

FILED

AUG 05 2003

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

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

IN THE MATTER OF OBJECTIONS TO THE)
SMALL MINING PERMIT APPLICATION)
OF PETE LIEN & SONS, INC.) DOCKET NO. 03-4800
PERMIT NO. 567s, TFN 4 4/23)

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER**

This matter came to hearing before the Environmental Quality Council (EQC) on April 28, 2003, in Sundance, Wyoming. EQC members John Morris, Tom Dunn, Jon Brady, Olin Sims, Wendy Hutchinson, and Mark Gordon were present, with Olin Sims serving as hearing examiner, and EQC attorney Terri A. Lorenzon advising the EQC. The Department of Environmental Quality, Land Quality Division (LQD) was represented by John S. Burbridge, Assistant Attorney General. Pete Lien & Sons, Inc. (Lien) was represented by Edward W. Harris of Holland & Hart LLP. Protestants, Marjorie Goodson, Doug & Phyllis Ramsey, James A. Miller, Sarah Rogers, Jim & Vickie Clark, John & Shirley Long, Roger & Doris Snider, Anabel Baker, Janelle Bettmann, Keith & Cindy Lambert, Bev Stagemeyer, Larry Goodson, Leroy Anderson, and Mary Cirks were present at the hearing and represented themselves. Immediately following the close of the hearing, the EQC held a public meeting and reached the following decision.

FINDINGS OF FACT

1. Lien owns and operates a limestone quarry located near the Town of Sundance. The quarry operates under Permit No. 567s, issued by LQD.

2. In July of 2001, the Sundance area experienced a 100-year storm event that caused flooding in the area. Neighbors downslope from the southwest corner of the quarry alleged that the mining operations had exacerbated the runoff, causing damage to their properties. Personnel from the LQD inspected the quarry, and concluded that the mining operation was being conducted in compliance with permit 567s, but they also believed that storm runoff from the quarry had left the quarry's permit area. Lien agreed to LQD's request to apply for a revision to its permit, authorizing changes intended to improve storm water runoff control. That application for revision is the subject of this proceeding.

3. This permit revision would authorize the construction of a series of storm water detention bars, which slow and lengthen the flow of storm water runoff in the reclaimed quarry area and allow it to infiltrate into the surrounding area rather than running off the site. The revision would also allow reclamation to be done sooner after mining is completed in an area. Finally, it would reduce the total area to be disturbed by approximately 16 acres.

4. The Protestants, residents of the Town of Sundance and nearby areas, expressed concerns about the possible impacts of the quarry on the town, particularly as the operations move toward the southeast corner of the permit area and nearer to the hospital. Concerns were expressed about the design and construction of the storm water detention bars, their effectiveness in controlling storm water runoff, and related matters. They also expressed concern about mining operations being visible from the town as operations proceed toward the southeast corner.

5. LQD witnesses described their review of the application for revision, and concluded it was complete and in compliance with all applicable requirements of the Wyoming Environmental Quality Act and its implementing regulations.

6. At the time of the hearing, the applicant had built the stormwater detention bars and LQD witnesses testified that they had discussed the design and construction of the bars with Pete Lien & Sons and had inspected the detention bars. The LQD concluded that the detention bars had been built in accordance with the permit revision requirements. If the revision were denied, the existing permit would remain applicable, and the proposed improvements to storm water runoff and visual impact would not be allowed.

7. The EQC finds that the application is technically complete.

8. The EQC further finds that the application would be improved by the addition of the design and construction specifications and plans for the stormwater detention bars that have been constructed in the southeast quadrant of the quarry.

9. Drainage analyses conducted to examine these changes indicate that, in a storm event like that occurring in July, 2001, the flow of storm water runoff from the quarry would be reduced by more than 80%. Further, the reduction of the disturbed area by approximately 16 acres will decrease further potential storm water runoff and reduce any visual impact of the operations to the Town of Sundance.

10. Protestants also raised, or sought to raise, concerns relating to blasting, noise, and dust. However, the proposed revision would make no changes with regard to the blasting operations, noise limitations, or dust control; therefore these concerns are not relevant to the protested revision and were excluded from the hearing.

CONCLUSIONS OF LAW

1. The EQC has jurisdiction over the subject matter and the parties to this proceeding.

2. Wyo. Stat. § 35-11-406(m) requires that a revision for a permit, other than a surface coal mining permit, must be granted if the application complies with applicable legal requirements. The Pete Lien & Sons application conforms to all applicable legal requirements.

