of us know, as opposed to something from
12 the blast?

13 A. The first thing I'd have to do is come out and
14 set a seismograph up and monitor some shots, see what
15 sort of vibration we were getting at the ground near your
16 house. And that would give me a pretty good idea of the
17 potential for that crack being produced from blasting or
18 settling or other causes.

19 COMMISSIONER GUSCHEWSKY: Thank you,
20 Mr. Emme.

21 CHAIRMAN SEARLE: Mr. Flitner, do you have
22 any questions?

23 COMMISSIONER FLITNER: Just one.
24
25

0116

1 EXAMINATION

2 BY COMMISSIONER FLITNER:

3 Q. If, by chance, there were complaints and you
4 did, by chance, find that there's a possibility there
5 could be some damage, can you manipulate those blasts to
6 try to diminish that?

7 A. If we discovered that there was, you know,
8 vibration issues or air blast issues from the shots at
9 this mine or another mine, there are many things you can
10 do to redesign the shot to minimize the impacts to the
11 neighbors, reducing the size of the shots, reducing the
12 pound of shot per delay period, where you initiate it,
13 how you have the shot progress. You can potentially deck
14 the holes, many, many things to change the design to
15 decrease impacts to neighbors.

16 Q. And do you wait for a complaint or do you try
17 to get kind of proactive when you start blasting, maybe
18 set some seismographs tools up in the area and kind of
19 get ahead of that issue, or do you just wait until
20 somebody files a complaint and you have to prove
21 otherwise?

22 A. We don't do a lot of monitoring early in an
23 operation like this. If we had a pit that was close, had
24 neighbors really close to it, we might get real proactive
25 and monitor initially. But in a situation like this

0117

1 particular operation, where those neighbors aren't very
2 close, I would probably see no need to monitor until we
3 had a complaint.

4 Q. This has probably been said, and I probably
5 missed it. But what is the closest neighbor? I know

6 Mr. Croell said he was a half a mile. Do you have any
7 idea what the next closest house is?
8 A. I do not.
9 COMMISSIONER FLITNER: That's all I have.
10 Thanks.
11 CHAIRMAN SEARLE: Thank you.
12 Mr. Coverdale, any questions?
13 COMMISSIONER COVERDALE: I have no
14 questions.
15 CHAIRMAN SEARLE: I have no questions,
16 either.
17 Mr. Burbridge?
18 MR. BURBRIDGE: Nothing further.
19 (Telephone disconnection.)
20 (Pause in proceedings.)
21 CHAIRMAN SEARLE: Mr. Burbridge, do you
22 have another witness?
23 MR. BURBRIDGE: One more.
24 CHAIRMAN SEARLE: Thank you.
25 MR. BURBRIDGE: Are we going to try to

0118

1 retrieve Mr. Flitner before we begin with this, or are
2 we -- with my questioning, do you want me to hold up for
3 a minute?

4 MR. RUBY: Give me one second.
5 (Pause in proceedings.)

6 MR. BURBRIDGE: I would call my last
7 witness, Mark Rogaczewski, to the stand.

8 MARK ROGACZEWSKI,
9 called as a witness by the DEQ, being subsequently duly
10 sworn, on his oath testified as follows:

11 DIRECT EXAMINATION

12 BY MR. BURBRIDGE:

13 Q. Would you please introduce yourself? And I'm
14 certain that the court reporter would like you to spell
15 your last name.

16 A. My name is Mark Rogaczewski, spelled
17 R-O-G-A-C-Z-E-W-S-K-I.

18 Q. And what is your occupation?

19 A. I'm the District 3 supervisor out of Sheridan
20 for the Land Quality Division.

21 Q. How long have you been employed by the Land
22 Quality -- Land Quality Division?

23 A. Since January of 2000.

24 Q. And I have called you just to hopefully clarify
25 some of the questions that Mr. Mooney was getting. And

0119

1 I'd like to start with when -- under what circumstances a
2 company would be required to amend its permit. Could you
3 explain that generally for the record?

4 A. Yes. We do have noncoal rules and regulations,
5 Chapter 7. And it does have specifications on when we
6 would require a permit to be revised. One of those
7 examples would be if we go out on our yearly inspection

8 and we note that the company has progressed in a quicker
9 manner than what was proposed in the mine plan, we use an
10 estimate of approximately eighteen months. If they are
11 outside eighteen months, we require them to get a
12 revision to that mine plan. Henceforth, if they are not
13 reclaiming the pit in such a time line, we would then ask
14 them -- require them to get a revision of their
15 reclamation plan. And there are several instances where
16 we can make a judgment call on what would require public
17 notice or not, and that is in that chapter.

18 Q. And, for instance, there's been some discussion
19 that the application represents -- and correct me if I'm
20 wrong here -- that the disturbed area is going to be
21 approximately 380 acres?

22 A. Uh-huh.

23 Q. If it were to appear that they were exceeding
24 that, would they be required to amend their permit if
25 that were to happen?

0120

1 A. That would be required, yes.

2 Q. And are there guidelines by which you determine
3 if an amendment in that circumstances would be considered
4 a major or a minor amendment?

5 A. Yes. And that is described in Chapter 7.

6 Q. And do you know what the parameters are of
7 that, generally, off the top of my head?

8 A. Yes. Generally there's -- it does state -- one
9 instance is if it is a major change in the method of
10 mining, as Mr. Mooney said earlier, if they happen to do
11 some auger mining, go underground, that would require
12 public notice. If they made a major shift in their pit
13 progressions -- let's say one instance they want to go
14 north, and they say they're going to go north all the way
15 to the end of their permit boundary affected area, but
16 then they decide to go in multiple sequences east and
17 west -- that would be another time that they would be
18 required. If they're going to move closer to an
19 individual house, get there faster in the time frame,
20 that would be another instance. So there are instances
21 that we would acknowledge that would make those happen.

22 Q. And another issue that's been raised today is
23 the depth that they're going to mine. If they were to go
24 considerably deeper than 25 feet, or whatever the limit
25 is that we've been talking about, again, would that

0121

1 require them to amend their permit?

2 A. Yes. That would require them -- if we noticed
3 that on an inspection or it came on a complaint, et
4 cetera, and we noticed that documented, yes, they would
5 have to have their permit revision applied through us and
6 then approved through the Land Quality Division.

7 Q. So they can't just mine down to 35 feet
8 without -- without being in violation of their permit?

9 A. Yes.

10 Q. Now, would you explain, for the benefit of
11 everybody here, your relationship with other departments
12 of the State and what would -- how the Land Quality
13 Division would handle a situation in the event that, for
14 instance, Croell Redi-Mix would be operating a crusher
15 without an air quality permit, and if that came to your
16 attention, what would you do?

17 A. In fact, we have had those complaints come to
18 our division. That is common. And we then forward those
19 on to the Air Quality Division. If we notice such
20 instances during yearly inspections, we get with the
21 other divisions, such as Air Quality, notify them, and we
22 let them handle that matter.

23 Q. And it would be the same situation if they had
24 a containment pond that was not permitted by the State
25 Engineer's Office. You would report that to the state

0122

1 engineer?

2 A. Yes. We have done that in the past.

3 Q. And so, then, those specific state agencies or
4 county agencies, or whatever it may be requiring various
5 levels of permitting, would retain that jurisdiction to
6 handle those issues on their own?

7 A. Yes.

8 Q. And is it possible if this -- if Croell
9 Redi-Mix was operating without an air quality permit,
10 would Air Quality be able to tell them to cease
11 operations until they got a permit from Air Quality?

12 A. I believe that is one of their options, yes.

13 Q. But the Land Quality Division, your division,
14 wouldn't come in and issue an NOV and try to shut them
15 down for something that really falls under the
16 jurisdiction of Air Quality?

17 A. No. Not in my ten years of experience, I have
18 not noticed that.

19 Q. And just as a last area that I want to -- would
20 like you to address, that's regarding site visits. How
21 often have you been out to that site in the last year?

22 A. I have been out there twice.

23 Q. Been out there twice? And when you've been out
24 there, have you been aware of what they have in their
25 permit application? Have you tried to compare what

0123

1 you've seen to the application, or have you been out
2 there for other reasons?

3 A. The inspections I've performed were for the
4 current limited mine operation. So since the permit is
5 not -- has been not issued, no, we did not investigate
6 according to the permit that is on file right now. It
7 was to make sure they were within the boundaries of their
8 ten-acre exemption.

9 Q. And do you have any firsthand knowledge
10 regarding this road, whether or not it's completed or
11 not?

12 A. I visited the site last Monday. And to my
13 knowledge, that new road is built and in existence. And
14 I noted that the previous road that had been used has a
15 type of berm, rocks across it, so the access to that road
16 has been denied at this point, as of last Monday.

17 Q. And since -- in your position, you field
18 complaints and what have you regarding all of your
19 permitted sites in this district?

20 A. Yes.

21 Q. And with your experience with the Croell
22 operation, have you heretofore received complaints with
23 regard of Croell Redi-Mix's use of its prior access?

24 A. Yes. I did receive a call back in June 2009
25 from Mrs. Judith Bush's ranch manager. I believe he said
0124

1 his name is Mr. Turbiville.

2 Q. And was that complaint with regard to using
3 that road, or was it like a dust complaint, or what was
4 the nature?

5 A. It was several complaints about dust, safety,
6 traffic, speed limits, trucks using it. And so I
7 discussed what I could with Mr. Turbiville.

8 Q. Did Mr. Turbiville complain that Croell
9 Redi-Mix shouldn't be using the road?

10 A. He asked what his options -- how could they
11 still be using it. I said we do not know that that is
12 officially Mrs. Bush's property. And I suggested that
13 they go check the courthouse for any type of easement,
14 lease agreements that may be available, because I did not
15 know of any at that time.

16 Q. So could that have been the triggering event
17 that led to the comments and the inclusion of the
18 application, the new road that is in existence today?

19 A. Yes.

20 Q. And so prior to that instance, Land Quality
21 Division would have had no knowledge that that was a
22 shared road or that there was an access issue?

23 A. Not to my knowledge.

24 Q. So June of '09 was the first time you knew
25 about that?

0125

1 A. Yeah.

2 Q. I'm going to ask you, is there anything I'm
3 missing?

4 A. Not that I know of.

5 MR. BURBRIDGE: That's all I have.

6 CHAIRMAN SEARLE: Thank you,

7 Mr. Burbridge.

8 Ms. Bush, do you have any questions?

9 MS. BUSH: Yeah.

10 CROSS-EXAMINATION

11 BY MS. BUSH:

12 Q. I just want to make sure that I understand.

13 You were told by Dewey Turbiville that this was our land.

14 And the implications are that if it was our land and they
15 didn't have consent from us to be on it, that the
16 operation should not be operating. Now, is it our -- is
17 it your responsibility at that point to double-check the
18 legal description and to see whether they're crossing our
19 land?

20 A. To my knowledge, I asked Mr. Turbiville to
21 check on the land ownership. And until your letter came
22 approximately one and a half weeks ago that it actually
23 stated you had been in negotiations with Mr. Croell, I
24 had no official notice in our office that I know of that
25 it was actually your property. And that came about two
0126

1 and a half weeks ago.

2 Q. What is official notice, as opposed to someone
3 telling you? I'm confused.

4 A. Well, what I understood Mr. Turbiville's
5 complaint back in June was he believed it was your
6 property. I don't have -- I do not have those records.
7 And I said you needed to go check in the courthouse and
8 prove that that was actually his -- your property. We do
9 not do those types of searches.

10 Q. Would you have -- but you did know what
11 Mr. Croell's property was, according to the application.
12 Yes?

13 A. Yes. And I believe at that time we asked him
14 if it was -- he was supposed to prove to us that that was
15 his property. And if not, as Mr. Mooney said, he had to
16 take care of it, which then he stated as of August, when
17 he revised his mine plan, he was going to be building a
18 new road, which now I understand, as I witnessed, he's
19 building.

20 Q. And so you asked Mr. Croell directly in June of
21 '09 if he owned the land to the road?

22 A. No. I asked Mr. Turbiville to prove it to us
23 that he did and then to discuss it with you. And if it
24 was, there's -- we do not have the legal advice -- I
25 cannot give you legal advice that it is yours. I don't
0127

1 go do those types of surveys. I do not GPS.

2 Q. No. I understand that. But if someone tells
3 you that -- you're saying that Dewey Turbiville told you
4 that he thought it was his land or that it was our land?

5 A. My notes state that he believed it was your
6 land. And I said --

7 COMMISSIONER FLITNER: Excuse me. This is
8 Tim Flitner. I think I'm getting confused here on the
9 phone. Which road are we talking about, the new one or
10 the old one?

11 MS. BUSH: The old one.

12 COMMISSIONER FLITNER: Pardon me?

13 MS. BUSH: The old one.

14 COMMISSIONER FLITNER: Which is no longer
15 in use. Is that correct?

16 MS. BUSH: Yes. But we've had testimony
17 on this, and I think it's worth following up.

18 COMMISSIONER FLITNER: To me, it isn't.
19 It's a moot point. That road is closed. It won't be
20 used again, no matter what. Is that right?

21 MS. BUSH: Hopefully.

22 COMMISSIONER FLITNER: So let's move on.
23 It's getting late in the day. We're supposed to be
24 closing down on operations here. We need to be at a
25 point with enough information to make a decision. And I
0128

1 don't want to spend any more time on stuff that's not
2 going to change this decision one way or the other.
3 Unless somebody tells me something different, I'm
4 assuming that that road will not be reopened, that it is
5 not part of this permit, and the permit is what we're
6 talking about today. Can anybody clear that up or make
7 that any different?

8 MS. BUSH: I'm sorry. Who am I talking
9 to?

10 COMMISSIONER FLITNER: Tim Flitner.

11 CHAIRMAN SEARLE: Tim, let me just -- I
12 understand -- Tim is a member of the Council. I
13 understand your frustration. Do you have much more on
14 this issue? Mr. Flitner does bring up a good point. I
15 mean, this road is clearly not part of this permit we're
16 reviewing.

17 MS. BUSH: This did come up in testimony,
18 and it made me wonder.

19 CHAIRMAN SEARLE: Do you have more to ask
20 on this particular issue?

21 Q. (BY MS. BUSH) What would have happened had you
22 known at that time?

23 A. If Mr. Turbiville had come to us with a survey
24 that had showed that that road had gone across your
25 property, it is my understanding that we would have had
0129

1 to have had Mr. Croell get some type of access agreement
2 with you through the LMO process. And I did not receive
3 that -- however, I did not receive that notification
4 until two weeks ago.

5 Q. And you didn't raise the question with
6 Mr. Croell at the time?

7 A. Not that I remember.

8 Q. I don't know how much -- we're in the process
9 of having -- we're supposed to be able to have that road
10 reclaimed.

11 CHAIRMAN SEARLE: I think we're -- I think
12 this issue is outside of the context of --

13 MS. BUSH: Okay.

14 CHAIRMAN SEARLE: I think we -- I allowed
15 you the extra questions for clarification.

16 MS. BUSH: Okay. Gotcha. Okay. Hold on
17 a minute.

18 Q. (BY MS. BUSH) So what you said that we didn't
19 know before is that you do -- if you notice -- if you
20 notice that something isn't quite according to rules and
21 regulations with another department of Environmental
22 Quality, you notify them? You do work back and forth
23 that way?

24 A. Yes. We have in the past, and we will continue
25 to do so.

0130

1 Q. And that's normal procedure?

2 A. Normal procedure.

3 Q. Yes?

4 MS. BUSH: Okay. That's it. Thank you.

5 CHAIRMAN SEARLE: Thank you.

6 Mr. Turgeon?

7 MR. TURGEON: Just a couple simple
8 questions.

9 CROSS-EXAMINATION

10 BY MR. TURGEON:

11 Q. The drainage in that area, is that in your
12 category, water drainage?

13 A. When it happens? They do have to describe that
14 in the permit. And it is, yes.

15 Q. And what control is involved in making sure
16 that that contamination does not affect other people's
17 land or the creeks and what have you?

18 A. Could you please, when you say "contamination,"
19 what are you --

20 Q. Well, any settlement, or now we're talking a
21 hot mix plant and a cement plant, which creates other
22 chemicals and cement itself that could possibly affect
23 people's land, because it's right on the border, and that
24 creek -- all that drainage goes into Sundance Creek,
25 which is where I'm concerned that all this drainage is.

0131

1 I do know, and part of the statement I get, is all the
2 drainage on the road.

3 MR. BURBRIDGE: I'm going to object. This
4 is testimony and not questioning.

5 Q. (BY MR. TURGEON) But what effect do you have
6 with that?

7 A. We do not have sediment control required by
8 Land Quality rules and regulations. That would be
9 underneath the storm water pollution and prevention plan
10 that's underneath Water Quality.

11 Q. And is there anything in the regulations or in
12 his control, or any permit, about how close to a fence
13 line you can mine? Mine right up to the property line?

14 A. If it is approved in his mine plan with a
15 disturbance boundary, yes, he can -- and those
16 progressions are in the mine plan.

17 MR. TURGEON: I guess that's all I need
18 from you.

19 CHAIRMAN SEARLE: Thank you.

20 Mr. Tomer, do you have any questions?
21 MR. TOMER: No.
22 CHAIRMAN SEARLE: Ms. Hamm, do you have
23 any questions? Ms. Hamm, do you have any questions? Do
24 we have anybody on the phone?
25 MS. HAMM: I'm on the phone, but I'm
0132
1 not -- I'm hearing just a siren for some reason.
2 CHAIRMAN SEARLE: We are, also. Do you
3 have any questions, Ms. Hamm?
4 MS. HAMM: Yes. No. No, I don't, not
5 related to this permit.
6 CHAIRMAN SEARLE: Thank you.
7 Mr. Croell, do you have any questions?
8 MR. CROELL: No questions.
9 CHAIRMAN SEARLE: Thank you.
10 Councilmembers? Mr. Flitner, any questions?
11 COMMISSIONER FLITNER: No. I'm fine.
12 CHAIRMAN SEARLE: Mr. Coverdale?
13 COMMISSIONER COVERDALE: No. I'm fine.
14 CHAIRMAN SEARLE: Ms. Guschewsky?
15 COMMISSIONER GUSCHEWSKY: I have just one.

16 EXAMINATION

17 BY COMMISSIONER GUSCHEWSKY:

18 Q. Mr. -- I can't pronounce your name.

19 A. Well, then, I refuse to answer the question.

20 Q. Rogaczewski? Anyway, I don't think I did very
21 well.

22 If I understand correctly, the Croell mine has
23 had three NOV's in the past. Because they didn't rectify
24 it, is this a concern to you?

25 A. When you say three NOV's, at this site?

0133

1 Q. Yes. I believe it was. They've had some with
2 their LMO at the site.

3 A. I know of one notice of violation at this
4 specific site. I do not know of any others.

5 Q. Okay. I don't think I have -- I don't know
6 from my notes, and it really doesn't matter. Is that a
7 concern to you?

8 A. At this time Mr. Croell is in compliance, and
9 he has paid his fine that he was issued. And he has
10 brought himself into compliance with the issues that were
11 brought up at that time.

12 Q. I'm trying to find my notes, because I believe
13 he was supposed to be operating on 10 acres, and he was
14 operating on 20. And then there was another NOV where
15 the topsoil was disturbed or it was inadequate. With
16 small LMOs, how often do the LMOs receive notice of
17 violation?

18 A. That depends on the operator, ma'am. We have
19 some companies that have -- or ranchers that have LMOs
20 that have never received a violation, and others -- other
21 companies have received some every other year or

22 something. It could be -- it depends upon the operator,
23 ma'am.
24 Q. So this shouldn't be a concern to the Council
25 in making their decision. Is that what you would advise?
0134

1 A. At this time he is in compliance and has been
2 for the past year and has -- when there have been, I
3 would say minor issues, such as reerect a topsoil sign,
4 Mr. Croell has done that, such as cattle can knock them
5 down, et cetera, by scratching on them. And he has
6 complied with those requests from the Land Quality
7 Division.

8 COMMISSIONER GUSCHEWSKY: Thank you.

9 CHAIRMAN SEARLE: Thank you, Cathy.

10 I don't have any questions, either. So,
11 Mr. Burbridge, do you have any in redirect?

12 MR. BURBRIDGE: No. State would rest.

13 CHAIRMAN SEARLE: Okay. Thank you.

14 MS. BUSH: Excuse me. May I say one
15 thing? I misunderstood procedure to some extent. And I
16 thought that I could not ask Mr. Rogaczewski anything
17 except what he has specifically testified about. But I
18 notice that other people have been able to ask him
19 questions that were not a part of his original testimony.
20 And I would like to do so.

21 CHAIRMAN SEARLE: I think we -- I think
22 your chance has come and gone, I'm afraid.

23 MS. BUSH: You understand what I'm saying?
24 This was a procedural misunderstanding.

25 CHAIRMAN SEARLE: Right. I understand.
0135

1 MS. BUSH: And you're telling me tough
2 luck?

3 CHAIRMAN SEARLE: Well, you've had your
4 chance, I'm afraid.

5 MS. BUSH: But this procedure was -- I
6 have questions that are quite relevant to him that I
7 thought I did not have the right to ask him, so I didn't.

