

BY FAX

307 - 777 - 6134

EQC Docket
DEQ LQD TFN

09-4806

5/6/10

FILED

JUN 11 2010

Jim Ruby, Executive Secretary
Environmental Quality Council

To: Members of the Environmental Quality Council

Re: Croell Redi-Mix Application for a regular mine permit to expand its operations at the Rogers Pit - Finding of Fact # 1

From: Judith Bush ph / fax 307-283-2835
please phone before faxing

John Burbridge Sr Asst Att Gen 307-777-3542
Kim Cannon Davis and Cannon LLP 307-672-8955

date: June 11, 2010

No. pgs 24 including attachments

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- 1) **MOTION FOR CORRECTION OF ERROR CONTAINED IN BASIC FACT 1) IN THE MARCH 12, 2010 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER, EQC Docket 09-4806**
 - 2) **MOTION TO REOPEN EVIDENCE IN EQC Docket 09-4806**
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- 1) **MOTION FOR CORRECTION OF ERROR CONTAINED IN BASIC FACT 1) IN THE MARCH 12, 2010 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER, EQC Docket 09-4806**

On May 14, 2010, Council decided to allow an error of fact ¹ to remain uncorrected in its March 12, 2010 Findings of Fact, Conclusions of Law and Order regarding the above noted matter.

Council made this decision after being advised by Executive Secretary of the EQC, Jim Ruby that correcting the error would leave the door open to further petitions for rehearing to the Council.

¹ Basic Fact 1) " Croell filed an initial application for a surface mining permit with DEQ on December 9, 2009. (Ex 11, Cover)"
page 2, Findings of Fact, Conclusions of Law and Order

My understanding of Mr. Ruby's legal advice to Council was that anyone reading the Findings would understand that the application had been filed on December 9, 2008, not on December 9, 2009 as the March 12, 2010 Findings state, and that as such it would do no harm to let the error remain in the Findings.

Basic Fact 1) of the December 12, 2010 Findings is more than a typographic error. A December 10, 2009 Memorandum "Croell Redi-Mix's Rogers Pit Chronology" contains the following references to various LQD temporary file numbers relating to Croell Redi-Mix applications to the LQD for mining permits relating to that company's operations at the Rogers Pit. (I am attaching pages 1 and 3 of this Memorandum for your information.)

| | |
|-----------|---|
| 10 /17/06 | Letter from J. Ewing, Croell to DEQ/LQD District III Office enclosing application for Limited Mining Permit |
| 10/24/06 | Email from J. Bowers to M. Rogaczewski assigning TFN 4 4/315 to LMO application. |
| 6/29/07 | Letter from R. Chancellor to J. Ewing, Croell, enclosing copy of approved Ten Acre Exemption, 1396 ET. |
| 11/30/07 | Email from J. Mickle to M. Rogaczewski assigning TFN 4 3/397 to project with archeological report by ACR Consultants |
| 12/11/09 | Request from M. Rogaczewski to J. Mickle requesting new TFN be assigned to Croell Redi-Mix Application to expand LMO 1396 to regular mine permit with response by J. Mickle assigning TFN 5 5/072 to project. |
| 12/16/08 | Email from M. Rogaczewski to R. Christensen requesting that TFN 4 4/397 ² be combined with TFN 5 6/072 <u>since both pertain to transformation into a regular mine permit.</u> Termination of TFN 4 4/397 requested. <i>underlining added.</i> |

Based upon the information above, the date when Croell Redi-Mix, Inc. initially filed an initial application for a surface mine permit (a regular mine permit application) to

² There are two slightly different TFN's noted for the file opened on November 30, 2007 - TFN 4 3 /397 and TFN 4 4/397. Presumably one of these file numbers represents a typographic error.

expand its LMO mining operations at the Rogers Pit on or around November 30, 2007, not on December 9, 2009 as the March 12, 2010 Findings state, nor on December 9, 2008.

It is not clear at this time why the LQD would chose to change the file number assigned to a mining application that was essentially ongoing, but this is what occurred. I am enclosing copies of three e-mails relating to LQD's decision to assign a new file number to this ongoing application process.

Essentially, Croell Redi-Mix applied for an LMO permit to jumpstart its mining operation at the Rogers Pit while the more arduous process of applying for a regular mine permit for its Rogers Pit operations was still in the works. (see transcript of December 21, 2009 hearing, page 81 line 12 - 23).

The date of Roger Croell's signature on the Surface Landowner's Consent (LQD Form 8) is dated November 24, 2006, (it looks like the "24" may have been altered) and was witnessed by Rebecca Hughes on November 24, 2008. I doubt that this document is legally binding, but it does show that the 600 acre minesite was planned around the time when Croell Redi-Mix applied for its LMO permit to operate at the Rogers Pit in October of 2006.

Basic Fact 1 a significant error. I was unaware of these circumstances until last week. They are not referred to in the application which was considered by the EQC on December 21, 2009. I am requesting that Council make the necessary corrections to its March 12, 2010 Findings of Fact, Conclusions of Law and Order in this matter.

2) MOTION TO REOPEN EVIDENCE IN EQC Docket 09-4806

I am enclosing a copy of a March 5, 2010 letter to Judith Hamm, which was in a file in Sheridan and which I copied last week. The letter is from Deputy Director of the DEQ Todd Parfitt . it contains the following statement:

“ The LQD notified both Croell and Bush Ranch that there may be an issue in early 2009. Neither Croell nor Bush Ranch came forward to the LQD with a survey to establish landownership, but rather chose to negotiate over a period of months to resolve their differences. It wasn't until early December that Bush

Ranch asserted a trespass to the LQD when negotiations were unsuccessful and had stopped, the mining activity had ceased and the road had been blocked off.”

