

c. The proposed mining area will cause pollution of waters in violation of the laws of the State of Wyoming.

d. The proposed operation constitutes a public nuisance and endangers the public health and safety.

e. The affected lands lie within three hundred (300) feet of an existing occupied dwelling or home, all in violation of Wyoming Statute §35-11-406.

E. That your Protestants hereby request a hearing of this matter before the Environmental Quality Council.


F. The agency from whom review is sought is the Department of Environmental Quality.

G. Your Protestants own lands adjacent to the permittee and own lands affected by the permit and proposed haul road.

H. A copy of the agency decision permit is attached as Appendix A.

DATED this 1st day of August, 2008.

GODDARD, WAGES & VOGEL:

By 
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Certificate of Service

I, Greg L. Goddard, attorney for Protestants in the above-entitled matter, do hereby certify that on the 12th day of August, 2008, I caused a true and correct copy of the foregoing Notice of Appeal/Petition for Review to be served as follows:

Dennis M. Boal, Chair	<input checked="" type="checkbox"/>	U.S. Mail
Environmental Quality Council	<input type="checkbox"/>	Fed Ex
Herschler Building	<input type="checkbox"/>	Facsimile
122 West 25 th Street, Room 1714	<input type="checkbox"/>	Hand-Delivered
Cheyenne, WY 82002		

David A. Finley	<input checked="" type="checkbox"/>	U.S. Mail
Administrator, Air Quality Division	<input type="checkbox"/>	Fed Ex
Department of Environmental Quality	<input type="checkbox"/>	Facsimile
Herschler Building	<input type="checkbox"/>	Hand-Delivered
122 West 25 th Street		
Cheyenne, WY 82002		

John V. Cora, Director	<input checked="" type="checkbox"/>	U.S. Mail
Department of Environmental Quality	<input type="checkbox"/>	Fed Ex
Herschler Building	<input type="checkbox"/>	Facsimile
122 West 25 th Street	<input type="checkbox"/>	Hand-Delivered
Cheyenne, WY 82002		

Mary Ann Porter	<input checked="" type="checkbox"/>	U.S. Mail
Manager	<input type="checkbox"/>	Fed Ex
Touchstone Materials, LLC	<input type="checkbox"/>	Facsimile
P.O. Box 735	<input type="checkbox"/>	Hand-Delivered
Meridian, ID 83680-0735		


Greg L. Goddard

**IN THE MATTER OF A PERMIT APPLICATION (AP-7066) FROM TOUCHSTONE
MATERIALS, LLC TO ESTABLISH THE TOUCHSTONE MINE WHICH WILL INCLUDE
GRAVEL SCREENING, EXPOSED ACREAGE, AND HAUL ACTIVITY APPROXIMATELY
THREE (3) MILES NORTHEAST OF BUFFALO, IN JOHNSON COUNTY, WYOMING.**

DECISION

I. Introduction

The Air Quality Division received a permit application from Touchstone Materials, LLC, on December 7, 2007, to establish the Touchstone Mine which will include gravel screening, exposed acreage, and haul activity. The applicant estimates an annual production rate of 20,000 tons. The Touchstone Mine is located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 24, T51N, R82W and the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 19, T51N, R81W, approximately three (3) miles northeast of Buffalo, in Johnson County, Wyoming. The Air Quality Division conducted an analysis of this application and on February 14, 2008, published in the Buffalo Bulletin in Buffalo, Wyoming, a public notice of proposed intent to approve and placed a copy of the application and Division's analysis in the office of the Johnson County Clerk in accordance with regulations. The public notice period ran from February 14, 2008 through March 17, 2008. Due to written comments received, the Administrator of the Air Quality Division determined that a public hearing would be held. The public hearing was held on April 21, 2008, at the Johnson County Fire Hall, located at 314 Railroad Avenue in Buffalo, Wyoming.

