

FILED

MAY 14 2010

*Jim Ruby, Executive Secretary
Environmental Quality Council*

BY FAX

To: Acting Administrator, DEQ Air Quality Division 307 - 777-5616

To: Members of EQC
& Jim Ruby, Exec Sec EQC 307-777-6134

To: Croell Redi-Mix 307-283-1450

Re: **DEQ AQD Permit Application No. AP-9645**
DEQ AQD Permit No. MD-9646, dated March 17, 2010

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

date: May 14, 2010

10-2803

PETITION FOR HEARING BEFORE EQC

I, Judith Bush, acting Pro Se, pursuant to Rules of Practice and Procedure, Chapter 1, Section 3, Initiation of Proceedings, and pursuant to Environmental Quality Act 35-11- 101 - 1104, and the Wyoming Procedure Act 16-3-107, hereby petition for a Hearing before the Environmental Quality Council in the matter regarding DEQ Air Quality Division Decision regarding AQD AP # 9645 (and AQD Permit No. 9645 issued to Croell Redi-Mix on March 17, 2010.)

- 1) Public Notice failed to provide any indication of the scope of the proposed "modification" of the Croell Redi-Mix Mining operation located at the Rogers Pit, which was to expand the operation from a ten acre minesite with an estimated annual production of 100,000 tons to a 600+ acre minesite with an estimated annual production of 500,000 tons.

In addition to failing to provide sufficient information for a reader to judge whether or not a trip to the County Clerks Office should be made to learn more, the information which is provided is both false and misleading.

Instead of providing the approximate size and location of the expanded minesite (something along the order of “~ 600 acres contained in parts of Sections 25, 26 and 35 T52N R62W, located South of the I-90 ROW approximately ?? miles east of Sundance in Crook County Wyoming” would have described the situation accurately), the October 1, 2009 public notice provides the legal description of the ten acre LMO, stating, “

“ The Applicant has requested permission to modify the Rogers Rock Pit, which will include limestone crushing, screening, blasting, exposed acreage, stockpiling, haul activity, a hot mix asphalt plant and a concrete batch plant located in the NW1/4NE1/4 of Section 25, T52N, R62W, approximately five (5) miles northeast of Sundance in Crook County, Wyoming....”

This is the sum total of the information provided on the nature of the application provided to the public in the October 1, 2009 edition of the Sundance Times. It leaves the reader with the impression that the project is located within a 40 acre quarter section.

It is unclear why a public notice for a 600 acre minesite would provide the legal description of the ~ 10 acre LMO which it will supersede.

Moreover, the lands described in the public notice ((the NW1/4NE 1/4 of Section 25 T52N R62 W) do not even belong to Roger Croell. They are a part of Bush Ranches. (see immediately below.)

- 2) I have checked past public notices regarding AQD permits relating to the Croell Redi-Mix mining and crushing operations at the Rogers Pit, as well as past AQD permits relating to Croell Redi-Mix mining operations at the Rogers Pit. Those I have seen all contain the same incorrect legal description (the NW1/4NE 1/4 of Section 25 T52N R62 W). Once again, this land is not owned by Roger Croell, and the owners of lands operating as Bush Ranches have at no time consented for any of our land to be included in the Croell Redi-Mix minesite at the Rogers Pit .

I did not think to compare AQD’s legal description of lands operating under AQD permits granted to Croell Redi-Mix for its mining and crushing operations at the Rogers Pit with with the legal description of lands operating under LQD permits granted to Croell Redi-Mix for its mining and crushing operations at the Rogers Pit, assuming that there was at least some coordination between the two departments in that regard. I only noticed the discrepancy between the two late last month (April / 2010), when I was checking legal descriptions because Mr. Croell has asked us to share in the expense of a boundary fence which he has had constructed between his property and that of Bush Ranches.

I am presuming that the circumstance described above throws into question the legality of all permits issued by AQD to Croell Redi-Mix regarding its operations at the Rogers Pit to date.

Croell Redi-Mix owns and operates a number of gravel and / or limerock mining and crushing operations in various states. This particular Croell Redi-Mix limerock mining and crushing operation is located on the ranch which is Mr. Croell's home. (Mr. Croell is the owner and President / CEO of Croell Redi-Mix.) it is difficult to see how this error has perpetuated itself for so long.