This statement is incorrect. The DEQ did not notify Bush Ranch of a trespass issue in early 2009. (Mr. Parfitt did not provide me with a copy of his letter, nor has he at any time taken the effort to check his facts with me,)

According to testimony provided by Mr. Glenn Mooney at the December 21, 2009 public hearing, Croell Redi-Mix was notified of this circumstance and it was suggested that Croell Redi-Mix provide a survey to LQD.

It was also established at the December 21, 2009 public hearing that Mr. Croell was in possession of a survey at the time that this suggestion was made to him. Mr. Mooney stated at the hearing that Mr. Croell did not provide the LQD with a copy of any survey, and Mr. Parfitt's letter confirms Mr. Croell's failure to do so.

As I pointed out in my 1, 2009 written closing statement, failure to disclose information to the LQD which had it been known would have rendered a mining permit and / or license invalid is a violation of several statutes contained in the Environmental Quality Act. The first applies to mining permits ³ The second applies to mining licenses ⁴ .

3

Environmental Quality Act
Permit revocation

35-11-409 (a)

The director shall revoke a mining permit if at any time he determines that the permit holder intentionally misstated or failed to provide any fact that would have resulted in the denial of a mining permit and which good faith compliance with the policies, purposes, and provisions of this act would have required him to provide

4

Environmental Quality Act
License revocation or suspension

35-11-412 (a)

The director shall revoke an operator's licence:

- (i) if at any time he becomes aware of the existence of any fact, reason, or condition that would have caused him to deny an application for a mining permit whether or not such condition existed at the time of the application
- (ii) if he determines that the operator intentionally misstated or failed to provide any fact that would have resulted in the denial of a license and which good faith compliance with the policies, purposes and provisions of this act would have required him to provide

As these statutes state, there is no statute of limitations on these particular violations of the Environmental Quality Act, and the penalty for such violations is explicitly stated in the statutes and is mandatory.

The matters referred to above were sufficiently important to generate correspondence from Mr. Parfitt, whom I understand is second in command to the Director of the WDEQ, Mr. Corra.

Mr. Parfitt goes to considerable trouble to (incorrectly) create a scenario wherein the DEQ was not in violation of both the Environmental Quality Act and Wyoming statutes regarding trespass when, after after LQD became aware in December of 2008 that access to and from the Rogers Pit minesite lacked surface landowner consent, LQD nevertheless permitted Croell Redi-Mix mining operations to continue at that site and in addition granted a second LMO permit to Frost Rock Products Inc, with both mining operations continuing to use the access road which LQD by knew at that time to be illegal.

Please note that Mr. Croell twice offered (in January of 2008 and December of 2008) to purchase lands operating as Bush Ranch, at no time acknowledging that trespass was occurring or that plans were in the works to expand the Rogers Pit minesite from 10 acres to 600 acres. (Exhibits 20 and 21).

In addition, Croell Redi-Mix sent the owners of Bush Ranches a Landowners Consent Form (LQD Form 8) to sign, which had been filled out to indicate that Croell Redi-Mix held the mineral rights underlying all of our lands located in T52N R62W, Section 25. Needless to say, we did not sign this form (letter with attachments is Exhibit 22)

This letter also contained a copy of a professional survey of the pit area done on March 3, 2008. It is unclear if LQD was provided with a copy of this survey, although mention of a "detailed land survey" occurs in the "First Completeness Review" dated January 8, 2009 of the Croell Redi-Mix application TFN 5 6/072. This survey states that a total of 13.3 acres have been disturbed, excepting designated roads. In an annual report to the LQD dated June 24, 2008 - more than three months later - it is stated that Croell Redi-Mix had disturbed a total of 8 acres since the start-up of its operations at the Rogers Pit. There are other statements of total disturbed acres relating to operations at Rogers Pit which conflict with each other chronologically.

I was not permitted to explain these exhibits noted above at the December 21, 2009 hearing. The reason given was that these matters pertained to the Croell Redi-Mix LMO operation at the Rogers Pit. Council would only hear testimony from me relating directly to matters contained within the permit application for the expansion of this LMO operation to a Regular Mining operation.

Council stated that Croell Redi-Mix was in compliance with the Environmental Quality Act (35-406 (m) (xv) when the hearing took place on December 21, 2009. The Croell Redi-Mix LMO had reclaimed no land, had been cited for disturbing more than double its permitted maximum minesite acreage and as such was not in compliance with the rules and regulations governing LMO's and by extension with the Environmental Quality Act. Croell Redi-Mix has been informed since receiving its Regular Mine Permit on March 31, 2010 that it is now considered to be in compliance with the Environmental Quality Act.

