

**BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING**

FILED

JUL 30 2003

**Terri A. Lorenzon, Director
Environmental Quality Council**

IN THE MATTER OBJECTIONS TO THE)
SMALL MINING PERMIT APPLICATION)
OF EVANS CONSTRUCTION COMPANY,) DOCKET NO. 02-4805
PERMIT NO. 608s, TFN 4 1/65)

ORDER

This matter came before the Environmental Quality Council (EQC) for hearing on February 27, 2003, in Jackson, Wyoming. EQC members Thomas Dunn and Wendy Hutchinson, John Morris and Dr. Jason Shogren conducted the hearing, with Mr. Dunn serving as hearing examiner. Terri A. Lorenzon, attorney for the EQC, assisted with the hearing. Evans Construction Company (Evans) was represented by Matthew E. Turner and David K. Larson, from Mullikin, Larson & Swift, Jackson, Wyoming. The State of Wyoming, Department of Environmental Quality, Land Quality Division (LQD) was represented by John Burbridge, Assistant Attorney General. Scott Garland of Moore, Myers & Garland, PLLC, represented Connie Hollstein, George and Jan Larson, Holly McAllister, Alice and Rodman Moorhead III, Amy Kelly, Michelle and Michael Reisbeck, Rob and Kathryn Hess, William and Mary Lou O'Blenness, and Brad Swett. The Petitioner, Carol Kaminski represented herself at the hearing.

1. Evans Construction Company, a sand and gravel operator, has applied for a mine permit revision from the Department of Environmental Quality (DEQ).
2. Protestants, Connie Hollstein, George and Jan Larson, Lee Judge, Carol Kaminski, Holly McAllister, Alice and Rodman Moorhead III, Amy Kelly, Michelle and Michael Reisbeck, Rob and Kathryn Hess, William and Mary Lou O'Blenness, and Brad Swett objected to the small mining permit because of concerns about hours of operation, noise levels, dust levels, night lighting, traffic, quality of life, fumes from the plant or diesel engines, excessive hours of operation, and the type of equipment used.
3. The Protestants, except for Carol Kaminski, and Evans filed a joint stipulation and agreed to withdraw their objections to the Evans Small Mining Permit Application in consideration of Evans agreeing to include the conditions outlined in the joint stipulation in its permit.

4. At the hearing, Counsel for the group of Protestants listed in Paragraph 2 notified the EQC that Rodman Moorhead III, moved to withdraw his agreement with the joint stipulation and for a continuance of the hearing. These Motions were filed after the deadline for filing motions.
5. Mr. Moorhead was not present at this hearing to proceed with his case or to argue his motions.
6. Carol Kaminski agreed to withdraw her objections to the Evans Small Mining Permit Application, Permit No. 608s, TFN 4 1/65 in consideration of Evans agreeing to include the following conditions in its permit.
 - a. All crushing operations that occur within the permit boundaries, including the loading of product into trucks for transportation, or removing product from trucks for stockpiling, and the cleaning and relocation of crushing equipment shall be conducted between the hours of 7:00 a.m. and 8:00 p.m., Monday through Saturday (hereafter "Regular Hours"); provided, however, that the above hours may be exceeded and may include operations on Sunday in extraordinary circumstances, such as unusual high demand for Evans' product, weather conditions which prevent operations within the above time limitations from occurring, or if the characteristics of a particular raw material result in a smaller volume of finished product and therefore require extra processing time to complete such product in relation to demand, or in the event that such crushing equipment should breakdown and prevent processing operations during the above regular hours (hereafter, collectively "Excess Hours").
 - b. No later than 12 hours prior to Evans conducting operations during Excess Hours, it will provide notice to Carol Kaminski of its intent to do so, the reason for doing so, and the expected duration of operations beyond Evans' Regular Hours for that particular use of Excess Hours. The notice shall be provided by Evans calling Carol Kaminski at a telephone number to be designated by Mrs. Kaminski in writing and, at a minimum leaving a voice mail message for Mrs. Kaminski containing the above information.
7. Evans agreed that the joint stipulation and the above stated conditions should be part of the small mining permit.
8. All of the Protestants withdrew their objections to the Evans Small Mining Permit Application, Permit No. 608s, TFN 4 1/65.

CONCLUSIONS OF LAW

1. The EQC has jurisdiction over the subject matter and the parties to this proceeding.
2. Notice of the Evans Small Mining Permit Application, Permit No. 608s, TFN 4 1/65

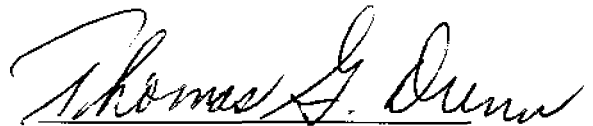
was published as required by DEQ, LQD Non Coal Land Rules and Regulations.

3. Notice of the contested case hearing was published in a local news paper as required by the DEQ Rules of Practice and Procedures.
4. Rodman Moorhead III was notified of the hearing date, and he had an obligation to appear before the EQC to present his case in the event his motion to withdraw from the stipulation was granted and his motion to continue was denied.

IT IS HEREBY ORDERED

1. Mr. Moorhead's motions to withdraw from the joint stipulation and for continuance of the hearing are denied.
2. That the DEQ shall incorporate the joint stipulation and above stated conditions, in to the Evans Small Mining Permit Application, Permit No. 608s, TFN 4 1/65.
3. The Protestants have withdrawn their objections to the Evans Small Mining Permit Application, Permit No. 608s, TFN 4 1/65

DATED this 28th day of July, 2003.



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