In addition, either AQD has maps submitted directly to it depicting the minesite to which its permits apply, or it takes its legal description from LQD. In either case, it is difficult to see how such an error occurred.

- 3) Failure of AQD to inform some objectors by registered / certified mail that the AQD Decision regarding this matter was issued on March 17, 2010.

The first page of the Decision (in the INTRODUCTION) lists members of the public who submitted comments regarding this AQD Application, and who, as a result, are entitled to appeal this decision and should have been notified by registered / certified mail regarding the EQC Decision in this matter.

There was no Affidavit of Service attached to the registered letter which was sent to some but not all of those members of the public who had objected to this AQD application. I therefore do not know who among the persons noted in the introduction portion of the Decision received the registered letter informing them that the AQD Decision had been issued and who did not. AQD will have a record of this.

I did not receive a copy of the registered letter. When I spoke to Judith Hamm at the end of April, she was unaware that the AQD Decision had been issued, and was in fact assuming that it had not yet been issued. For certain, neither Judith Hamm nor I were sent a copy of the registered letter, which should have been mailed on March 17, 2009.

This was a significant omission in the public process surrounding this application, since objectors wishing to appeal the March 17 2009 decision to the EQC had 60 days from the date the Decision is issued to do so (Section 16. Chapter 1. General Rules of Practice and Procedure), limiting our ability to participate effectively in this public process.

Kimberly M. Metz e-mailed me a copy of the (Wednesday), March 17, 2010 Decision on Monday, March 22, 2010. Although I should have been sent a registered letter, if only for the sake of AQD knowing that I had received timely notice, from my point of view, e-mailing would have been sufficient had I been

informed by AQD at the time that the e-mail had been sent. However, I was not so informed. I do not have internet or e-mail at home, was not familiar with the name Kimberley Metz (who sent the e-mail), and the decision was buried in junk mail.

I am attempting to file this appeal with the EQC and the AQD in a timely manner, however, I believe given failure to provide timely notice by registered mail, the deadline for filing for an appeal should be extended for one month, until mid June, 2010. Perhaps, with the help of AQD, we can figure out why property operating as Bush Ranches has been designated a minesite permitted to Croell Redi-Mix, as well as to sort out other matters contained in this letter, either simplifying the hearing process, or making it unnecessary.

- 4) AQD asserts that Croell Redi-Mix will not be permitted to exceed an annual production of 500,000 tons per year at its Rogers Pit minesite. (500,000 tons / year is the maximum estimated production per year which Croell Redi-Mix provided in its application.

It is unclear what legal authority AQD has to enforce the amount of maximum yearly production, I have been unable to find a rule or statute permitting AQD to directly govern the amount of production. If there is such a rule or law, I would appreciate having it identified.

In my December 2, 2009 objection letter to AQD, I noted that AQD's method of determining the amount of dust and toxic airborne particles generated by the operation in a year is based upon the Applicant's estimate of maximum yearly production (in this case 500,000 tons / year), and that from this calculation AQD then determines the classification of the operation and the conditions which must be met (both the EQC and Croell Redi-Mix).

Croell Redi-Mix's estimate of maximum yearly production at the modified (expanded) Rogers Pit came up for scrutiny at the December 21, 2009 public hearing before the EQC. (That hearing concerned the Croell Redi-Mix application to LQD regarding the same mining operation at the Rogers Pit.)

The LQD representatives, one of whom has been in charge of the Croell Redi-Mix operation at the Rogers Pit since its inception as an LMO (in late 2006) stated that although LQD requires yearly production information from permittees in annual reports, LQD is nevertheless unable to strictly regulate production within any given year. LQD made it clear that it considered the estimated maximum yearly production just that - and that market conditions would dictate how much limerock was blasted, crushed, hauled off the minesite and sold in any given year.

In short, LQD has no power to limit Croell Red-Mix to a maximum of 500,000 tons of product per year. In addition, if I am understanding these rules and

regulations correctly, it appears that increased production triggers amendments to the permit which have the effect of permitting increased yearly production. It is unclear whether, if these increases are done incrementally, future public input into the process would ever be triggered.

