

FILED

DEC 02 2010

Jim Ruby, Executive Secretary
Environmental Quality Council

Judith Bush
PO Box 861
Sundance, Wyoming
82729
307-283-2834

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

In the Matter of the Appeal and)	
Petition of Judith Bush for Hearing of :)	
Croell Redi-Mix, DEQ AQD Permit)	EQC Docket No. 10-2803
Application No AP-9645 and)	
DEQ AQD Permit No. MD-9645)	
dated March 17, 2010)	

**BUSH OBJECTION TO NOTICE OF PROPOSED ORDER
PROVIDED BY CROELL REDI-MIX
TO THE ENVIRONMENTAL QUALITY COUNCIL**

AND

**OTHER OBJECTIONS / CONCERNS RELATING TO COUNCIL'S
DECISION FOR SUMMARY JUDGMENT IN THIS MATTER**

There is nothing in this proposed order for summary judgment to reflect either the facts relating to this matter, the evidence submitted by the parties to the EQC prior to the November 18, 2010 proceedings or the proceedings of November 18, 2010, or the legal arguments upon which this decision of Council was based.

This order as written, is inadequate to reflect whether there was agreement of Croell and the DEQ AQD with regard to facts presented by Bush (largely documented by DEQ documents).

The order drafted by Attorneys for Croell Redi-Mix states that, "Council, having considered the Motion and the responses thereto, having reviewed the file, having

heard oral argument of the Parties, and being otherwise fully advised and informed in the premises, hereby : Orders that Croell Redi-Mix's Motion for Summary Judgment is GRANTED; and The contested case hearing set for January 13 and / or 14th, 2011 is VACATED.

If Council members were fully advised, it is unclear when or by whom such advice was provided. Such advice was not provided to Council members within the context of the November 18, 2010 hearing into this matter of summary judgment. As such, any opportunity to either hear or to argue upon the premises upon which such advice was based was not afforded to Bush.

Additionally:

- * Explanatory pages regarding Bush Exhibits (a requirement of the discovery process required by Croell attorneys as well as a requirement for hearings of summary judgment) were detached from Bush Discovery / Summary Exhibits 1 - 28 by the EQC. This was not corrected until pointed out to the EQC by Bush in a fax dated November 16, 2010.
- * Bush Discovery / Summary Judgment Exhibits 29 - 33, also with attached explanatory cover pages, which were faxed to Croell attorneys, DEQ AQD attorney and the EQC on November 17, 2010. These were not posted on the EQC website prior to the November 18, 2010 hearing taking place. It is my understanding that members of the EQC access the record via the EQC web pages.
- * Bush Preliminary Brief in this matter, which was couriered to Croell attorneys, DEQ AQD attorney and the EQC on September 29, 2010, also does not appear to have been included in the record. Many of my concerns and legal citations justifying these concerns are contained on pages 1 - 28 of this document. (Discovery / Summary Judgment Exhibits, which I was unable to copy at the time the Preliminary Brief was sent were subsequently renumbered with explanatory cover pages added.)

As such, it is questionable that Council members were adequately informed to carry out their role as a quasi-judicial body or to establish the facts upon which arguments by Bush were based. Presumably none of the facts documented by Bush (largely contained in DEQ documents submitted as exhibits) are in dispute.

Motions for Summary Judgment were submitted to the EQC both by Croell Redi-Mix, Inc. and the DEQ AQD in this matter. The "Order on Croell Redi-Mix's Motion for Summary Judgment" as drafted by Croell attorneys as it is written applies solely to Croell's Motion for Summary Judgment.

I am assuming that matters relating to the conduct of the DEQ AQD will be specifically addressed in any Order for Summary Judgment, and that the EQC will be providing clarification in regard to the basis for its decisions relating to matters and arguments raised, both in exhibits and during the course of the November 18, 2010 hearing with regard to issues relating to DEQ AQD as well as Croell Redi-Mix, Inc.

- 1) Bush submission was limited to 10 minutes, in spite of the two opposing parties (DEQ AQD and Croell Redi-Mix) each being given 10 minutes to present. Bush requested an additional 10 minutes to present this complicated matter to Council (copy of request is attached). This request was denied.

There was inadequate time provided to Bush to counter 20 minutes of objections provided by the DEQ AQD and Croell in this matter, and written submissions should carry equal weight to arguments and information presented at the November 18 2010 hearing

- 2) Mr. Stewart, on behalf of Croell Redi-Mix, in addition to rephrasing the points previously made by Ms. Vehr (representing the DEQ AQD in this matter), offered a possible explanation of the error of including the NWNE of Section 25 T 52N R 62W in the Croell Redi-Mix minesite at the Rogers Rock Quarry, thus acknowledging this error in the permit issued to Croell Redi-Mix on March 17, 2010, which has been inexplicably self-perpetuating (since February 13, 2007).