3. Many Protestants who initially filed objections did not submit prehearing memoranda as ordered by the EQC, nor did not testify at the hearing. At this point, it is appropriate to dismiss these Protestants from the proceeding. Accordingly, the following should be dismissed: Les & Ilene Hooper, Allen Leslie, Riley Crawford, Dennis, Sherrill & Kevin Vail, Pat Duca, William R. Buckman, Tim & Hazel Lyons, Jan W. Denzin, Clint & Paula Gress, Michael Taylor, Brad W. Marchant, Terry W. Wiechert, Jim Butts, Susan K. Smith, Neva E. Buresh, Merlene Elwonger, Nellis & Donna Hoing, Lonny Smith, Vernon A. Montgomery, George Huntington, Alecia Reid, Mike Kuhl, Gordon Goetz, David Wilson, Hugh R. Palmer, Travis Price, Lyle Brunson, Otto Linderman, Ezra Stransky, Thomas & Debra Davis, Donald & Marilyn Denzin, Claudis Carr, Floyd Carr, Tim Fitzer, Juli Shoun, Cindy Santistevan, Richard & Linda Peterson, Kenneth & Janice Bush, Edward Mignery, Kevin & Sara Daniels. Pose Zella Proctor, Jo Ellen McCuan, Blair & Pamela Stugelmeyer, Bob Campbell, A. K. Glover, David Williams, David & Barbara Sue Fuhrmann, Larry & Bobbie Truax, Vicky J. Adams, Annabelle Ellsburg, Donald Stoner, Elizabeth H. Taylor, Carroll Baumberger, Carol Petersen, Harold & Betty Olson, Lila J. Dudrey, R. E. Rhoades, Billy D. & Betty Myers, Janet M.

Lake, Michael S. Surber, Carla Livingston, Kathy Wilson, Janice Lee Livingston, Helen Engelhaupt, Ronald & Terry Vore, Janette Heidtke, and Ronald Vane should be dismissed

ORDER

IT IS THEREFORE ORDERED:

1. That Lien shall submit the design and construction specifications and plans for the storm water detention bars in the southeast quadrant of the quarry to the LQD;

2. That, once the design and construction information is submitted, LQD shall approve and issue the permit revision; and

3. That the Protestants who initially filed objections and who did not submit prehearing memoranda as ordered by the EQC, and/or who did not participate at the hearing are dismissed. Accordingly, Protestants: Les & Ilene Hooper, Allen Leslie, Riley Crawford, Dennis, Sherrill & Kevin Vail, Pat Duca, William R. Buckman, Tim & Hazel Lyons, Jan W. Denzin, Clint & Paula Gress, Michael Taylor, Brad W. Marchant, Terry W. Wiechert, Jim Butts, Susan K. Smith, Neva E. Buresh, Merlene Elwonger, Nellis & Donna Hoing, Lonny Smith, Vernon A. Montgomery, George Huntington, Alecia Reid, Mike Kuhl, Gordon Goetz, David Wilson, Hugh R. Palmer, Travis Price, Lyle Brunson, Otto Linderman, Ezra Stransky, Thomas & Debra Davis, Donald & Marilyn Denzin, Claudis Carr, Floyd Carr, Tim Fitzer, Juli Shoun, Cindy Santistevan, Richard & Linda Peterson, Kenneth & Janice Bush, Edward Mignery, Kevin & Sara Daniels. Pose Zella Proctor, Jo Ellen McCuan, Blair & Pamela Stugelmeyer, Bob Campbell, A. K. Glover, David Williams, David & Barbara Sue Fuhrmann, Larry & Bobbie Truax, Vicky J.

Adams, Annabelle Ellsburg, Donald Stoner, Elizabeth H. Taylor, Carroll Baumberger, Carol Petersen, Harold & Betty Olson, Lila J. Dudrey, R. E. Rhoades, Billy D. & Betty Myers, Janet M. Lake, Michael S. Surber, Carla Livingston, Kathy Wilson, Janice Lee Livingston, Helen Engelhaupt, Ronald & Terry Vore, Janette Heidtke, and Ronald Vane are dismissed from this proceeding.

IT IS SO ORDERED.

Dated this 31st day of July, 2003.



Olin Sims, Hearing Examiner
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