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

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Attorneys 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-9645)
Dated March 17, 2010)

DEFENDANT'S MOTION TO STRIKE EXPERT DESIGNATION AND TESTIMONY

Croell Redi-Mix, LLC, by and through its attorneys, Davis & Cannon, LLP, moves for an Order striking the expert designation of Petitioner Judith Bush and striking the testimony of Dr. James H. Myers, DVM. As grounds for this Motion, Croell Redi-Mix states as follows:

1. Pursuant to Chapter 2, Section 14 of the Council's Rules of Practice and Procedure Applicable to Hearings in Contested Cases, the Wyoming Rules of Civil Procedure apply to matters before the Council insofar as they may be applicable.

2. Wy. R. Civ. P. Rule 26(a)(2) is the applicable rule governing disclosure of expert testimony and provides in part that such disclosures shall be made at the times and in the sequence ordered by the tribunal. Wy. R. Civ. P Rule 26(a)(2)(C).
3. The Environmental Quality Council (Council) Ordered on August 3, 2010 that Petitioner file her Designation of Experts and Expert Reports by September 7, 2010.
4. Wy. R. Civ. P. Rule 26(a)(2)(B) requires that a party disclose the following:
 - a. A written report prepared and signed by the witness containing a complete statement of all opinions to be expressed and the basis and reasons therefor and including the data or other information considered by the expert witness in forming the opinions;
 - b. Any exhibits to be used as a summary of or support for the opinions;
 - c. The qualifications of the witness including a list of all publications authored by the witness within the last ten years;
 - d. The compensation to be paid for the study and testimony; and
 - e. A listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.
5. Apart from disclosing the witness' name, title and a vague description of the topic of his testimony, Petitioner's original designation fails to provide any of the information required by the Rule. (Petitioner's Notification to Parties of Expert Witness and Expert Reports).
6. On September 30, 2010, more than three weeks after her designation deadline, this Respondent received a letter signed by Petitioner's listed expert along with copies of articles which are not referenced in the expert's letter. While the letter signed by the

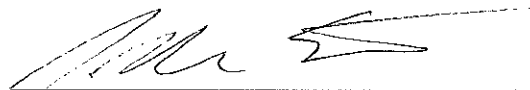
expert establishes his opinion that “dust pneumonia” is “not truly a scientific term” nor a “viable term,” this submission does not cure the primary deficiencies listed in the previous paragraph. Specifically, there is still no explanation of the basis or reasons for his opinion, nor a listing of the information considered by him. There are no exhibits identified, no listing of the expert’s qualifications to testify on this subject, no disclosure of his compensation, and no list of cases in which he has testified as an expert.

7. Without the information required under Wy. R. Civ. P. 26(a)(2), Defendant cannot provide a full and complete counter designation. Disclosure of the Petitioner’s expert actual opinions and the bases therefor is absolutely necessary for Defendant’s expert to provide a written report and a complete counter designation.

For the reasons stated herein, Defendant asks that the Council strike Petitioner’s “Notice to Parties of Expert Witness and Expert Reports” and to prohibit James H. Myers from testifying in these proceedings.

DATED this 1st day of October, 2010.

DAVIS & CANNON, LLP



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CERTIFICATE OF SERVICE

I, J. Mark Stewart, attorney for Croell Redi-Mix, Inc. in the above-entitled and numbered cause, do hereby certify that on the 1st day of October, 2010, I caused a true and correct copy of Defendant's Motion to Strike Expert Designation and Testimony as follows:

F. David Searle, Presiding Officer	<input checked="" type="checkbox"/>	U.S. Mail
Environmental Quality Council	<input type="checkbox"/>	Federal Express
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Cheyenne, Wyoming 82002	<input 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
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Amanda Kroul	<input checked="" type="checkbox"/>	U.S. Mail
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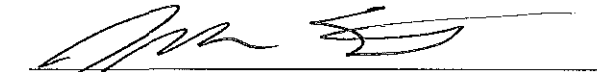
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