

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)

DEQ'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 20

Fax from Judith Bush dated 12/6/09

DEQ Bates Nos. 000092 - 000102

BY FAX (307) 777 - 5864

To: Don McKenzie Director, WDEQ LQD Fax (307) 777 - 5864

From: Judith Bush tel / fax 613-392-2313
2313 County Rd 64 please phone before faxing
Carrying Place ON Canada K0K 1L0

date: December 6, 2009

cc: John Corra Director, WDEQ Fax (307) 777 - 7682
Jim Ruby Director, EQC Fax (307) 777 - 6134
✓ **David Finley** Director, WDEQ AQD Fax (307) 777 - 5616
(WDEQ Air Quality Division AP - 9645)

Re: Croell Redi-Mix Application to WDEQ LQD to expand the Roger's Pit from a 10 acre limestone mining and crushing LMO (1396 ET) to a Regular Mining Permit encompassing 600 + acres
and
Scheduling of two WDEQ Public Meetings regarding the expansion of the Rogers Pit by (by both LQD & AQD)

Dear Mr. McKenzie,

The deadline noted in notices published in the Sundance Times relating to the above matter was given as the end of the business day on December 5, 2009 (yesterday, which was a Saturday). Although my understanding was that the deadline had been extended until 5:00 pm. Monday, December 7, 2009, I decided that I would nevertheless fax my reply to you by the deadline noted in the Sundance Times notices.

When I tried to fax my reply to you yesterday shortly before 5:00 pm (as well as copies to Mr. Corra, Mr. Ruby and Mr. Finley, as noted above) I could not get through on any of the fax numbers noted above. All numbers kept ringing until the ring changed to a dial tone. I assumed that the fax machines had been turned off until Monday morning, and decided to wait and fax my response to you on Monday. However, when I tried your fax number a few moments ago, I found that it was working. I am attaching my response to the above matter to this cover letter.

When I discovered yesterday that I could not get through to any of the above fax numbers, I faxed a copy of my response to Governor Freudenthal, whose fax was working. I then followed up with a short note explaining to the governor my reason for sending the response to him instead of directly to you (copy attached).

Yours truly,

Judith Bush

BY FAX (307) 632-3909

To: Governor of Wyoming, Dave Freudenthal

From Judith Bush tel / fax 613-392-2313
2313 County Rd 64 please phone before faxing
Carrying Place ON Canada K0K 1L0

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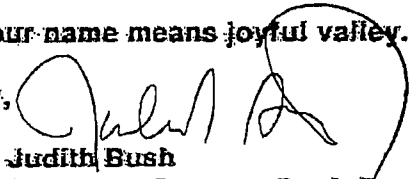
I have just faxed you a copy of my response to the WDEQ LQD regarding
the expansion of the Rogers Pit.

I have done so at this time because the official deadline for responding
to the WDEQ Land Quality Division Notice was officially 5 pm today
(Saturday, December 5, 2009).

I understand that the deadline has been extended until December 7,
2009 at 5 pm, however, I wanted to make sure that I had a response in
prior to the deadline stated in the official notice which was published in
the Sundance Times. All of the fax machines at the DEQ have
apparently been turned off, as has the fax at the Environmental Quality
Council, so I thought I would try your fax, and was happy to find that it
was working.

I am sure that you already know that your name means joyful valley. It is
a beautiful name.

Yours truly,


Judith Bush
Managing Partner, Bush Ranches

BY FAX (307) 777 - 5864

To: Don McKenzie Director, WDEQ-LQD Fax (307) 777 - 5864

From: Judith Bush tel / fax 613-392-2313
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**Scheduling of two WDEQ Public Meetings regarding the
expansion of the Rogers Pit by (by both LQD & AQD)**

Dear Mr. McKenzie,

This letter is in response to the public notice regarding the application by Croell Red-Mix to expand the Rogers Pit which was published in the Sundance times on October 15, October 22, October 29, and November 5 of this year.