This circumstance was pointed out by Bush in her May 14, 2010 petition for a hearing in this matter. Mr. Stewart's acknowledgment on behalf of Croell of this circumstance contradicted assertions made in the DEQ AQD presentation which preceded the Croell presentation. Bush addressed other objections to MD-9645 because of the acknowledgement on behalf of Croell that this error.

Whereas Bush agreed that it was likely the case that the error in the legal description of all AOD permits relating to the Rogers Pit minesite resulted from an error in the change of the legal description of a 10 acre legal description (the NWNESW of Section 25) to a forty acre legal description (the NWNE of Section 25) [see Bush Exhibit 29], Bush Exhibit 31 points out that in November of 2007 the same (600.07 acre) minesite was GPS'd to contain 551.5 acres.

The cover page for this exhibit also points out that the total acres designated as the minesite in MD-9645 as written contains the 600.07 acres designated in Croell regular minesite # 772 plus an additional ~ 40 acres contained in the NWNE of Section 25. Council either did not have access to this Exhibit, did not read the cover page to this exhibit, or chose to disregard this exhibit.

It is my understanding that it is the responsibility of Council to ascertain the facts prior to making a decision in a Motion for Summary Judgment.

Once again, the facts regarding this matter are complicated, and it was not possible in the 10 minutes allotted to cover all of the material which was submitted to Council but which must be given equal weight to testimony in a matter of summary judgment.

- 3) Bush addressed the incorrect and misleading public notice provided for AP-9645. This public notice clearly stated that all mining and associated activities would take place on the NENW of Section 25, T52N R62W - clearly implying to any reasonable mind a 40 acre minesite when in fact the minesite contained 600+ acres.

Bush also pointed out that case law cited by Ms. Vehr (Pheil v. Amax Coal) does not concern itself with public notice, but with mailed notice to an adjacent landowner, which was mailed to an out of date address, and that, as such, this precedent was inapplicable to the both incorrect and misleading public notice described in 3) immediately above.

- 4) Bush pointed out the implicit responsibility of the WDEQ to protect the public from illegal and / or unpermitted mining activities, that this responsibility had not been afforded to Bush Ranches during the course of Croell Redi-Mix operations at the Rogers Rock Pit/ Quarry (Roger's Pit / Quarry), and that such unpermitted and /or otherwise illegal mining activity had taken place throughout much of the time that the owners of Bush Ranches had been trying to market their ranch.

Bush also pointed out that DEQ AQD had issued permits to Croell Redi-Mix which were out of all proportion with DEQ AQD Permit CT-4526 under which these permits were issued, and that this was inconsistent with the intent of the Environmental Quality Act (citing WDEQ AQD Standards and Regulations, Ch 6, Sec 2 (c) (i).

Disregard for its own rules and the intent of the Environmental Quality Act and rewarding disregard on the applicant's part of the conditions governing a AQD small permit by rewarding the applicant with a greatly expanded AQD permit is beyond the pale.

- 5) Bush submitted numerous exhibits (largely of DEQ origin) with explanatory cover pages. These documented the concerns raised in her original objection, as well as in her petition and amended petition for a hearing before the EQC as well as in her arguments in opposition to both Croell's and the DEQ AQD's motions for summary judgment, both written and and at the November 18, 2010 hearing.

There was inadequate time provided to refer to the bulk of these documents during the 10 minute presentation permitted.

- 6) Neither DEQ AQD nor Croell Redi-Mix offered any rebuttal to any of the points raised by Bush at the November 18, 2010 motion hearing for summary judgment.
- 7) No questions were asked by Council Members prior to Council voting (with one abstention) in favour of the Motion for Summary Judgment.
- 8) No discussion or deliberation of Council ensued prior to Council's approval of the Croell Redi-Mix and the DEQ AQD motions for summary judgment.
- 9) Council did not acknowledge Mr. Stewart's implicit admission on behalf of Croell Redi-Mix of the inaccurate information regarding the inclusion of the NWNE of Section 25, T 52N R 62W as a part of the minesite designated in DEQ AQD Permit MD-9645 [3] above], nor did Council order that this permit be corrected. It was the responsibility of Council to order this error corrected.
- 10) The approval of Council of the Motion for Summary Judgment represents a legal decision based on the evidence and testimony presented and otherwise available to Council at the time of the hearing on November 18, 2010. Council's Order for Summary Judgment requires that Council's rationale for its respective decisions to disregard and / or reject specific arguments raised by Bush be addressed in its Order for Summary Judgment..
- 11) Mr. Stewart's explanation of Dr. Glock's expert opinion regarding the relationship of dust to the development of pneumonia in cattle is in no way inconsistent with the expert opinion of Dr. Myers. (Also see Bush Discovery / Summary Judgment Exhibits 25 and 28).
- 12) It is impossible to know whether Council took the time to acquaint themselves with the complicated circumstances in this matter. Given the limitation

placed on presentations, specifically the Bush presentation, it is reasonable to expect that Council members, acting as a quasi-judicial body, should have been up to speed prior to the December 18, 2010 hearing in order to perform this function adequately.