There have been difficulties from the outset of the hearing process. Notice of Hearing and Order mailed to objecting parties failed to comply with Wyoming Rules of Civil Procedure Chapter 6(a) and (d). Public Notice of the December 21, 2009 public hearing failed to comply with 35-11-406(k). The DEQ failed to provide copies of its exhibit prior to the day of the hearing as ordered by Council. My January 14, 2010 letter was sealed because it arrived too late in spite of the unlawful procedural matters noted above and in spite of that letter clearly pointing out the incompleteness of the application and the failure of the DEQ to follow its own rules and regulations in assessing the application. (The LQD disregarded its Rules regarding Overburden and depth of deposit (LQD Nonequal Rules and Regulations, An incomplete application is cause to deny a mining permit (35-11-406 (m) (i). At the December 21, 2009 hearing, relevant cross examination was interrupted and redirected in violation of Wyoming Administrative Procedure Act 16-3-108. I was not permitted to explain my exhibits denied the opportunity to present testimony, which was ruled irrelevant prior to and without ever being heard by Council, in violation of EQC Rules Practice and Procedure Chapter II Section 8 (c). Evidence was declared closed without my having been given the opportunity to present my evidence and explain my exhibits in violation of EQC Rules of Practice and Procedure Chapter II Section 4 (a) iii) and (x).

In spite unreasonable limits place upon my ability to explain my exhibits (which were

entered into the record at the hearing) or to present argument, both of which may constitute a violation of the impartiality Council in this matter, testimony contained in the transcript of the December 21, 2009 hearing shows that Croell Redi-Mix withheld information (A survey of Section 25 T 52N62W completed in November of 2007 and signed by surveyor Mr. Goodson in December of 2007 indicating that legal access to and from the Croell Redi-Mix Minesite did not exist) from the LQD which, had it been known at the time, would (or should) have resulted in denial or revocation of a mining permit [Environmental Quality Act 35-11-409 (a) and 35-11-412 (a) (1) and (ii)]. The consequence of a failure to divulge such information is the mandatory revocation of the mining permit and / or license. The transcript also shows that LQD, in addition to permitting Croell Redi-Mix to continue its mining operations at the Rogers Pit after LQD became aware that legal access to and from the Rogers Pit was not in place, also granted an LMO permit to a second company (Frost Rock Products, Inc.) to set up mining operations at the Rogers Pit, and to use the same access to and from its minesite at the Rogers Pit that the LQD knew to be illegal at the time this second LMO license was issued. Legal access to and from a minesite to the first public road is a requirement of any mining operation. Additionally, operation of a mining operation in the absence of legal access to the first public road becomes a violation of state trespass laws once the situation is known to the trespasser. No mining can occur without a mining permit (35-11-405) and permits cannot be granted (or by extension remain in force) if the mining operations so permitted are in violation of state or federal laws and statutes (35-11-406). Nevertheless, operations at the Rogers Pit were allowed to continue after it was known both by the Permittee, Croell Redi-Mix and by the LQD that state laws regarding trespass were being violated by the Permittee. This violation of state trespass law by Croell Redi-Mix was essentially sanctioned by the LQD. Throughout this time Croell Redi-Mix continued mining related operations at the Rogers Pit and proceeded in its application to LQD to expand its operation to a regular mining operation at that site. During this time Croell Redi-Mix also received a Notice of Violation from the LQD for having disturbed 20.5 acres of land, in violation of the cardinal rule of LMO operations, LQD Rules and Regulations, Chapter 10 - Limited Mining Operations for Ten Acres or less of affected land. It was discovered that the crushing operator at the site had changed and the permittee/operator Croell Redi-Mix had failed to notify the LQD of this change in violation of LQD Nonequal Rules and Regulations Chapter 10, Section 6 (a) and (b). DEQ AQD had issued an operator permit to this new new crushing operator with a yearly production rate more than 10 times greater than the original permit which stated a maximum yearly production of

100,000 tons per year. Furthermore, the operator granted the permit was not even licensed to operate in Wyoming. Once again, no one informed LQD of any of these circumstances, which were discovered during a site inspection in October of 2008. Croell Redi-Mix was not required to reclaim the disturbed acreage in excess of its permitted 10 acres. Nevertheless, the LQD maintained that this LMO (1396 ET), by virtue of having paid a \$7,000 fine, was in compliance with the Environmental Quality Act at the time when its application for a regular mining permit was the subject of the December 21, 2009 public hearing. It was further stated that LMO 1396 ET was in compliance with the Environmental Quality Act precisely because it was applying for a Regular Mining Permit when what was really being said was that if Croell Redi-Mix had been operating under a regular mining permit (and that company was operating as if it had already received a regular mine permit) as opposed to operating under an LMO permit at the time when it disturbed 20.5 acres, it would not have been in violation of the Environmental Quality Act. This is true but entirely irrelevant, unless time moves backwards. (The LQD Nonequal Rules and Regulations (in this case LQD Nonequal Rules and Regulations Chapter 10) are promulgated from the Environmental Quality Act and being in a state of non-compliance with these Rules and Regulations is tantamount to being in a state of non-compliance with the Environmental Quality Act. Being in a state of non-compliance (violation) with the Environmental Quality Act is a cause to deny an application to LQD for a mining permit (35-11-406 (xv)). In addition, the Croell Redi-Mix Application for a regular mining permit which was the subject of the December 21, 2009 hearing contained errors of fact, one of which implied that the situation of trespass had been resolved months before the situation was corrected and another which implied that a drill hole study was of recent origin (done in 2007) when in fact it dated back to the time when I-90 was being constructed. The actual location where the drilling had been carried out was far from clear. The March 12, 2010 Findings of Council justified the first error in fact by stating that Croell Redi-Mix had encountered difficulties in obtaining a permit to construct a new access road. This was true but irrelevant to Croell Redi-Mix claiming in its application that the road was complete at a time when construction on it had barely begun. This application for a regular mine permit was undergoing revision and information was being submitted as late as October of 2009. There was no reason why information pertaining to the access road could not have revised to reflect the true circumstances. Discussion of matters relating to the questionable nature of the drill study were cut short at the December 21, 2009 hearing. There was neither question nor response from Council when I elaborated on the issue at the May 14,

2010 meeting of Council when my Petition for Rehearing was considered and denied. Information contained in applications is required to be both current and accurate.