8 CHAIRMAN SEARLE: Well, you should have
9 asked when you had the chance.

10 MR. BURBRIDGE: If it would assist the
11 Council, I -- she's right. You aren't supposed to ask
12 questions that go beyond direct examination. And I was
13 about to make that objection. But I was curious to see
14 how far away we were going to get and how far it was
15 going to go. And so had it gone any further, it would
16 have drawn my objection. And the State's rested its
17 case, and the time for cross-examination has past.

18 CHAIRMAN SEARLE: Thank you,
19 Mr. Burbridge.

20 So you actually did the right thing by staying
21 within the bounds of his testimony. Thank you.

22 Ms. Bush, we're going to go ahead and start
23 on -- you're done. Thank you.

24 MS. BUSH: On me? Okay. So someone's
25 going to be asking me questions first?

0136

1 CHAIRMAN SEARLE: Well, you get to call
2 your first witness. If you're the first witness, we'll
3 ask you questions.

4 MS. BUSH: Okay. I'll call Dewey
5 Turbiville. Should I come up?

6 CHAIRMAN SEARLE: Yes, please.

7 (Discussion off the record.)

8 (Witness sworn.)

9 DEWEY TURBIVILLE,
10 called as a witness by the Objector Bush, being first
11 duly sworn, on his oath testified as follows:

12 DIRECT EXAMINATION

13 BY MS. BUSH:

14 Q. I think a really good place to start is with
15 the impact that this has had on the ranching operation to
16 date.

17 CHAIRMAN SEARLE: Ms. Bush, why don't you
18 have your witness introduce himself --

19 Q. (BY MS. BUSH) Yes, please.

20 CHAIRMAN SEARLE: -- and spell his name
21 for the record, please.

22 MS. BUSH: Yes.

23 A. Dewey Turbiville. I'm Bush Ranch's manager.

24 T-U-R-B-I-V-I-L-L-E.

25 The dust is terrible at times. It blows over

0137

1 all parts of the ranch that's connected to the pit. The
2 wind changes from day to day, so it don't blow the same
3 direction all the time, but it blows. We got fields and
4 hay corrals within a half mile of the pit. The dust is
5 terrible up there at times. We winter cows in a pasture
6 adjoining the pit. We also run cows up there in the
7 spring and summertime.

8 Q. How do you think that might curtail operation
9 in the future when this pit is larger?

10 A. Well, I'm afraid that the cows could get dust
11 pneumonia up there eating the grass that the dust settles
12 on. I've talked to people about it. They assured me it
13 could happen. It could be a problem.

14 Q. Now, I noticed, according to Chapter 2, Section
15 2 of the water rights, land quality noncoal rules and
16 regulations, it said the operator shall submit a list by
17 name and owner of existing wells on the proposed permit
18 area and adjacent lands, including all wells filed with
19 the State Engineer's Office three miles or less from the
20 proposed permit area.

21 Do we have any such wells on our ranch?

22 A. Yes, we do.

23 Q. Has anyone approached you?

24 A. No, they haven't.

25 Q. To your knowledge, that hasn't been done?

0138

1 A. No, it hasn't.

2 Q. Now, we have one well that's particularly close
3 to the mine site.

4 A. Yes, within a half mile.

5 Q. Can you describe the situation of wildlife on
6 our ranch before and after the mining operation started
7 in the general area of where the mine is?

8 A. Well, used to be nothing to see two or three
9 hundred head of elk up there in the fall and, geez, I
10 don't know how many antelope and deer. And the last
11 couple years, it's just been -- the numbers have been
12 getting smaller all the time.

13 Q. Now, do some of those animals actually winter
14 there?

15 A. Yes. A lot of the deer does and the elk. They
16 actually -- they're there from the first of September to
17 middle of May.

18 Q. And they bear their young there, some of them,
19 I take it?

20 A. The deer and antelope does, yes.

21 Q. Can you let people know how long -- when Croell
22 Redi-Mix stopped using our road, the old one?

23 A. Roughly, two weeks ago.

24 Q. And before that time, it was being used full
25 time?

0139

1 A. Yes, it was.

2 Q. Thank you.

3 COMMISSIONER FLITNER: I missed that. How
4 many weeks ago?

5 THE WITNESS: Roughly, two weeks ago.

6 COMMISSIONER FLITNER: I missed it again.
7 It's not coming in.

8 THE WITNESS: Roughly, two weeks.

9 COMMISSIONER FLITNER: Okay. Thank you.

10 Q. (BY MS. BUSH) Can you think of anything else
11 you'd like to tell us?

12 A. Well, the noise is fairly bad at our house a
13 lot of times. We can hear them dumping rocks and gravel
14 into the pits most all day long. And we hear the
15 blasting and stuff, too.

16 Q. And this mine is now pretty well as far away
17 from you as it's going to ever be. It's going to get
18 closer now?

19 A. Yes. There's a neck there of Croell's pasture
20 it goes up into. It's going to get a little closer, yes.

21 Q. And reclamation on the old road is going on
22 now. Is it going on -- were you consulted beforehand?
23 Did they ask you what you wanted done?

24 A. Sort of. They were up there grading the road
25 up one day. And I stopped and talked to them or was

0140

1 watching them. They came and talked to me. They were

2 going to grade the road up, they said back the way it
3 was. Well, actually, it was just a two-track. And they
4 started hauling over it. And they asked me what I wanted
5 done with it. And I said it should be reclaimed the way
6 it was before. And they told me they couldn't do it now
7 because it's wintertime. They'd have to wait until
8 spring to reclaim it.

9 Q. And did you tell them that they were
10 trespassing and to stop doing what they were doing?

11 A. Well, I didn't --

12 COMMISSIONER FLITNER: Again, excuse me.
13 And, Dave, correct me if I'm wrong. But with all due
14 respect, in the issuance of time, are we still within the
15 parameters of the permit at stake today?

16 CHAIRMAN SEARLE: Tim, I believe you're
17 correct.

18 We've gone a little too far, Ms. Bush, on the
19 road. This road is not part of the current permit.
20 We've given you a little bit of latitude to bring out
21 some facts, but I think we need to move off of this.

22 MS. BUSH: All right. I won't go any more
23 into it, but again, I'm pointing out that they're not --
24 they're not dealing with us the way they should deal with
25 us.

0141

1 CHAIRMAN SEARLE: You're testifying to me
2 now. I need you to deal with --

3 MS. BUSH: All right. Fine distinction.
4 I'll try to remember.

5 CHAIRMAN SEARLE: Thank you.

6 Q. (BY MS. BUSH) Can you think of anything else?

7 A. Right offhand, no, I can't.

8 MS. BUSH: Thank you very much.

9 CHAIRMAN SEARLE: Mr. Turgeon, do you have
10 any questions for Mr. Turbiville?

11 MR. TURGEON: I'd just ask him a couple
12 things.

13 CROSS-EXAMINATION

14 BY MR. TURGEON:

15 Q. Am I correct, Dewey, to say that you said that
16 the dust was quite bad in that area of time?

17 A. Yes.

18 Q. And do you have a well in the Sundance Creek
19 area?

20 A. Yes, we do.

21 Q. And do you notice any effect of this sand and
22 stuff in that area?

23 A. Yes. The snow down in there in the wintertime
24 is brown from dust. Ice on the water tank is brown from
25 the dust set on there.

0142

1 Q. And have you ever -- have you ever noticed, was
2 the snow on the ground the color of the snow in that
3 area?

4 A. Oh, definitely. At times it's brown. Well, if
5 we get fresh snow, that day, within -- if the wind's
6 blowing right, within a couple hours, if they're mining
7 up there, it is brown.

8 Q. After living there that long, I believe you
9 mentioned, is there any particular direction that wind
10 can blow, or can it blow in all directions?

11 A. It can blow in all directions.

12 Q. Another thing that you'd mentioned is about the
13 elk in there. Has there been any decline in the number
14 in the past three years?

15 A. I feel there has been quite a decline there,
16 yes.

17 MR. TURGEON: Thank you.

18 CHAIRMAN SEARLE: Thank you.

19 Mr. Tomer, do you have any questions?

20 MR. TOMER: No questions.

21 CHAIRMAN SEARLE: Thank you.

22 Ms. Hamm, do you have any questions?

23 MS. HAMM: No questions.

24 CHAIRMAN SEARLE: Okay. Thank you.

25 Mr. Burbridge?

0143

1 MR. BURBRIDGE: No questions.

2 CHAIRMAN SEARLE: Thank you.

3 Ms. Guschewsky, any questions?

4 COMMISSIONER GUSCHEWSKY: No questions.

5 CHAIRMAN SEARLE: Oops, I went by

6 Mr. Croell.

7 MR. CROELL: I have a couple. I have a
8 couple.

9 CROSS-EXAMINATION

10 BY MR. CROELL:

11 Q. How close is your ranch site to another pit in
12 the area that is operating on a full-time basis, and how
13 close to your ranch site is it?

14 A. I haven't measured it. Probably -- the home
15 ranch site, probably two miles away.

16 Q. And how far would you say your ranch site is
17 from this pit?

18 A. Roughly, around a mile as the crow flies.

19 Q. Is there a road going through your pasture that
20 you're claiming is very dusty?

21 A. Yes. The Rifle Pit Road goes through it.

22 Q. Did you ever contact me about the dust on the
23 pit, and did I come out to check or talk to you about it?

24 A. Yes, I did, and yes, you did.

25 Q. And what did I tell you when I got there?

0144

1 A. You told me that you would go back and talk to
2 them at the pit and have them come up and water it.

3 Q. And did I mention anything about how dusty the
4 road was, too?

5 A. Yes.

6 Q. Was the road dusty?
7 A. The part of the road that we were sitting on,
8 yes, it was dusty. But it wasn't near as dusty as what
9 the road was that I was complaining about.
10 MR. CROELL: That's all. That's all I
11 have.
12 CHAIRMAN SEARLE: Thank you.
13 Mr. Flitner?
14 EXAMINATION
15 BY COMMISSIONER FLITNER:
16 Q. Yeah. The testimony we heard earlier about all
17 the dust and the dust pneumonia and all this, that was
18 all based on the old road. Is that correct?
19 A. No.
20 Q. During the two weeks that it's been -- the new
21 road's been operational?
22 A. The dust is from the gravel pit, and you have
23 the new road, plus the county road that they haul over.
24 COMMISSIONER FLITNER: Okay. That's all I
25 had. Thanks.
0145
1 CHAIRMAN SEARLE: Mr. Coverdale?
2 COMMISSIONER COVERDALE: No questions.
3 CHAIRMAN SEARLE: I don't believe I have
4 any questions, either.
5 Ms. Bush, do you have anything to -- oh,
6 Ms. Hamm. No. I asked Ms. Hamm.
7 Ms. Bush, do you have any further follow-up
8 questions?
9 MS. BUSH: Yeah, I think.
10 REDIRECT EXAMINATION
11 BY MS. BUSH:
12 Q. Could you describe where the dust is coming
13 from on the roads to make that more clear?
14 A. The main dust is coming from Highway 14 under
15 the underpass. At the time it was when they was using
16 the old road, because they -- they haven't hauled much
17 over the new road yet. But it's from the road coming
18 from Highway 14 into their pit.
19 Q. Can you let us know what --
20 CHAIRMAN SEARLE: Ms. Bush, you're going
21 to have to move up here if you're going to ask questions.
22 MS. BUSH: Okay.
23 Q. (BY MS. BUSH) Could you describe safety issues
24 on the Rifle Pit Road relating to the old road and the
25 new road as you would anticipate?
0146
1 MR. BURBRIDGE: I'm going to object to
2 questioning -- any questioning regarding county or state
3 roads, as those issues are outside the jurisdiction of
4 this Council.
5 CHAIRMAN SEARLE: Are your questions
6 related to those particular roads, county and state
7 roads?

8 MS. BUSH: Safety related to traffic from
9 the pit. I don't think that's too far removed from
10 something that is important for the application.
11 CHAIRMAN SEARLE: You know, I am -- I'm
12 going to overrule that, Mr. Burbridge, but --

13 MS. BUSH: Short.

14 CHAIRMAN SEARLE: No, not short. Bear in
15 mind, these are going to probably have nothing to do with
16 our decision, because we do not regulate county and state
17 roads.

18 Q. (BY MS. BUSH) Give them the short, sweet
19 story.

20 A. I personally have been hit three or four times
21 by vehicles coming out of the mine pit itself. That was
22 on the old road. My wife about got ran over by a gravel
23 truck once. And on the new road coming out of there,
24 there's a hill that blocks the sight of view from
25 truckers to the road when they come out on the road. And
0147

1 the road -- the new road is steeper than what a gravel
2 truck can stop on even when it's dry, let alone when it's
3 icy on it.

4 Q. And that's on the site, yes. That's coming
5 down the road on the site. Right?

6 A. Yes, coming out of the site.

7 MS. BUSH: Okay. Thank you.

8 CHAIRMAN SEARLE: Thank you,
9 Mr. Turbiville.

10 Ms. Bush, do you have another witness?

11 MS. TURBIVILLE: If you won't let me about
12 safety, I can't.

13 MR. RUBY: Could we take -- before she
14 calls another one, could I take the --

15 CHAIRMAN SEARLE: We're going to take a
16 few-minute time out.

17 MR. RUBY: Mr. --

18 CHAIRMAN SEARLE: Could you swear --

19 MR. RUBY: I'll start with him.

20 MR. ROGACZEWSKI: Rogaczewski.

21 MR. RUBY: Rogaczewski. Mr. Rogaczewski,
22 will you raise your right hand? Do you solemnly swear or
23 affirm that the testimony you have given before this
24 Council was the truth, the whole truth and nothing but
25 the truth?
0148

1 MR. ROGACZEWSKI: I do.

2 MR. RUBY: Thank you.

3 Tell me your name.

4 MR. EMME: Doug Emme.

5 MR. RUBY: Mr. Emme, would you raise your
6 right hand? Do you solemnly swear or affirm that the
7 testimony you have given to this Council has been the
8 truth, the whole truth and nothing but the truth?

9 MR. EMME: Yes, I do.

10 MR. RUBY: Thank you.
11 CHAIRMAN SEARLE: Thank you.
12 (Doug Emme and Mark Rogaczewski sworn
13 at this time on their previous
14 testimony.)

15 CHAIRMAN SEARLE: Okay. Ms. Bush.

16 MS. BUSH: As far as Margaret Turbiville,
17 I think I have to leave it up to you whether you think
18 that this is nuisance, health and safety that we're
19 talking about when we talk about the road, including
20 trucks coming down the road, conditions created going
21 down that cause safety on the Rifle Pit Road. If it's
22 irrelevant, then there's no point in us bringing it up.
23 From my point of view, it looks relevant.

24 CHAIRMAN SEARLE: If the safety -- if the
25 safety at issue is regarding this permit, on the site

0149

1 that they have permitted, we'd like to hear that
2 testimony. As I say, just bear in mind, we try to be a
3 little bit lenient on this stuff --

4 MS. BUSH: I understand.

5 CHAIRMAN SEARLE: -- but we don't regulate
6 county roads, nor do we regulate state roads.

7 MS. BUSH: No.

8 (Witness sworn.)

9 MARGARET TURBIVILLE,
10 called as a witness by the Objector Bush, being first
11 duly sworn, on her oath testified as follows:

12 THE WITNESS: Margaret L. Turbiville,
13 M-A-R-G-A-R-E-T T-U-R-B-I-V-I-L-L-E.

14 DIRECT EXAMINATION

15 BY MS. BUSH:

16 Q. Do you think that problems that you have
17 personally experienced on the Rifle Pit Road are caused
18 by -- to any extent by the road conditions of the road
19 coming off of the permit area or the access road to the
20 Rifle Pit Road, or is it entirely a problem of the Rifle
21 Pit Road?

22 A. It's related to that road, yes. And this
23 probably goes beyond testimony. I was within 50 yards of
24 that road, and a gravel truck pulled out in front of me.
25 I did everything I could to stop. I got to the end of

0150

1 the road and called the sheriff's office. They met the
2 man at the port of entry, pulled him over and asked him
3 if he realized that he had to yield because that is a
4 county road. And the man's comment was, I didn't even
5 look, because nobody -- that road isn't that busy.

6 And I'd like the record to show there are 39
7 residents that live on that road in fourteen different
8 residences, and there are six of us that that is our
9 access road.

10 Q. Can you think of anything else that is relevant
11 under the terms that they've described just now?

12 A. I think -- we did take a picture of the new
13 access road. There is a terrible blind spot. It comes
14 out onto the corner. And I also think they need to know
15 that we have teenage drivers on our road that, I can
16 drive through those gravel trucks, but those teenage
17 drivers, probably we're going to pick somebody up in a
18 body bag.

19 Q. We have a picture here. Are there any pictures
20 in there that are relevant to that?

21 A. This is a picture taken from my Blazer. The
22 new access road comes from down behind this hill.

23 CHAIRMAN SEARLE: We'll have to work with
24 Mr. Ruby to get these entered as exhibits.

25 A. And, also, one thing I would like to address --

0151

1 CHAIRMAN SEARLE: Let us take care of this
2 matter first.

3 MR. RUBY: Is it 25?

4 COMMISSIONER FLITNER: Dave?

5 CHAIRMAN SEARLE: Yes, Tim?

6 COMMISSIONER FLITNER: Just a quick
7 question while they're doing that to make sure I have
8 this right. Rifle Pit Road is a county road. Is that
9 correct?

10 MR. RUBY: Yes.

11 THE WITNESS: No. The first half mile of
12 the Rifle Pit Road is a state road. After it passes the
13 car gate going into Bush ranch property, it is county
14 road.

15 COMMISSIONER FLITNER: Okay. And, Dave,
16 does the DEQ regulate state roads or not?

17 CHAIRMAN SEARLE: My understanding is,
18 Tim, they do not.

19 COMMISSIONER FLITNER: So what we're
20 talking about is just the access point?

21 CHAIRMAN SEARLE: What we can deal with --
22 my understanding is the access road is part of the mine.
23 That is part of the permit. That's what we can do. Once
24 he gets to the Rifle Creek Road, once he gets to the
25 state road, then it's out of our jurisdiction.

0152

1 COMMISSIONER FLITNER: Say that again.

2 CHAIRMAN SEARLE: The access road itself
3 that goes off of Rifle Creek Road that goes actually to
4 where they're actively mining is considered part of this
5 application, part of the mine plan. We do have the
6 ability -- Land Quality has the ability to regulate that
7 as specified. Once it gets to Rifle Creek Road --

8 COMMISSIONER FLITNER: No part of Rifle
9 Pit Road is under DEQ under this permit?

10 CHAIRMAN SEARLE: No part of it is. Is
11 that what you said?

12 COMMISSIONER FLITNER: Yeah. That's all
13 I'm saying.

14 CHAIRMAN SEARLE: That's correct. Have we
15 just entered into --

16 MS. BUSH: I think, really --

17 CHAIRMAN SEARLE: Hold it. Let me just --
18 Jim, has everybody seen this?

19 MR. RUBY: Yeah. You still want to ask
20 them if there's any objections.

21 CHAIRMAN SEARLE: Is there any objections
22 to the exhibit? This is a picture photograph.

23 MR. BURBRIDGE: There's going to have to
24 be some description. I'm going to object to it because
25 there's no foundation for it. I don't know -- I've seen

0153

1 the picture. I can't tell what -- I mean, I see it's a
2 road. I don't know what road. You know, there's going
3 to be have to be some description here. So I'm objecting
4 to --

5 CHAIRMAN SEARLE: More than what she's
6 given already?

7 MR. BURBRIDGE: Yes. I'd like to know
8 what direction that's looking, where --

9 Q. (BY MS. BUSH) Okay. It's in the legal
10 description.

11 A. We are going west on the Rifle Pit Road. The
12 old access road was right here. And this is going into
13 the corner. Croell's new road comes down this road and
14 goes directly to this corner.

15 MS. BUSH: And Mr. Croell just agreed.
16 Yes?

17 MR. CROELL: I think you're right, but I'm
18 not sure. You can't even see the new road.

19 THE WITNESS: That's right. You cannot
20 see the new road.

21 MR. BURBRIDGE: Can I voir dire the
22 witness real quickly on this picture?

23 CHAIRMAN SEARLE: If that would help.

24

25

0154

1 VOIR DIRE EXAMINATION

2 BY MR. BURBRIDGE:

3 Q. Ma'am, did you take this picture?

4 A. Yes, I did.

5 Q. When did you take this picture?

6 A. Last week.

7 Q. And does it accurately reflect what you're able
8 to see on that thing?

9 A. Yes, it is.

10 Q. And does this picture show the new road?

11 A. Because the road is behind the hill.

12 Q. So your answer is this picture does not show
13 the new road?

14 A. Right. I do have it on my camera, though, the
15 new road.

16 Q. But you don't have a picture of the new road?
17 A. I don't have one.
18 Q. And is it your intent to offer this picture to
19 show where this new road is coming into Rifle Pit Road?
20 A. I didn't have time to do it.
21 MS. BUSH: I think the point is that you
22 cannot see the road. That is exactly the point.
23 MR. BURBRIDGE: I think the point of my
24 questioning is you cannot see the road in that picture.
25 MS. BUSH: Okay. And that's the point.