The 'Order on Croell Redi-Mix's Motion for Summary Judgment provided to the EQC by Cannon and Davis on behalf of Croell Redi-Mix on November 22, 2010, is also inadequate in that it fails to address either its own acknowledgment on behalf of Croell Redi-Mix that an error in DEQ AQD Permit MD-9645 exists or the specific arguments presented by Bush. Furthermore, it fails to note specific points raised by the parties in the course of the November 18, 2010 Hearing regarding Croell's and the DEQ AQD's motions for Summary Judgment.

The decision of Council in this matter requires that arguments and acknowledgments presented by all parties be reflected in Council's decision and that reasons for Council's acceptance of and / or rejection of these arguments be specifically addressed in its Order for Summary Judgment.

- 13) The decision of Council in favour of summary judgment requires that neither Croell Redi-Mix nor DEQ AQD disputes any material facts presented in Bush Exhibits 1 - 33 for discovery and for the Hearing for Summary Judgment in order for Summary Judgement to be a permissible means of settlement of this matter.
- 14) It is impossible to comment further on the Order resulting from the November 18, 2010 hearing prior to receiving EQC's Order for Summary Judgment containing Council's rationale and legal arguments for rejecting the arguments of Bush in this matter.

RELEVANT STATUTE RE FAILING TO PROVIDE COUNCIL MEMBERS WITH COVER PAGES TO EXHIBITS IN A TIMELY MANNER

**Wyoming Rules of Civil Procedure
Rule 56.1 Summary Judgment**

Required statement of material facts upon any motion for summary judgment pursuant to Rule 56 of the Rules of Civil Procedure, in addition to the materials supporting the motion, there shall be annexed to the motion a separate, short and concise statement of the material facts as to which the moving party contends there is no genuine issue to be tried.

In addition to materials opposing a motion for summary judgment, there shall be annexed a separate, short and concise statement of material facts as to which it is contended that there exists a genuine issue to be tried.

Such statements shall include pinpoint citations to the specific portions of the record and materials relied upon in support of the parties' position.

RELEVANT STATUTE RE "ORDER ON CROELL REDI-MIX'S MOTION FOR SUMMARY JUDGMENT" FAILING TO PROVIDE ANY SPECIFIC INFORMATION WHATSOEVER RELATING TO THESE PROCEEDINGS

Wyoming Administrative Procedure Act

16-3-110 Contested cases: final decision contents: notification

A final decision or order adverse to a party in a contested case shall be in writing or dictated into the record. The final decision shall include findings of fact and conclusions of law separately stated. Findings of fact if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Parties shall be notified either personally or by mail of any decision or order. A copy of the decision and order shall be delivered or mailed forthwith to each party or to his attorney of record.

CERTIFICATE OF SERVICE

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

**BUSH OBJECTION TO NOTICE OF PROPOSED ORDER
PROVIDED BY CROELL REDI-MIX
TO THE ENVIRONMENTAL QUALITY COUNCIL; AND**

**OTHER OBJECTIONS / CONCERNS RELATING TO COUNCIL'S
DECISION FOR SUMMARY JUDGMENT IN THIS MATTER**

re EQC Docket 10-2803
AP-9645 / MD-9645

DEC 2, 2010
was served by fax and by U.S. mail on Dec *3*, 2010.

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J. Mark Stewart (# 5-4121)
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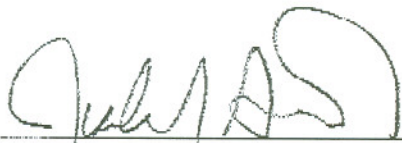
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Judith Bush date
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BY FAX **307-777-6134** *mailed copy to follow*

To: Environmental Quality Council
Attn: Jim Ruby, Exec Sec EQC

From Judith Bush tel 307-290-2834
 PO Box 861
 Sundance, WY 82729

Re: EQC Docket No 10-2803
 Croell Redi-Mix AQD AP
 November 18, 2010 Motion Hearing for Summary Judgment

date: November 16, 2010

no. pages 1 including attachment

Dear Mr. Ruby,

I am asking that Council allow me 20 minutes to present my arguments. The two opposing parties will each have 10 minutes to present reasons why this matter should not proceed to a hearing before the EQC. In fairness, I believe that I should be allowed 20 minutes to counter these arguments and present my case.