II. Analysis of Public Comments:

Emissions Impacts - A common issue to most commentors, both written and verbal, was the potential impact due to dust and other pollutants generated by the gravel mine operation. Touchstone Materials, LLC will be subject to the terms of the permit, which includes controlling fugitive dust. Chapter 6, Section 2 of the Wyoming Air Quality Standards and Regulations requires consideration of "best available control technology" (BACT) in all permitting actions in Wyoming. Proposed permit conditions will require Touchstone Materials, LLC to control fugitive emissions at the mine. Conditions that address dust control are as follows:

- i. That the screening equipment shall be equipped with a wet suppression system to control fugitive emissions from the screening equipment. The wet suppression system shall be operated to the extent necessary to limit visible emissions to twenty (20) percent opacity or applicable limits set forth by Wyoming Air Quality Standards and Regulations, Chapter 5, Section 2, Subpart OOO, as determined by 40 CFR, Part 60, Appendix A, Method 9.
- ii. That all work areas, disturbed areas, and stockpiles shall be treated with water and/or chemical dust suppressants on a schedule sufficient to control fugitive dust.
- iii. All unpaved haul roads shall be treated with water and/or chemical dust suppressants on a schedule sufficient to control fugitive dust from vehicular traffic.

The proposed conditions represent BACT for mine operations and emissions from portable crushing/screening equipment. The Division generally does not require modeling or monitoring for a quarry of this size. 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 and nitrogen dioxide annual ambient standards. There is also a 24-hour particulate standard. Mines/quarries are considered fugitive sources, meaning the emissions are not emitted through a stack, and currently there is not a dispersion model that adequately predicts short term particulate impacts. Therefore, the Division relies on monitoring to demonstrate compliance with the 24-hour particulate standard. Based on experience, the Division is satisfied that properly controlled gravel mine operations, as required through conditions of the permit with application of BACT, will not result in an exceedance of air quality standards. However, compliance with the ambient air quality standards does not mean there will be no air quality impact.

Health Effects: Ambient air quality standards listed in the Wyoming Air Quality Standards and Regulations are health-based standards. As stated, the Division is satisfied that properly controlled gravel mine operations, as required through conditions of the permit with application of BACT, will not result in an exceedance of air quality standards

Hours of Operation: The Division is satisfied that the control requirements established through the BACT process will ensure the mine complies with all applicable requirements of the Wyoming Air Quality Standards and Regulations. Therefore, the Division does not believe it is necessary to establish limited operating hours to ensure compliance with ambient air standards. Touchstone Materials, LLC has indicated in their response to comments that the hours of operation will be less than or equal to 10 hours per day, 6 days per week, 52 weeks per year.

Location Not Suitable for Mine Operations: Multiple comments were received suggesting the location is not suitable for a gravel mine mining operation. It was also stated that the properties surrounding the mine are subject to covenants that the mine is not. There are no distance restrictions contained in the Air Quality Standards and Regulations. Land use planning is entirely a local issue over which the Department has no control. However, the Air Quality Division is required by regulation to consider local land use planning prior to issuing a permit. As part of this permitting action, Touchstone Materials, LLC provided a letter from the Johnson County Commissioners stating Johnson County does not have zoning regulations in effect. Touchstone Materials, LLC has complied with the siting requirements of Chapter 6, Section 2 of the Wyoming Air Quality Standards and Regulations.

Clarification of Equipment/Operations: Touchstone Materials, LLC indicated in their response to comments that a concrete batch plant is no longer proposed for the Touchstone Mine. Crushing has not been indicated by the applicant and will not be allowed under the Air Quality Permit. Should Touchstone Materials, LLC intend to operate a crusher or concrete batch plant in the future, a new application must be submitted to the Division and will be subject to the full application process, including public notice.

Application Completeness: Comments were received suggesting that the application was incomplete. The Division reviewed the application for completeness, and in a letter dated January 15, 2008 deemed the application complete. The Division utilized the Air Quality forms as the basis for the permit analysis. The Air Quality Division does not have authority over Land Quality concerns, which

includes the content of the Mine Plan.

Facility Inspections: Division personnel conduct announced inspections to ensure compliance with the permit conditions and unannounced inspections in response to public complaint as Division resources allow. Questions regarding compliance with the permit conditions should be directed to the District Engineer at 1866 S. Sheridan Avenue, Sheridan, WY 82801 (307) 672-6457.