I understand that AQD has the authority to control or limit production if dust and toxic particulate matter exceed the limits established and enforceable by the AQD. However, since at one point AQD approved a crusher with a maximum production capacity of 1,050,000 tons per year, did the math on that level of production and found that it fell within the AQD limits for dust and other airborne particulate matter, it is difficult to see how AQD is equipped to limit production to less than half that amount. Once again, I have seen nothing to indicate that Croell Redi-Mix has committed to producing no more than 500,000 tons per year, either in the Air Quality or the Land Quality Applications. Such a statement from Croell Redi-Mix might constitute an enforceable contract, although it is not clear that AQD has the authority to make such a contract with Croell Redi-Mix.

Once again, I would prefer, and I believe that the situation merits, an extension to the deadline for filing for an appeal before the EQC. I will be in Wyoming and will contact AQD shortly. I will not mail out notice to other objecting parties until after I hear from AQD regarding the possibility of an extension to the May 14 deadline. However, I see no alternative but to file for an appeal at this time simply to avoid losing the right to do so.

Yours truly,



Judith Bush

2009 NOTICE OF ASSESSMENT

CROOK COUNTY ASSESSOR
 ARDITH D "DEE" GRIFFIS
 P.O. BOX 58
 SUNDANCE, WY 82729
 Phone: (307) 283-2054 Fax: (307) 283-1400
 Office Hours: 8am - 5pm

In case of a dispute over values of your property, your first obligation is to discuss the problem with the assessor's office. If not resolved, any person wishing to contest the assessment of their property shall file no later than thirty (30) days after the date of postmark of the assessment notice, a statement with the County Assessor. The statement shall specify the reasons why the assessment is incorrect. Please contact the assessor's office for more information on the appeal process.

NAME OF PROPERTY OWNER AS OF JANUARY 1ST, 2009

BUSH TODD H & JUDITH A ETAL
 2313 COUNTY ROAD 64
 RR 2 CARRYING PLACE
 ONTARIO CANADA K0K-1L0,

This is NOT a Bill.
 The Tax Bill will be sent to you by the County Treasurer.

Date Mailed	Date of Assessment	Parcel ID Number	Account Number	Local ID Number
4/20/2009	01/01/2009	52622440001500	R0004745	00000000

PROPERTY ADDRESS	TAX DISTRICT	TOTAL LAND SIZE
1046 RIFLE PIT RD	0100	435. AC

LEGAL DESCRIPTION OF PROPERTY BEING ASSESSED

T 52N R 62W SEC 24 S SE; SEC 25 NE NENW N SE SESE (LESS 5 AC. TO HWY) TOTAL ACRES: 435.00

PREVIOUS YEAR PROPERTY BREAKDOWN

Fair Value	x	Level of Assessment	=	Assessed Valuation	x	Last Year's Mill Levy	=	Last Year's Tax
6,960		9.5%		661		61.5		41

CURRENT YEAR'S ASSESSMENT

DESCRIPTION	FAIR VALUE	x	LEVEL OF ASSESSMENT	=	ASSESSED VALUATION
Agricultural Range Land	7,830		9.5		744
Total Valuation Used to Calculate Tax:	7,830				744.00
Estimated Tax Using Previous Year's Levy	\$46	This is NOT a Bill! It is for your information only			
Veteran's Exemption Pursuant to W.S. 39-13-105 (if applicable)					

CERTIFICATE OF SERVICE

I, Judith Bush, do hereby certify that a true and correct copy of the foregoing Petition Appeal of Decision before the EQC was served via facimile on May 14, 2010 and by certified mail of May 15, 2010.

Environmental Quality Council
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Room 1714
Cheyenne, Wyoming 82002
tel (307) 777-7170

(x) by Facsimile (307) 777-6134
(x) by certified mail

WDEQ Air Quality Division
Attn. Acting Administrator
Herschler Building
122 West 25th Street
Cheyenne, Wyoming 82002
tel (307) 777-3746

(x) by Facsimile (307) 777- 5616
(x) by certified mail

Roger Croell
Croell Redi-Mix, Inc.
2719 South Hwy 585
PO Box 1352
Sundance, Wyoming 82729

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(x) by certified mail