Most of the circumstances just mentioned, all of which are a matter of record, are not even referred to in the March 12, 2009 Findings of Fact, Conclusions of Law and Order.

Once again, I am documenting the fact that Croell Redi-Mix filed an initial application for a surface mining permit in November of 2007. The March 12, 2010 Findings are inaccurate, and should be changed.

The Findings of Fact, Conclusions of Law and Order (the Findings) in this matter was written, at the request of Council, by the attorney for the DEQ LQD, which may constitute a violation rules of impartiality of Council (Wyoming Administrative Procedures Act 16-111 and 16-112). The Findings, in addition to containing numerous errors, pointed out to Council in my March 3, 2010 response of Proposed Findings of Facts, Conclusions of Law and Order and elsewhere which have not been corrected.

In addition, the March 12, 2009 Findings are couched in legal wording with a failure to adequately describe the specific circumstances relating to this matter. The final entry in the Findings of Fact contains a clause stating that findings of fact which are also conclusions of law are to be regarded both. The dearth of specific information and the combining of facts and conclusions of law are both inconsistent with Wyoming Administrative Procedures Act 16-3-110. It is difficult to argue with a finding of fact and a conclusion of law supposedly implicit in that fact when the fact itself is either wrong, not stated, or incompletely and prejudicially described in the Findings.

Additionally, although the Findings state that all matters of record (which would include both all of my exhibits, most of which - although all were accepted into the record at the hearing - I was nevertheless not permitted to refer to or explain during testimony) and my March 3, 2010 response to Mr. Burbridge's' Proposed Findings of Fact, Conclusions of Law and Order (2 proposed versions - both remarkably similar to the final version) which documented errors of fact, and omission of details of facts bordering on lies of omission, procedural abnormalities to mention a few, there is virtually no reference in the March 12, 2010 Findings to legal arguments (perforce presented in writing since I was not permitted to tie the facts which had emerged in the

course of the hearing together in my testimony) which were either dismissed without legal reasons never mentioned or never considered by Council at all.

I believe that the appropriate venue in which this matter should be heard is the Environmental Quality Council, and I am giving this one last shot. Unfortunately, Council has so far refused to hear and consider relevant testimony regarding failures of both Croell Redi-Mix and the WDEQ LQD in this matter.

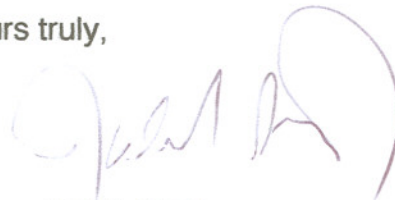
I believe that Council does have the authority to reopen evidence in this matter, either on my motion, or on its own, in accordance Rules of Practice and Procedure, Chapter II, Section 4 (a) (x) which states that:

After all interested parties have been offered the opportunity to be heard the presiding officer shall declare the evidence closed and excuse all witnesses. The evidence may be reopened at a later date, for good cause shown, by order of the Council upon motion by a party or on the Council's own motion.

I believe that good cause has been shown many times over.

I am enclosing a copy of a report signed by Perry Rahn, PhD PE, Professor Emeritus, (Geological Engineer, hydrologist), Department of Geology and Geological Engineering, South Dakota School of Mines and Technology, Rapid City, South Dakota, 57701. Questions raised at the May 14, 2010 meeting of Council deserve a fair hearing.

Yours truly,



Judith Bush

- encl * report signed by Perry Rahn, PhD PE, Professor Emeritus, (Geological Engineer, hydrologist), Department of Geology and Geological Engineering, South Dakota School of Mines and Technology, Rapid City, South Dakota, 57701
- * Letter from Todd Parfitt, Deputy Director, WDEQ to Judith Hamm, dated March 5, 2010
- * Pages 1 and 3 of Memorandum by Glenn Mooney dated Dec 10, 2009, subject " Croell RediMix's Rogers Pit chronology, 1396 ET

- * e-mail dated Nov 30, 2007 from Jennifer Mickle to Mark Rogaczewski
- * e-mail dated Dec 10, 2008 from Mark Rogaczewski to Jennifer Mickle
re: new TFN
- * e-mail dated Dec 11, 2008 from Jennifer Mickle to Mark Rogaczewski
re: new TFN
- * e-mail dated Dec 16, 2008 from Mark Rogaczewski to Ramona
Christenson and Pat Seuer re combining TFN's Request
- * e-mail date October 2, 2009 from Deanna Hill to Glenn Mooney and
Mark Rogacewski ; Subject: Doc 1 (3) (Form 8; Appendix C-1;
reclamation performance bond)
- * Appendix C-1 - Land Description
- * Form 8 - Surface Landowner's Consent

To: Alvis Lisenbee
From: Perry Rahn
Subject: Hydrogeology near Bush Ranch

May 11, 2010

On May 10, you and I drove over to a few miles east of Sundance, WY, and visited ranches belonging to Judy Bush and Les Turgeon. Dewey Turbiville, ranch foreman for the Bush Ranches, was present, as well as Karen Turgeon. They are concerned about a proposed expansion of a quarry in the Minnekahta Limestone about a mile south of the exit off I-90. A small limestone quarry in the Minnekahta Limestone is currently active at this location. I agreed to provide them with some basic hydrogeology of this area.

