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

Terri A. Lorenzon, Director
Environmental Quality Council

IN THE MATTER OF OBJECTIONS TO THE)
AIR QUALITY PERMIT NO. MD-1041)
OF KEN HARVEY RABBIT PIT)

DOCKET NO. 04-2801

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Environmental Quality Council (Council) held a public hearing and heard the testimony on this matter on June 22, 2005 and on August 19, 2005 at the Town Hall, Council Chambers, 4320 Broadway, Thermopolis, Wyoming. Ken Harvey (Harvey) was represented by Jerry D. Williams, Esq., The Protestants, Gary & Sharon Crane (Crane) and Paul & Carrie Galovich (Galovich) were represented by Mistee L. Godwin, Esq. of Brown, Drew and Massey, LLP, and The Department of Environmental Quality, (DEQ) Air Quality Division, (AQD) was represented by Nancy E. Vehr, Esq., Senior Assistant Attorney General. Members of the Council present were Wendy Hutchinson, Hearing Examiner, Jon Brady, Richard C. Moore, P.E. and Mark Gordon. Also present for the Council was Terri A. Lorenzon, Esq.

At a public meeting held on November 16, 2005, the Council, by a vote of a majority of the Council members, reached a decision in this matter. The Council hereby issues the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The Rabbit Gravel Pit is located in the SW1/4NE1/4, Section 8, T43N, R94W, and it is approximately 6 miles north of Thermopolis. The Rabbit Pit is owned by Ken Harvey, and the Hot Springs County land use for the site of the Rabbit Pit is classified as industrial.
2. The Rabbit Pit is located adjacent to property owned by Gary and Sharon Crane, and across a county road, East Sunnyside Lane, from property owned by Paul and Carrie Galovich.
3. The Rabbit Pit has been operated as a 10 acre exemption pursuant to the Environmental Quality Act, W.S. 35-11-101 *et seq.* 2005 and the DEQ mine permit regulations. A water quality permit was issued to an operator of the Rabbit Pit but neither the status of the pit as exempt or the water quality permit are at issue in this proceeding.

4. Hot Springs County entered into an agreement with Ken Harvey to operate the Rabbit Pit and the County mined gravel for local road projects. Witnesses did not provide a date on which operations began but the record shows that in 2001 the County contracted with a third party to crush 25,000 yards of gravel at the Rabbit Pit. This was the first of two crushing operations that have been conducted at the Rabbit Pit.
5. In anticipation of operating the pit, on October 3, 2002, the Wyoming Department of Transportation (WYDOT) obtained an air quality permit, Permit CT-3036, for the Rabbit Pit. An air quality permit was not required by the DEQ at the time and Permit CT-3036 applied solely to WYDOT. One of the conditions of this permit was, "That no crushing/screening equipment, asphalt plants, or concrete batch plants are authorized at this pit." WYDOT never mined any gravel from the Rabbit Pit.
6. In 2003 the County contracted with a third party to crush 50,000 yards of gravel at the Rabbit Pit. It took approximately three weeks, working ten hour shifts, to complete this crushing project. The existing stockpile at the Rabbit Pit represents the remaining 20,000 to 25,000 yards of gravel from the second crushing operation. Current operations at the site consist of loading and hauling materials from the stockpile to various County projects.
7. In 2003, the DEQ received a complaint about the crushing operations occurring at the Rabbit Pit. The DEQ Air Quality Division (AQD) asked Ken Harvey to submit an air quality permit application to analyze the air quality impacts of crushing/screening operations at the Rabbit Pit. Ken Harvey submitted an application for an air quality permit on December 10, 2003 and he sought the authority to allow crushing/screening equipment, hot mix plants, concrete batch plants, and stockpiling at the Rabbit Pit. Although Harvey did not indicate that he wanted to modify permit CT-3036, that permit previously issued to WYDOT, the AQD referred to the permit application as a proposed modification of CT-3036.
8. Ken Harvey estimated that the gravel pit would produce 25-50 thousand yards of gravel/year.
9. The permit application analysis for the Ken Harvey application identified fugitive particulate matter as the pollutant of primary concern. The AQD estimated that the crushing and screening operations would generate 0.6 tons of total suspended particulates (TSP) emissions for every 50,000 tons of material produced.
10. The AQD estimated that crushing and screening operations would generate 0.3 tons of PM₁₀ for every 50,000 tons of material produced. PM₁₀ particulates are 10 microns and less in size.
11. The AQD estimated the amount of TSP and PM₁₀ emissions using the emission

factors set forth in an EPA document titled “AP-42 Compilation of Emission Factors” which is used by all states.