I am the Managing Partner of Bush Ranches, and one of the owners of lands lying immediately adjacent to and downwind from the land to be included in the 600 + acre Regular Mining Permit.

Our deeded property would share a boundary of approximately 1 1/4 miles with the expanded Rogers Pit. In addition, our ranch leases a 640 acre school section from the state, which would border the mining / crushing operation for an addition 1 1/2 miles. The impact upon our ranch and its potential for multiple environmentally

friendly and compatible uses in the future will be severely impacted.

It is more than probable that in the future an application will be sought by Croell Redi-Mix to include this school section within its Mining permit as well. If this were to occur, the Pit would be operating a stones throw from the ridge above the Red Canyon, which is the heart of our beautiful ranch.

Past Problems regarding 10 acre LMO 1396

LMO 1396 has caused the usual problems for our ranch operation. Our grasslands downwind from the pit are coated with dust, our nearby hay field is coated with dust. Our cattle graze these lands in the summer, and winter on them as well.

The Rifle Pit Road is in poor repair. I am sure you could not read the DEQ AQD standards for opacity while standing near the Rifle Pit Road when the trucks from the Rogers Pit are on the move.

I was astonished to learn from the LQD a few days ago that the DEQ LQD has no regulation which requires an applicant to provide public notice regarding an application for an LMO and no requirement for an applicant for an LMO to inform nearby landowners and for home owners directly.

There is no doubt that LMO's can destroy quality of life for those living nearby. They also have the capacity to impact the livelihood of those living nearby, and the value of the property of those living nearby. I am assuming that, were a neighbor to be informed of an application for an LMO in his backyard, he or she would be entitled to request and obtain any information regarding the application which the LQD might have. Regulations regarding notification need tightening up. They certainly failed us.

None of the owners of Bush Ranches received direct notification from Croell Redi-Mix and / or the DEQ (either LQD or AQD applications) when Croell Redi-Mix got its foot in the door with a 10-acre LMO to mine and crush limestone.

Although the machinations by which this was accomplished still requires clarification, it appears that Croell Redi-Mix operated outside of the regulations of the DEQ and far in excess of the production estimates stated on its applications to the DEQ in order to obtain the permits required to set up the Rogers Pit in the first place.

Furthermore, because we did not see the initial application in a timely fashion, we were not aware until later that the access and egress from the Rogers Pit crossed our property to access the Rifle Pit Road.

After we learned of this, we considered informing Croell Redi-Mix that trucks from the Rogers Pit could no longer cross our land, which would have effectively shut down the pit. I personally consulted a number of attorneys, all of whom advised me that such an action would definitely result in a lawsuit, and that they did not have the time (or probably the inclination) to take the matter on. Had we gone ahead with this plan, we

would have had a lawsuit to deal with and no lawyer.

We were concerned with the dangers posed by loaded gravel trucks turning onto the Rifle Pit Road. (Line of sight was obscured due to a curve in the Rifle Pit Road at that point.)

Mr. Croell informed us in December of 2008 that his road was encompassed by our land and that he would like to purchase the land in question. We did not wish to sell our land. We were, however, concerned from the standpoint of danger to people's lives posed by the trucks turning onto the Rifle Pit Road. In addition, because the trucks were turning off of our property onto the Rifle Pit Road, there was a question of liability which became clear to us when we discussed the possibility of leasing the access to Croell Redi-Mix with attorneys and were advised that profiting in any way from the Rogers Pit could increase the possibility of our being liable for accidents involving trucks from the Rogers Pit.

In March of last year (before this new application came to light) our agent offered Mr. Croell an extremely reasonable proposal which Mr. Croell refused - swapping the twenty acres of our land which would have given legal access from Rogers Pit to the Rifle Pit Road for forty acres of Mr. Croell's land which would have to some extent buffered our ranch from the effects of what we then thought was a 10 acre operation[†]. Mr. Croell said that he did not want to give up any land, that he wanted more land, and that he would build his own road.

