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JUN 17 2010  
Jim Ruby, Executive Secretary  
Environmental Quality Council

Attorney for Defendant  
Croell Redi-Mix. LLC

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 )

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**CROELL REDI-MIX, INC.'S RESPONSE PURSUANT TO THE ORDER  
OF THE ENVIRONMENTAL QUALITY COUNCIL DIRECTING  
A RESPONSE TO THE APPEAL FILED BY JUDITH BUSH IN THIS MATTER**

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Respondent Croell Red-Mix, Inc. (hereafter "Respondent Croell") responds to the enumerated paragraphs in the Judith Bush Petition for hearing before the EQC as follows:

1. Sufficiency of Public Notice. A public notice of the Wyoming Department of Environmental Quality (DEQ)/ Air Quality Division (AQD) was sufficient under the statute. DEQ and AQD published the public notice of the intent to approve that Application NO. AP-9645 on October 1, 2009. A copy of the application for the permit was properly deposited and reviewable at the office of the County Clerk of Crook County, Wyoming. Respondent Croell denies all other allegations in paragraph 1 of the petition inconsistent herewith.

2. Legal Description of Permitted Area. The application for the Air Quality Permit on its face referenced a complete land description contained in Table C-1 describing approximately 600.07 acres of land. The full description of the lands is as follows:

A tract of land located in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ , that portion of SW $\frac{1}{4}$ NW $\frac{1}{4}$  located east of Interstate 90 Right-Of-Way, SW $\frac{1}{4}$  and SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 25; that portion of SE $\frac{1}{4}$ NE $\frac{1}{4}$  located east of Interstate 90 R-O-W, that portion of SE $\frac{1}{4}$  located east of Interstate 90 R-O-W, and that portion of SE $\frac{1}{4}$ SW $\frac{1}{4}$  located east of Interstate 90 R-O-W of Section 26; E $\frac{1}{2}$ NE $\frac{1}{4}$ , NW $\frac{1}{4}$ NE $\frac{1}{4}$ , that portion of the N $\frac{1}{2}$ NW $\frac{1}{4}$  located east of Interstate 90 R-O-W and the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 35, T52N R62W of the Sixth Principal Meridian, Crook County, Wyoming.

The NE $\frac{1}{4}$ SW $\frac{1}{4}$  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 NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 25 is excluded from mining progressions.

The legal description is accurate and complete, and it is consistent with the legal description for the Land Quality Permit. A typographical error mistakenly identified the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 25, Township 52 North, Range 62 West on the first page. However, the complete description of the land on Table C-1 of the application fully notifies the public of the area at issue. Additionally, the aerial photograph attached to the application clearly delineates the lands in the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of said Section 25 as belonging to Bush. Petitioner Judith Bush had actual knowledge of the area within the Land Quality Permit as well as the identical area which is the subject of the Air Quality Permit by documents on file at the Crook County Clerk's office pursuant to statute. Petitioner Bush has proved herself to be an adept commenter on all aspects of the Land Quality and Air Quality Permits that are sought, and for her to suggest at this point that she is unaware of the actual location of the Rogers Pit permit area is disingenuous. Respondent Croell denies all other allegations set forth in paragraph 2.

3. Requirement of Registered/Certified Mail. Neither the statutes nor the regulations have any requirement of registered or certified mailing. The issuance of the permit was properly and timely mailed. Respondent Croell denies all other allegations set forth in paragraph 3.

4. Terms of the Permit. There is no claim stated or basis upon which Petitioner Bush appears to challenge the terms upon which the permit is issued. Respondent Croell denies all other allegations set forth in paragraph 4.

#### **AFFIRMATIVE DEFENSES**

1. Petitioner failed to comment on the legal description during the permitting process and therefore failed to preserve the issue for appeal.

2. Petitioner has failed to state a claim upon which relief can be granted.

3. Petitioner has failed to state any requested relief.

4. Petitioner is not the aggrieved party.

5. Respondent Croell reserves the right to assert additional affirmative defenses after discovery is completed and additional facts are learned.

6. Respondent Croell asserts that the DEQ/AQD's actions complied with the Wyoming Environmental Quality Act, Wyoming Air Quality Standards and Regulations, and other applicable laws and regulations.

Respondent Croell hereby joins in the Department of Environmental Quality's response and incorporates all of the DEQ/AQD's responses by reference.

WHEREFORE, Respondent Croell respectfully requests that the Council uphold the DEQ/AQD's issuance of Permit No. AP-9645 to Croell and deny the Petition for Hearing filed by Judith Bush. Respondent Croell further requests that the EQC take such action as appropriate to correct the permit so that all references to the NW<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub> of Section 25 are changed to be the





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