Figure 1 (from Hodson et al., 1973) is a geologic map showing the area east of Sundance. Figure 2 (prepared for this report by Alvis Lisenbee) is a geologic cross section. About one-half mile to the east of the proposed quarry location is a well (known as the Ghoull well) on the Bush ranch. It is reportedly 520 ft deep and the static water level is 60 ft. The well is located in the Minnelusa Formation. From Figure 2 it can be seen that this aquifer lies approximately 100 ft below the Minnekahta Limestone. Another aquifer, the Madison Limestone, is just below the Minnelusa Formation. The Ghoull well possibly produces from the underlying Madison Limestone. The Madison (also known as the Pahasapa) Limestone is a major aquifer in the Black Hills. For example, just west of the Bear Lodge Mountains the city of Gillette is planning to drill additional Madison wells for their municipal supply. These two aquifers, the Minnelusa and the Madison, are an important resource in northeastern Wyoming.

The potentiometric surface on these two aquifers is not known with great accuracy. Figure 3 (from Konikow, L.F., 1976; Woodward-Clyde Consultants, 1980) shows that in general the ground water in these aquifers would flow northerly.

Surficial aquifers also exist in this area, including alluvium along Sundance Creek and Red Canyon. I think the Wyoming DEQ should reconsider their permit for this proposed quarry operation. I suggest the following ameliorating conditions:

- (1) Chemical contamination issues. Explosives are used in a quarry operation such as this and may result in increased dissolved nitrate levels. Chemicals from heavy equipment may infiltrate into the rocks. I think the permit should require a monitoring well in the Minnelusa Formation close to the quarry. I suggest a monitoring well located near I-90, near the BM 4315 (Figure 1).
- (2) Blasting can disrupt an aquifer by loosening clay or silt and discoloring the water in the aquifer. (This has been reported in the Judith Hamm well near a quarry along Moskee Road). The observation well would help identify if this problem is occurring.
- (3) Lastly, I suggest the landowners surrounding this area have samples of their well or spring water analyzed, particularly for dissolved nitrate. Thus, if there are future legal proceedings, there would be background data available for comparison with later analyses.

References Cited:

- Hodson, W.G., R.H. Pearl, and S.A. Druse, 1973, Water resources of the Powder River Basin and adjacent areas, northeastern Wyoming: U.S. Geol. Survey, Hydrologic Atlas HA-465.
- Konikow, L.F., 1976, Preliminary digital model of ground-water flow in the Madison Group, Powder River Basin and adjacent areas, Wyoming, Montana, South Dakota, North Dakota and Nebraska: U.S. Geological Survey, Water-Resources Investigations 63-75, 44 p.
- Woodward-Clyde Consultants., 1980, Well-field hydrology, Coal Slurry Pipeline: Technical Report, Prepared for the U.S. Bureau of Land Management.





Department of Environmental Quality



To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.

Dave Freudenthal, Governor

John Corra, Director

March 5, 2010

56/072

Judith Hamm
308 Moskee Road
Sundance, WY

RE: January, 7 2010 Hamm Email to Governor Freudenthal

Dear Ms. Hamm,

The Governor's Office has asked the Department of Environmental Quality (DEQ) to address to your January 7, 2010 email regarding quarries near Sundance.

The DEQ has responded to many complaints, most associated with dust concerns.

The Land Quality Division (LQD) has received two previous complaints from you which are mentioned in your recent email to the governor. The first complaint was received through the Governor's Office on September 19, 2008. On October 28, 2008 you were provided with a written response from DEQ regarding information on Pete Lien's Hunter Pit on hours of operation, dates of public notice and when the permit was approved. In addition, Mr. Don McKenzie, the LQD Administrator met with you at your home on October 31, 2008 and agreed to participate in a future public meeting to be set up by the County Commissioners. This public meeting on Crook County quarries was held on December 8, 2008.

The second complaint was received via a telephone call on July 24, 2009 regarding your water well. The LQD investigated your water well complaint on August 3, 2009, at which time Mr. Doug Emme installed a seismograph between your home and Pete Lien's Hunter Pit. A blast at the mine was monitored by the seismograph and the ground vibration recorded was under levels associated with structural damage. The LQD did not observe any damage to your home during this investigation. The LQD also reviewed the shot records for the Hunter Pit and found the shots were conducted by a Wyoming certified blaster and the shots were in compliance. During the Croel Redi-Mix EQC Hearing, Mr. Emme testified that there is potential for ground vibrations to affect a well depending upon the size of the shot, the shot load and the distance to a well. Mr. Emme concluded there was no damage to your well related to blasting because shot size, shot load, seismograph monitoring results and shot records all indicated compliance with blasting practices and standards.

Your most recent complaint references the EQC's Croel Redi-Mix mine application hearing held in Gillette on December 21, 2009. On January 14, 2010 the EQC decided to allow the Croel Redi-Mix LQD mine permit to be issued as there was no evidence presented that the LQD did not address a rule requirement.

