

**FILED**

**JUN 11 2010**

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

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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	)	

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**DEPARTMENT OF ENVIRONMENTAL QUALITY'S RESPONSE**

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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) Petition for Hearing Before EQC, responds as follows:

Petitioner's introductory paragraph appears to be for descriptive purposes and does not contain factual allegations. Therefore a response is not required. However, to the extent this paragraph is deemed to contain any factual allegations, DEQ/AQD denies.

1. DEQ/AQD admits that a public notice of its proposed intent to approve Application AP-9645 was published in the Sundance Times on October 1, 2009. DEQ/AQD asserts that the public notice speaks for itself and paraphrasing the public notice is not an allegation of fact which requires a response. DEQ/AQD also admits that

it placed a copy of Croell Redi-Mix, Inc.'s (Croell) application to modify the Rogers Rock Pit and the DEQ/AQD's analysis in the office of the Crook County Clerk. The DEQ/AQD further admits that during the public comment period, it did not receive any comments regarding the mine location's legal description. DEQ/AQD denies all other allegations in section 1.

2. DEQ/AQD admits that Croell's application included a description of the pit location and a map. DEQ/AQD asserts that the application and map speak for themselves. DEQ/AQD is without sufficient knowledge or information to form a belief as to the truth of the remaining matters asserted in section 2 and therefore denies the same.

3. DEQ/AQD asserts that the decision document speaks for itself. DEQ/AQD further admits that it notified all commenters of its decision granting Permit MD-9645 to Croell to modify the Rogers Rock Pit. DEQ/AQD admits that Kimberly M. Metz is a DEQ/AQD employee. DEQ/AQD further admits that on March 22, 2010, DEQ/AQD emailed a copy of its decision and Permit MD-9645 to Petitioner. The allegations in section 3 asserting that Petitioner timely filed her appeal call for a legal conclusion for which no response is required. DEQ/AQD is without sufficient knowledge or information to form a belief as to the truth of the remaining matters asserted in section 3 and therefore denies the same.

4. DEQ/AQD admits that Condition No. 11 of Permit MD-9645 limits production. DEQ/AQD asserts that Permit MD-9645 speaks for itself and paraphrasing Permit MD-9645 is not an allegation of fact which requires a response. The allegations in section 4 questioning the clarity of DEQ/AQD's enforcement authority call for a legal conclusion for which no response is required. DEQ/AQD asserts that its enforcement authority is derived from federal and/or state law, including, but not limited to, the Wyoming Environmental Quality Act, Wyoming Air Quality Standards and Regulations, and Permit MD-9645. DEQ/AQD denies that it received any letter from Petitioner dated December 2, 2009. DEQ/AQD admits that on December 14, 2009, it held a public hearing on Croell's application and the DEQ/AQD's analysis. DEQ/AQD is without sufficient knowledge or information to form a belief as to the truth of the remaining matters asserted in section 4 and therefore denies the same.

5. Petitioner's final paragraph appears to be for descriptive purposes and does not contain factual allegations. Therefore a response is not required. However, to the extent this paragraph is deemed to contain any factual allegations, DEQ/AQD denies the same.

6. To the extent the final page of Petitioner's Petition for Hearing Before EQC labeled "2009 Notice of Assessment" is deemed to contain any factual allegations, DEQ/AQD denies the same.

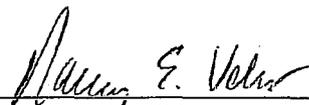
## AFFIRMATIVE DEFENSES

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 an aggrieved party.
5. DEQ/AQD reserves the right to assert additional affirmative defenses after discovery is completed and additional facts are learned.
6. ~~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 11<sup>th</sup> day of June, 2010.

FOR RESPONDENT DEQ:



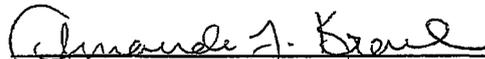
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 11 day of June, 2010, a true and correct copy of the foregoing *Department of Environmental Quality's Response* 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

Mr. Roger Croell  
Croell Redi-Mix, Inc.  
PO Box 1352  
Sundance, WY 82729

  
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Wyoming Attorney General's Office