0155

1 MR. BURBRIDGE: I'm going to -- I'm going
2 to object to the introduction of this picture because I'm
3 not sure that offers any meaningful relevance, because it
4 doesn't show what we're discussing here. I mean, it's
5 not a picture of the road. It's shows a picture of Rifle
6 Pit Road and the hill. But I object to the relevance of
7 this picture.

8 THE WITNESS: The road is down in
9 between --

10 CHAIRMAN SEARLE: Mr. Croell, any
11 objections to this?

12 MR. CROELL: I object to it, too, because
13 I can't -- she could have taken a lot better picture if
14 she'd have got out in the middle of Rifle Pit Road and
15 looked down the road. There is a small, small embankment
16 there, but it's on their -- it's on the Bush property. A
17 small amount of it is.

18 CHAIRMAN SEARLE: Let me ask you a
19 question. Basically, looking at the picture, do you
20 recognize the area?

21 MR. CROELL: I recognize the area, but I
22 can't see the road.

23 CHAIRMAN SEARLE: I see. I'm going to
24 overrule on the objection. We will accept it, with the
25 realization that there are some concerns with the

0156

1 picture.

2 DIRECT EXAMINATION RESUMED

3 BY MS. BUSH:

4 Q. Can you think of anything else that might be
5 relevant from the standpoint of health, safety?

6 A. No, nothing, probably. Because my other
7 objection is the amount of gravel trucks that would be
8 traveling down Rifle Pit Road and the hazards to the
9 people that are living there.

10 CHAIRMAN SEARLE: Let's go ahead and --
11 thank you.

12 Mr. Turgeon, do you have any questions?

13 MR. TURGEON: I don't have any questions.

14 CHAIRMAN SEARLE: Mr. Tomer?

15 MR. TOMER: No questions.

16 CHAIRMAN SEARLE: Ms. Hamm?

17 MS. HAMM: Yes?

18 CHAIRMAN SEARLE: Do you have any
19 questions?
20 MS. HAMM: No, no questions.
21 CHAIRMAN SEARLE: Mr. Burbridge?
22 MR. BURBRIDGE: No questions.
23 CHAIRMAN SEARLE: Thank you.
24 Mr. Croell?
25 MR. CROELL: Yes, I have a question.
0157
1 CROSS-EXAMINATION
2 BY MR. CROELL:
3 Q. What's the speed limit on the road?
4 A. Actually, the Rifle Pit Road, you can drive 65
5 miles an hour. And it's 35 miles an hour when you hit
6 the state road.
7 Q. Have you ever driven 65 mile an hour on that
8 road?
9 A. No, I have not.
10 Q. The time in question when you almost got hit by
11 someone, how fast were you going?
12 A. It was raining that day, and I was probably
13 going 25 miles an hour.
14 Q. Do you think there should be a speed limit in
15 that area?
16 A. I think there should be a speed limit in that
17 area. I think that the truckers should also have to obey
18 the fact that there was a stop -- there was not a stop
19 sign at that time. There is now.
20 Q. Are you aware that Croell Redi-Mix is not
21 responsible for drivers entering onto the roadway if they
22 are not -- if they are not Croell Redi-Mix trucks?
23 A. I do realize that. I also know that I've
24 contacted that company, and the driver in question had to
25 take three days' paid suspension -- unpaid suspension.
0158
1 Second offense, he lost his license and was no longer
2 there. So that's probably worse than --
3 Q. You're aware, then, that Croell Redi-Mix does
4 not control Rifle Pit Road?
5 A. Yes.
6 MR. CROELL: No questions.
7 CHAIRMAN SEARLE: Thank you. Don't leave
8 yet.
9 Ms. Guschewsky, do you have any questions?
10 COMMISSIONER GUSCHEWSKY: No, thank you.
11 CHAIRMAN SEARLE: Mr. Flitner?
12 COMMISSIONER FLITNER: No, thanks.
13 CHAIRMAN SEARLE: Mr. Coverdale? Tom?
14 (No response.)
15 CHAIRMAN SEARLE: I'll take that as a no.
16 Ms. Bush, do you have any follow-up questions?
17 MS. BUSH: (Shakes head.)
18 CHAIRMAN SEARLE: Okay. Thank you. You
19 can step down.

20 Ms. Bush, your next witness?
21 MS. BUSH: That's it.
22 CHAIRMAN SEARLE: Are you going to
23 testify?
24 MS. BUSH: Yes.
25 CHAIRMAN SEARLE: Come on up.
0159
1 MS. BUSH: Sorry. It will just be a few
2 more minutes.
3 CHAIRMAN SEARLE: Why don't we -- since
4 we're going to be a few minutes, why don't we take a
5 five. Before we break, let me tell you we're good until
6 6:00, and then we're going to have to, depending on where
7 we're at -- we may be done. We may not be done. But
8 6:00 is our time limit here. If we're not done, then we
9 will have to -- whatever the correct term is -- continue
10 this into January.
11 MR. RUBY: Before you totally recess, I
12 have before me Exhibits 1 through 24, excluding Exhibit
13 Number 11. Are there any objections to 1 through 24
14 being introduced into the record?
15 MS. BUSH: Have we seen them?
16 MR. RUBY: You offered 12 through 24.
17 MS. BUSH: All right. There's one
18 missing.
19 MR. BURBRIDGE: I need to take a closer
20 look at 12 through 24. And I do object to whatever that
21 number --
22 MR. RUBY: Exhibit 1?
23 MR. BURBRIDGE: Yeah.
24 MR. RUBY: The provisional assessment of
25 recent studies?
0160
1 MR. BURBRIDGE: Yeah.
2 CHAIRMAN SEARLE: Why don't we use the
3 break for people to do that. Take a look at them, and
4 we'll take that up afterwards.
5 (Hearing proceedings recessed
6 4:41 p.m. to 4:49 p.m.)
7 CHAIRMAN SEARLE: I'm going to call us
8 back to order.
9 MR. RUBY: Cathy, are you there?
10 COMMISSIONER GUSCHEWSKY: I'm here, Jim.
11 MR. RUBY: Tim, are you there?
12 COMMISSIONER FLITNER: Yeah.
13 MR. RUBY: Ms. Hamm, are you there?
14 MS. HAMM: Yes.
15 MR. RUBY: Mr. Presiding Officer, at this
16 time --
17 COMMISSIONER COVERDALE: I'm here, too.
18 MR. RUBY: Oh, Mr. Coverdale, you're back.
19 At this time, Mr. Presiding Officer, I would,
20 for the record, ask if there are any objections to
21 Exhibits 1 through 24, excluding Exhibit 11, which

22 already has been received, to their placement in the
23 record.

24 CHAIRMAN SEARLE: Did you say 1 through
25 24?

0161

1 MR. RUBY: 1 through 24. 11 and 25 are
2 already in.

3 CHAIRMAN SEARLE: Are there any objections
4 to that, Mr. Burbridge?

5 MR. BURBRIDGE: I have a question.
6 Ms. Bush gave me a packet that has three Exhibit 1s. I
7 presume, then, after the first two Exhibit 1s is a copy
8 of what you've asked about. I think what you're -- the 1
9 through 24 --

10 MS. BUSH: Oh, yeah. No. That goes
11 there. That doesn't belong anywhere. I tried to make it
12 easier to find stuff any way I could.

13 MR. BURBRIDGE: Can I see what you have?
14 Because I don't think it matches what she's offering.

15 MS. BUSH: They're all the same.

16 MR. RUBY: It won't. She won't -- 1
17 through 24 are the exhibits offered by Ms. Hamm and
18 Ms. Bush.

19 MR. BURBRIDGE: Oh, then there's 12
20 through --

21 MR. RUBY: 1 through 24 include all
22 exhibits that were discussed and provided to the Council
23 by Friday of last week by Ms. Bush and Ms. Hamm.

24 MS. BUSH: So that actually should be the
25 same. That should be the same, just a little
0162

1 different --

2 MR. RUBY: Essentially. I haven't looked
3 at what she's got in there.

4 MS. BUSH: You know what? The only
5 difference is, so it will help you, is I had no way to
6 get you a color map. So I listed a map in there, but I
7 didn't send it because it was impossible. So I brought
8 that today.

9 CHAIRMAN SEARLE: Is this going to cause
10 confusion, having two sets of documents?

11 MS. BUSH: I think you should work from
12 mine right now, because I can refer to it.

13 MR. RUBY: Those are not the ones that
14 were presented to the Council on Friday through your
15 batch numbers.

16 MS. BUSH: They're the same thing. All we
17 have to do is find them.

18 MR. BURBRIDGE: I have no objection to
19 this packet.

20 MS. BUSH: They are the same. They're the
21 same.

22 MR. RUBY: Any objection, Mr. Croell?
23 MR. CROELL: I don't think so.

24 CHAIRMAN SEARLE: Mr. Croell, any
25 objection?
0163

1 MR. BURBRIDGE: That didn't include the
2 big packet, did it?
3 MR. RUBY: I asked about Exhibits 1
4 through 24.
5 MR. BURBRIDGE: Okay.
6 MR. RUBY: Exhibit 1 is the large one.
7 MR. BURBRIDGE: I do object to 1. It's
8 not relevant to land quality proceedings. It's all about
9 air quality. Number two, it's written by somebody,
10 hearsay. We have no opportunity to cross-examine whoever
11 drafted this particular exhibit. And so I am objecting
12 to Exhibit 1. The other separate packet you've got
13 there, I have no objection to.
14 CHAIRMAN SEARLE: Let me take a look at
15 Exhibit 1.
16 MR. BURBRIDGE: I'm sorry -- I'm sorry
17 that I had a certain degree of confusion about that.
18 MR. RUBY: That's all right. It was my
19 fault. It was the one that was approximately --
20 CHAIRMAN SEARLE: Mr. Croell, have you had
21 a chance to look at 1 through 24?
22 MR. CROELL: The part with the air
23 quality, I object to, too.
24 CHAIRMAN SEARLE: Okay.
25 MS. BUSH: What part is that?
0164

1 MR. RUBY: It was offered by the same.
2 MS. BUSH: Okay. Thank you.
3 CHAIRMAN SEARLE: Anybody else had a
4 chance to look at these Exhibits 1 through 24?
5 MR. TURGEON: Just glanced at them, but
6 they're fine.
7 CHAIRMAN SEARLE: Mr. Tomer?
8 MR. TOMER: (Nods head.)
9 CHAIRMAN SEARLE: Ms. Hamm?
10 MS. HAMM: No. I don't see them, so
11 you'll just have to leave me out. Just let me know if
12 mine are broken out or what.
13 MS. BUSH: It's the stuff I faxed you.
14 MS. HAMM: Yeah.
15 MR. RUBY: Your stuff is in this packet,
16 Ms. Hamm.
17 CHAIRMAN SEARLE: Okay. I'm going to go
18 ahead and accept those, despite the fact that we have an
19 objection, including Exhibit Number 1.
20 (Ms. Bush sworn.)
21 MR. RUBY: Would you please state your
22 name for the record and spell your last name?
23 MS. BUSH: Judith, middle initial A, Bush,
24 B-U-S-H.
25 MR. BURBRIDGE: I'm going to -- I guess I

0165

1 wasn't prepared for this kind of procedure. I don't
2 understand why the director of the EQC is asking Ms. Bush
3 questions.

4 CHAIRMAN SEARLE: You want me to do that,
5 then, John?

6 MR. BURBRIDGE: If you can explain to me
7 what the basis for this procedure is. We've never --

8 MS. BUSH: I thought you were going to ask
9 me questions.

10 CHAIRMAN SEARLE: Here, hand me that,
11 please.

12 Mr. Burbridge, what we wanted to do, because
13 primarily, as evidenced by your witnesses and how you
14 handle them, typically we get information into the docket
15 by asking questions and having answers. What we have
16 designed here for those that are representing themselves,
17 a series of questions that Mr. Boal and I put together
18 that would allow this conversation to take place in a
19 more orderly manner. If your objection is the fact that
20 Mr. Ruby is asking them, I will ask the questions.

21 MR. BURBRIDGE: My objection is that this
22 kind of -- in some respects, if it's the Council -- if
23 the Council is calling their own witnesses, they can
24 question. If -- the objectors have the opportunity to
25 hire their own attorney to ask them questions, or they

0166

1 can present testimony on their own. My objection is a
2 procedure like this almost seems to be highly conflicted
3 for the director of the Council to ask questions, because
4 the Council can't be this person's attorney to direct-
5 examine this person. This person can be a witness of the
6 Council but not -- I don't see the Council in any way --
7 or in a role in this setting to be acting as an attorney
8 to directly examine this -- an objector. That's what my
9 objection is to this procedure. I expect, like the rest
10 of my objections, it will be overruled, but I do need to
11 make it for the record.

12 CHAIRMAN SEARLE: I have been consistent,
13 haven't I? Let me just --

14 MR. BURBRIDGE: But I do have some real
15 concerns about this type of procedure.

16 CHAIRMAN SEARLE: Mr. Burbridge, let me --
17 let me go through the questions and see if that helps
18 you. Okay? The idea with these was to try to organize
19 the testimony just a little bit to allow it to have some
20 organization.

21 MR. BURBRIDGE: I'm real certain that the
22 idea behind this is well meaning and good and is probably
23 helpful. But it raises a whole lot of red flags for me
24 to handle it this way.

25 CHAIRMAN SEARLE: Thoughts, Mr. Ruby?

0167

1 MR. RUBY: I think it's perfectly

2 appropriate for the Council, the presiding officer, to
3 lay out the foundation for a person's testimony to give
4 direction to where they're headed in an administrative
5 hearing. It's not unusual at all for the hearing officer
6 to ask questions. The difference is you're doing it at
7 the beginning, as opposed to the end, to make sure that
8 the record is complete.

9 MS. BUSH: Can I ask a question?

10 CHAIRMAN SEARLE: No.

11 MR. RUBY: And so -- but I do understand
12 Mr. Burbridge's problem, concerns. The bottom line is
13 the question is going to be -- if she doesn't answer all
14 your questions, you're going to ask them at the end,
15 anyway. And so -- and that's perfectly appropriate. I
16 think it's your call.

17 MR. BURBRIDGE: And I'm concerned of at
18 least an appearance of conflict, if not a conflict, for
19 acting in an adjudicative role and asking Ms. Bush or any
20 other person, objector, questions when they aren't
21 couched as a witness called by the Council, versus
22 essentially assisting these objectors through the
23 presentation of their objection. And it just -- I think
24 there's either an appearance or an actual conflict for
25 the Council to act in both of those roles. Even though

0168

1 you may get to the same ends, this one -- at this stage,
2 it makes me nervous.

3 CHAIRMAN SEARLE: And your suggestion
4 would be just have them testify?

5 MR. BURBRIDGE: Yeah. And then -- and
6 then allow your questioning. Let me -- I guess, let's
7 try this, but it makes me real nervous. I feel more
8 comfortable with you asking the questions than Mr. Ruby.

9 CHAIRMAN SEARLE: Let's try it. And
10 here's what I'd like to do, Mr. Burbridge. If you feel
11 that we're starting to skate on thin ice, let's bring
12 that up at the time, and we will change.

13 MR. BURBRIDGE: Had I known this was going
14 to happen, I probably would have insisted that our
15 Ms. Assistant Attorney General be present today.

16 MS. BUSH: May I ask, just so I understand
17 what's going to happen now? Because I had come here
18 under the assumption that I was going to be able to give
19 at least an opening statement of my concerns. Am I
20 understanding correctly now that I'm going to be guided
21 throughout my testimony?

22 MR. RUBY: No. And you gave your opening
23 statement several hours ago.

24 MS. BUSH: That's not what I'm talking
25 about, though. I thought when I came up here, I could

0169

1 elaborate on my opening statement in a way that I saw
2 would be the most effective to make you understand where
3 I'm coming from. And that's my concern.

4 MR. RUBY: And you'll have all the
5 opportunity in the world to say whatever you want to say.
6 The questions that you were about to be asked were to lay
7 the foundation for the court reporter and for the Council
8 to understand who's doing what and when and why.

9 MS. BUSH: So when the questions are done,
10 if I am -- if I am either thinking that there are things
11 that have been omitted that should be asked or if I think
12 that my testimony has been elicited in such a way that
13 the importance of it that I'm trying to convey has
14 dissipated, do I have cause to go back and rephrase
15 things?

16 CHAIRMAN SEARLE: Let me just -- let's
17 just get to the point. I'm going to ask each of the
18 objectors -- this is the plan we have right now -- is, as
19 Mr. Ruby started out, to state your name and spell your
20 name for the court reporter.

21 MS. BUSH: No problem with that. Yeah.

22 CHAIRMAN SEARLE: We were going to ask
23 each objector or each person what their relationship to
24 this action is, to this permit, whether you're a
25 landowner, owner, whatever. We were going to ask you, in
0170

1 your case, in the objectors' case, to clarify that you do
2 object to this permit being issued by DEQ. I think we
3 all know that, but it's just a clear statement of facts.
4 We were going to ask, then, that you list in a list the
5 list of objections that you have to this permit action
6 that has taken place. Okay?

7 MS. BUSH: Well, I don't really --

8 CHAIRMAN SEARLE: And then we will go
9 through --

10 MS. BUSH: You asked me if it was okay.
11 I'm not sure.

12 CHAIRMAN SEARLE: -- and then we will
13 allow you to expound on each of those things. For
14 example, if you say, "I'm concerned about the
15 completeness of the application," in the next step, we
16 will allow you to give us more detail of why you object
17 to the completeness of the application.

18 MS. BUSH: In that case --

19 CHAIRMAN SEARLE: And then as we close it
20 out, once we do that, the final question -- you used it
21 yourself with your witnesses -- "Do you have any other
22 issues that you would like to bring up that haven't been
23 brought up?"

24 MS. BUSH: Okay. If we're going to
25 structure it that much, I just want to grab my 406. I'll
0171

1 be back.

2 CHAIRMAN SEARLE: Mr. Burbridge, those are
3 the questions.

4 MR. BURBRIDGE: I'm not liking this.

5 MS. BUSH: I'm not, either, actually. I

6 feel very -- I feel very limited in how I can convey what
7 I think.

8 MR. BURBRIDGE: I'll tell you what. I
9 would -- I'd feel a lot better about doing something like
10 this after you've had advice of your counsel as to
11 whether or not this is an appropriate way to proceed in
12 an administrative hearing case and get the okey-dokey
13 from your attorney on that. But I -- it's real squishy
14 for me here.

15 CHAIRMAN SEARLE: We will --

16 MR. BURBRIDGE: I know the intentions are
17 good, but it just --

18 CHAIRMAN SEARLE: We'll sustain that
19 objection. I have to give you one win today there,
20 Mr. Burbridge.

21 MR. BURBRIDGE: And part of my -- part of
22 my concern is I'm wondering if it's not taking away the
23 opportunities -- opportunity of these objectors to really
24 present what they want to present to you, and then we can
25 make a determination as to whether or not what they are

0172

1 objecting to is relevant to the complaint and consistent
2 with our prehearing order.

3 CHAIRMAN SEARLE: I think we've given you
4 this one.

5 MR. BURBRIDGE: Yeah, I know.

6 CHAIRMAN SEARLE: Okay. We're going to
7 change the format. Please give your testimony.

8 MS. BUSH: Thank you. But you did want to
9 know -- do you have any questions about me personally?

10 CHAIRMAN SEARLE: I do think you need to
11 answer the first two questions, and I think you did, your
12 name and your affiliation with this action.

13 MS. BUSH: I'm one of a group of a family
14 ranch that's been in the family for four generations.
15 It's a beautiful, big ranch. It's over 7,000 acres. If
16 you take a look at the map, I think you might have a
17 better idea of how this affects our ranch. I had
18 hoped -- our ranch is for sale now. And I'd buy it if I
19 could, but I can't. So I was hoping that our real estate
20 agent would be here today to explain to you -- I know
21 everybody thinks their ranch is the most beautiful ranch
22 in the world, but this ranch in Crook County has
23 qualities that are uncommon when you factor in the size
24 of the ranch. And we have tried our very best to find
25 someone to buy this ranch who will take as good care of

0173

1 it as we have.

2 I suspect, although I know this has nothing to
3 do with what you're going to consider, that this pit is
4 going to cause the ranch to be sold in pieces and broken
5 up. And Crook County is going to lose something quite
6 beautiful. And they have no planning. So if somebody
7 else doesn't look after it, it's gone.