Herschler Building • 122 West 25th Street • Cheyenne, WY 82002 • <http://deq.state.wy.us>

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|--|---|---|---|--|--|---|
| ADMIN/OUTREACH (307) 777-7937 FAX 777-7938 | ABANDONED MINES (307) 777-6145 FAX 777-6149 | AIR QUALITY (307) 777-7391 FAX 777-6010 | INDUSTRIAL SITING (307) 777-7369 FAX 777-6070 | LAND QUALITY (307) 777-7156 FAX 777-6080 | SOLID & HAZ. WASTE (307) 777-7752 FAX 777-6090 | WATER QUALITY (307) 777-7781 FAX 777-6090 |
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Your most recent complaint also alleges trespassing at the Croel mine site. The LQD notified both Croel and Bush Ranch that there may be an issue in early 2009. Neither Croel nor Bush Ranch came forward to the LQD with a survey to establish landownership, but rather chose to negotiate over a period of months to resolve their differences. It wasn't until early December that Bush Ranch asserted a trespass to the LQD when negotiations were unsuccessful and had stopped, the mining activity had ceased and the road had been blocked off.

In a separate email to LQD Sheridan staff dated January 13th you requested a copy of a Hunter Pit NOV and referred to an investigation of a blaster at the Hunter Pit. The LQD has not issued a Notice of Violation related to the Hunter Pit nor has there been an investigation of a blaster at the Hunter Pit. All blasting conducted at the site has been found to be under the supervision of a certified blaster.

Regarding your air quality concerns, all new or modified quarries are required to obtain an air quality permit from the Air Quality Division (AQD). As part of the permitting process, the applicant is required to demonstrate that the proposed quarry will comply with all applicable rules and regulations of the Wyoming Air Quality Standards and Regulations (WAQSR).

When the AQD has reached a proposed decision based upon the information presented in the permit application, the AQD advertises the proposed decision in a newspaper of general circulation in the county in which the source is proposed. This advertisement indicates the general nature of the proposed facility, the proposed approval/disapproval of the permit, and a location in the region where the public might inspect the information submitted in support of the requested permit and the AQD's analysis of the effect on air quality.

During the 30-day public notice the public and applicant have the opportunity to provide written comments on the Division's proposed decision. A public hearing may be called if sufficient interest is generated or if any aggrieved party makes a request in writing within the 30-day comment period. After considering all comments, including those presented at any hearings held, the Administrator will reach a final decision and notify the appropriate parties. By statute, the Agency is required to issue a permit if the facility complies with all applicable rules and regulations. Two air quality permits have been issued for rock quarries in Crook County since January of 2008. Both applications followed the process described above.

The WAQSR does require that quarries be located in accordance with proper land use planning as determined by the appropriate state or local agency charged with such responsibility. If counties have restrictions on quarry locations, the applicants will be required to meet the requirement as part of the air quality permitting process.

Wyoming Air Quality Standards and Regulations require consideration of Best Available Control Technology (BACT) in all permitting actions. The Division has considerable experience in permitting these types of operations throughout the state and has determined that application of water and/or dust suppressant is an effective means of controlling emissions from crushing, screening, exposed

acreage and hauls roads, and as such represents BACT for this type of operation. Any equipment located at a quarry will be required to have a separate, valid air quality permit for which BACT will have been applied.

Estimated emissions from activities at the quarries are calculated using approved emissions factors and operational information. Control efficiencies are applied to the emissions to reflect the application of BACT. This is the same methodology used to calculate emissions at large surface coal mines.

The Division generally does not require modeling or monitoring for rock quarries or multiple pits in an area. In previous permitting actions, the Division has modeled coal mines with production rates in the millions of tons per year and the results have demonstrated compliance with particulate matter (PM₁₀) and nitrogen dioxide annual ambient standards. Based on the Division's experience, a properly controlled quarry, as required through conditions of the permit with application of BACT, will not result in an exceedance of air quality standards.

If you have further concerns or questions regarding the quarry mining in and around Sundance please feel free to contact Don McKenzie, Land Quality Division at 307-777-7046 or Chad Schlichtemeier, Air Quality Division at 307-777-5924.

Sincerely,



Todd Parfitt
Deputy Director

cc: Don McKenzie, LQD
Chad Schlichtemeier, AQD
Chris Boswell, Governors Office



561072

MEMORANDUM

TO: File,
FROM: Glenn Mooney GM
DATE: December 10, 2009
SUBJECT: Croell RediMix's Rogers Pit chronology, 1396ET

Introduction

- 10-17-06 Letter from J. Ewing, Croell, to DEQ/LQD District III Office enclosing application for Limited Mining Operation.
- 10-24-06 Email from J. Bowers to M. Rogaczewski assigning TFN 4 4/315 to LMO application.
- 10-25-06 Letter from G. Mooney to J. Ewing, Croell, requesting changes in Form 10 including legal land description and number of acres to be affected.
- 10-28-06 Letter from J. Ewing, Croell, to G. Mooney enclosing revised Form 10 and bond.
- 11-1-06 Prepermitting inspection of pit area conducted by G. Mooney. No activity found.
- 1-2-07 Letter from D. Hill to R. Croell, Croell, returning reclamation bond for corrections. The bond and certificate of corporation did not match.
- 1-12-07 Letter from G. Mooney to J. Ewing, Croell, enclosing copies of annual inspection reports for several Croell Limited Mining Operations, including a prepermitting inspection of the Rogers Pit area.
- 6-29-07 Letter from R. Chancellor to J. Ewing, Croell, enclosing copy of approved Ten Acre Exemption, 1396ET.
- 10-11-07 Annual inspection conducted by G. Mooney. No activity found.
- 11-30-07 Email from J. Mickle to M. Rogaczewski assigning TFN 4 3/397 to project with archeological report by ACR Consultants.
- 1-8-08 Letter from G. Mooney to J. Laughlin, SHPO, enclosing copy of report entitled Croell RediMix Company, Crook County Limestone Quarry Application, ACR Report No. 363 and requested a review of the report.
- 1-28-08 Letter from J. Laughlin, SHPO, to G. Mooney stating that his review of report found that no historic properties would be affected by project.. He requested standard stipulation be placed on project.