12. When WYDOT obtained an air quality permit for the Rabbit Pit, the AQD had issued the permit to the operator of the pit. In June of 2004, DEQ changed its policy and began issuing the air quality permits to the owners of gravel pits. DEQ changed its policy to avoid a lapse in coverage of operations when the operator at the site changes and to have a party responsible for the site when operations are complete.
13. The AQD analyzes and permits the equipment that is brought into a pit separately. The crushing/screening equipment as well as hot mix plants and concrete batch plants have individual air quality permits, as this equipment is mobile.
14. DEQ requires Best Available Control Technology (BACT) in all air quality permits. The DEQ/AQD determined that the use of water and/or chemical dust suppressants on the work areas, access roads and haul roads would be the BACT for the operations at the Rabbit Pit.
15. The AQD proposed five permit conditions for the Rabbit Pit air quality permit, including:
 3. That any crushing/screening equipment, asphalt plants, or concrete batch plants shall have separate, valid air quality permit(s) prior to locating/operating at this site.
 4. That any crushing/screening equipment operated at this site shall utilize water spray control measures at all belt transfer points, shaker screens, and discharge points of the primary and secondary crushers as necessary to limit visible emissions to twenty (20) percent opacity or applicable limits set forth by Wyoming Air Quality Standards & Regulations, Chapter 5, Section 2, Subpart OOO, as determined by 40 CFR Part 60, Appendix A, Method 9.
 5. That all unpaved portions of the haul roads, access roads, work areas, and stockpiles associated with this facility shall be treated with water and/or chemical dust suppressants on a schedule sufficient to control fugitive dust from vehicular traffic and wind erosion.
16. The AQD determined that the Rabbit Pit operations would meet the National Ambient Air Quality Standard (NAAQS) if BACT was applied.
17. The AQD determined that with BACT in place, the particulate emissions from the Rabbit Pit would be minimal and would not lead to a violation of the PM₁₀ NAAQS and therefore would not pose a significant health risk.
18. On April 23, 2004, the AQD sent a copy of the DEQ/AQD Permit Application analysis to Ken Harvey. Thirty days of public notice was issued to take comments on the proposed permit. Notice was published in the Thermopolis

Independent Record.

19. Public comments were received, a public hearing was scheduled by the AQD, public notice of the hearing was issued, and the hearing was held on June 21, 2005.
20. Based on the permit analysis and the experience of the AQD staff, the AQD concluded the regulations promulgated to further the policy and purpose of the Act in Chapter 6, section 2(c) of the Wyoming Air Quality Standards and Regulations had been met. The AQD stated:
 1. The proposed facility (the Rabbit Pit) will comply with the DEQ/AQD rules and regulations and the intent of the WEQA.
 2. The proposed facility will not prevent the attainment or maintenance of any ambient air quality standard or cause significant deterioration of existing ambient air quality.
 3. The proposed facility will be located in accordance with proper land use planning as determined by the appropriate agency charged with such responsibility.
 4. The proposed facility will utilize BACT with consideration of the technical practicability and economic reasonableness of reducing or eliminating emissions from the facility.
 5. The proposed facility will have provisions for measuring the emissions of significant air contaminants as determined by the AQD Administrator.
 6. The proposed facility will achieve the performance specified in the application for the permit to construct or modify as the conditions proposed for the permit become legal obligations once the permit for the facility is issued and other equipment that is brought to the site for use will be permitted separately.
21. On August 3, 2004 the DEQ/AQD issued MD-1041 to Ken Harvey and the five conditions proposed in the Permit Application Analysis were placed into the permit.
22. On August 3, 2004, the AQD sent a copy of the decision and final permit to interested persons, including Paul Galovich.
23. Paul and Carrie Galovich and Gary and Sharon Crane filed appeals of the decision to issue Permit No. MD-1041 for the Ken Harvey Rabbit Pit.
24. At the hearing, Protestants did not present any evidence or data from a similarly sized gravel pit that would demonstrate the AQD analysis of particulate emissions was flawed and that a violation of the NAAQS would be likely.

25. Although the Protestants argued that site specific monitoring or modeling should be conducted, no evidence was introduced to justify this requirement. The level of production at this pit, when compared with large sources such as surface coal mines, would not generate emissions that warrant site specific monitoring or modeling.

CONCLUSIONS OF LAW

1. Pursuant to W.S. 35-11-112(c)(ii), the Council has the power to suspend, deny, revoke or modify Air Quality Permit MD-1041. The Environmental Quality Council has jurisdiction over the subject matter of and the parties to this proceeding.
2. The regulations promulgated to further the policy and purpose of the Act is Chapter 6, section 2(c) of the Wyoming Air Quality Standards and Regulations. These regulations have been met.
3. Permit No. MD-1041 should be issued in accordance with W.S. §35-11-801(a) which states:

When the Department has, by rule or regulation, required a permit to be obtained, it is the duty of the Director to issue such permits upon proof by the applicants that the procedures of this Act and the rules and regulations promulgated hereunder have been complied with.

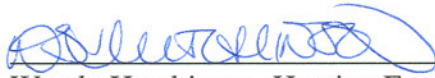
4. After conducting an exhaustive review of the facts and law during the contested case hearing, it is concluded that Harvey has met all requirements to obtain the air quality permit. It is also concluded that although Harvey has met those requirements the Protestants are impacted by the proximity of the Rabbit Pit to the Protestants property, conditions should be added to the permit to minimize the impact of dust on the adjacent landowners.

IT IS HEREBY ORDERED THAT: The Director of the Department of Environmental Quality shall modify Air Quality Permit MD-1041 with the following conditions.

1. Condition 5 of the Permit shall be modified to state:
 5. That all unpaved portions of the haul roads, access roads, work areas and stockpiles associated with this facility, shall be treated with water and/or chemical dust suppressants on a schedule sufficient to control fugitive dust from vehicular traffic and wind erosion. If water is chosen as the dust suppressant method, water application equipment must be located on site during loading operations.
2. New Conditions 6 through 8 shall state:

6. All operations shall be limited a Monday through Friday work week.
7. Notice shall be sent to the adjoining property owners before any screening and/or crushing or asphalt or batch plants are located at the mine.
8. The Permittee shall advise all operators operating under a relocate permit of the permit conditions for this pit.

DATED this 19th day of April, 2006.



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