8 If you look at the map of this ranch, you will
9 see I've had horizontal lines to show --
10 CHAIRMAN SEARLE: That exhibit number,
11 just so --
12 MS. BUSH: It's the first one, Number 1 in
13 mine. It isn't in the one from you because I couldn't
14 bring you a color one until I came. And without the
15 color one -- do you want one?
16 MR. RUBY: You're going to have to make a
17 decision as to whether or not you want to offer it as an
18 exhibit.
19 MS. BUSH: I did.
20 MR. RUBY: No, you haven't.
21 MS. BUSH: Well, I put it in my exhibit
22 package. I thought I couldn't do it until today. Your
23 letter seemed to say that I couldn't do any exhibits
24 unless I came out here to Wyoming.
25 MR. BURBRIDGE: Mr. Ruby, if that's marked
0174
1 as an exhibit, the State would have no objection to it.
2 MR. RUBY: It's not marked as an exhibit.
3 MR. BURBRIDGE: I'm just saying if and
4 when it does get there.
5 MS. BUSH: I mean, the worst it is is
6 duplication if you just take the whole thing.
7 CHAIRMAN SEARLE: Mr. Croell, do you have
8 any objections to that map being entered?
9 MR. CROELL: No.
10 CHAIRMAN SEARLE: Mr. Turgeon?
11 MR. TURGEON: No.
12 CHAIRMAN SEARLE: Mr. Tomer, any
13 objections?
14 MR. TOMER: No.
15 CHAIRMAN SEARLE: Ms. Hamm?
16 MS. HAMM: No.
17 CHAIRMAN SEARLE: This is Exhibit Number
18 what?
19 MR. RUBY: 26.
20 CHAIRMAN SEARLE: Exhibit 26. Okay. We
21 have the map now. Thank you.
22 MS. BUSH: So where you see -- you see
23 where it says "Rogers Pit." And that's the whole new
24 area that they're seeking. That's the 600-plus acres.
25 Our land immediately to the east is the land that we were
0175
1 talking about that is absolutely full of deer and elk --
2 antelope and elk. And I have personally been out there
3 when they just carpeted the ground. They're there --
4 I've never been here in the winter before. But they're
5 there in the autumn, and they're there in the spring with
6 their young. And it is a habitat for them. And I
7 understand the elk are born in the high ground, but the
8 antelope and the deer, they're born here.
9 Now, the terrain is that the Rogers -- the

10 Rogers Pit and the school section are high ground. You
11 can see the wooded ground, so you know that. This is
12 high ground, which is why you're hearing so many people
13 say that it is such a nuisance to hear the noise of the
14 blasting. Because many pits are located in a more
15 sheltered area. There is no shelter for this pit. And
16 the noise and the dust does go everywhere because of the
17 lay of the land.

18 Now, this land, if you look where it says
19 "school section" and you just follow the ridge around
20 from the school section, this is incredibly beautiful
21 ridge-top land overlooking the canyon to the east that
22 you see wandering through below. So we have land here
23 that is suitable for wildlife habitat. We have land here
24 that would have made home sites to die for for anyone.
25 Because they're close to the road. They're easily

0176

1 accessed. They were completely private. And that use is
2 gone. So there's a monetary use gone. There's an
3 enjoyment of life for people who would have been lucky
4 enough to live there gone. There's tax money gone from
5 people that are not going to live there.

6 And this is sustainable, absolutely
7 sustainable. And instead of water going to support these
8 people, it's going to go get gravel out of the ground,
9 lime rock, which is not a substance which is in short
10 supply in Crook County. But this kind of beauty is.

11 So that's my point as far as that. We're
12 losing many opportunities. The rest of the ranch is
13 spectacular. It's spectacular. There's -- anybody --
14 anybody who would choose this use or a close use to this
15 kind of property in Crook County is just not thinking in
16 a broad enough environmental context. And I don't know.
17 I know you have guidelines that limit you very much, but
18 I also know that you have a statement that says you're
19 going to protect the land for future generations. This
20 is something that deserves being protected. And it makes
21 me weep that this is happening. That's our ranch.

22 Now, my second point -- and before I bring it
23 up, I'm going to document it, because it is a legal point
24 which is outside of 406, whatever. And it says -- hold
25 on. It talks about when applications are made, the

0177

1 information that people need to give. And it says such
2 other --

3 CHAIRMAN SEARLE: I think we're going to
4 need a citation, would be helpful.

5 MS. BUSH: I'm sorry. It's the
6 Environmental Quality Act 35-11-406(a) and 35-11-406(a)
7 Roman Numeral 15. And it says, application for a mining
8 permit shall be made in writing to the administrator and
9 shall contain such other information -- it lists
10 everything specifically you want -- such other
11 information as the administrator deems necessary or as

12 good faith compliance with the provisions of this Act
13 require.

14 Now, I've heard testimony that it's
15 insignificant that Croell Redi-Mix said in their report
16 that the road was already built because they were going
17 to build it, anyway. However, I don't think that's quite
18 correct. I think the statement was made for a number of
19 reasons. It was made to hurry up the application because
20 they want to get it open. It worked out, the way it was
21 timed, that we have our hearing at Christmas as a result,
22 to some extent, of this statement having been made and as
23 a result of the notice being published when it was
24 published. And I understand that that was at the
25 discretion of the applicant.

0178

1 So that just speeds things through really
2 quickly. And then we have numerous glitches in
3 notification that also made it harder for people to come.
4 So all these things combined to help to get something
5 through without people looking at it. And we have had to
6 work very hard to get people to look at it, because we
7 had to learn about it first, and we had -- if I hadn't
8 been on the telephone, I would never have received
9 notification. I was sent my notification from the
10 Environmental Quality Council by registered mail on the
11 8th and again on the 9th. And I have yet to receive
12 either one of them. So if I was relying on the
13 Environmental Quality Council to be informed of this
14 meeting, I would know nothing, absolutely nothing.

15 And people had to be aware of that. I live in
16 Canada. Judy Hamm, as well, when we had our telephone
17 conference, had received her first of two notices that
18 very same day. And so we were presented with demands
19 which it was physically impossible to meet. And when I
20 said it's physically impossible to meet them, the
21 reaction was, well, sorry, that's the law.

22 And I looked, and I could be wrong, but I think
23 that the Environmental Quality Council did have
24 discretion to put this meeting off. Let me see if I can
25 find it for you. I may have to hunt. Sorry about that.

0179

1 I think it's in another -- excuse me for a minute. I may
2 miss the citation. I may miss the citation. It occurs
3 in a number of places. I'll check it and I'll give it to
4 you afterwards.

5 But what, essentially, it says is, as far as
6 the rules of the Environmental Quality Council, if
7 enforcing them results in unreasonable, or I think they
8 said impossible situations, the Environmental Quality
9 Council has the discretion to change them. Now, as far
10 as I can see, the only discretion that the Environmental
11 Quality Council gave was to excuse themselves for not
12 having given published notice of this hearing in a timely
13 fashion. And I will stress one more time that they had

14 time. It wasn't even a question. We were rushed. We
15 could hardly get finished. The Environmental Quality
16 Council knew -- they knew before this.

17 But just to be simple, they knew on December
18 8th, when they sent out the notice, that they were
19 required to do newspaper advertising of this hearing once
20 a week for two weeks in a local newspaper prior to the
21 hearing taking place. And they had time to do it, and
22 they didn't do it. And when I realized that they hadn't
23 done it and I called them, they said, oh, it's just been
24 rushed. We couldn't do it any other way, so we're
25 putting it into the paper on -- I forget exactly when it
0180

1 went in. It was absurd.

2 MR. BURBRIDGE: I'm going to object to
3 this testimony because this was a motion that was taken
4 up for continuance at the prehearing conference. And
5 this has already been decided.

6 COMMISSIONER FLITNER: This is Tim
7 Flitner. I was just about to say the very same thing.
8 We've been over this before in testimony.

9 MS. BUSH: Okay. We'll move on.

10 COMMISSIONER FLITNER: And again, it's
11 getting late here. We have got to stay on what has not
12 been covered.

13 CHAIRMAN SEARLE: Sustained.

14 MS. BUSH: I just want to be on record. I
15 know this is all history.

16 CHAIRMAN SEARLE: I think you're on
17 record.

18 MR. RUBY: You're on record.

19 MS. BUSH: We're on record. Okay. I have
20 some -- though I better let you know to the point that
21 I'm doing this. As I said, I think that Croell Redi-Mix
22 has a history of dealing in very bad faith with the Land
23 Quality Division.

24 COMMISSIONER FLITNER: Again, we've been
25 over that part.

0181

1 MS. BUSH: No. You haven't heard it yet.

2 COMMISSIONER FLITNER: Yeah. With all due
3 respect, we know that you believe that the DEQ or Croell
4 has a history of not playing fair. We know that. We
5 know that you object to the way this has been handled in
6 a timely manner. We know that. We have got to keep
7 moving here on things that we have not discussed.

8 MS. BUSH: These are things that --

9 COMMISSIONER FLITNER: Keep your testimony
10 to what has not been testified already to.

11 CHAIRMAN SEARLE: Tim, we're going to give
12 her a few minutes.

13 We would ask you to be concise, with the
14 realization this has all been --

15 MS. BUSH: I'll try to be concise, but I

16 do -- I do request my full opportunity to say what I have
17 to say, even if it means carrying things over. I'm not
18 trying to be slow.

19 Now, I don't think that the issue of Croell
20 Redi-Mix dealing in bad faith with the Land Quality, the
21 circumstances of it have not been investigated, so here
22 we go.

23 CHAIRMAN SEARLE: Let's hear your case.

24 MS. BUSH: Does everyone have this copy of
25 the exhibit? Let's go to -- you know what? We can skip

0182

1 some things. There does seem to be a pattern of
2 disregard for saving topsoil, which doesn't bode well for
3 reclamation. But we can just leave that at that.

4 Croell Redi-Mix originally applied for an LMO
5 to produce 100,000 tons of lime rock a year. And this
6 was -- the application was put in towards the end of
7 2006. And at the same time, they applied for a crusher.
8 And same information, 100,000 tons a year.

9 CHAIRMAN SEARLE: Just to remind you,
10 we're not hearing the issue about the LMO.

11 MS. BUSH: No. We're hearing bad faith.
12 And I'm trying to be as fast as I can.

13 CHAIRMAN SEARLE: I don't need bad faith
14 on the LMO. I need bad faith as it applies to the
15 application that are currently being reviewed and
16 suggested -- DEQ suggested they're going to go with.

17 MS. BUSH: I'll get there.

18 CHAIRMAN SEARLE: I need you to get there
19 now.

20 MS. BUSH: This is a step I don't want to
21 miss. This is important.

22 CHAIRMAN SEARLE: I'm going to overrule
23 you on this one.

24 MS. BUSH: This is important. Just let me
25 say it.

0183

1 CHAIRMAN SEARLE: I understand that. But
2 I'm not dealing with the LMO. I've given you a fair
3 amount of latitude because it's important we hear your
4 comments. But stay with the permit we're dealing with,
5 please.

6 MS. BUSH: I cannot demonstrate the extent
7 of bad faith without mentioning this second permit. This
8 is crucial testimony. This is sufficient testimony that
9 it's just going to be reheard if I'm not allowed to say
10 it, because it is important. I'm sorry. I just -- this
11 is -- this needs to be entered.

12 CHAIRMAN SEARLE: It is in the record.

13 MS. BUSH: Well, let me -- give me a
14 minute to say it.

15 CHAIRMAN SEARLE: If it is on the LMO, I
16 don't want to hear about it. Okay? Go on to your -- if
17 you have bad faith in regards to this application, that's

18 important for me to hear.
19 MS. BUSH: Nobody wants to hear this. You
20 know what it is. You know, I heard about this in stages,
21 so it took me a long time to put it together, sir. But
22 it is a large-scale infraction that deserves notice. I
23 don't know -- I don't know how to stress how important
24 this is, because you are going to say -- here's the end
25 issue.

0184

1 CHAIRMAN SEARLE: Ms. Bush, I have ruled
2 on this.

3 MS. BUSH: The end issue is --

4 CHAIRMAN SEARLE: If you have something
5 regarding this application, please step forward with
6 those comments.

7 MS. BUSH: The end issue is -- I won't
8 mention this right now because I know everybody doesn't
9 want to look at it. The end issue is that there has been
10 enough bad faith in the past that I have no reason to
11 expect good faith in the future. And there have been --
12 that's my point.

13 CHAIRMAN SEARLE: Ms. Bush, you seem to be
14 continuing to go on, and I'm getting frustrated. And
15 you're not making any points with the Council when we ask
16 you to move on to the point at hand.

17 MS. BUSH: When I say -- when I say, oh,
18 look, he said the road was done when it wasn't done, in
19 order to advance his application, which is what I believe
20 happened --

21 CHAIRMAN SEARLE: I think that's been
22 testified on.

23 MS. BUSH: -- which is what I believe
24 happened, yes. So what you don't want me to talk about,
25 plus this instance in here, it shows me that -- it shows

0185

1 me that he has a contempt for the Land Quality Division,
2 a complete contempt for it. If he has to say something
3 to speed up his application, he will do so. If he has to
4 fail to mention a change in operation, he will do so. If
5 he has to mention operating two pits close together under
6 two different names, he will do so. How does that bode
7 well for the future of our ranch and how this operation
8 is going to be conducted?

9 CHAIRMAN SEARLE: Ms. Bush, I think it's
10 time to proceed on to your next issue.

11 MS. BUSH: Now, you're saying -- you're
12 saying that this is a part of the record?

13 MR. RUBY: All your NOV -- all the NOV and
14 violations are part of the record.

15 MS. BUSH: Will it be dealt with in the
16 decision?

17 MR. RUBY: They are made a part of the
18 record.

19 MS. BUSH: Okay. If it isn't dealt with

20 in the decision, we're going to have to get back to it.
21 So however you're going to deal with it.
22 As far as -- as far as the mine plan and the
23 reclamation plan, these strike me as being vague. We'll
24 move on to this part, and we'll find out what that's
25 like, and then we'll tell you what we're going to do,

0186

1 whereas, when I read what people are supposed to put into
2 a mine plan and a reclamation plan, they want -- they
3 want a schedule. They want to know what it's going to
4 be. And I don't see that there.

5 CHAIRMAN SEARLE: Citations would be nice.
6 Could you tell me where they have -- we've had testimony
7 from DEQ that the mine plan satisfies -- satisfies their
8 regulations.

9 MS. BUSH: Oh, those kind of citations.
10 Those kind of citations.

11 CHAIRMAN SEARLE: So if you have a
12 citation --

13 MS. BUSH: Yeah. Hold on. Let me --

14 CHAIRMAN SEARLE: -- that suggests that
15 this rule suggests this and they didn't do that.

16 MS. BUSH: Oh, you mean a citation, not
17 what he says in here.

18 CHAIRMAN SEARLE: Yeah. I want to know
19 where in the rules, and I want examples of where you
20 think that they're incorrect. Because what we've heard
21 in testimony so far is that is not the case.

22 MS. BUSH: Well, somewhere in -- I'm
23 sorry. If you'd given me a few more days, I'd be more
24 organized. Somewhere in the mine plan, it mentions the
25 information is supposed to be specific. In the -- let me

0187

1 see if I can find it.

2 Okay, here we go. It says -- it's really hard
3 for me to figure out where exactly these come from. It
4 looks like we're in the noncoal authorities -- this is
5 the rules and regulations, noncoal. And we're in Section
6 2, it looks like B, double I. I'm sorry. Yeah, B double
7 I. And it says a time schedule for each major step in
8 the reclamation which coordinates the operator's
9 reclamation plan with the mining plan in such a manner so
10 as to facilitate reclamation at the earliest possible
11 time consistent with Chapter 3, Section 2K and the
12 orderly development of the mining property. And I don't
13 see anything that specific.

14 CHAIRMAN SEARLE: Okay.

15 MS. BUSH: I'll have to go a bit back and
16 forth here. Reclamation plan, I think I already
17 mentioned that it looked to me like he's leaving holes in
18 the ground, to some extent, more than we would expect.
19 And I don't think that bodes well for future ranching. I
20 don't know whether he's leaving things in a state where
21 cows could walk in and not get out. I don't know. We

22 don't know how deep the holes are going to be, if they're
23 25, 30 feet. If they get a 25-foot strata and he's
24 pulling off a couple feet, you're talking 27 feet, yeah,
25 to get down. And most of the lime rock is gone. And I

0188

1 don't know what he's filling in with. And it doesn't
2 sound -- it didn't sound quite right to me.

3 There were other things that I'm less sure of,
4 but I know he recommended getting rid of -- you called
5 them fines, yes, by spreading them on the ground. That
6 was one of his suggestions for how to deal with that,
7 rather than through, I don't know, disposal. And I
8 imagine that that -- that may cause problems for water
9 quality. Water in itself, I found very difficult. And I
10 think it relates to land in the following way, that there
11 is no -- there's no estimation on how much water might be
12 used to control the dust. Water is anticipated to
13 control 50 percent of dust. And that's a lot of dust.
14 And that water is going to fall with the dust, and it is
15 going to wind up in the water supply. Now, who looks at
16 that? Water, Land, Air? It's completely interrelated,
17 and it doesn't seem to be dealt with.

18 Okay. Pretty quick end here. Mr. Croell has
19 said that he didn't realize that he was trespassing on
20 our land until early in two thousand and -- late 2008. I
21 have a letter from him offering to buy that land from us
22 in -- the letter was posted January 10th, 2008. And that
23 was -- specifically, the land he wanted to buy was the
24 land where our access went through. We were not aware of
25 it at the time. But I do have that letter. And that's

0189

1 Exhibit, according to mine -- I don't know what exhibit
2 it is. Maybe you'd like to make a note of that in your
3 nomenclature.

4 CHAIRMAN SEARLE: If it's in the exhibits,
5 that's all I need to know.

6 MS. BUSH: But what number is it? And
7 I'll know, too, then. I also have --

8 MR. BURBRIDGE: Exhibit 16.

9 MR. RUBY: 16.

10 CHAIRMAN SEARLE: Thank you.

11 MS. BUSH: Now, and I have a copy of the
12 survey that's from -- it's by Ralph Goodson.

13 MR. RUBY: It's Exhibit 20.

14 CHAIRMAN SEARLE: Now, is this regarding
15 the road that is not really a part of this permit
16 application?

17 MS. BUSH: No. This is -- this is
18 regarding -- this is regarding bad faith and how long it
19 was known.

20 CHAIRMAN SEARLE: I think we understand
21 that there's a bad faith part of your argument.

22 MS. BUSH: Well, let me -- but if I don't
23 present evidence for it, you're going to disregard it.

24 CHAIRMAN SEARLE: This is all evidence.
25 COMMISSIONER FLITNER: Mr. Chairman, with
0190
1 all due respect, it should be disregarded. It is not
2 part of this permit. We have heard enough of that old
3 road. It is not a part of this permit.
4 CHAIRMAN SEARLE: Ms. Bush, that's two of
5 us on the Council sending you the same message.
6 MS. BUSH: At any rate, it was done in
7 late 2007, this survey, late 2007. Okay?
8 CHAIRMAN SEARLE: You're continuing on
9 when I tell you to move on to something else.
10 MS. BUSH: Okay. Well, you don't want to
11 hear about the last -- you don't want to hear the last
12 letter, either.
13 CHAIRMAN SEARLE: If it involves the road,
14 I don't.
15 MS. BUSH: If it involves bad faith?
16 CHAIRMAN SEARLE: I don't want to hear
17 about it unless it involves this application.
18 MS. BUSH: You don't want to hear about
19 bad faith. Okay. You don't want to hear about bad
20 faith. I'm finished. Thank you.
21 CHAIRMAN SEARLE: Ms. Bush, I want to hear
22 about bad faith, but I want to hear about in regards to
23 this application in front of us.
24 MS. BUSH: In regards to this application,
25 the example of bad faith that I see is the false
0191
1 information about the road. And as far as legal
2 citations for that -- hold on. Sorry. Just a minute.
3 I'm just trying to get the right -- it's the statute that
4 says that information provided would be -- I forget the
5 word they used -- timely, which it definitely was not.
6 Excuse me. I'm going to have to go check one more place,
7 I think, to get the citation. Sorry. I thought I gave
8 it to you earlier. Didn't I give that to you earlier?
9 CHAIRMAN SEARLE: It's in the record.
10 MS. BUSH: It's in the record, yeah. It's
11 Chapter 2A, I think, or B. I forget.
12 CHAIRMAN SEARLE: Everything that you've
13 sent us is in the record.
14 MS. BUSH: Okay. So that's it.
15 CHAIRMAN SEARLE: Okay. Very good.
16 MS. BUSH: And that's my citation. And
17 the other one, as I said, is if a person says false
18 things in a permit -- it's phrased a little differently,
19 but it's saying basically if it's discovered that the
20 applicant said things that were not correct, false, in an
21 application, that application shall be revoked. It's
22 very clear. It's very clear. This case is a little
23 different but not that different. I mean, do you -- do
24 you approve an application where information in the
25 application has been -- it's been manipulated for a

0192

1 purpose. Okay, that's it.

2 CHAIRMAN SEARLE: Thank you.

3 MS. BUSH: You're welcome.

4 CHAIRMAN SEARLE: We're going to go

5 ahead --

6 MR. RUBY: Cross-examination.

7 MR. BURBRIDGE: No questions from the

8 State.

9 CHAIRMAN SEARLE: Well, let's -- let's

10 start with the other petitioners first.

11 Mr. Turgeon, do you have any questions of this

12 witness?

13 MR. TURGEON: Not at this time.

14 CHAIRMAN SEARLE: Mr. Tomer?

15 MR. TOMER: Not at this time.

16 CHAIRMAN SEARLE: Ms. Hamm, do you have

17 any questions?

18 MS. HAMM: No questions.

19 CHAIRMAN SEARLE: Mr. Croell?

20 MR. CROELL: No, thank you.

21 CHAIRMAN SEARLE: Councilmembers?

22 Ms. Guschewsky?

23 COMMISSIONER GUSCHEWSKY: No questions.

24 CHAIRMAN SEARLE: Mr. Flitner?

25 COMMISSIONER FLITNER: No questions.

0193

1 CHAIRMAN SEARLE: Mr. Coverdale?

2 COMMISSIONER COVERDALE: I'm afraid to ask

3 questions. I might hear more about the road.

