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FILED

AUG 20 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-9646)
DATED MARCH 17, 2010)

**RESPONDENT CROELL REDI-MIX, INC.'S RESPONSE
TO JUDITH BUSH'S AMENDED PETITION**

Respondent Croell Redi-Mix, Inc. (hereafter "Respondent Croell"), by and through its undersigned attorney, Kim D. Cannon, of Davis & Cannon, LLP, Sheridan, Wyoming, and responds to Judith Bush's Amended Petition for Hearing Before EQC and the "Addendum to Judith Bush's Petition for Hearing Before EQC" dated August 11, 2010 (hereafter referred to collectively as the "Amended Petition"), as follows:

1. FAILURE TO STATE CLAIM OR REMEDY

The Amended Petition fails to state a claim for which relief may be granted and fails to state a remedy. The Environmental Quality Council (hereafter "EQC") provided leave for Judith Bush to file an Amended Petition for purposes of identifying the claims that she is making and

the remedies that she seeks. She has failed to do that in the Amended Petition in any intelligible way. She states candidly: "I am not sure what remedies a hearing regarding Air Quality issues can provide. I am not sure what issues will be considered germane to challenging an Air Quality Permit which has been issued." (Amended Petition, p. 9) She further admits that she has "continued my efforts to two reasons." The primary reason seems to be a generalized desire to cause trouble for Respondent Croell Redi-Mix, Inc. and oppose the mining project on any basis and through any procedure without identifying the basis of the claim. Such claims should be dismissed.

2. FAILURE TO PROVIDE RESPONDENT NOTICE OF CLAIMS

The Amended Petition should be dismissed for its failure to identify, by any reasonable means, the claims upon which the DEQ Air Quality Permit No. MD-9645 is being appealed. Vague and unspecific complaints do not provide sufficient notice for Respondent Croell to be able to appear and defend. Consequently, Respondent Croell is deprived of notice and due process of the matters at issue by virtue of the Amended Petition. DEQ Rules of Practice and Procedure (RPP) require that the petition state in ordinary but concise language, "the facts on which the request or protest is based, including whenever possible particular references to the statutes, rules or orders" that are alleged to have been violated RPP Ch 1, § 3(c)(iii). The Amended Petition should further be dismissed for failure to comply with that Rule.

3. NO STATUTORY OR REGULATORY VIOLATION

The Amended Petition fails to state any statutory or regulatory violation.

4. CLAIMS ON OTHER PERMITS SHOULD BE BARRED

The time for appeal on other permits other than AQD Permit No. MD-9645 have passed, and any challenges to those permits are barred. Complaints concerning the issuance of the Land

Quality Permit which is the subject of the appeal to the District Court in Crook County, Wyoming, Bush v. Wyoming Department of Environmental Quality, et al., Civil Action No. 8016, are outside the scope of this matter. The failure to bring a timely petition on another permit is jurisdictional, and such portions of the Amended Petition that collaterally attack other permits should be dismissed.

**5. REITERATION AND INCORPORATION OF
ALL RESPONSES TO THE INITIAL APPEAL**

Respondent Croell hereby refers to and incorporates all of its responses to the initial appeal filed by Judith Bush in this matter which Response is dated June 14, 2010. All allegations and defenses set forth in that Response are incorporated herein including all responses regarding compliance with notice requirements.

6. GENERAL DENIAL

Respondent Croell generally denies all statements and claims of the Amended Petition not expressly admitted.

7. ADOPTION OF DEQ/AQD DEFENSES

Respondent Croell adopts all defenses asserted by the DEQ/AQD in its responses of August 20, 2010 and June 11, 2010.

8. RESERVATION OF RIGHTS TO ADD AFFIRMATIVE DEFENSES

Respondent Croell reserves the right to add affirmative defenses.

WHEREFORE, Respondent Croell Redi Mix, Inc. respectfully requests that the Environmental Quality Council deny the Amended Petition for Hearing Before EQC filed by Judith Bush, and further prays that the Environmental Quality Council enter such further additional equitable relief as it deems proper.

Dated this 20th day of August, 2010.

DAVIS & CANNON, LLP

By: 

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CERTIFICATE OF SERVICE

I, Kim D. Cannon, attorney for Croell Redi-Mix, Inc. in the above-entitled and numbered cause, do hereby certify that on the 20th day of August, 2010, I caused a true and correct copy of Respondent Croell Redi-Mix, Inc.'s Response to Judith Bush's Amended Petition as follows:

F. David Searle, Presiding Officer	<input checked="" type="checkbox"/>	U.S. Mail
Environmental Quality Council	<input type="checkbox"/>	Federal Express
Herschler Building	<input type="checkbox"/>	Facsimile
122 West 25th Street	<input type="checkbox"/>	Hand-Delivered
Cheyenne, Wyoming 82002	<input checked="" type="checkbox"/>	Electronic Transmission
Nancy Vehr	<input checked="" 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 type="checkbox"/>	Hand-Delivered
Cheyenne, Wyoming 82002	<input checked="" type="checkbox"/>	Electronic Transmission
Amanda Kroul	<input checked="" 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 type="checkbox"/>	Hand-Delivered
Cheyenne, Wyoming 82002	<input checked="" type="checkbox"/>	Electronic Transmission
John Corra	<input checked="" 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 type="checkbox"/>	Hand-Delivered
Cheyenne, Wyoming 82002	<input checked="" type="checkbox"/>	Electronic Transmission

Steve Dietrich	<input checked="" 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 type="checkbox"/>	Hand-Delivered
Cheyenne, Wyoming 82002	<input checked="" type="checkbox"/>	Electronic Transmission
Gina Johnson	<input checked="" 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 type="checkbox"/>	Hand-Delivered
Cheyenne, Wyoming 82002	<input checked="" type="checkbox"/>	Electronic Transmission
Jim Ruby	<input checked="" type="checkbox"/>	U.S. Mail
Environmental Quality Counsel	<input type="checkbox"/>	Federal Express
Executive Secretary	<input type="checkbox"/>	Facsimile
Herschler Building	<input type="checkbox"/>	Hand-Delivered
122 West 25th Street, Room 1714	<input checked="" type="checkbox"/>	Electronic Transmission
Cheyenne, Wyoming 82002		
Kim Waring	<input checked="" type="checkbox"/>	U.S. Mail
Sr. Off. Support Specialist	<input type="checkbox"/>	Federal Express
Environmental Quality Council	<input type="checkbox"/>	Facsimile
Herschler Building	<input type="checkbox"/>	Hand-Delivered
122 West 25th Street, Room 1714	<input checked="" type="checkbox"/>	Electronic Transmission
Cheyenne, Wyoming 82002		
Judith Bush	<input checked="" type="checkbox"/>	U.S. Mail
P.O. Box 861	<input type="checkbox"/>	Federal Express
Sundance, Wyoming 82729	<input checked="" type="checkbox"/>	Facsimile
	<input type="checkbox"/>	Hand-Delivered
	<input type="checkbox"/>	Electronic Transmission



Kim D. Cannon