Water Source: The conditions of the permit require water to be used to control fugitive emissions, but the Division does not require applicants to identify the source of the water. In their response to comments, Touchstone Materials, LLC indicated that water would be purchased offsite.

Dust Control during Winter Months: Comments were received regarding potential freezing of water spray systems during the winter, as well as concerns over dust suppression on the stockpiles during the winter. In their response to comments, Touchstone Materials, LLC indicated that a surfactant will be utilized during winter months to control dust. The permit requires year-round operation of dust control measures, and Touchstone Materials, LLC will be responsible for complying with the conditions of the permit.

Public Notice: Comment was received that the public notice package is required to be published more than once. Chapter 6, Section 2(m) of the Wyoming Air Quality Standards states that after the Administrator has reached a proposed decision based upon the information presented in the permit application to construct or modify, the Division of Air Quality will advertise such proposed decision in a newspaper of general circulation in the county in which the source is proposed. This advertisement will indicate 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 Air Quality Division's analysis of the effect on air quality. The Air Quality Division conducted an analysis of this application and on February 14, 2008, published in the Buffalo Bulletin in Buffalo, Wyoming, a public notice of proposed intent to approve and placed a copy of the application and Division's analysis in the office of the Johnson County Clerk. The Division has met the public notice requirements for this application.

Johnson County Road Use Agreement: Comment was received regarding Touchstone Materials, LLC signing a road use agreement with the County to assist in the maintenance and dust control of Kumor Road. In their response to comments, Touchstone Materials, LLC indicated that no correspondence from Johnson County has been received regarding a road use agreement and that Touchstone Materials, LLC will not commit to an agreement without first knowing what it might contain. The Division encourages Touchstone Materials, LLC to work with the County, but does not have the regulatory authority to require signing of the road use agreement as a condition of the permit. As discussed, Touchstone Materials, LLC is required by the permit to control emissions from the haul route whether an agreement with the County is in place or not.

Issues which cannot be considered in the issuance of an air quality permit.

- i. Noise – Comments were received expressing concern about the noise generated by the mining operation, including haul equipment. The Division has no authority to regulate noise pollution.

- ii. Traffic safety - The issue of safety due to increased truck traffic was raised during the hearing. The Air Quality Division has no authority to consider safety issues related to the use of public roads, in determining whether an air quality permit should be granted or denied.
- iii. Haul Road Infrastructure - The issue of road and bridge maintenance due to increased truck traffic was raised. The Air Quality Division has no authority to consider safety issues related to the use of public roads and bridges, in determining whether an air quality permit should be granted or denied.
- iv. Aesthetic Impacts- Comments were made expressing concern with the impact to the surrounding area. The Wyoming Air Quality Standards and Regulations do not allow the Division to consider aesthetics in determining whether an air quality permit can be issued. The Division is required to address the ambient air quality impact of the proposed gravel operation and is satisfied that if the gravel operation is operated within the confines of the permit conditions, ambient air quality standards will not be violated.
- v. Property Values - The effects the proposed industrial operation may have on the values of surrounding residential or agricultural property is likewise not an issue which the Division can consider in determining compliance with standards and regulations and in issuing or denying permits. Again, these are local issues properly resolved by local planning and zoning commissions.
- vi. Land Quality Concerns – A comment was received stating that § 35-11-406 has not been met requiring a bond. This regulation is a Land Quality Regulation, not an Air Quality Regulation. The applicant is required to obtain a separate Land Quality permit for this mining operation. The Air Quality Division does not have authority over Land Quality concerns.
- vii. Water Quality Concerns – A comment was received stating that the establishment of the Touchstone Mine will affect water quality, including water that is used for agricultural purposes. The Air Quality Division does not have authority over Water Quality concerns. Water Quality personnel attended the public meeting on April 1, 2008 and will be provided a copy of this decision document.

III. **Decision:**

On the basis of comments received during the public notice period and at the public hearing, an analysis of those comments, and representations made by the applicant in the application, the Department has determined that an air quality permit will be issued to Touchstone Materials, LLC, to establish the Touchstone Mine as described in the application.

Dated this 2nd day of June, 2008.



Dave Finley
Administrator
Wyoming Air Quality Division



John Corra
Director
Wyoming Department of Environmental Quality