Yours truly,



Judith Bush

FILED

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**Jim Ruby, Executive Secretary
Environmental Quality Council**

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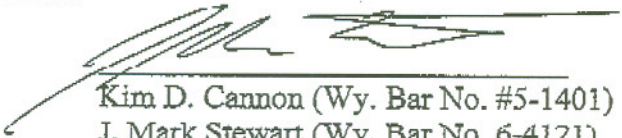
**BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING**

In the Matter of the Appeal)
and Petition for Hearing of:)
Croell Redi-Mix, DEQ AQD Permit) Docket No. 10-2803
Application No. AP-9645)
and DEQ AQD Permit No. MD-9645)
dated March 17, 2010)

NOTICE OF PROPOSED ORDER

Croell Redi-Mix, by and through its attorneys Davis & Cannon, LLP, submits herewith its proposed order granting Croell Redi-Mix's Motion for Summary Judgment.

DATED this 22nd day of November, 2010.



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BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

In the Matter of the Appeal)	
and Petition for Hearing of:)	
Croell Redi-Mix, DEQ AQD Permit)	Docket No. 10-2803
Application No. AP-9645)	
and DEQ AQD Permit No. MD-9645)	
dated March 17, 2010)	

ORDER ON CROELL REDI-MIX'S MOTION FOR SUMMARY JUDGMENT

This matter came before the Council on Croell Redi-Mix's Motion for Summary Judgment filed on October 20, 2010. A hearing on the Motion was held before the Council on November 18, 2010 at approximately 10:15 a.m. in Laramie, Wyoming with Croell Redi-Mix having been represented by its attorney, J. Mark Stewart, the DEQ/AQD having been represented by its attorney Nancy Vehr, and with Judith Bush appearing on her own behalf via telephone with the permission of the Council.

This Council, having considered the Motion and the responses thereto, having reviewed the file, having heard the oral argument of the Parties, and being otherwise fully advised and informed in the premises, hereby:

ORDERS that Croell Redi-Mix's Motion for Summary Judgment is GRANTED; and
 The contested case hearing set for January 13 and/or 14th, 2011 is VACATED
 DONE this ___ day of _____, 2010.

 F. David Searle, Presiding Officer

CERTIFICATE OF SERVICE

I, J. Mark Stewart, attorney for Croell Redi-Mix, Inc. in the above-entitled and numbered cause, do hereby certify that on the 22nd day of November, 2010, I caused a true and correct copy of the proposed Order On Croell Redi-Mix's Motion for Summary Judgment to be served as follows:

F. David Searle, Presiding Officer	<input type="checkbox"/>	U.S. Mail
Environmental Quality Council	<input type="checkbox"/>	Federal Express
Herschler Building	<input type="checkbox"/>	Facsimile
122 West 25th Street	<input checked="" type="checkbox"/>	Hand-Delivered
Cheyenne, Wyoming 82002	<input type="checkbox"/>	Electronic Transmission
Nancy Vehr	<input type="checkbox"/>	U.S. Mail
Sr. Asst. Attorney General	<input type="checkbox"/>	Federal Express
Wyoming Attorney General's office	<input type="checkbox"/>	Facsimile
123 Capitol Building	<input checked="" type="checkbox"/>	Hand-Delivered
Cheyenne, Wyoming 82002	<input type="checkbox"/>	Electronic Transmission
Amanda Kroul	<input type="checkbox"/>	U.S. Mail
Office of Attorney General	<input type="checkbox"/>	Federal Express
Wyoming Attorney General's office	<input type="checkbox"/>	Facsimile
123 Capitol Building	<input checked="" type="checkbox"/>	Hand-Delivered
Cheyenne, Wyoming 82002	<input type="checkbox"/>	Electronic Transmission
John Corra	<input type="checkbox"/>	U.S. Mail
Director, DEQ	<input type="checkbox"/>	Federal Express
Herschler Building	<input type="checkbox"/>	Facsimile
122 West 25th Street, Room 1714	<input checked="" type="checkbox"/>	Hand-Delivered
Cheyenne, Wyoming 82002	<input type="checkbox"/>	Electronic Transmission
Steve Dietrich	<input type="checkbox"/>	U.S. Mail
DEQ, Air Quality Administrator	<input type="checkbox"/>	Federal Express
Herschler Building	<input type="checkbox"/>	Facsimile
122 West 25th Street, Room 1714	<input checked="" type="checkbox"/>	Hand-Delivered
Cheyenne, Wyoming 82002	<input type="checkbox"/>	Electronic Transmission
Gina Johnson	<input type="checkbox"/>	U.S. Mail
DEQ, Air Quality Division	<input type="checkbox"/>	Federal Express
Herschler Building	<input type="checkbox"/>	Facsimile
122 West 25th Street, Room 1714	<input checked="" type="checkbox"/>	Hand-Delivered
Cheyenne, Wyoming 82002	<input type="checkbox"/>	Electronic Transmission

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J. Mark Stewart