

Harriet M. Hageman (Wyo. Bar No. 5-2656)
Hageman and Brighton, P.C.
222 East 21st Street
Cheyenne, Wyoming 82001
Telephone: (307) 635-4888
Facsimile: (307) 635-7581
hhageman@hblawoffice.com

FILED
JUL 16 2010
Jim Ruby, Executive Secretary
Environmental Quality Council

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
OF THE STATE OF WYOMING

IN THE MATTER OF THE OBJECTION)
TO THE MINE PERMIT OF) Docket No. 10-4801
McMurry Ready Mix Company, Permit # 739)
TFN 5 2/110)

McMURRY READY MIX COMPANY
PRE-HEARING DISCLOSURES

McMurry Ready Mix Company (McMurry), by and through its Attorneys, Hageman & Brighton, P.C., and pursuant to the Environmental Quality Council's (Council) July 9, 2010 Notice of Hearing and Order, hereby submits its Pre-Hearing Disclosures:

SUMMATION OF THE FACTS

McMurry filed an application to revise mining permit #739. After proper notification that McMurry's application for permit revision was complete, Mike and Cheryl Newberry (Newberrys) submitted a written objection to the Land Quality Division ("LQD" or "Division") of the Department of Environmental Quality (DEQ). The Newberrys have

alleged that McMurry's proposed revision will adversely affect Smiley Springs by changing its water flow and by causing it to no longer flow. The Newberrys also allege that water wells drilled by McMurry have mitigated some of the damage to them but that McMurry's mining activities have adversely affected water rights in Smiley Springs dating back to the 1920s. Lastly, the Newberrys generally allege that McMurry's application does not take into account long term affects of its mining operation on Smiley Springs.

The DEQ/LQD has reviewed McMurry's application and revised mining permit and has determined that its proposed mining activities will not adversely affect Smiley Springs. The Division has also determined that McMurry's application for revision to permit #739 is complete and in full compliance with Wyoming law. The Division is ready to issue the permit.

McMurry disagrees with the Newberrys' contentions. McMurry further states that it has fully complied with the May 15, 2006 Water Well Drilling, Usage and Ownership Agreement (Agreement) entered into with the Newberrys.

LEGAL ISSUE

Whether McMurry's application for permit revision is complete and whether the Division should issue McMurry a permit revision pursuant to WYO. STAT. ANN. § 35-11-406.

WITNESSES

WILL CALL WITNESSES:

1. Ron McMurry
McMurry Ready Mix
P.O. Box 2488
Casper, Wyoming
(307) 473-9581

Mr. McMurry is the Vice-President of McMurry. He is expected to testify regarding general mine operations, permit compliance, and McMurry's practices and procedures. He is expected to testify about McMurry's efforts and activities undertaken to minimize impacts of mining operations, and oversight of the operations. He is expected to testify regarding all matters contained in the permit application, including water and nuisance concerns and McMurry's work with the DEQ to ensure that the permit application complies with Wyoming Law. He is expected to testify regarding all matters associated with McMurry's application for permit revision. He is expected to testify about the Agreement with the Newberrys, as well as with McMurry's compliance with it. He is also expected to testify regarding his contact with the Newberrys and their use of the groundwater wells. He is expected to testify regarding all matters associated with McMurry's application for permit revision and compliance with Wyoming law. Finally, Mr. McMurry is expected to testify regarding any of the Exhibits that relate to the matters identified above.