4 MS. BUSH: You might.

5 CHAIRMAN SEARLE: I have -- I have no

6 questions, either. Ms. Bush, thank you.

7 MS. BUSH: Thank you very much.

8 CHAIRMAN SEARLE: We're going to go to

9 Ms. Hamm, who is on the phone.

10 (Judith Hamm sworn.)

11 CHAIRMAN SEARLE: Thank you. Just --

12 you've heard the lead-in questions. I'll just ask them.

13 If you could state your name and spell your name for the

14 record, please.

15 MS. HAMM: My name is Judith, J-U-D-I-T-H,

16 Hamm, H-A-M-M.

17 CHAIRMAN SEARLE: And what is your

18 relationship to this case?

19 MS. HAMM: I live on 308 Modkey Road

20 (phonetic), and I am, I think, just over three miles from

21 the quarry.

22 CHAIRMAN SEARLE: Okay. Thank you very

23 much. We will just allow you to give your testimony.

24 Again, we would just ask, given the shortness of time, if

25 there are things that have already been talked about, you

0194

1 can always reference somebody else's comments and say, "I

2 agree with those comments," rather than restating the
3 whole thing.

4 MS. HAMM: Okay. I'm going to try and be
5 short and to the point. I am speaking about the Wyoming
6 Environmental Quality Act 35-11-406, and I think it's
7 Roman Numeral 7. The proposed operation that's Rogers
8 Pit endangers public health. And I had submitted an
9 article and photographs. The article that I submitted,
10 "Provisional Assessment of Recent Studies on Health
11 Effects of Particulate Matter Exposure." Now, this was
12 published in July of 2006. It's a compilation of 200
13 studies taken from over 700. It has been reviewed by the
14 EPA, and it has been approved to be published by the EPA.
15 It's about particulate matter -- excuse me?

16 CHAIRMAN SEARLE: Nobody said anything.
17 But since you paused, I would just say that that is what
18 we have listed as Exhibit Number 1, I believe.

19 MS. HAMM: That's the -- the article.
20 It's about particulate matters, also known as particulate
21 pollution, or PM. It is a complex mixture of extremely
22 small particles and liquid droplets. Particle pollution
23 is made up of a number of components, including acids,
24 nitrates and sulfates, organic chemicals, metals and soil
25 or dust particles. These inhalable particles are found

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1 near roadways and dusty industries.

2 Throughout this document that I submitted, it
3 frequently reflects that health issues cannot be
4 associated with any one single source or that any one
5 single source is not toxic. The photographs that I
6 submitted are of Rogers Pit Quarry. These pictures
7 illustrate the dust particulate matter from the quarry,
8 and the landscape picture illustrates how this dust
9 affects the surrounding area by the overall haze.

10 I took these pictures on October 31st, 2008,
11 and this is a typical scene of the summer of 2008. Some
12 of these pictures I did send to the Rogers Pit safety
13 director. And she did not respond to me. They were also
14 sent to DEQ, Air Quality Control. And the response that
15 I received from that person was that they would talk to
16 their supervisor and get back to me. I did not receive a
17 response after that.

18 When dust like this is inhaled, it takes up
19 space in the lungs. The space occupied by the dust
20 particles is not able to exchange gases that humans need
21 to survive. This dust can scar lungs and cause permanent
22 damage. And this EPA-approved study found strong
23 association between health and particulate matter. This
24 particulate matter decreases mortality, and that is
25 deaths within a given population. It increases

0196
1 morbidity, which is health disabilities.

2 Specific health disabilities that have been
3 identified in this article has been a reduction in lung

4 function growth in children, the development of
5 arteriosclerosis, which is a condition in which fatty
6 material deposits on the walls of the arteries, and this
7 fatty material thickens and hardens and eventually blocks
8 the arteries. It's a major factor in strokes and heart
9 attacks. In individuals with cystic fibrosis, the dust
10 causes exacerbation, which is an increase in the symptoms
11 of cystic fibrosis, and an advancement in the disease.

12 Particulate matter increases hospitalization for
13 cardiovascular issues, which are heart issues and
14 respiratory issues. It causes changes in heart rhythm.
15 People with preexisting heart or lung conditions are more
16 susceptible to particulate matter, and it causes early
17 death in individuals with diabetes. Studies also suggest
18 that brain degeneration occurs from particulate matter.

19 COMMISSIONER FLITNER: Excuse me. This is
20 Tim Flitner. If I could break in for just a second, with
21 your permission, we might be able to speed it up a little
22 again. We're really familiar with what damages PM causes
23 and through that. What we'd like to get you to is how
24 much is this mine going to put into the air? We agree
25 with you that all these pollutions are damaging to

0197

1 health. Nobody's going to dispute that at all. What we
2 really need from you is how much is this gravel mine
3 contributing to that? So if that helps at all --

4 MS. HAMM: Well, I did finish -- I did get
5 through all that I had to say.

6 COMMISSIONER FLITNER: I'll be quiet,
7 then.

8 MS. HAMM: But the proposed operation
9 endangers the public health. And that's one reason --
10 you know, and I just don't think that the permit should
11 be given until appropriate steps are identified and put
12 in place to protect the health of the Wyoming residents.

13 CHAIRMAN SEARLE: Is that the end of your
14 testimony, Ms. Hamm?

15 MS. HAMM: That's it.

16 CHAIRMAN SEARLE: Okay. Thank you. I'm
17 going to go ahead and start the cross-examination.

18 Ms. Bush, do you have any questions?

19 MS. BUSH: No. I thought that was very
20 helpful, though.

21 CHAIRMAN SEARLE: Mr. Turgeon?

22 Ms. Hamm, we're doing cross-examination of you
23 here for a moment.

24 MS. HAMM: Okay.

25 MR. TURGEON: No, I don't have any

0198

1 questions. I was just getting ready to come up.

2 CHAIRMAN SEARLE: Mr. Tomer, do you have
3 any questions?

4 MR. TOMER: No questions.

5 CHAIRMAN SEARLE: Mr. Burbridge?

6 MR. BURBRIDGE: No questions.
7 CHAIRMAN SEARLE: Mr. Croell?
8 MR. CROELL: No questions.
9 CHAIRMAN SEARLE: Councilmembers?
10 Mr. Flitner, any questions?
11 COMMISSIONER FLITNER: No.
12 CHAIRMAN SEARLE: Mr. Coverdale?
13 COMMISSIONER COVERDALE: I have no
14 questions.
15 CHAIRMAN SEARLE: Ms. Guschewsky?
16 COMMISSIONER GUSCHEWSKY: No questions.
17 CHAIRMAN SEARLE: Ms. Hamm, I appreciate
18 your testimony. I'm still, if anything, a little
19 confused, because you didn't really link your testimony
20 in specific to the land quality permit and what should or
21 shouldn't have been done in that permit to meet your
22 concerns or to satisfy your concerns.
23 MS. HAMM: Well, Mr. Ruby said to relate
24 it to 35-11-406.
25 CHAIRMAN SEARLE: That's correct.

0199

1 MS. HAMM: It says it endangers the public
2 health. That's how it's related. If that's not a health
3 issue, I don't know what is.
4 CHAIRMAN SEARLE: I'm not saying it's not
5 a health issue. But you didn't make it specific to this
6 application. Because we've heard testimony earlier that
7 they do have a dust control plant, and they plan on
8 watering roads. So I'm not -- I'm not sure what
9 deficiency there was in DEQ's review.
10 MS. HAMM: I didn't want to get into that
11 because that's air quality, and that's where you get
12 going back and forth with air quality and land quality.
13 I'll bring that up with Air Quality when that hearing
14 comes.
15 CHAIRMAN SEARLE: Very good.
16 MS. HAMM: But they didn't give a 24-hour
17 plan, which Air Quality says they have to do.
18 CHAIRMAN SEARLE: Very good. Good. I'm
19 glad you're following that. I think, based on your
20 testimony, that's probably the better place to voice
21 those concerns. Thank you.
22 MS. HAMM: Thank you. I'm hanging up now.
23 CHAIRMAN SEARLE: Thank you for staying
24 with us.
25 Mr. Turgeon?

0200

1 (Witness sworn.)
2 MR. TURGEON: I'll try to keep this a
3 little shorter and a little more to the subject.
4 CHAIRMAN SEARLE: Two simple questions for
5 you, please. State your name.
6 MR. TURGEON: Les Turgeon.
7 CHAIRMAN SEARLE: And spell it for the

8 record, please.

9 MR. TURGEON: T-U-R-G-E-O-N.

10 CHAIRMAN SEARLE: And your relationship

11 with the -- this application?

12 MR. TURGEON: I live and own land on Rifle

13 Pit Road on Sundance Creek approximately a mile and a

14 half from the site, where I can see the dust. And as

15 they move the project, I'll be able to see up the works.

16 CHAIRMAN SEARLE: Please proceed with your

17 testimony.

18 MR. TURGEON: Some of the comments that

19 I'm going to make that Mr. Croell hasn't testified yet,

20 I'm going to have to go back and refer to some of his

21 testimony that he did with the DEQ on December 14th,

22 because that's basically all I've got to go on in some

23 areas. Some of the questions, I think, that we have to

24 do here --

25 CHAIRMAN SEARLE: Let me just ask for a

0201

1 clarifying. December 14th?

2 MR. TURGEON: 14th of '09. The DEQ, they

3 had a hearing.

4 CHAIRMAN SEARLE: So that was with the

5 Land Quality Division?

6 MR. TURGEON: Yes. And he testified on

7 that.

8 MR. CROELL: Air Quality.

9 MR. TURGEON: Or, Air Quality, yes.

10 CHAIRMAN SEARLE: So this is something

11 that was done on a different permit application?

12 MR. TURGEON: Yes. But this is -- his

13 testimony is all I've got to relate some of my remarks

14 to, because he stated that this happened or whatever.

15 CHAIRMAN SEARLE: Bear in mind, that's a

16 different division.

17 MR. TURGEON: Right. I understand that.

18 CHAIRMAN SEARLE: Different set of issues.

19 MR. TURGEON: I realize it.

20 CHAIRMAN SEARLE: And there can be

21 inconsistencies between applications.

22 MR. TURGEON: I realize that.

23 CHAIRMAN SEARLE: Okay, sir.

24 MR. TURGEON: However, I am concerned -- I

25 am very concerned about the amount of runoff in this

0202

1 area. All the drainage does run into Sundance Creek.

2 And we're --

3 MR. RUBY: Tom, we can hear you.

4 CHAIRMAN SEARLE: I don't think you're

5 quite muted, bud. Tom?

6 COMMISSIONER GUSCHEWSKY: I'll e-mail him.

7 CHAIRMAN SEARLE: Tell him he's not quite

8 muted.

9 COMMISSIONER COVERDALE: Hello?

10 CHAIRMAN SEARLE: You're not quite muted.

11 COMMISSIONER COVERDALE: Not muted?

12 CHAIRMAN SEARLE: We know what you're

13 picking up for groceries tonight. Let's put it that way.

14 Sorry about that. Please proceed.

15 MR. TURGEON: No problem.

16 And so I am concerned about this, especially

17 since --

18 COMMISSIONER COVERDALE: Can you hear me

19 now?

20 CHAIRMAN SEARLE: I can hear you now.

21 Okay. Please, Mr. Turgeon.

22 MR. TURGEON: I'm concerned about that

23 because we've all heard -- you had testimony today about

24 the dirt and the dust. And even Mr. Croell brought up

25 how dusty the Rifle Pit Road was. And so when we add

0203

1 more to that on this mining pit, we create a bigger

2 problem. There's many sinkholes in this area. And that

3 water goes underground. And I'm concerned that it's

4 going to jeopardize my well, my springs.

5 Sundance Creek even runs into Sand Creek. And

6 that is one of the high fishery areas in the state of

7 Wyoming. And it's not that far from that pit to the

8 headwaters of Sand Creek. So as this water goes

9 underground in these pit holes, there could definitely be

10 an area of concern in a lot of areas.

11 Another area that seems to be some concern and

12 I -- you know, environment, to me, consists of everything

13 around us, and the looks and everything. When I

14 explained this process that was going to take place with

15 this 600-acre mining permit, asphalt plant and a cement

16 plant, one of our adjoining neighbors and several other

17 people have said a comment, and I think it fits very

18 well. That is going to be one hell of an eyesight. And

19 we're going to have to live with that.

20 Not only on top of that, but if you'll travel

21 down the road to the I-90 Exit 199, the State of Wyoming

22 is investing hundreds of thousands of dollars into a

23 tourist center. It overlooks the valley towards Sundance

24 Mountain. And they're trying to promote Sundance as

25 clean air, a beautiful place to live and all these

0204

1 things. You can look at Sundance Mountain. You can look

2 at Bear Lodge. You can look at all the small ranches and

3 livestock in there. But the thing that's going to draw

4 the attention of these people standing there is this one

5 hell of an eyesight. You can stand there now and see the

6 pit that they have on a ten-acre plot. What's it going

7 to be with a 600 plot, a cement plant and a hot mix

8 plant? And so we're going to be in all the interstate

9 along through there.

10 He also mentioned at that meeting the southerly

11 wind -- or southwest wind. Is that correct, Roger,

12 southwest wind? Is that what you said? And that also
13 blows down the road. Now, one of two things there. It
14 either blows across Interstate 90. This should
15 definitely be stopped. And I think that the federal
16 highway department will be checking into this, because it
17 has happened. And if he's talking about Rifle Pit Road,
18 then with the dust that's already there, which I agree
19 with him is, is creating more of us a problem.

20 And so I just think these are some of the
21 concerns that I have and are going to create a lot of
22 problems, basically, when you figure that we're moving
23 from 100,000 ton a year to 500,000 ton a year. So you're
24 creating all the -- five times more, five times more
25 dust, five times more.

0205

1 The one thing that has been mentioned earlier
2 was -- let me get one more thing here -- okay, was the
3 bonding issue. And am I to understand, then, that if I
4 was to have well and spring problems and I could have
5 that ground tested to that soil or the contamination went
6 back to the Croell plant, that that bond was to cover
7 that? I question whether \$83,000 would do it. They said
8 that they increased the bond by 52 percent, but they're
9 increasing the land permit by 600 percent, from ten acres
10 to 600 percent. And so when you start comparing the
11 bonding issue, it doesn't quite balance out there.

12 And so there's a lot of concern, I think, for a
13 lot of the residents. The price of our value, the view,
14 the dust, the water. And I would hope that the Council
15 would take a lot of these things into consideration and
16 give us all a thought. I think the environment affects
17 us all, and I do not think that one person's pocketbook
18 should affect everybody else's life.

19 Thank you.

20 CHAIRMAN SEARLE: Don't leave. Thank you,
21 Mr. Turgeon.

22 Ms. Bush, do you have any questions in
23 cross-examination?

24 MS. BUSH: Could you ask someone else and
25 let me think for a minute?

0206

1 CHAIRMAN SEARLE: We're going in the same
2 order. This is your chance.

3 MS. BUSH: No. I think you said a lot.

4 CHAIRMAN SEARLE: Mr. Tomer?

5 MR. TOMER: No questions.

6 CHAIRMAN SEARLE: Mr. Burbridge?

7 MR. BURBRIDGE: No questions.

8 CHAIRMAN SEARLE: Mr. Croell?

9 CROSS-EXAMINATION

10 BY MR. CROELL:

11 Q. How far would you say the headwaters of Sand
12 Creek are from the pit?

13 A. Slightly over six miles.

14 Q. Yes. Do you think that would affect --

15 A. Yes, I do. There was just a recent article in
16 the Rapid City Journal where they're doing investigation
17 for twelve states that are -- the scientist says are
18 polluting the Gulf of Mexico. And if these can go that
19 extreme, your pit and underground water can definitely do
20 six miles when you're looking at a 20-year period. Maybe
21 not the general one we got now. But we're making an
22 extremely large extension.

23 Q. Are you aware that Sundance Creek is dry about
24 nine or ten months of the year?

25 A. I realize a lot of the water on your side, the
0207

1 east side of the highway -- or west side run, there are
2 sumps underneath, and the water goes underground. And
3 that consists of all runoffs off your mining area into
4 that creek.

5 MR. CROELL: Thank you.

6 CHAIRMAN SEARLE: Councilmembers?

7 Mr. Flitner?

8 COMMISSIONER FLITNER: No, I don't have
9 anything.

10 CHAIRMAN SEARLE: Mr. Coverdale?

11 COMMISSIONER COVERDALE: No, I don't have
12 anything.

13 CHAIRMAN SEARLE: Ms. Guschewsky?

14 COMMISSIONER GUSCHEWSKY: No.

15 CHAIRMAN SEARLE: Thank you, Mr. Turgeon.
16 You can stand down.

17 Mr. Tomer, do you have testimony for the
18 Council today?

19 MR. TOMER: Not pertinent to this
20 application.

21 CHAIRMAN SEARLE: Thank you, sir.

22 Mr. Croell, it is your turn.

23 MR. CROELL: Okay.

24 CHAIRMAN SEARLE: Do you have witnesses?

25 Let me just ask, do you have witnesses?
0208

1 MR. CROELL: Yes, I do.

2 CHAIRMAN SEARLE: Do you want to call
3 witnesses first, or do you want to testify first?

4 MR. CROELL: I would like to testify
5 first.

6 CHAIRMAN SEARLE: Okay, please.

7 MR. CROELL: I'll try to make it short.

8 (Mr. Croell sworn.)

9 MR. CROELL: Roger Croell.

10 CHAIRMAN SEARLE: Spell, please.

11 MR. CROELL: C-R-O-E-L-L.

12 CHAIRMAN SEARLE: Your association with
13 this application?

14 MR. CROELL: I'm the owner of the land
15 where the quarry sets. I also own Croell Redi-Mix. I'm

16 one of the -- I'm the father of the -- of all the
17 shareholders of Croell Redi-Mix, which are my sons.

18 CHAIRMAN SEARLE: Very good. Please
19 proceed with your testimony.

20 MR. CROELL: I want to touch very briefly
21 on this road that we're still -- that we're talking
22 about, the road that goes out from the pit out to the
23 Highway 14.

24 CHAIRMAN SEARLE: Are we talking the new
25 road or the old road?

0209

1 MR. CROELL: The new road. The new road
2 encompasses 586 feet of Rifle Pit Road. That's all that
3 it goes on. We travel on 586 feet of road. We water
4 that road. We watered the County or the State or whoever
5 owns the road. We watered our own drive road into the
6 quarry. We watered it, and we treated it with mag
7 chloride, magnesium, last year three or four times, I
8 believe, it was, to the tune of over \$5,000. So we've
9 tried to correct the -- correct the dust. We've dug a
10 well up there. We're going to -- we have corrected a lot
11 of the dust with the well. We have water there now. If
12 the well does not produce enough water to control the
13 dust, we will haul it from a reservoir that I have about
14 a mile away.

15 The driveway that Mrs. Bush is concerned about,
16 I don't -- that's something that her and I will have to
17 work out. I don't think it pertains to this at all
18 anymore. So I won't even go into that.

19 CHAIRMAN SEARLE: Thank you.

20 MR. CROELL: I will say that we had -- we
21 had the property line surveyed. I was under the
22 impression that the road was always going into my field.
23 It never did have access to their ranch. The DOT put
24 their driveway in. And I was under the impression it was
25 my driveway all the time until we had it surveyed. We

0210

1 then found out about it. I believe the speed limit
2 should be enforced on the Rifle Pit Road so we take care
3 of any possible accidents that should -- could possibly
4 happen there.

5 I want to get this through as fast as I can. I
6 want to stipulate that I live a half mile away. I'm
7 probably the closest person to live there. It took me a
8 long time to talk my wife into letting me do this. And
9 she has no problem with it now because it doesn't -- we
10 don't -- there's not much of a reaction or problem with
11 the noise. We don't hear the noise when the conveyor --
12 when the crusher's running. It's just not a -- not a
13 problem at all.

14 I would state that Mrs. Bush's statement that
15 they get a lot of dust from the pit, let me state that
16 from where the pit sets, to the top of the ridge there,
17 it's 65 feet above the pit. And then down to their

18 headquarters of the Bush ranch, it is 250 feet lower yet.
19 And it's a mile -- it's about a mile and a half, almost
20 two miles to their ranch headquarters.

21 They claim that -- we are going to put all of
22 the lime -- the lime is something that we're going to
23 spread on my hayfields, because it's almost like
24 fertilizer. It increases the tonnage that you get off of
25 your hayfields, and it works very good. I don't know if

0211

1 they don't -- they don't do it out here. But I come from
2 back East, eleven, twelve years ago. And we spread lime
3 on our fields all the time to help with the alfalfa
4 production.

5 They're saying that it's going to be a 600-acre
6 pit. It will never be a 600-acre pit. We put that in
7 there -- we put the 600 acres in because the field is 600
8 acres. And it will never be a 600-acre pit. The asphalt
9 plant, we have no plans to put an asphalt plant there.
10 There probably never will be one. We have absolutely no
11 plans to put a ready-mix concrete plant there, because we
12 have one five miles away. Again, when we filled out the
13 application for the permit, there were boxes to check,
14 and we checked them just to be checking them, I guess.
15 But there's absolutely no plans to do anything like that.