1/28

Croell Rogers Pit Permitting Chronology

1396ET and TFN 5 6/072

December 10, 2009

Page 3

- 12-08-08 Follow-up inspection conducted by M. Rogaczewski and G. Mooney. A GPS measurement was made to delineate the multiple use areas around the scale house and a road used for ranch purposes.
- 12-8-08 Meeting between Croell RediMix representatives and LQD representatives at Crook County Courthouse to discuss violations' LQDF agreed to reduce affected area to 17 acres because of dual use of access road and scale house for ranch purposes. Croell proposed to have Frost Construction in adjacent quarry as arms' length operation to produce needed rock for Dry Fork Power Plant.
- 12-8-09 Letter from D. McGirr, Environmental Solutions, to M. Rogaczewski enclosing two copies of a permit application from Croell RediMix. Check for \$2025.00 for permit and license fees attached.
- 12-11-08 Letter from G. Mooney to J. Ewing, Croell, enclosing copy of report on 12-08-08 inspection.
- 12-11-09 Email from M. Rogaczewski to J. Mickle requesting new TFN be assigned to Croell RediMix application to expand LMO 1396ET to regular mine permit with response by J. Mickle assigning TFN 5 5/072 to project.
- 12-15-08 Check No. 1806 in amount of \$7000.00 received by District III Office from Croell.
- 12-15-09 Meeting in Sheridan District III Office between B. Marchant of Croell and M. Rogaczewski and G. Mooney of LQD. Settlement agreement was discussed. During cursory review of application during meeting, Mooney noted access to pit was possibly across Bush Ranch surface. Survey was recommended to establish exact property line location.
- 12-16-08 Fax from S. Rivers Finney, Holmes Murphy & Assoc. to D. Hill enclosing copy of bond rider for her review.
- 12-16-08 Email from M. Rogaczewski to R. Christensen requesting that TFN 4 4/397 be combined with TFN 5 6/072 since both pertain to transformation into a regular mine permit. Termination of TFN 4 4/397 requested.
- 12-18-08 Settlement Agreement signed by B. Marchant, Croell, J. Corra and D. McKenzie calling for Croell to pay a penalty of \$7,000.00 and post an additional reclamation bond of \$7000.00 to cover the additional 7 acres affected.
- 12-19-08 Letter from B. Brosius to J. Ewing enclosing Receipt No. 429 for Check No.1806 in amount of \$7000.00.
- 12-22-08 Email from D. Hill to M. Rogaczewski stating Forms 1 and 3 and fees are acceptable.

Mark Rogaczewski - Re: New TFN

From: Jennifer Mickle
To: Rogaczewski, Mark
Date: 11/30/2007 7:51 AM
Subject: Re: New TFN
CC: Mooney, Glenn

Mark~

I assigned **TFN 4 3/397** to this request. Please send the original package to my attention.

Thanks Jen

>>> Mark Rogaczewski 11/30/2007 7:06 AM >>>
Jennifer,

Please assign a new TFN to Creoll Redi-Mix, Inc., Regular Mine Permit Application, Roger's Pit Limestone Quarry. Mineral is limestone in Crook County.

The initial materials for this application are a archaeological study report by ACR Consultants.

Thanks,

Mark

Rogaczewski, Mark

From: Mickle, Jennifer
Sent: Thursday, December 11, 2008 8:36 AM
To: Rogaczewski, Mark; Christensen, Ramona
Cc: Mooney, Glenn
Subject: RE: New TFN

Mark~

I assigned TFN 5 6/072 to this request. Please send the original package to us.

Thanks Jen

From: Rogaczewski, Mark
Sent: Wednesday, December 10, 2008 4:33 PM
To: Mickle, Jennifer; Christensen, Ramona
Cc: Mooney, Glenn
Subject: New TFN

Jennifer,

Please assign a new TFN to Croell Redi-Mix, Inc.,- Regular Mine Permit Application to expand operations currently under LMO 1396ET. Mineral is limestone in Crook County.

Thanks,

Mark

Seurer, Pat

From: Rogaczewski, Mark
Sent: Tuesday, December 16, 2008 11:30 AM
To: Christensen, Ramona; Seurer, Pat
Cc: Mooney, Glenn
Subject: Combining TFN's Request

Ramona,

Please combine TFN 4 3/397 (Croell Redi-Mix) with TFN 5 6/072. Materials in both of these TFN's pertain to the same permitting action, the transformation of 1396ET into a Regular Mine Permit. Please keep TFN 5 6/072 active and terminate TFN 4 3/397 during this process. Please call if you have questions.

