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AUG 20 2010

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

Attorney for the State of Wyoming,
Department of Environmental Quality

**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)

**DEPARTMENT OF ENVIRONMENTAL QUALITY'S RESPONSE TO
AMENDED PETITION FOR HEARING**

Respondent, the Wyoming Department of Environmental Quality (DEQ)/ Air Quality Division (AQD), by and through the Office of the Attorney General of the State of Wyoming, in response to Judith Bush's (Petitioner) Amended Petition for Hearing Before EQC, responds as follows:

1. The Scheduling Conference held August 3, 2010, established August 11, 2010 as the filing deadline for an amended petition, and August 20, 2010, as the deadline for filing a response. *See* Amended Order (Aug. 11, 2010).

2. By Fax dated August 11, 2010, Petitioner submitted an Amended Petition for Hearing Before EQC. Petitioner's Amended Petition consists of "Addendum to Judith Bush's Petition for Hearing dated May 14, 2010 Addendum is dated August 11 2010)" and "copy of Judith Bush's May 14, 2010 Petition for Hearing (*previously [sic]*

filed with EQC” (emphasis as in original). See Amended Petition for Hearing Before EQC (Aug. 11, 2010). Petitioner’s Addendum totals fourteen single spaced typed pages and includes a three page letter dated March 5, 2010, as an attachment. *Id.* at pp. 1-17. Petitioner also includes what appears to be Petitioner’s previously filed Petition for Hearing, dated May 14, 2010. *Id.* at pp. 18-22.

3. Petitioner’s Addendum states that “in addition to and / or complementing issues already raised in my May 14, 2010 petition for Hearing, add the following[.]” *Id.* at 1. The subsequent fourteen pages include information under the following headings: “Nature of the Public Hearing before the EQC” (*Id.*); “Chronology of AQD permits Issued to Croell Redi-Mix for its limerock mining operations at its 10 acre LQD designated LMO minesite (1396ET)(alternatively defined by Air Quality Permit CT 4526)” (*Id.* at p. 3); “All AQD permits issued to Croell Redi-Mix, Inc to date for operations at its Rogers Pit Location contain the same incorrect legal description of regarding [sic] the location /site of the mining activity” (*Id.* at p. 7); “Another error relating to legal land descriptions” (*Id.* at p. 9); “Remedies Sought through Petition for Rehearing In this matter” (*Id.*); and “Other legal errors of the AQD pertaining to the permitting of mining operations in the Rogers Pit” (*Id.* at p. 12). Petitioner concludes the Addendum by stating, “It is my intention to raise the matters at the upcoming Contested Administrative Public Hearing . . . I believe that a public inquiry into matters discussed herein would be appropriate.” *Id.* at 14.

4. DEQ Rules of Practice and Procedure (RPP) require the petition state in ordinary but concise language, "the facts on which the request or protest is based, including whenever possible particular reference to the statutes, rules or orders" that are alleged to have been violated." RPP Ch. 1, § 3(c)(iii).

5. Similar to a civil complaint, a petition must include factual allegations of the essential elements of a claim. *See Id.* Conclusory statements or opinions, in lieu of facts, are inadequate. *See Giacchino v. Estate of Stalkup*, 908 P.2d 983, 985 (Wyo. 1985).

6. Petitioner's Addendum fails to include any reference to any statute, rule or specific permit condition that DEQ/AQD has allegedly violated by issuance of Permit MD-9645.

7. In response to possible allegations in the Addendum relating to permits other than MD-9645, DEQ/AQD admits that such permits speak for themselves and paraphrasing such permits are not allegations of fact which require a response. To the extent a response is required, DEQ/AQD denies. DEQ/AQD asserts that Petitioner is jurisdictionally time-barred from challenging or collaterally attacking such permits. *See RPP Ch. 1, § 16(a).* *See also Chevron U.S.A., Inc. v. Dep't of Revenue*, 155 P.3d 1041, 1043 (Wyo. 2007) (pursuant to the Wyoming Rules of Appellate Procedure, the timely filing of a petition for review is mandatory and jurisdictional).

8. In response to possible allegations in the Addendum relating to DEQ/AQD's public notice of its proposed intent to approve Application AP-9645, and

notice of its subsequent decision, DEQ/AQD admits that it complied with and followed the notice requirements prescribed by Wyoming Air Quality Standards and Regulations (WAQSR) Ch. 6, § 2(m).

9. In response to possible allegations in the Addendum relating to Petitioner's previously submitted verbal and written comments and letters, DEQ/AQD admits that it considered and addressed such comments as reflected in its Decision and in the permit conditions for Permit MD-9645.

10. In response to possible allegations in the Addendum relating to the pit location's legal description, DEQ/AQD asserts that Croell's application included the pit location's legal description and maps, which documents speak for themselves. DEQ/AQD further asserts that such descriptions sufficiently apprised the public with notice of the general area at issue, and the specific pit location.

11. Petitioner's Addendum is vague, ambiguous, and replete with conclusory statements. The Petition fails to provide notice of what legal bearing such statements have on DEQ/AQD's issuance of Permit MD-9645. Therefore, to the extent Petitioner's Addendum, including footnotes and attachments, is deemed to contain any factual allegations, DEQ/AQD denies any allegations not specifically admitted.

12. DEQ/AQD incorporates by reference and realleges the responses in the DEQ Response filed with the EQC on June 11, 2010.

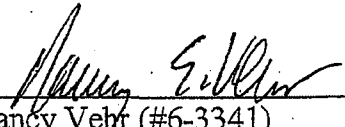
AFFIRMATIVE DEFENSES

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. DEQ/AQD reserves the right to assert additional affirmative defenses after discovery is completed and additional facts are learned.
5. DEQ/AQD's actions complied with the Wyoming Environmental Quality Act, Wyoming Air Quality Standards and Regulations, and other applicable laws and regulations.

WHEREFORE DEQ/AQD respectfully requests this Council uphold DEQ/AQD's issuance of Permit MD-9645 to Croell and deny the Petition for Hearing.

RESPECTFULLY SUBMITTED this 20th day of August, 2010.

FOR RESPONDENT DEQ:



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CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of August, 2010, a true and correct copy of the foregoing *Department of Environmental Quality's Response to Amended Petition for Hearing* 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
Davis & Cannon, LLP
40 South Main Street
P.O. Box 728
Sheridan, WY 82801-0728

and via email addressed to:

cannon@davisandcannon.com

and via FAX to:

Judith Bush at 307-283-2835



Wyoming Attorney General's Office