16 As far as our tonnage that we've run out of
17 that pit, we've had it for two, two and a half years, I
18 guess, now. We will never probably run 500,00 tons out
19 of that in a year. That was just something we put in
20 there. That's a proposed number. We run anywheres from
21 30,000 to 200,000 tons a year out of there.

22 We also -- also, the Bush ranch sets right
23 directly south and east of our pit. There's also a
24 state -- a section of state land that borders my land to
25 the south. We do not have the mining rights to that

0212

1 state section. Someone else has the mining rights to
2 that. So I'm not going to go into detail who has the
3 mining rights, but we do not have them. And someday
4 someone will be coming to you people and asking for a
5 permit to crush rock in that area.

6 That's all I have to say, I believe.

7 CHAIRMAN SEARLE: Thank you.

8 Ms. Bush, do you have any questions for
9 Mr. Croell?

10 MS. BUSH: Just a couple really short
11 ones. Your well --

12 CHAIRMAN SEARLE: Please come over so we
13 can make sure everybody --

14 COMMISSIONER COVERDALE: I can't hear her.

15 CHAIRMAN SEARLE: We're moving her closer,
16 Tom.

17 CROSS-EXAMINATION

18 BY MS. BUSH:

19 Q. I just wanted to have some information about

20 your well, what its capacity is and what it's -- what
21 it's licensed for and how much water you're permitted to
22 take out of it.

23 A. The well is six hundred and -- I believe about
24 650 feet deep, and it produces about 25 gallons a minute.
25 It's no deeper than any other well in the area. We won't
0213

1 be drawing any more water out of it than anyone else in
2 the area. I've got a pasture there where I'm putting a
3 stock tank in there to water my cows. So it will be
4 watering my cows and to fill a two- or three-thousand-
5 gallon truck up when we want to water the roads and spray
6 water on the conveyor belts.

7 Q. And is the well -- is one of the permitted uses
8 of the well the quarry to control dust? Is it
9 categorized as a livestock well or a quarry well?

10 A. I don't know, to be honest with you. I know
11 it's categorized for a livestock well, but it's also --
12 it's also categorized to extract water for whatever
13 purpose I want, I believe.

14 Q. And you said you had -- when did you have your
15 survey done?

16 A. It was in -- again, this is not pertaining to
17 this -- to this application. But if you want to go into
18 it, I will, gladly.

19 Q. Well, you just mentioned it.

20 A. 12/10/07 is when I got a report back from the
21 surveyor. And that's when I told you about the land that
22 we were driving across of yours that you never even knew
23 belonged to you.

24 Q. No. That was later.

25 CHAIRMAN SEARLE: I think we're done with
0214

1 this issue.

2 MS. BUSH: That was later, a year later.

3 CHAIRMAN SEARLE: You all can take this up
4 at the bar over beers afterward.

5 Q. (BY MS. BUSH) And then my other question is,
6 basically, you were saying that you don't hear the noise.
7 But you're basically upwind from your site, are you not?

8 A. No. No. The prevailing winds are the south --
9 are coming from the southwest, and the wind basically
10 comes right relatively close to me. So I should be able
11 to hear it, if anyone can.

12 Q. I have to -- that's fine. Just purely
13 conversational, that where I come from, the winds are
14 generally from the west or the northwest.

15 CHAIRMAN SEARLE: Well, we're not going to
16 debate that.

17 MS. BUSH: No, we're not.

18 CHAIRMAN SEARLE: The gentleman answered
19 your question.

20 MS. BUSH: I don't think I have any more.

21 Thank you.

22 CHAIRMAN SEARLE: Thank you, Ms. Bush.
23 Mr. Turgeon?
24
25

0215

1 CROSS-EXAMINATION

2 BY MR. TURGEON:

3 Q. In your watering of your pit and the belt and
4 stuff, do you have any idea how much of that water you
5 use a day?

6 A. It would probably take over 2,000 gallons,
7 because it comes out of the fine, misty nozzles sprayed
8 on the belt where the rock and the fines drop from one
9 belt to the other.

10 Q. Okay. And does that then wash sediment onto
11 the ground?

12 A. You never even see water running.

13 Q. There's no sediment washed off that, then?

14 A. No.

15 Q. And the water is evaporated or used up?

16 A. The water is evaporated.

17 Q. Approximately how many trucks a day goes out of
18 there, for a dust problem, on top of everything else? Do
19 you have any idea?

20 A. I would say in the vicinity of anywheres from
21 zero to 20.

22 Q. Now, you talked about your house not being
23 bothered by noise. But are you live -- do you live on
24 the same side of the interstate that the quarry is?

25 A. No. I live right on the frontage road right

0216

1 next to it.

2 Q. And this southwest wind then blows. Does that
3 blow your quarry toward your house or away from your
4 house?

5 A. About -- just runs -- goes past my house. Put
6 it that way.

7 Q. So it does -- some of the dirt and dust comes
8 your way?

9 A. Not -- very, very, very rarely. I've never had
10 any more dust than we get normally from Wyoming roads.

11 Q. Okay. So, in other words, the wind is blowing
12 away -- basically away from your house?

13 A. Yes.

14 Q. And so it wouldn't be a problem for you?

15 A. It does blow -- the wind blows across my ranch,
16 yes.

17 Q. Yeah, right. Well, it blows all directions out
18 there. Basically, what is being affected by this dust
19 that does blow off there in the Rifle Pit Road? Where
20 does it go to?

21 A. A lot of it goes on the fields, the pastures
22 and my hay land.

23 Q. And where is this located?

24 A. On my ranch.
25 Q. Well, but what direction from the quarry?
0217
1 A. It would be probably northeast.
2 Q. Northeast of the quarry?
3 A. Yes.
4 Q. Okay. And so is that on the other side of
5 Sundance Creek?
6 A. Probably, yes.
7 Q. And so in order to reach your pasture and your
8 field, it has to go also through Sundance Creek and the
9 valley on the Bush ranch?
10 A. You mean the dry Sundance Creek?
11 Q. Well, it depends on how you look at this. You
12 know, if you got enough dirt, and then when we get rains
13 like we did in August, it all washes in.
14 CHAIRMAN SEARLE: It's not a debate.
15 Q. (BY MR. TURGEON) Excuse me. Do you own an
16 asphalt plant?
17 A. No. Oh, yes, I do. I do own it. Yes, I do,
18 in Douglas.
19 Q. And when you first moved here, did you own any
20 concrete plants?
21 A. Yes.
22 Q. Here in South Dakota or Wyoming?
23 A. Yes.
24 Q. And that was located where?
25 A. Sundance.
0218
1 Q. And have you expanded that since then?
2 A. Yes, I have.
3 Q. So as you own these different operations and
4 business, you do expand them. Is that correct? You've
5 expanded your concrete plants to different towns and
6 different areas?
7 A. I've moved to different towns, yes. I've
8 purchased different ready-mix plants and an asphalt plant
9 that we acquired with a ready-mix concrete plant that
10 is -- that is permanent. It's nonmovable. It's not
11 mobile, so it's there to stay.
12 Q. Yeah. But what I guess I'm trying to ask you
13 is, in your business line, which is normal, you expand
14 and build your business with whatever it is. Right? And
15 is that why you applied for an asphalt plant, because you
16 planned to expand this?
17 A. I never knew that my safety director applied
18 for it, to be honest with you. I have no intention of
19 ever putting an asphalt plant in.
20 Q. Yeah. But, see, the bad thing about that is we
21 can't accept that. Your permit says you're going to put
22 one in. Is that correct?
23 A. No, it doesn't say I'm going to put it in.
24 Q. It says applies to put one in.
25 A. No. It said I -- it said that we may put an

0219

1 asphalt plant if the demand ever is there. And I
2 don't -- I don't contemplate ever the demand being there.
3 Q. I guess I got a different set of rules than
4 what you got.

5 MR. TURGEON: I guess that will do for
6 right now.

7 CHAIRMAN SEARLE: Thank you.
8 Mr. Tomer?

9 MR. TOMER: No questions.

10 CHAIRMAN SEARLE: Okay. Thank you.
11 Mr. Burbridge?

12 MR. BURBRIDGE: No questions.

13 CHAIRMAN SEARLE: Councilmembers?
14 Ms. Guschewsky?

15 COMMISSIONER GUSCHEWSKY: Yeah. I've got
16 a few, but they'll go really quickly.

17 EXAMINATION

18 BY COMMISSIONER GUSCHEWSKY:

19 Q. Mr. Croell, you live a half mile from where the
20 mine is. But where is -- the next neighbor is how close?

21 A. I believe that's a man that lives straight east
22 of there.

23 Q. And would you say that's within one mile or
24 what?

25 A. I think it's within one mile, half to three-

0220

1 quarters of a mile.

2 Q. Okay. And how many neighbors would you say
3 live within five miles of you?

4 A. Oh, I don't -- I wouldn't know. But I think
5 most of the people that sent objections to this live
6 anywhere from three to ten miles away.

7 Q. Okay. And of those neighbors, what percent of
8 those neighbors would you think object to this permit?

9 A. Well, there are --

10 Q. Of those neighbors that are within ten miles,
11 what percent of those neighbors would you think object to
12 this permit?

13 A. I don't know. I think someone went around and
14 just started getting signatures. And I believe that
15 there have been about two or three people or maybe four
16 people that have really objected to it.

17 Q. Okay. Thank you. And does your partners, your
18 sons, do they live in this area, as well?

19 A. Yes. I have two sons that live in the area. I
20 have one that lives northeast of the pit, and I have one
21 that lives in the town of Sundance.

22 Q. And my last question is kind of long. But,
23 Mr. Croell, do you believe that the permit was handled
24 correctly and that the petitioners had ample opportunity
25 to voice their concern, and were they notified, as they

0221

1 should have been, to be fair to them and give them

2 opportunity -- let's do this one at a time. Do you
3 believe the permit was handled correctly?
4 A. Yes, I do.
5 Q. Do you believe that the petitioners had ample
6 opportunity to voice their concerns?
7 A. Yes, I do. I do believe that.
8 Q. And do you believe that they were notified, as
9 they should have been, to be fair? Because we've had
10 some -- we've had some concerns about that. They claim
11 they maybe were not.
12 A. I've been -- I've been reading articles in the
13 paper for, it seems like the last six months, about this
14 permit going through. And they surely should have had
15 the notice in front of them at one time or other, that it
16 was going to be -- that it was applied for.
17 Q. Okay. And my very last question, how many
18 acres do you own in this area?
19 A. I own -- personally?
20 Q. Just lump it all together, personal and the
21 company.
22 A. In Wyoming, I own about 12,000 acres.
23 Q. Thank you. I know that's a question you're not
24 supposed to ask. But what I'm trying to see here is if
25 you are here to stay and if you love Wyoming like all of

0222

1 us do. That's where I was going with that, Mr. Croell.
2 COMMISSIONER GUSCHEWSKY: Thank you. I'm
3 done.
4 CHAIRMAN SEARLE: Mr. Coverdale?
5 COMMISSIONER COVERDALE: Yeah, I have a
6 question.

7 EXAMINATION

8 BY COMMISSIONER COVERDALE:

9 Q. Mr. Croell, is it your testimony, then, that
10 your permit application is inaccurate and that inaccuracy
11 is leading to about 60 or 70 percent of these complaints
12 and discussions having to do with the plans to expand it
13 and the asphalt plant and everything?

14 A. No, I don't think it's inaccurate at all.

15 Q. That's what's in the permit, right, in your
16 application?

17 A. Yes. The permit states that there's -- the
18 land is suited for an asphalt plant or a concrete plant
19 in the event that there would ever be a need for one of
20 these, which I don't contemplate there ever being.

21 Q. Well, I understand that. I understand your
22 testimony. But I also looked at the permit. It says
23 otherwise. Thank you.

24 CHAIRMAN SEARLE: Mr. Flitner? Tim?

25 COMMISSIONER FLITNER: Just a couple quick

0223

1 ones, just because this has come up a few times.

2 EXAMINATION

3 BY COMMISSIONER FLITNER:

4 Q. Mr. Croell, how many notice of violation orders
5 have you received, if you know?

6 A. I believe just one.

7 Q. And that's on the old plan. And did you
8 rectify that?

9 A. Absolutely.

10 Q. So you had, for the most part, a pretty good
11 record of compliance historically with the DEQ?

12 A. Every time there was any questions about
13 anything, we took care of them very promptly.

14 Q. You're not aware of any complaints by them that
15 you have not complied with everything they've asked you
16 to do at this point?

17 A. Not that I'm aware of.

18 COMMISSIONER FLITNER: That's all I've
19 got.

20 CHAIRMAN SEARLE: Thanks, Tim.

21 EXAMINATION

22 BY CHAIRMAN SEARLE:

23 Q. Mr. Croell, I have just a clarifying question,
24 again, going to this asphalt and ready-mix plant. Is
25 there anything in your permit application that suggests

0224

1 you're permitting this for that type of use? And I'm
2 talking the land quality application.

3 A. I don't think so. But, you know, I did not
4 fill out the application myself. My safety director did
5 all of that.

6 Q. If you don't know the answer -- you're also
7 currently applying for an air permit. Is that correct?

8 A. That's right.

9 Q. Does it have any reference in the air permit
10 for those types of facilities?

11 A. I believe that was included there, too.

12 Q. So there may be some confusion between the two
13 applications?

14 A. There probably is. And my safety director will
15 be up here shortly, and she can clarify all that.

16 Q. Good. Then we'll put her to the test.

17 COMMISSIONER FLITNER: Mr. Chairman?

18 CHAIRMAN SEARLE: Yes, sir?

19 COMMISSIONER FLITNER: I think maybe the
20 simplest way to look at this is, if it's in the
21 application, then we -- we should just assume it's a
22 possibility, period. I mean, we're approving an
23 application of a permit, not -- not an intention of
24 Mr. Croell. So it doesn't really matter what his
25 intentions are today. What we're dealing with is what's

0225

1 written in that permit. And in that case, we need to
2 approve a permit with, you know, all that in it,
3 regardless of what his intentions may or may not be. If
4 it's in the permit, we're going to have to deal with it.
5 Am I wrong on that?

6 CHAIRMAN SEARLE: Mr. Flitner, I agree
7 with you. I think that as we look at the application for
8 the land quality permit, which is what we're hearing
9 today, those two plants are not mentioned. Okay?
10 COMMISSIONER FLITNER: Okay.
11 CHAIRMAN SEARLE: Frankly, I think, for
12 what we're dealing with today, that -- those issues are
13 not on the table. Now, we can look at it as we
14 deliberate and review that more. I think we have a
15 little bit of confusion going because there's another
16 permit process going on at the current time. Okay? But
17 I agree with you.
18 Hearing no other questions, thank you,
19 Mr. Croell. And you may call your first witness.
20 MR. CROELL: I'd like to call Julie Ewing.
21 CHAIRMAN SEARLE: How many witnesses do
22 you have?
23 MR. CROELL: Two.
24 CHAIRMAN SEARLE: You have two?
25 MR. CROELL: It won't take long.

0226

1 CHAIRMAN SEARLE: I've heard that before.
2 I'm going to have you go over on that side. You get
3 promoted to the big-boy seat.
4 (Witness sworn.)
5 MR. CROELL: I want to correct my
6 statement. I said there was two. There's a third one,
7 too, which won't -- shouldn't take long, a third witness.
8 Okay, Julie --
9 CHAIRMAN SEARLE: Let's do introductions
10 first, please. You can lead her through it, or I can.
11 JULIE EWING,
12 called as a witness by the Permittee, being first duly
13 sworn, on her oath testified as follows:
14 DIRECT EXAMINATION
15 BY MR. CROELL:
16 Q. Julie, state your name.
17 MR. BURBRIDGE: Swear the witness.
18 MR. RUBY: I did.
19 MR. BURBRIDGE: Oh, I missed it.
20 Q. (BY MR. CROELL) State your name and your job.
21 A. Julie Ewing, J-U-L-I-E E-W-I-N-G. I'm the
22 safety director for Croell Redi-Mix.
23 Q. Julie, you're the one that did a lot of the
24 paperwork to apply for this permit?
25 A. Yes, with the help of Dennis McGirr.

0227

1 Q. Yes. Dennis McGirr will be testifying here
2 shortly. Are you the one that put in in the application
3 the asphalt plant and the concrete plant?
4 A. Yes, I did, for the air quality permit. That
5 has nothing to do with this permit.
6 Q. Okay. Then I'm misinformed. Because there's
7 nothing in this permit application about an asphalt or a

8 concrete plant.
9 A. That's correct.
10 Q. Okay. There's a question about the bond.
11 Would you tell me how much this bond is going to be for
12 this here pit?
13 A. Okay. Our bond estimate, I believe, came out
14 to \$86,000. We currently have our -- our LMO is bonded
15 for 17,000. And then there's another \$10,000 bond by
16 another operator that has an LMO within our mine. So
17 that's the 56,000, and hence, we need the 56,000 to
18 increase it to the eighty-two or six, whatever it is. It
19 will be in place if and when we get the permit. Through
20 correspondence with Ms. Deanna Hill, we cannot obtain --
21 the bond cannot be filed with the State until the permit
22 number is on the bond. Our bonding company at Merchants
23 Bank has the bond ready to go. It's just holding that
24 spot open for the permit number. And it will be
25 overnighted to the State at that time. And Deanna Hill
0228

1 will, she said, hand-deliver it to the people it needs to
2 go to in order to be approved and filed with the State.
3 Q. Okay. Now, Mrs. Hamm stated that she sent you
4 pictures of the pit and you never replied to her. Did
5 you receive those pictures?

6 A. I don't recall ever receiving this packet of
7 information that I saw today, no.

8 Q. I guess I have no other questions unless you
9 have something you want to add.

10 A. I don't think so.

11 CHAIRMAN SEARLE: Thank you. Don't leave.
12 You can go.

13 MR. CROELL: I can go. Okay.

14 Ms. Bush, do you have any questions for this
15 witness, please?

16 MS. BUSH: Yeah.

17 CROSS-EXAMINATION

18 BY MS. BUSH:

19 Q. Bonds aren't my specialty, but Mr. Driscoll
20 mentioned earlier -- and I noticed it, as well -- you've
21 got for -- I don't know -- a total of 23 acres, 24 acres
22 now, is that right, with the two operations?

23 A. Uh-huh.

24 MR. RUBY: Can you speak up?

25 A. Yes.

0229

1 Q. (BY MS. BUSH) You have \$27,000 bond. And
2 that's being raised an extra 53,000 for a hugely expanded
3 operation. I'm just wondering why that is and --

4 A. This bond is strictly a reclamation performance
5 bond. As we mine -- if you would read our mine plan and
6 the rec plan, as we mine, we reclaim as we mine.
7 Therefore, it takes some of that -- the bond is able to
8 be released. So that's the idea. The idea of reclaiming
9 as we go is to keep the bond --

10 Q. So if you've got \$27,000 now for 25 acres --
11 let's average it out, whatever, 25 -- and they're asking
12 you for an extra 53, that would say that you're going to
13 be doing about another 50 acres a year, is that right,
14 instead of -- if you have -- because you haven't done any
15 reclamation yet, am I right --

16 A. That's correct.

17 Q. -- on either of these? So this bond would seem
18 to cover a total of 75 acres. Is that right?

19 A. Bonds are estimated in accordance with
20 Guideline 12, I believe it is. And it's based upon not
21 acreage. It's based upon disturbed lands, the graders
22 that it's going to -- the operators, the machinery that
23 it's going to take to reclaim that.

24 Q. But the proportions still hold, yeah, even
25 though it's not based on acreage? Because disturbed

0230

1 land, I mean, you have -- you have 25 acres of disturbed
2 land. That's not all pit. Right? And I don't mean you.
3 But what's out there now at the pit, the total, would be,
4 give or take, 25 acres disturbed land?

5 A. Uh-huh.

6 Q. And that bond or that amount of disturbed land
7 is \$27,000. So I'm just adding it up, and I'm trying to
8 figure if you can extrapolate in any way the amount of
9 land that's going to be disturbed at any one time.

10 A. Those are projections. We create projections
11 in our mine plan. And those projections also follow
12 through with the reclamation plan.

13 Q. So your projections now are for how many --
14 however it's based, what would you say in terms of
15 disturbed land --

16 MR. BURBRIDGE: I'll object. This has
17 been asked and answered.

18 CHAIRMAN SEARLE: John, let me --

19 MS. BUSH: It has?

20 CHAIRMAN SEARLE: Ms. Bush, let me ask you
21 a question. Are you familiar with Guideline 12?

22 MS. BUSH: Yeah. I've read -- I've read
23 everything I could read in the time permitted.

24 CHAIRMAN SEARLE: So I think what you need
25 to ask is, are they complying with Guideline 12? Is what

0231

1 they've done appropriate under the regulations?

2 MS. BUSH: What I'm trying to --

3 CHAIRMAN SEARLE: I think what you're
4 trying to do is trying to calculate something, and my
5 suggestion is you're almost trying to verify as to
6 whether Guideline 12 is appropriate.