It is unclear what information was provided to the DEQ LQD and/or other branches of government (Crook County, Wyoming State Highway Department) which led them to believe that Croell Redi-Mix had legal access from the Rogers Pit to the Rifle Pit Road. We had never given consent for trucks from the Rogers Pit to cross our ground. Any survey showing the access road would have made it clear that the access road crossed our land before reaching the Rifle Pit Road.

We have recently had a title search done on our main ranch, and First American Title found no recorded ROW on deed benefiting either lands designated under LMO 1396 ET or lands included in the 600+ acres of land which Croell Redi-Mix is presently seeking to include in a Regular Mining permit.)

The 10 acre LMO (1396 ET) for which Croell Redi-Mix originally applied for in November of 2006 in order to establish the limestone mining and crushing operation known as Rogers Pit has caused the our ranch operation headaches in the past. Dust lies thick on the grass and hay ground (presumably flying through the air to get there). This is land where our cattle graze in summer and winter over as well. (Our ranch manager on one occasion lodged a complaint with the Air Quality Division. Air

[†] Although we were unaware of this at the time, Croell Redi-Mix had violated its DEQ LMO 1396 ET permit by operating on ~ double the acreage permitted (with the Rogers Pit producing as as yet unknown quantity of crushed firerock in the process.)

Quality has told me that there is no record of any citations regarding the operation of the Rogers Pit.)

The Rifle Pit Road is in generally poor repair due to the limerock laden trucks. Truck traffic to and from the Rogers Pit has been far in excess of anything which can easily be explained by the operation of a 10 acre LMO with an estimated yearly production of 100,000 tons.

There have been a variety of legal or quasi-legal machinations involving multiple LMO's operating side by side in the Rogers Pit, permits for the installation of crushers which in the process switch and / or add operators and have apparently fundamentally altered the criteria of the original permit without ever stating so in language a layman can begin to grasp upon first reading.

Loaded trucks coming out of the Rogers Pit and turning onto the Rifle Pit Road pose a hazard for traffic along the Rifle Pit Road. Our ranch manager's wife nearly wound up under one of the loaded gravel trucks. The sight line is not clear due to a curve in the road.

The new road which is having the finishing touches put on it as we speak, poses an even greater danger to cars traveling along the Rifle Pit Road. Loaded trucks are coming down a sizable hill where they meet the Rifle Pit Road. A curve in the Rifle Pit Road further obscures visibility. There is no clear line of sight, either for the trucks or for the normal traffic along the Rifle Pit Road. The Rifle Pit Road enters a tunnel going underneath I-90 shortly after the turn onto the Rifle Pit Road. Once on the north side of I-90, the trucks must turn either left or right onto Wyoming State Highway 14. I understand that they cannot make turn right without entering a lane of oncoming traffic.

The August 2009 application to the DEQ LCD stated that a new access road was complete and operational, which it most certainly was not at that time. That application falsely states:

" The current mine entrance access road to the pit area is limited in length and has been relocated from the original access road that was previously used by the landowner for ranch access to the area. "

In fact, access across our land was the exclusive path of entrance and egress from the Rogers Pit at that time.

It is unclear if the DEQ should have begun evaluating this application prior to legal access to the crushing site being in place, or if it should presently be considering proceeding in the approval process at this time.

In general, the response that I have received from staff of both the Land Quality and the Air Quality Divisions of the DEQ is that they do not have time to verify the information which is provided to them by the applicants for mining permits, and that

they generally take this information at face value.

In the case of the Rogers Pit, various information strikes me as dubious, including;

- * information regarding legal access to the crushing site, which I have already described
- * depth of the limerock deposits, which I strongly suspect increase dramatically as the land rises up before it drops off into Red Canyon (which is lined with limestone - hence the name).
- * The applicant has estimated the depth of deposit of limerock for the entire 600+ acres is based solely upon preliminary drilling done on the original 10 acre LMO site..
- * Croell Redi-Mix estimated the total deposit over 600+ acres of ~ 10,000,000 tons. However, in Croell Redi-Mix's original application, it estimated a total deposit of 2,000,000 tons on a 10 acre site.
- * Croell Redi-Mix is estimating a yearly production rate of 500,000 tons / year for the 600+ acre mine. Its August 2009 application to the AQD states that in both 2008 and 2009 the Rogers Pit produced 500,000 tons. (That's 500,000 tons for each of those years)

What boggles my mind is that this is the basis on which the AQD has calculated not only the amount of air borne particles, including various toxic substances, which the operation will generate, but this same estimate, provided by the applicant, is also used to determine the type of mining permit which this operation should fall under.