2. Gene Brummond
McMurry Ready Mix
P.O. Box 2488
Casper, Wyoming
(307) 473-9581

Mr. Brummond is the Materials Superintendent for McMurry. He is expected to testify regarding the Agreement and McMurry's compliance with it. He is also expected to testify regarding the Newberrys' original water right, the groundwater wells that have been installed for their use, their operation and manner of use of those wells, the amount of water produced, and their use of such well water to supplement Smiley Springs. He is also expected to testify regarding the water permits for Smiley Springs and the groundwater wells. He is also expected to testify regarding McMurry's monitoring of Smiley Springs, the typical and historical flow rate of Smiley Springs, the estimates that have been made, the fluctuation in flows that have been observed, the location of the seepage, and the use of such water for dust control at the mine site in compliance with McMurry's mine permit requirements and water rights. He is expected to testify about the sediment ponds, the life of the mine, and public meetings and outreach. Mr. Brummond is also expected to testify regarding McMurry's historical compliance with its mining permit and Wyoming law. He is expected to testify regarding all matters associated with McMurry's application for permit revision and compliance with Wyoming law. He is expected to testify about McMurry's practices and procedures, efforts and activities undertaken to minimize impacts of mining operations, and oversight of the operations. He is expected to testify regarding McMurry's commitment to

minimizing the impact of the Wyute pit operations on residential homes and the water in the area. Finally, Mr. Brummond is expected to testify regarding any of the Exhibits that relate to the matters identified above.

MAY CALL WITNESSES:

3. Mike Wolf
WWC Engineering
1849 Terra Avenue
Sheridan, Wyoming 82801
(307) 672-0761

Mr. Wolf is a Senior Geologist with WWC Engineering. He may be called to testify regarding all matters contained within the permit application related to groundwater, including hydrologic issues pertaining to Smiley Springs and the Hydrogeologic Assessment for WYUTE Pit. He may also be called to testify regarding the capacity of Newberry's water system. Finally, Mr. Wolf may be called to testify regarding any of the Exhibits that relate to the matters identified above.

4. Troy Summers
WWC Engineering
611 Skyline Road
Laramie, Wyoming 82070
(307) 742-0031

Mr. Summers is an Associate Geologist with WWC Engineering. He may be called to testify regarding all matters contained within the permit application related to groundwater, including hydrologic issues pertaining to Smiley Springs and the Hydrogeologic Assessment for WYUTE Pit. He may also be called to testify regarding the

capacity of Newberry's water system. He may also be called to testify regarding the permitting of the water rights, monitoring and sampling of Smiley Springs in compliance with the Agreement, enforcement and implementation of the mine's groundwater monitoring program, and compliance with the mine permit requirements. Mr. Summers may also be called to testify regarding the revisions to the mine permit. Finally, Mr. Summers may be called to testify regarding any of the Exhibits that relate to the matters identified above.

5. Murray Schroeder
WWC Engineering
611 Skyline Road
Laramie, Wyoming 82070
(307) 742-0031

Mr. Schroeder is the Office Manager for WWC in Laramie, Wyoming. He may be called to testify regarding his oversight of WWC's activities related to the McMurry operation, general water laws, and the specifics of McMurry's permit revision application. Finally, Mr. Schroeder may be called to testify regarding any of the Exhibits that relate to the matters identified above.

6. Doyle Fritz
WWC Engineering
1849 Terra Avenue
Sheridan, Wyoming 82801
(307) 672-0761

Mr. Fritz is employed with WWC Engineering. Mr. Fritz is a consulting engineer who has assisted with the preparation of numerous mine permit applications. He also has prior experience as a district engineer for the LQD of the DEQ, a position in which he reviewed

numerous mine permit applications for completeness and technical adequacy and also performed compliance monitoring on numerous surface mining operations. Mr. Fritz will testify as to the adequacy of McMurry's permit revision application in terms of meeting the requirements of the Wyoming Environmental Quality Act and its accompanying regulations; the provisions in the permit for protecting the quantity and quality of the State's water resources; and other questions that may arise as to the technical reasons why the permit should be approved. He may be called to testify regarding all matters contained within the permit application related to groundwater, including hydrologic issues pertaining to Smiley Springs and the Hydrogeologic Assessment for WYUTE Pit. He may also be called to testify regarding the permitting of the water rights, monitoring and sampling of Smiley Springs in compliance with the Agreement, enforcement and implementation of the mine's groundwater monitoring program, and compliance with the mine permit requirements. Mr. Fritz may also be called to testify regarding the revisions to the mine permit. He may be called to testify regarding general water laws and operations, Wyoming State Engineer permitting and water rights, the prior appropriation system, and the water rights issued on Smiley Springs. Finally, Mr. Fritz may be called to testify regarding any of the Exhibits that relate to the matters identified above.