7 MS. BUSH: No, no, no, no, no. No, I'm
8 not. I was only trying to extrapolate --

9 CHAIRMAN SEARLE: Your questioning is not
10 going where you need to go.

11 MS. BUSH: Well, I was trying to

12 extrapolate to --
13 CHAIRMAN SEARLE: That's not where you
14 need to go. That's not how bonds are calculated.
15 Q. (BY MS. BUSH) Now, when you apply for an
16 asphalt plant, is it necessary to apply to Land Quality,
17 as well as to Air Quality?
18 A. I don't believe so. I don't believe, in this
19 permit, it would have been required.
20 Q. So you basically covered everything you needed
21 to cover in order to get a hot asphalt plant. It's just
22 that Land Quality has no control over it?
23 A. Yes, through our air quality permit.
24 MS. BUSH: Okay. That's it. Thank you.
25 CHAIRMAN SEARLE: Mr. Turgeon, do you have

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1 questions?
2 MR. TURGEON: No questions.
3 CHAIRMAN SEARLE: Mr. Tomer?
4 MR. TOMER: No questions.
5 CHAIRMAN SEARLE: Okay. Thank you.
6 Mr. Burbridge?
7 MR. BURBRIDGE: Just real quick for
8 clarification.

9 CROSS-EXAMINATION

10 BY MR. BURBRIDGE:

11 Q. For clarification, I just wanted to clarify the
12 two operations that are out there. It's my understanding
13 is there's a ten-acre operation, which is the quarry,
14 which is Croell Redi-Mix. Is that correct?

15 A. Yes.

16 Q. And then there's another seven acres of
17 disturbance there, which is, I think, another company.
18 And couldn't tell you if that's a quarry or a processing
19 area or what that is. Can you describe what that other
20 area is?

21 A. Croell Redi-Mix has disturbed seventeen acres,
22 and that was the NOV that's been brought up, was the
23 seven acres that we corrected with the Land Quality
24 Department. There's another ten-acre mine within
25 Rogers -- within this permitted area. It's a ten-acre

0233

1 LMO registered to Frost Rock Products.

2 Q. So there is actually more than seventeen acres
3 disturbed out there, or is it a total of seventeen?

4 A. No. Croell Redi-Mix has disturbed seventeen,
5 and Frost Rock has disturbed ten, 27 total acres.

6 Q. Okay. But then that explains the total current
7 bond amount of 27,000?

8 A. Yes.

9 Q. I think that -- oh, just one last question.
10 The excess ten acres created the NOV, which was resolved
11 through a settlement agreement. As a part of that
12 agreement as a result of this application we have -- are
13 here today to bring Croell Redi-Mix back into compliance

14 with the Land Quality Division and the number of acres
15 being disturbed? Part of your agreement is to file this
16 application for the mining operation with the Land
17 Quality Division?

18 A. Okay. So what's your question? I'm sorry.

19 Q. That's fair. Croell Redi-Mix was issued an NOV
20 because you went over the ten acres. Correct?

21 A. Correct.

22 Q. Croell Redi-Mix entered into a settlement
23 agreement with Land Quality Division to resolve that NOV.
24 Is that correct?

25 A. Yes, we did.

0234

1 Q. And as a result of that settlement agreement,
2 one of the things you were to do was file this
3 application. Is that correct?

4 A. If we wanted to move further, yes.

5 Q. But by filing this application, that resolves
6 the NOV that you received?

7 A. No. The NOV was resolved. We ceased
8 operation. We increased our bond. We also paid a fine
9 of \$7,000.

10 Q. And you were required to -- I presume maybe you
11 were given the option to reclaim back the ten acres or
12 file this application for a larger mining operation?

13 A. Yes. I'm sorry. Yes, we did agree to do that.

14 Q. And so this is consistent with that agreement,
15 which keeps you in compliance with your current
16 situation, and you're being compliant with what the LQD
17 expects?

18 A. Yes.

19 MR. BURBRIDGE: I have no further
20 questions. Thank you.

21 MR. CROELL: I have no other questions.

22 CHAIRMAN SEARLE: Thank you,
23 Mr. Burbridge.

24 Okay. Councilmembers?

25 Ms. Guschewsky, any questions?

0235

1 COMMISSIONER GUSCHEWSKY: Yes, one,
2 please.

3 EXAMINATION

4 BY COMMISSIONER GUSCHEWSKY:

5 Q. Mrs. Ewing, can you tell me what your
6 relationship now or what has been your relationship in
7 the past with Frost Rock, the other ten-acre LMO that
8 is -- and how close is it to Croell Redi-Mix?

9 A. Okay. I don't know if I completely understand
10 your question. We've worked with Frost Rock Products
11 down South in our southern plants. That's kind of how we
12 know who they are. But they worked within -- they had
13 their very -- their very own separate LMO on Roger
14 Croell's land.

15 Q. So it's their LMO, but it is on Roger Croell's

16 land?
17 A. Yes.
18 Q. And how far away is it from Croell -- Croell
19 Redi-Mix?
20 A. It's within -- yeah. It's right up -- its
21 boundary, I guess, is right along our pit.
22 Q. Okay. So they're side by side, you could say,
23 then?
24 A. Yes.
25 COMMISSIONER GUSCHEWSKY: Okay. Thank
0236
1 you. That's all.
2 CHAIRMAN SEARLE: Mr. Flitner?
3 COMMISSIONER FLITNER: No questions.
4 CHAIRMAN SEARLE: Mr. Coverdale? Tom?
5 COMMISSIONER COVERDALE: No questions.
6 CHAIRMAN SEARLE: Thank you.
7 MR. CROELL: Can I follow up?
8 CHAIRMAN SEARLE: You're allowed to follow
9 up, yes.
10 REDIRECT EXAMINATION
11 BY MR. CROELL:
12 Q. Julie, they were questioning the seven acres
13 that we went over. The seven acres, did they not entail
14 the Frost LMO, too?
15 A. They did. Yes, they did.
16 Q. In other words, what you're saying is that the
17 seven acres that we used too much land of, Frost entailed
18 that seven acres to include it in their LMO?
19 A. Yes, they did. That's right. I was incorrect.
20 They did. They did take up that seven acres instead
21 of --
22 MR. CROELL: No further questions.
23 CHAIRMAN SEARLE: Thank you, Ms. Ewing.
24 Next witness?
25 MR. CROELL: Could I bring Brian Marchant
0237
1 in quick?
2 CHAIRMAN SEARLE: You still have two
3 witnesses?
4 MR. CROELL: Yeah. But the last one will
5 be pretty easy.
6 CHAIRMAN SEARLE: I've heard that before.
7 (Witness sworn.)
8 BRIAN MARCHANT,
9 called as a witness by the Permittee, being first duly
10 sworn, on his oath testified as follows:
11 DIRECT EXAMINATION
12 BY MR. CROELL:
13 Q. State your name.
14 A. Brian Marchant, B-R-I-A-N M-A-R-C-H-A-N-T. And
15 I am the general manager for Croell Redi-Mix.
16 Q. Okay. Brian, as general manager of Croell
17 Redi-Mix, you have control of almost all the operations

18 of Croell Redi-Mix to take some of the pressure off me,
19 which I hate pressure. Is that right?

20 A. Yes.

21 Q. Okay. First of all, how much tonnage has this
22 pit put out the last couple of years between Croell
23 Redi-Mix and Frost Rock Products?

24 A. I'm going to -- rough guesstimate, I'm going to
25 say the low end, when we first started, probably 30,000

0238

1 ton, up to probably 200,000 ton. Bounces between there.

2 Q. I'm going to jump around here with several
3 questions, because I want to get this done as quickly as
4 possible. How large -- we blast concrete stone out
5 there. How deep is the deposit?

6 A. Oh, usually 12 to 20 feet so far. But, you
7 know, it varies so much with uplifting, and we just haul
8 the seam up.

9 Q. Usually we blast in how large -- the blast goes
10 by the tons that you blast out at one time. Is that
11 true?

12 A. Yeah. We try to lay out about a 40,000-ton
13 pattern and shoot it.

14 Q. And that would be how deep?

15 A. 12 to 20 feet.

16 Q. Okay. There's been a lot of complaints about
17 the dust on the roads. Are the Wyoming roads dusty?

18 A. Yes, they're dusty. I've lived here all my
19 life. And I grew up on a county road. And county roads
20 are dusty. And we've never lost any cattle to dust
21 pneumonia, but I'm not saying that it won't happen.

22 Q. Have we ever -- has Croell Redi-Mix, to your
23 knowledge, ever used a noncertified blaster?

24 A. No. No. We have a -- we hire all our
25 blasting done. They actually have a -- our well is

0239

1 probably a quarter of a mile from the current blast site.
2 They set up a seismograph to test the ground shakeage at
3 the well site, and they document every time, and we've
4 had no problems with the well or anything else.

5 Q. Would you say that blasting has occurred
6 approximately how often?

7 A. Usually once every couple weeks, depending on
8 the weather and other things.

9 Q. In your mind, do you know of any plans at all
10 for Croell Redi-Mix to put a concrete plant or an asphalt
11 plant in this location?

12 A. No. The reason -- the reason it's there is, if
13 there is an adjoining road, a highway, decides to go with
14 an asphalt, some asphalt companies like to put their
15 pit -- their plants in our -- in a pit to reduce haulage.
16 So in order to meet competition -- because our
17 competition also has this ability -- we want to be able
18 to put a portable plant in there or allow a portable
19 plant in there in the future.

20 Q. Would you explain the NOV at the pit, the one
21 NOV that we received?

22 A. Our foreman is -- at the time was an individual
23 that worked exclusively in South Dakota. South Dakota
24 does not have ten-acre ETs. And he went up there -- he
25 was crushing. He went up there and stripped seven acres
0240

1 off on top of the hill. I didn't know about it. And
2 that's what put us out of violation. He just stripped
3 too much. We hadn't blasted it yet. And it was pure
4 ignorance on the part of our pit boss.

5 Q. But, nevertheless, we were responsible?

6 A. Yes. We took care of it.

7 Q. The wind direction, that seems to be a problem,
8 too. What way would you say the prevailing winds most
9 generally blow in the summertime?

10 A. Usually in the south, out of the southwest,
11 south, southwest.

12 Q. So the southwest -- if the wind were coming out
13 of the southwest, it would basically not affect very few
14 people, if any?

15 A. Yes. Yeah. And if it did, people are not used
16 to it.

17 Q. Do you know of any instance where any of the
18 neighbors have complained about any amount of dust and
19 what were the remedies that you did to take care of it?

20 A. If it's dusty, we made sure -- and the
21 neighbors call us, we would run out there and put the
22 water suppression on, make sure the water suppression is
23 going. And if that's not enough, we shut the pit down.
24 And we have done that.

25 Q. Okay. Tell us -- tell us what you did for dust
0241

1 control on the roads.

2 A. We put approximately about 4,000 gallons of mag
3 chloride on the road. We treated it three times. We
4 rolled it in with a blade. It seemed to work good. And
5 we ran it all the way from where the trucks were getting
6 loaded, all the way down to the blacktop highway.

7 Q. Okay. Wildlife, have you seen any wildlife in
8 any amount of numbers there?

9 A. No. I seen a coyote one time. I did see some
10 elk that looked like they got chased across the highway
11 by your house one day. But there's no trees or anything
12 on it.

13 Q. There are no trees on this property whatsoever.

14 A. No.

15 Q. It's just purely grassland.

16 A. That's right.

17 Q. Is that right?

18 A. Grassland and rock.

19 Q. And does the rock come right out of the
20 hillside where there is no topsoil?

21 A. On the -- on the aerial photos, you can

22 actually see the rock outcroppings that we were mining.
23 There's very little vegetation, if any vegetation, on top
24 of it. On portions of it, I should say.

25 Q. Now, the driveway coming out of the pit, that
0242

1 was just installed here in the last few months. We
2 worked on it. Was it -- explain to us how we had to go
3 through all the -- all the hoops that we had to jump
4 through to get the permit.

5 A. We applied for and got a county permit for the
6 new road. As we were bidding -- building the road with a
7 Cat, the local WYDOT maintenance supervisor stopped in --
8 stopped us because he said he had control over that act,
9 that it was a -- the road actually has a setback in
10 easement there that the State owned and not the County.
11 So we applied for the state permit. The State then
12 decided that they didn't think they had it, that it was a
13 federal permit. So they couldn't rule on it. So they
14 went in front of the federal highway commission in
15 Cheyenne on one month, the next month. And they ruled
16 that they didn't have -- I believe it went that they did
17 not have --

18 Q. Jurisdiction?

19 A. -- jurisdiction, that it was a state
20 jurisdiction. So it bounced it back down to the district
21 level. The district finally gave us the go-ahead to go
22 ahead and put the road in, which we had one year to
23 complete it. And we have completed the road, and the
24 State has signed off on it, and so it is a done deal.

25 Q. Okay. Are you aware of any accidents that
0243

1 happened on the road coming out of our pit?

2 A. No, I have not. I've not heard of any
3 accidents at all. I just haven't. If there are, I hope
4 they turn it in to us and let us know.

5 MR. CROELL: That's all I have.

6 CHAIRMAN SEARLE: Thank you.

7 Start cross-examination. Ms. Bush, any
8 questions?

9 MS. BUSH: Yeah, just real quick.

10 CROSS-EXAMINATION

11 BY MS. BUSH:

12 Q. I'm not familiar with all the different levels
13 of government.

14 A. I understand. We're learning, aren't we?

15 Q. Yeah. So who approved what, when? First the
16 County said it was okay. Is that right?

17 A. Approved it -- the new road access was -- went
18 to Dan Blakeman. Dan Blakeman gave me the permit, of
19 which we have it on file. We started building the road.
20 The state maintenance foreman, Buzz -- I forget his last
21 name.

22 MR. CROELL: Meyers.

23 A. -- Meyers stopped us and said we could not do

24 that because we needed that permit through the state
25 highway department. Filled out the application. It went

0244

1 to the district level. The district decided that they
2 did not have jurisdiction.

3 Q. (BY MS. BUSH) Yeah. That's what confused me.
4 The district is --

5 A. Sheridan. District level is Sheridan. Bounced
6 it to the federal highway commission, which meets once
7 monthly in Cheyenne. They found that they did not have
8 jurisdiction or decided they didn't have jurisdiction,
9 bounced it back down to the district level. District
10 level decided to --

11 Q. District is state again, right --

12 A. Yes.

13 Q. -- in Sheridan?

14 A. In Sheridan. They decided they did have --
15 would be able to issue us a permit. The permit was good
16 to build the road. And we had one year from the date of
17 issuance -- or the date of the notification letter to
18 finish it. And I believe that is -- the dates are -- we
19 had to finish it by May of 2010. I'm just pulling that
20 out. It's somewhere around in there. And we finished it
21 the other day. So the State come out and inspected it,
22 signed off on it, and now we have our permit.

23 Q. And they ruled that it was all fine?

24 A. It's fine.

25 MS. BUSH: Thanks.

0245

1 CHAIRMAN SEARLE: Mr. Turgeon?

2 MR. TURGEON: I didn't until he started
3 talking.

4 CROSS-EXAMINATION

5 BY MR. TURGEON:

6 Q. Would you go back over how often you blast?

7 A. Depends on the time of year. I'm going to say
8 it's every couple of weeks.

9 Q. And that's consistent throughout the year?

10 A. Well, we have the crushing year-round. I mean,
11 when we're crushing year-round, yes, it will be probably
12 once every week to two weeks.

13 Q. When you were crushing, how long did you crush?

14 A. How long did we crush?

15 Q. Yeah, that you've been doing this blasting
16 every two weeks.

17 A. I don't know. I'm going to say 20 weeks. I
18 don't have exact dates. I'm guessing. Half a year.

19 Q. Six months or so?

20 A. Yeah.

21 Q. And how many tonnage did you blast with each
22 one?

23 A. 30, 40 thousand tonnage. It depends on how the
24 pattern laid out, where you were on your pattern and on
25 your high wall.

0246

1 Q. But somewhere between 30 and 40 thousand ton a
2 blast?

3 A. Yeah.

4 Q. Every two weeks for six months?

5 A. Yeah.

6 Q. And what was that permit for? How many tonnage
7 a year?

8 A. I don't know. I don't have that in front of
9 me.

10 Q. You were talking about the wildlife. Has any
11 of this mining area been done on any hayfields at all?

12 A. Mining?

13 Q. Yeah. Or your gravel pit, whatever. Has any
14 of that land ever been involved as a hayfield?

15 A. Not that I know of. You'd have to ask the guy
16 that owns the property.

17 Q. And is there any hayfield above you right
18 there?

19 A. Yeah, there is.

20 Q. And will that hayfield be part of the new
21 mining area?

22 A. I don't have the book in front of me.

23 Q. Is that part of the 600 acres?

24 A. I'd expect so, yes.

25 Q. And this wildlife -- how long have you been in

0247

1 that area, worked for --

2 A. Rog?

3 Q. Right.

4 A. I've worked for Rog for sixteen years, but my
5 family has a ranch north of Aladdin, fifth generation.

6 Q. The reason I ask is, do you have, in the past,
7 say, four years, five years ago, six years ago, seen any
8 wildlife in that area?

9 A. No.

10 Q. None at all?

11 A. I have not. I'm going to be flat honest with
12 you. I didn't drive out there every day and look for elk
13 or coyotes.

14 Q. Or deer or antelope or anything?

15 A. Yeah.

16 Q. So, to the best of your knowledge, there's no
17 wildlife involved there?

18 A. No. I've been out there when we first started.
19 There was no wildlife out there.

20 MR. TURGEON: Okay. Thank you.

21 CHAIRMAN SEARLE: Mr. Tomer?

22 MR. TOMER: One quick question.

23 CROSS-EXAMINATION

24 BY MR. TOMER:

25 Q. When does the seismic monitoring?

0248

1 A. The blasting company does.

2 Q. So it's all private?
3 A. Yeah. Or they'll set up a unit right next to
4 the wellhead. They have a seismograph that sits right
5 next to the wellhead they'll put there as part of the
6 unit. And they'll -- when they touch it off, they can
7 see what it reads. It's just for historical data for
8 them in case something does go wrong with the well.
9 MR. TOMER: Thank you.
10 CHAIRMAN SEARLE: Mr. Burbridge?
11 MR. BURBRIDGE: No questions.
12 CHAIRMAN SEARLE: Councilmembers?
13 Mr. Coverdale?
14 COMMISSIONER COVERDALE: No questions.
15 CHAIRMAN SEARLE: Mr. Flitner?
16 COMMISSIONER FLITNER: No.
17 CHAIRMAN SEARLE: Ms. Guschewsky?
18 COMMISSIONER GUSCHEWSKY: I just have one
19 real quick.

20 EXAMINATION
21 BY COMMISSIONER GUSCHEWSKY:

22 Q. I'm trying to -- you said whenever you blast,
23 you blast -- you blast to get either 30 to 40 thousand
24 tons, and you do that every couple of weeks?

25 A. Yes. Well, and like I say, that's objective,
0249 ma'am. Sometimes you get a 20,000-ton blast. Sometimes
2 you get a 45,000-ton blast. And it depends on the
3 weather and all sorts of things. But, yeah.

4 Q. I'm just trying to round it around. So if you
5 take the, let's say, 30,000 twice a month times six
6 months times -- or you take it out to a year, where you
7 are now, you're getting about 720,000 tons a year?

8 A. Well, we have -- I guess we have never done
9 that, no. We've never done that much, ma'am, no.

10 COMMISSIONER GUSCHEWSKY: That's all.

11 CHAIRMAN SEARLE: Thanks. I don't have
12 any questions.

13 Mr. Croell?

14 MR. CROELL: I have one more.

15 CHAIRMAN SEARLE: It's going to be quick.

16 Right?

17 MR. CROELL: It's going to be very quick.

18 MR. RUBY: One more witness or one more
19 question?

20 MR. CROELL: One more witness. I'd like
21 to call Dennis McGirr.

22 (Witness sworn.)

23 DENNIS MCGIRR,
24 called as a witness by the Permittee, being first duly
25 sworn, on his oath testified as follows:

0250
1 DIRECT EXAMINATION
2 BY MR. CROELL:

3 Q. State your name and your occupation, Dennis.

4 A. My name is Dennis McGirr. That's M-c-G-I-R-R.
5 And I'm currently -- well, for the last 20-some years,
6 I've been a consultant doing permitting work. Prior to
7 that, I spent sixteen years working with Exxon, doing
8 their permitting and reclamation at their Wyoming
9 operations. And I've been doing -- writing land quality
10 permits for the last 33 years to comply with land quality
11 rules and regulations and environmental impact
12 statements, environmental assessments. And I currently
13 work on fifteen aggregate permits.

14 Q. Dennis, are you satisfied, to the best of your
15 knowledge, that all of the Wyoming statutes and
16 everything else pertaining to this application for this
17 permit are covered in a lawful and legal manner?

18 A. Yes, I am. I've gone through the review
19 process.

20 Q. Now, there was a question about the wells in
21 the area. Could you explain something about the wells in
22 the area?

23 A. Appendix E of the permit document contains the
24 state engineer's search of all the surface water and
25 groundwater rights within -- groundwater rights is a

0251

1 search covering a three-mile perimeter around the
2 operation. And we have a map in the permit application
3 listing all the water rights, all the Bush wells, your
4 well, the new well. Some of the data, like your well,
5 isn't complete on here, because a completion notice had
6 not been filed at the time we did the search. But every
7 water right recorded in the State Engineer's Office, in
8 accordance with the regulations, is on that map and in
9 the tables in the document.