The applicant's estimates, which past history should at the very least call into question, are accepted at face value, and these figures are plugged into the formulas to create the Air Quality Divisions Assessment. I suspect that this is very much a case of GARBAGE IN GARBAGE OUT.

In addition, no attention seems to have been given to how much water from an on-site well may be necessary to keep the dust down, and what impact this may have on nearby wells on our property. Water is the limiting factor for growth in Wyoming. It should not be ignored and/or squandered.

Please note that there was nothing in the notice which was placed in the Sundance Times on June 4 and 11, 2009 to indicate the extent of expansion being sought by Croell Redi-Mix. (This notice, published in the Sundance Times, was prepared by a person representing Croell Redi-Mix in this matter and was evidently ok'd by the DEQ prior to publication.) I telephoned the DEQ around this time and was told that the Croell Redi-Mix application had not been finalized, and that there would be adequate

time to respond to the application once it was in its final form.

Our Ranch is a 7000+ acre property, containing abundant wildlife. Please note that our lands adjacent to lands with Croell Redi-Mix are applying to have designated as under a Regular Mining Permit are a wildlife sanctuary par excellence. I have been to the ranch in the spring and the fall, when the deer on that part of our ranch are so thick you couldn't begin to count them. Elk and antelope are common. Our timber is mature - some of it original growth over 200 years old. This is the Wyoming that the state's tourism branch likes to brag about. It is a truly beautiful property.

The 600 acres which Croell Redi-Mix wishes to include within its Regular Mining Permit are, I am sure, also home to abundant deer and antelope.

Croell Redi-Mix's application to enlarge Rogers Pit by a factor of 60 (from 10 acres to 600+ acres) will greatly curtail the multi-use potential of our ranch, which the owners have taken care to preserve over generations. We have consistently chosen to forego forgoing quick profits from timber, over hunting and limestone crushing operations in order to preserve the natural scenic beauty, mature trees and abundant wildlife our ranch affords. The value, both in terms of pristine beauty and in terms of financial worth will be eroded by this project going ahead. There are not many, if any, ranches of this size and unspoiled beauty left in Crook County.

I understand that the DEQ LQD has tentatively set up a date for a meeting / hearing regarding this application to take place on December 21, 2009 in Gillette, Wyoming.

It seems to me that both meetings are being set up in ways which will tend to discourage rather than encourage attendance.

Land Quality Division Meeting / hearing tentatively scheduled for Monday, December 21, 2009 in Gillette (time not yet determined). I am asking the DEQ to schedule this meeting / hearing in the New Year, when the holidays are over. Also, unless there is some reason of which I am unaware, the meeting should take place in Sundance. Scheduling the meeting days before Christmas and in Gillette poses unnecessary difficulties for Crook County people wishing to attend.

Air Quality Division Meeting scheduled for 5:30 pm on Monday, Dec 14 at Public Library in Sundance

While I am happy that a public meeting has been scheduled, I wonder why it has been scheduled for supertime on a week night. It would be more reasonable to allow time for people who work regular hours to return home, feed their kids, have some supper themselves, and then attend the meeting.

In general, I think that the public would be better served and better informed in meetings attended by representatives from all involved departments of the DEQ, as well as by representatives from any other involved government agencies (of whatever

level of government). This way all matters relating to a project would be open to discussion and could be considered in an integrated manner.