Thanks,

Mark

TFD 5/6/07
Rogaczewski

Rogaczewski, Mark

From: Hill, Deanna
Sent: Friday, October 02, 2009 1:39 PM
To: Mooney, Glenn; Rogaczewski, Mark
Cc: Futa, Tina
Subject: Doc1 (3)
Attachments: Doc1 (3).docx

Ignore attachment.

1. We have received the originally signed Form 8
2. Our Appendix C-1 received May 20, 2009 – cannot tell for sure whether it is an original signature or photocopy.
Compared to other signature affixations I would say it is a photocopy.
3. An acceptable reclamation performance bond need be in place prior to approval. Not a completeness issue.

OCT 07 09

RECEIVED

Appendix C-1

This Appendix "C" represents the location of lands by legal subdivision, section, township, range, county, and municipal corporation, if any, (W.S. 35-11-406, (a), (vi)) and the number of acres in each description. No mining activity may take place on land for which there is not in effect a valid mining permit (W.S. 35-11-405). To include additional lands within a permit area it is necessary to amend the permit (W.S. 35-11-406, (a), (xii)), so care should be taken to include all lands necessary to the mining and reclamation operation as defined in W.S. 35-11-103, (e), (viii). All acreage figures should be obtained from official survey documents or recent surveys if available. An original U.S.G.S. topographic map with the permit area clearly outlined should accompany each permit application.

TABLE C-1
Roger's PIT - LAND DESCRIPTION

A tract of land located in the SE1/4NW/4, that portion of SW/4NW/4 located east of Interstate 90 Right-Of-Way, SW1/4 and SW/4SE/4 of Section 25; that portion of SE/4NE/4 located east of Interstate 90 R-O-W, that portion of SE/4 located east of Interstate 90 R-O-W, and that portion of SE/4SW/4 located east of Interstate 90 R-O-W of Section 26; E/2NE/4, NW/4NE/4, that portion of the N/2NW/4 located east of Interstate 90 R-O-W and the NE/4SE/4 of Section 35, T52N R62W of the Sixth Principal Meridian, Crook County, Wyoming.

The NE1/4SW1/4 of Section 25 contains federal minerals for which no right to mine is claimed. Croell Redi Mix, Inc. has not obtained a BLM contract for these minerals. Therefore, the NE1/4SW1/4 of Section 25 is excluded from mining progressions.

Said tract of land contains 600.07 acres, more or less, subject to all rights, restrictions, reservations and/or easements of sight and record.

| | | |
|---------------------------------------|--------------------------------|---------------|
| COUNTY of <u>Crook</u> | Description Acres | <u>600.07</u> |
| Municipal Corporation <u>Sundance</u> | Total Permit (Amendment) Acres | <u>600.07</u> |
| <u>Roy - Croell</u> | <u>5/14/09</u> | |
| Applicant Signature | Date | |

Permit No.

App. C-1.3

Received
Dept. of Envir. Quality
Cheyenne

5/10/09

5/10/09

30

Do not make corrections to this form after printing. Forms bearing strikeouts, ink changes, etc will not be accepted.

LQD

SEP 29 09

SURFACE LANDOWNER'S CONSENT

RECEIVED

I, Roger R. Croell, CERTIFY that I hold surface rights on the following lands on which Croell Redi Mix, Inc. holds mineral estate rights:

S/2NW, SW, SWSE Section 25
SE, SESW Section 26
N/2NE, N/2NW, NESE Section 35
____ Section ____
____ Section ____
____ Section ____
____ Section ____

T. 52 N. R. 62 W.
T. 52 N. R. 62 W.
T. 52 N. R. 62 W.
T. ____ N. R. ____ W.
T. ____ N. R. ____ W.
T. ____ N. R. ____ W.
T. ____ N. R. ____ W.

County of Crook.

I have examined the mining plans and reclamation plan prepared by Croell Redi Mix, Inc. in compliance with the Wyoming ENVIRONMENTAL QUALITY ACT, and do hereby approve said plans, and give my consent to enter and carry out said mining and reclamation programs on said lands as proposed therein.

Dated this 24 day of Nov, 2006.

Roger R. Croell
Surface Landowner (Signature)
Roger R. Croell
Name (printed or typed)

[Signature]
(Witness)

11-24-08
(Date)

Form 8
Rev. 10/99

50C.3

Amended CERTIFICATE OF SERVICE

I, Judith Bush, do hereby certify that a true and correct copy of the foregoing

**Motion for Correction of Error Contained in Basic Fact 1) in the
March 12, 2010 Findings of Fact, Conclusions of Law, and Order**

and

Motion to Reopen Evidence in EQC Docket 09-4806

was served via facsimile on June 11, 2010 and by regular mail on
June 11, 2010 to:

Kim D. Cannon
and Clint A. Langer
Davis and Cannon
40 South Main Street
P.O. Box 728
Sheridan, Wyoming 82801

and by Facsimile (307)672-8955 on June 11, 2010
by regular mail on June 12, 2010

John Burbridge (*Att for LQD at EQC hearing*)
Sr. Asst. Attorney General
Attorney General's Office
123 Capitol Avenue
Cheyenne, Wyoming 82002

and by Facsimile (307) 777-3542 on June 11, 2010
by regular mail on June 12, 2010

Environmental Quality Council
Attn Jim Ruby, Executive Secretary
122 W. 25th, Herschler Building
Room 1714
Cheyenne, Wyoming 82002

and by Facsimile (307) 777-6134 on June 11, 2010
by regular mail on June 12, 2010

