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**FILED**

**OCT 20 2010**

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

**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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**DEQ ANNEX OF UNDISPUTED MATERIAL FACTS**

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The Department of Environmental Quality (DEQ), Air Quality Division (AQD), through the Office of the Attorney General, and pursuant to WYO. R. CIV. P. 56.1 and Environmental Quality Council (EQC) Rules, Chapter II, Sections 3 and 14, respectfully submits the following Annex of Undisputed Material facts:

1. On July 6, 2009, the DEQ/AQD received Croell's application (AP-9645) to modify its existing air quality permit for the Rogers Rock Pit limestone quarry, located in Crook County, Wyoming. (Schlichtemeier Aff. at ¶ 13; Ex. 1).

2. Croell's application identified planned equipment and operations for the estimated 500,000 tons per year production site would include limestone crushing, screening, blasting, exposed acreage, stockpiling, haul activity, a hot mix asphalt plant, and a concrete batch plant. (*Id.*).

3. Croell's application also provides a legal description for the quarry location. The legal description indicated on application form AQD-MN1 as NW1/4NE1/4 of Section 25, Township 52 North, Range 62 West, which represents 40 acres. (Ex. 1 at 000001; DEQ Resp. to Int. No. 1). An asterisk by the legal description states, "See attachment for further legal description." (Ex. 1 at 000001; DEQ Resp. to Int. No. 1). The further legal description, representing 600.07 acres is as follow:

A tract of land located in the SE1/4NW/4, that portion of SW/4NW/4 located east of Interstate 90 Right-Of-Way, SW1/4 and SW/4SE/4 of Section 25; that portion of SE/4NE/4 located east of Interstate 90 R-O-W, that portion of SE/4 located east of Interstate 90 R-O-W, and that portion of SE/4SW/4 located east of Interstate 90 R-O-W of Section 26; E/2NE/4, NW/4NE/4, that portion of the N/2NW/4 located east of Interstate 90 R-O-W and the NE/4SE/4 of Section 35, T52N R62W of the Sixth Principal Meridian, Crook County, Wyoming.

(Ex. 1 at 000003; DEQ Resp. to Int. No. 1).

4. Following receipt of AP-9645, the DEQ/AQD proceeded with a technical review and analysis. (Schlichtemeier Aff. at ¶¶ 15-17; Exs. 2-5).

5. DEQ/AQD determined that fugitive particulate matter (PM) would be the largest source of air pollutant emissions from the quarry. (Ex. 5 at 000027).

6. Through a BACT analysis, the DEQ/AQD determined and proposed that the quarry would be subject to certain work practices and operational standards to control the PM emissions (commonly referred to as dust). (*Id.* at 000027-28).

7. On October 1, 2009, the DEQ/AQD advertised its proposed decision in the Sundance Times and provided an opportunity for public comment through November 2, 2009. (Schlichtemeier Aff. at ¶ 19; Ex. 10).

8. A copy of DEQ's public notice, AP-9645, and DEQ/AQD's Application Analysis was also made available for public inspection at the Crook County Clerk's office. (Schlichtemeier Aff. at ¶ 18; Exs. 7, 9).

9. During the public comment period, the DEQ/AQD received several comment letters, and a public hearing request. (Schlichtemeier Aff. at ¶¶ 21- 22; Exs. 12- 13).

10. In November, the DEQ/AQD noticed that it would be holding a public hearing on December 14, 2009, regarding its proposed decision to issue an air quality permit to Croell to modify the Rogers Rock Pit. (Schlichtemeier Aff. at ¶¶ 23-26; Exs. 14- 18).

11. On December 14, 2009, the DEQ/AQD held a public hearing on its proposed decision. (Schlichtemeier Aff. at ¶ 30; Ex. 22).

12. Petitioner's ranch manager, Dewey Turbiville, attended and provided oral comments at the hearing. (Ex. 22 at 000188-89, 000192).

13. On March 17, 2010, the DEQ/AQD issued its decision, response to comments and Permit MD-9645 to Croell for modification of the Rogers Rock Pit. (Schlichtemeier Aff. at ¶¶ 31- 34; Exs. 23- 28).

14. The DEQ/AQD's decision and permit included revised BACT control requirements for the fugitive PM emissions. (Schlichtemeier Aff. at ¶¶ 40 – 42; Ex. 23 at 000147-158; Ex. 25).

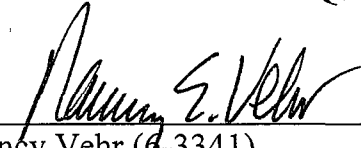
15. Given the utilization of BACT, the DEQ/AQD determined that the quarry operations would not prevent the attainment or maintenance of any ambient air quality standards. (Schlichtemeier Aff. at ¶ 43; Ex. 5 at 000028).

16. On March 22, 2010, the DEQ/AQD e-mailed a copy of its decision and Permit MD-9645 to Judith Bush. (Schlichtemeier Aff. at ¶ 35; Ex. 29; Pet. for Hr'g at p. 3).

17. By at least April 19, 2010, Ms. Bush had received DEQ/AQD's e-mail and a second copy of the decision and Permit MD-9645 sent by DEQ/AQD on April 19, 2010. (Schlichtemeier Aff. at ¶ 37; Ex. 31).

DATED this 20<sup>th</sup> day of October, 2010.

FOR RESPONDENT DEQ:

  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 26<sup>th</sup> day of October, 2010, a true and correct copy of the foregoing *DEQ Annex of Undisputed Material Facts* was served by placing the same in the United States mail, postage pre-paid, addressed to:

Judith Bush  
P.O. Box 861  
Sundance, WY 82729

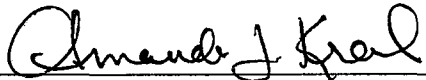
Kim D. Cannon  
Mark Stewart  
Davis & Cannon, LLP  
40 South Main Street  
P.O. Box 728  
Sheridan, WY 82801-0728

and via FAX to:

Judith Bush at 307-283-2835  
Kim Cannon at 307-672-8955

and via hand delivery to:

John Corra, DEQ Director  
Herschler Building, 4<sup>th</sup> Floor

  
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