It also makes no sense to me that matters pertaining to the Rogers Pit (or any other project) falling under the jurisdiction of one Division of the WDEQ (in this case Air Quality) be approved and off the table prior to the public having input into matters relating to the same project which fall under the jurisdiction of another division of the WDEQ (in this case Land Quality). I can understand how it might seem logical to the DEQ to proceed with meetings in this way. However, from the public perspective isolating and considering interrelated matters at separate meetings looks a lot like a shell game.

Preparation for these meetings, whether in person, or by representation and written submission takes time. With regard to the hearing regarding the LQD Application, we may require legal representation. We should not be asked to accomplish this in a rush as the holiday season approaches.

Moreover, this is not an isolated example of a crushing operation overpowering more benign and sustained land uses and adversely impacting the lives, economic and otherwise, of people living in Crook County. (Our hay grounds on another part of Bush Ranches are routinely coated with dust from another crushing operation.)

People who have objected to living with the disturbance to their lives caused by the crushing operations in Crook County, and who have objected to this project going forward in its present form, and before DEQ regulations are put in place to adequately control the scope and effects of this and other crushing operations, should not be required to further inconvenience themselves by traveling to Gillette days before Christmas to make themselves heard.

It is my understanding that the Air Quality Division of the DEQ, after holding its public meeting regarding the application which Croell Red-Mix has submitted to AQD regarding air quality matters relating to the expansion of the Rogers Pit, is in a position to approve its application from Croell Redi-Mix prior to the public process relating to the application made by Croell Redi-Mix to the Land Quality Division of the DEQ being completed. (The Air Quality Division of the DEQ has scheduled its meeting for December 14, 2009, at 5:30 pm.)

I understand that the decision made by the Department of Land Quality regarding its application from Croell Redi-Mix regarding on the expansion of the Rogers Pit (a separate application from the one submitted to the Air Quality Division) will determine whether this project will go ahead. However, I also understand that the Land Quality decision will not be based upon matters relating to dust and air quality, which fall under the jurisdiction of the Air Quality Division of the DEQ, which will already have been decided by the and off the table by the time the Land Quality hearing is held.

I sincerely hope that I am confused regarding procedure of the DEQ as described

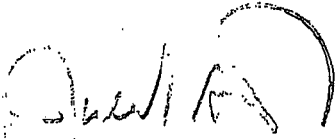
above, since these procedures compartmentalize and isolate matters which come together to form a package deal in any given permit application.

I also understand that the Air Quality Division has the discretion, but not the duty, to place limits upon operations when estimates made by an applicant when applying for any type of a mining permit are exceeded. Croell Redi-Mix has consistently violated the terms of its LMO, the DEQ AQD has apparently raised no objection, and the overall response of the DEQ, when Croell Redi-Mix apparently accepted contracts which it had to know it could not fulfill under the terms of its Limited Mining Operation permit # 1396, was to facilitate by questionable means the continued operation of the Rogers Pit, on over twice its permitted area by granting a second LMO to another crushing operator to operate side by side with Croell Redi-Mix in the Rogers Pit. The DEQ instructed that artificial barriers be set up to separate the two operations until they reached the scales, and even this separation of the two mining operations was not being carried out when the site was inspected in June of 2009.

If I am understanding correctly that the Air Quality Division meeting scheduled for December 14, 2009 can result in approval of the Air Quality Application prior the Land Quality hearing taking place, then I strongly object to this procedure.

If by approval of the Air Quality Division Permit, matters relating to Air Quality are off the table at the time of the Public hearing regarding the LQD permit, the project cannot in my opinion, be discussed in a meaningful manner at the very hearing which will determine whether this greatly expanded Roger's Pit will be permitted go ahead.

Yours truly,



Judith Bush

Managing Partner, Bush Ranches

BY FAX (307) 632-3909

To: Governor of Wyoming, Dave Freudenthal

From: Judith Bush tel / fax 613-392-2313
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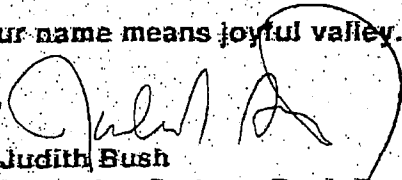
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