

FILED

JUL 30 2003

**Terri A. Lorenzon, Director
Environmental Quality Council**

**BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING**

IN THE MATTER OF THE APPEAL)
TO THE APPROVAL OF APPLICATION)
AP-W72 TO MODIFY AIR QUALITY) DOCKET NO. 02-2801
PERMIT CT-460, MD-745)

ORDER

This matter came before the Environmental Quality Council (EQC) for hearing on February 27, 2003, in Jackson, Wyoming. EQC members Thomas Dunn and Wendy Hutchinson, John Morris and Dr. Jason Shogren conducted the hearing, with Mr. Dunn serving as hearing examiner. Terri A. Lorenzon, attorney for the EQC, assisted with the hearing. Evans Construction Company (Evans) was represented by Matthew E. Turner and David K. Larson, from Mullikin, Larson & Swift, Jackson, Wyoming. Scott Garland of Moore, Myers & Garland, PLLC, represented Alice and Rodman Moorhead III.

1. Evans Construction Company, a sand and gravel operator, applied for a permit revision from the Department of Environmental Quality (DEQ) Air Quality Division(AQD).
2. The Protestants, Alice and Rodman Moorhead III (Moorheads) protested the issuance of the revised Evans air quality permit, CT-460, MD-745.
3. The Moorheads were also part of a group of thirteen Protestants who objected to the revision of a small mine permit for Evans Construction, TFN 4 1/65. The air quality permit was being revised to update the Evans Construction equipment list.
4. The Moorheads' objection to the air quality permit for Evans Construction was withdrawn as part of a settlement of the objections to the small mine permit. Evans incorporated the terms of the joint stipulation in its small mine permit.
5. At the hearing, Rodman Moorhead III, moved to withdraw his agreement with the joint stipulation, bifurcate the air quality case, and for a continuance of the hearing. Mr. Moorhead was not present at this hearing to proceed with his case or argue his motions.

6. All of the Protestants withdrew their objections to the Evans Small Mining Permit Application, Permit No. 608s, TFN 4 1/65.

CONCLUSIONS OF LAW

1. The EQC has jurisdiction over the subject matter and the parties to this proceeding.
2. Notice of the contested case hearing was published in a local news paper as required by the DEQ Rules of Practice and Procedure.
3. The Moorheads were notified of the hearing date and the deadline for filing motions.
4. The Moorheads had an obligation to appear before the EQC to present arguments on their motions or to be prepared to present evidence.
5. The Moorheads' motions should be denied and their stipulation to withdraw their objections to the air quality permit should be accepted.

IT IS HEREBY ORDERED THAT

1. Alice and Rodman Moorheads' motion to withdraw their agreement with the joint stipulation, bifurcate the air quality case and for a continuance of the hearing is denied.
2. This case is dismissed and the Department of Environmental Quality shall issue the revised air quality permit for Evans Construction, CT-460, MD-745.

DATED this 28th day of July, 2003.



Thomas Dunn, Hearing Examiner
Environmental Quality Council
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122 West 25th Street
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CERTIFICATE OF SERVICE

I, Joe F. Girardin, certify that at Cheyenne, Wyoming, on the 30th day of July 2003, I served a copy of the foregoing ORDER by depositing copies of the same in the United States mail, postage prepaid, duly enveloped and addressed to:

Carol Kaminski
PO Box 2576
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Ben Graham
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Jackson, WY 83001

Scott Garland
MOORE MYERS & GARLAND
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and also to the following persons via interoffice mail:

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Joe F. Girardin, Paralegal
Environmental Quality Council