10 Q. Now, the well that we put in up there is not
11 excessively deep -- deeper than any other well in the
12 area, is it?

13 A. No. There are other wells in that 600-foot
14 range. And some of those aren't at the elevation that
15 you're at to begin with.

16 Q. So you don't think that there's going to be any
17 problem with any filtration or siltration, or whatever
18 else you may call it, that would affect anyone's --
19 anyone's well in the area?

20 A. Well, there was an issue of -- if I understand
21 Mr. Turgeon correctly, that he was concerned about
22 surface water runoff getting into the ground and
23 contaminating the wells or whatever. But if you read the
24 mine plan, it says specifically that all surface water
25 runoff from the site, which is very limited, will be

0252

1 controlled by the pit, because you have a hole in the
2 ground that's 24 feet deep, 12 to 24 feet deep. So the
3 chance of getting any surface water running out of that
4 pit at that elevation, you know, is slim.

5 Q. Okay. Is the bond accurate? There was some

6 discrepancy about that.

7 A. Okay. When you do an LMO, limited mining
8 operation, the bond is calculated at the rate of \$1,000
9 per acre, irregardless. And when you go to a small mine
10 or regular mine permit, you go to Guideline 12, which is
11 going to increase that to 2,500 to \$3,000 an acre, if you
12 look at the guideline. And that's why your permit,
13 ten-acre LMO, has a \$10,000 permit, 1,000 per acre. And
14 when you increase yours by seven, you got another 7,000.
15 And if you look at the progressions right now, the
16 disturbance at that pit, it totals about seventeen or
17 eighteen acres, because you have a lot of overlap from
18 the Frost pit to the seven acres that you disturbed.

19 And when we calculated the bond, it is covering
20 35 acres. Because you rate the bond one year in advance,
21 what you think your worst amount of disturbance for the
22 next year would be. And the accuracy of that bond is --
23 right now it's at 96,300, is what it's at. And so you
24 have to increase it from the 27. You're actually
25 overbonded for the LMOs out there right now by \$10,000.

0253

1 Q. So you're projecting that we won't be digging
2 into another 50 acres next year?

3 A. No. Those progressions are shown on here.

4 Q. Okay. Would you explain the progressives of
5 the mine -- of the mine plan?

6 A. Well, we have mine progressions drawn out based
7 on your 500,000 yard volume. And I have a map here
8 that's included in the document as Mine Plan 1, which we
9 show detail for like the first five years. And after
10 that, we just block five years together, because it is
11 just best guess. And you go through an annual report
12 process, where you revise your annual progressions, your
13 production, what you actually produced. That's the mine
14 plan progression.

15 And then we have a reclamation plan
16 progression, which is Map RP1 in the rec plan section,
17 which shows the post-mining topo. That came up in a
18 question earlier, what it would be. And it shows year by
19 year the reclamation progressions throughout the life of
20 the mine. And the only review comments we had on that
21 were including an access route throughout the life of the
22 mine to show access. But reclamation progression is
23 illustrated on Map RP1.

24 Q. And all of these maps are in the permit
25 application. Correct?

0254

1 A. Yes, they are.

2 Q. I guess -- is there anything else that you'd
3 like to help explain to the people that would help
4 clarify any questions?

5 A. On the asphalt and concrete batch plant, I can
6 say absolutely that there's not one word in that land
7 quality document referencing an asphalt plant or a

8 concrete plant. But there is on your air quality permit.
9 And if you bring that form up on the computer, if you
10 don't take and check off some of those, they're
11 automatically checked. I mean, then you'd work on the
12 form. But that document says specifically that you'd be
13 mining only limestone, and it does not say a single word
14 about any batch plant or concrete plant.

15 Q. So there's nothing in this at all that would
16 indicate that there would ever be a batch plant or
17 asphalt plant there?

18 A. Right. And the Land Quality -- that would be
19 an industrial facility, something that's not even under
20 the jurisdiction of Land Quality. The facility that's
21 set up out there, it's not a mining operation, and you
22 don't have a facility like that.

23 Q. In other words, what you're saying is that if
24 there was ever an asphalt -- asphalt plant or a concrete
25 batch plant set up there, it would probably be only on a
0255

1 temporary basis?

2 A. I would think that would be up to you, but
3 yeah, I would think so. I mean, it would be a different
4 permitting process to put that in there. If you put
5 anything in the permit, you would need an entirely
6 different permitting process to accomplish that.

7 MR. CROELL: Okay. I think that's
8 probably all my questions.

9 CHAIRMAN SEARLE: Ms. Bush, do you have
10 any questions for Mr. McGirr?

11 CROSS-EXAMINATION

12 BY MS. BUSH:

13 Q. When you talked about the seven-acre overlap,
14 that confused me.

15 A. They set up a ten-acre limited mining
16 operation. And like I said, when the guy came out and
17 stripped the area, he stripped an additional seven acres.
18 And so they had maxed out the ten acres that they could
19 mine. And it came that they had -- this other company
20 came in and established another limited mining operation
21 there. And he was permitted for ten acres. When you put
22 the two LMOs together totally, according to the land
23 quality survey, GPS survey, they currently have less than
24 eighteen acres disturbed. But that seven additional is
25 what they paid the fine on, because they went over the
0256

1 limit, seventeen acres, on the original LMO, on theirs.

2 Q. So the other company, Frost, they have -- a
3 part of their ten-acre LMO was the seven acres that were
4 in excess?

5 A. Portions of it. It overlapped.

6 Q. I just can't -- we were talking -- I'm
7 confused. We were talking about 27 acres later --
8 earlier. And I'm trying to -- we've got two LMOs, and
9 they're only supposed to have ten acres each. Right? So

10 I was just confused.

11 A. Yeah. And paper calculations, it looks like it
12 would be 27 and a half acres actually out there. But due
13 to the overlap between the two pits, there's less than
14 20.

15 Q. That's where I started off with the overlap.
16 What is the overlap? I don't understand. I know what
17 overlap means. I just don't understand it in terms of
18 this --

19 CHAIRMAN SEARLE: I'm going to interject
20 here, because it may be -- I'm not sure this has any
21 relevance to this issue. They ended up with a notice of
22 violation because they overstripped their area. I think
23 that's what's important for this conversation, is they
24 ended up with an NOV, and it's been resolved. And maybe
25 after the hearing, you can pull Mr. McGirr aside, and he
0257

1 can draw you a little map on a piece of paper to explain
2 it, to handle it.

3 Q. (BY MS. BUSH) So, then how many -- you're
4 saying there are not actually 27 acres disturbed up
5 there?

6 A. No. If you look at land quality documentation
7 in the file, I'd say they're probably overbonded by about
8 three acres or two and a half acres, something like that.

9 Q. And you're saying -- you're saying that the
10 form that you fill out for air quality has asphalt plants
11 and concrete plants checked off --

12 A. Yes.

13 Q. -- and you have to take the check away in order
14 to not apply for it?

15 A. On some of those forms, they are that way,
16 because I filled out half a dozen of them. And if you
17 don't clear the form, then that can stay checked.

18 Q. So you think that was a mistake?

19 A. Well, I'm not saying that. I mean, there's
20 nothing that they can't do on their air quality permit
21 to -- I mean, they're allowed to check those and permit
22 for those in the case the opportunity ever arose. But
23 all I'm saying is I know there's nothing in that land
24 quality permit on it.

25 MS. BUSH: Okay. Thank you very much.
0258

1 CHAIRMAN SEARLE: Thank you.
2 Mr. Turgeon?

3 CROSS-EXAMINATION

4 BY MR. TURGEON:

5 Q. In the violation report that I have here, it
6 reads that the overspan we've been talking about is seven
7 acres, is that correct, that was over their ten acres to
8 start with?

9 A. I did not work on that at all. It's seven-
10 point-some acres that they're dealing with. But that
11 wasn't my issue.

12 Q. Okay. So you're not aware, then, that
13 according to the violation, it reads 10.5 acres that they
14 were over?

15 CHAIRMAN SEARLE: I don't think he
16 testified on that, Mr. Turgeon.

17 A. I have nothing to do with that.

18 Q. (BY MR. TURGEON) Okay. Very good. You did
19 testify about all the water and the runoff and that goes
20 into a hole?

21 A. Well, if you're concerned about runoff in an
22 active mining operation and your mining is subgrade and
23 you have a pit that's anywhere from 15 to 25 feet deep,
24 yeah, the runoff from the active pit area is retained in
25 the pit unless you pump it out.

0259

1 Q. What's the soil right here that this pit is?

2 A. It varies. But the complete soils report is in
3 that document over there.

4 Q. But is this whole area limestone? Is that
5 correct?

6 A. Yeah, basically the same rock as what the
7 surface water runoff would be crossing that ran over the
8 limestone once the pit was dug.

9 Q. And then, basically, they have a dam there? Is
10 that what they have?

11 A. They have no real runoff up there at that
12 elevation. They've never had any runoff. They're
13 required to put berms around their plant site and on the
14 roads to contain the runoff within the disturbance
15 boundary and disturbance limits. They cannot let their
16 runoff run off site. They can use -- if they want it bad
17 enough, they can use that as their border. They can use
18 ASCM, all the sediment control measures that are allowed
19 by DEQ, like the silt fences, rock check dams, hay bales,
20 straw bales or whatever. But actual runoff from the
21 crusher site and the pit, just because they're subgrade,
22 it normally won't exist.

23 Q. Okay. But you're going to get runoff up there,
24 is that correct, some? I've been there. I live there.
25 I drive by it every day. But they do have runoff?

0260

1 A. I would have to observe that myself.

2 Q. But you testified that the runoff goes in this
3 pit.

4 A. Any runoff from the pit mining activities is
5 what I testified.

6 Q. So where does this water go, then? Do they
7 have a dam there all the time, or does water seep away in
8 the rocks?

9 A. They don't have that much runoff. It probably
10 could seep into the rocks. It depends on the rock
11 formation. If it runs off the limestone that's exposed
12 on the surface of the -- exposed on top of the pit, it's
13 still limestone. So would it have the same impact on the

14 water quality.

15 Q. So wherever that water on that runoff in the
16 area, whether it was surface water or in this pit, would
17 have the same effect, that it could seep away?

18 A. Or evaporate. Like any other mine, the
19 preferred method is having the water evaporate away,
20 retain it and let it evaporate or put it through a silt
21 fence or some sort of control measure. And that's the
22 importance of the regulations.

23 Q. And then, so what is the percentage of this?
24 In other words, does 100 percent of the runoff have to be
25 contained? You're saying they have to have berms and

0261

1 what have you not to allow any runoff. So do they have
2 to have 100 percent containment?

3 A. No. That's practically impossible to do, I'd
4 say. Could have runoff -- they don't design their berms
5 to a 100-year storm or a 25-year storm or a ten-year
6 storm like a lot of the mines do and things that have
7 sediment control ponds and flood control reservoirs on
8 their facilities. The noncoal operations aren't required
9 to have that. And to say that they can provide 100
10 percent guarantee of runoff, I couldn't say that. But
11 their regulations, statutes don't require those other
12 facilities to do that.

13 Q. So this runoff, then, could either go in the
14 hole or seep off or run off into other areas?

15 A. Seep into the whole pit.

16 Q. Could seep away or run off into the other
17 countryside?

18 A. Yeah. But it's going to run across limestone,
19 probably the same -- exactly the same thing that runs off
20 now before the pit was ever established. The soil
21 between the pit and Sundance Creek is exactly the same
22 now as it was before. The water running across it, if
23 you put the hose out there and run it down there now,
24 you'd pick up stuff running across the top of the
25 limestone, too.

0262

1 Q. But wouldn't you pick up a lot more sediment
2 when you've got fines and everything else and you run the
3 same amount of water through the same distance? If you
4 take --

5 A. The slope that's out there, I would say running
6 it through Roger's hayfields with the filtration,
7 probably the vegetation that's out there, I don't think
8 you'd get much through there, especially by the time it
9 got into I-90 and down -- heading down the drainage. You
10 got to remember, Sundance Creek splits off the other side
11 of I-90, which is a pretty good embankment. And if you
12 go to the other end, his reservoir is down there, and
13 there's no mine disturbance. If you go to the other end
14 down there where the reservoirs are, where the canyons
15 cross the road there, he's not mining that area. That's

16 one reason we have the 600 acres in the permit area,
17 because it covers all his property. So, I mean,
18 vegetation is a real good filter for water.
19 Q. And have you studied that 600 acres for
20 drainage?
21 A. Myself?
22 Q. Yes.
23 A. Land people look at it.
24 Q. And they're testifying -- they will testify
25 that the drainage goes to the west side of Interstate 90?

0263

1 A. I'm not a hydrologist. I've had -- I've
2 supplied a map and these things, topography maps in here
3 with the drainage divides on them. And Land Quality
4 Division staff hydrologists, at least two of them have
5 reviewed that. And they said it was adequate. So I
6 don't question them. And I'm not a hydrologist, so it's
7 not -- I can't respond any further.
8 MR. TURGEON: Thank you.
9 CHAIRMAN SEARLE: Thank you, Mr. Turgeon.
10 Mr. Tomer, do you have any questions?
11 MR. TOMER: No questions.
12 CHAIRMAN SEARLE: Okay. Thank you.
13 Mr. Burbridge?
14 MR. BURBRIDGE: No.
15 CHAIRMAN SEARLE: Councilmembers?
16 Ms. Guschewsky?
17 COMMISSIONER GUSCHEWSKY: I do have a
18 question.

19 EXAMINATION

20 BY COMMISSIONER GUSCHEWSKY:

21 Q. Mr. McGirr, did I hear you say that you -- or
22 that Croell Redi-Mix established another LMO, which I'm
23 assuming would be Frost Rock, after the notice of
24 violation?

25 A. No. Land Quality required them to shut down

0264

1 their operation, and then the other rock quarry company
2 established an LMO.

3 Correct?

4 Q. Okay. So Frost Rock established their LMO
5 after there was the notice of violation?

6 A. Yes. Croell did not do any more mining in
7 their LMO after they received the violation, because they
8 had exceeded the disturbance limits under the ten-acre
9 limit.

10 Q. Okay. And then why -- when Croell Redi-Mix is
11 counting their bond money, why do they count the 10,000
12 from the Frost Rock?

13 A. Well, the purpose of this land quality permit
14 is to combine Croell's previous LMO and the Frost LMO and
15 all of the future mining property into what's called a
16 regular mining permit. So they --

17 Q. I understand that.

18 COMMISSIONER GUSCHEWSKY: Okay. Thank
19 you. That's all.
20 CHAIRMAN SEARLE: Mr. Flitner, any
21 questions?
22 COMMISSIONER FLITNER: No.
23 CHAIRMAN SEARLE: Mr. Coverdale? Tom?
24 COMMISSIONER COVERDALE: I don't have any
25 questions, either.

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1 CHAIRMAN SEARLE: Okay. Thank you.
2 EXAMINATION
3 BY CHAIRMAN SEARLE:
4 Q. One question, Mr. McGirr, from my perspective.
5 You went over your maps and showed your mine progression.
6 If I understand correctly, those are based upon the
7 500,000 tons per year?
8 A. Yeah, it's based on the 500,000 tons per year
9 and the average depth. The drilling information -- they
10 only drilled in that area. And they came up with an
11 average depth, which is discussed in the D5. And that's
12 what I say. You need -- that depth takes this many acres
13 to get 500,000.
14 Q. How long is it going to be before those are out
15 of date? It sounds like you've never mined -- this
16 facility's never mined that much.
17 A. Right. And probably when they do their first
18 annual report after this permit, they'll probably have to
19 reduce that down to what they actually did that year and
20 what they proposed to do the following year. And that's
21 what they'll have to bond for.
22 Q. So there's a process within the department to
23 handle this?
24 A. Yeah. We have a \$96,000 bond, assuming they're
25 going to bond at 500,000 yards. If they don't mine that

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1 much, and they won't the following year, then they'll
2 have more money bonded than necessary and can actually
3 get a refund.
4 CHAIRMAN SEARLE: That's all I have.
5 Mr. Croell, any questions?
6 MR. CROELL: I have no more questions.
7 CHAIRMAN SEARLE: Any more witnesses?
8 MR. CROELL: No.
9 CHAIRMAN SEARLE: Any quick ones?
10 MR. CROELL: No more quick ones.
11 CHAIRMAN SEARLE: Thank you. I believe
12 we're done with all the testimony.
13 MR. RUBY: We are.
14 CHAIRMAN SEARLE: What we have left in
15 front of us -- and we're done with you, Mr. McGirr.
16 Thank you. Where we're at in this proceeding is we're
17 basically to closing statements. And because we're
18 tough, we're just going to power on through.
19 THE REPORTER: I'm not that tough. Can we

20 take a break?
21 CHAIRMAN SEARLE: You need a break?
22 THE REPORTER: Yeah.
23 COMMISSIONER GUSCHEWSKY: Yeah. And I've
24 got people at my house. This is Cathy. And I have
25 company coming at 6:30. So I hate to do it, but I won't
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1 be able to hear closing arguments.
2 CHAIRMAN SEARLE: Cathy, let me ask you a
3 question. Tim and Tom, I hope you're still on. There
4 are four -- there are four of us. And technically, we
5 could rule on this permit today because we have a
6 majority of the Council. If the preference of this
7 Council, at least the four of us, is to defer
8 deliberation and action on this until our January
9 meeting, one of the options we have is to have them
10 write -- present closing comments in a written form, just
11 to save time.

12 COMMISSIONER COVERDALE: This is Tom. I'm
13 not going to be able to make a decision today. I'd like
14 to see some of the photographs that were entered into
15 evidence and would also like to be able to reread the
16 permit and take a look at some of the other documents
17 that were entered into the record that, unfortunately, I
18 couldn't see. And so I would prefer to have them submit
19 their closing remarks in writing and conclude this
20 session.

21 COMMISSIONER GUSCHEWSKY: I agree with
22 Tom. I think we've sat here for six hours. I need a
23 little time for it to sink in or settle in before I can
24 make a decision I'd be comfortable making.

25 CHAIRMAN SEARLE: Tim, any comments?

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1 COMMISSIONER FLITNER: Yeah. That sounds
2 fine to me.

3 CHAIRMAN SEARLE: I think we're all in
4 painful agreement. Mr. Burbridge is fidgeting over here.

5 MR. BURBRIDGE: The State's going to waive
6 closing.

7 CHAIRMAN SEARLE: Here's what we're going
8 to do. I'm making an executive decision here. What
9 we're going to do -- I appreciate -- first of all, let me
10 say I appreciate everybody's time and patience. This is
11 truly a public process, and I know there were concerns
12 and even allegations made that we tried to make this so
13 difficult that people couldn't participate. That's the
14 furthest thing from the truth. We are a public agency,
15 and we enjoy having people testify in front of us.

16 That being said, I think what we will do is I
17 will ask you to submit your closing comments in writing.
18 You were going to be given five minutes. So I don't need
19 another volume. If a lot of stuff is already on the
20 record, closing comments are really trying to say, "I
21 presented this case. This is what I heard. This is why

22 I would suggest that you should rule in my favor." It
23 should be literally that short.
24 And when should we have those in?
25 MR. RUBY: I would say by January 7th.
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1 I'm not sure what that day is.
2 CHAIRMAN SEARLE: Why don't we just say by
3 the end of the year.
4 MR. RUBY: December 31st?
5 CHAIRMAN SEARLE: I like that.
6 MS. BUSH: Can they come in by fax?
7 MR. RUBY: Yes, as long as you follow it
8 up with the original by mail.
9 CHAIRMAN SEARLE: Fax would be just fine.
10 Our next meeting is around January 14th to 16th. We're
11 going to probably try to put the deliberation during that
12 meeting. I'm not making any promises now, because they
13 keep telling me that schedule is full. But we'll try and
14 squeeze that in. So just a hint. Be watching our
15 website. We'll try to put that on the calendar for then.
16 In the meantime, we will -- we will take written closing
17 comments, or in the case of people that want to waive
18 closing comments, just send us a note that you're waiving
19 closing comments, and we'll be done with you.
20 MS. BUSH: How large is the Council?
21 CHAIRMAN SEARLE: The Council is seven
22 members. The Council is described in the Environmental
23 Quality Act under 35-11-111.
24 MR. TURGEON: Need a copy to each one of
25 them or just one?
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1 MR. RUBY: No. Just send it to the office
2 in Cheyenne at the Herschler Building.
3 MR. BURBRIDGE: Mr. Searle, do you want to
4 close the evidentiary portion of this proceeding so we
5 can give our court reporter a rest?
6 CHAIRMAN SEARLE: Yes. The evidentiary
7 portion is closed.
8 (Hearing proceedings concluded 7:06
9 p.m., December 21, 2009.)
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C E R T I F I C A T E

I, RANDY A. HATLESTAD, a Registered Merit Reporter, do hereby certify that I reported by machine shorthand the proceedings contained herein constituting a full, true and correct transcript.

Dated this 6th day of January, 2010.

RANDY A. HATLESTAD
Registered Merit Reporter