7. Kenny Lehmkuhl
McMurry Ready Mix
P.O. Box 2488
Casper, Wyoming
(307) 473-9581

Mr. Lehmkuhl is the current Manager of the WYUTE Pit. He may be called to testify regarding current operations, use of dust control water, water levels in and use of the sediment ponds, and locations of the seeps. He may be called to testify regarding general mine operations, permit compliance, and McMurry's practices and procedures. He may testify about the Agreement with the Newberrys, as well as with McMurry's compliance with it. He may be called to testify regarding the second groundwater well drilled for the Newberrys. Finally, Mr. Lehmkuhl may testify regarding any of the Exhibits that relate to the matters identified above.

8. Bill Hogg
Steve Ingle
Department of Environmental Quality
Herschler Building
122 West 25th Street
Cheyenne, Wyoming 82002
(307) 777-7756

Mr. Hogg is in charge of the oversight and review of McMurry's permit revision application, TFN 5 2/110. He may be called to testify regarding general permit application requirements and whether McMurry's application is complete and in compliance with the requirements of Wyoming law.

Mr. Ingle may be called to testify regarding all matters contained within the permit application relating to groundwater, including hydrologic issues pertaining to Smiley Springs.

9. Mike and Cheryl Newberry
P.O. Box 1644
Rawlins, Wyoming 82301
(307) 320-7476

Mr. and Mrs. Newberry have submitted an objection to McMurry's proposed permit revision. One or both of them may be called to testify regarding the Agreement and all aspects of their objections.

EXHIBITS

- Exhibit I: McMurry's permit revision application, including maps (submitted by DEQ; already part of file)
- Exhibit A: Index Sheet for Mine Permit Amendments or Revisions
- Exhibit B: Affidavit of Ron McMurry of Notice
- Exhibit C: Hydrogeologic Assessment for Wyute Pit
- Exhibit D: Water Well Drilling Usage and Ownership Agreement
- Exhibit E: Map of area
- Exhibit F: Water Sampling Report - data only (Third Quarter 2009)
- Exhibit G: Water Sampling Report (Fourth Quarter 2009)
- Exhibit H: Water Sampling Report (First Quarter 2010)
- Exhibit I: Water Sampling Report (Second Quarter 2010)
- Exhibit J: Statements of Completion (Newberry # 1, Over-Filling Newberry #1)
- Exhibit K: Application for Temporary Change in Location of Well
- Exhibit L: Eagle Drilling Invoice (December 17, 2009)
- Exhibit M: Eagle Drilling Invoice (March 8, 2010)
- Exhibit N: Childers Electric documentation re: groundwater wells
- Exhibit O: Statements of Completion (Newberry # 1, Over-Filing Newberry # 1)

- Exhibit P: Resume of Mike Wolf
- Exhibit Q: Resume of Troy Summers
- Exhibit R: Resume of Murray Schroeder
- Exhibit S: Resume of Doyle Fritz

McMurry may also rely upon any records on file with the Department of Environmental Quality, such as the Mine Plan or the revised Plan.

Respectfully submitted this 16th day of July, 2010.

McMURRY READY MIX COMPANY

By: 
Harriet M. Hageman (Wyo. Bar No. 5-2656)
Hageman and Brighton, P.C.
222 East 21st Street
Cheyenne, Wyoming 82001
Telephone: (307) 635-4888
Facsimile: (307) 635-7581
hhageman@hblawoffice.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 16th day of July, 2010, a true and correct copy of the foregoing WAIVER OF COURT REPORTER FOR PRE-HEARING CONFERENCE was served upon the following:

John S. Burbridge
Senior Assistant Attorney General
Attorney General's Office
123 Capitol Building
Cheyenne, WY 82002
*Attorneys for the Department of
Environmental Quality*

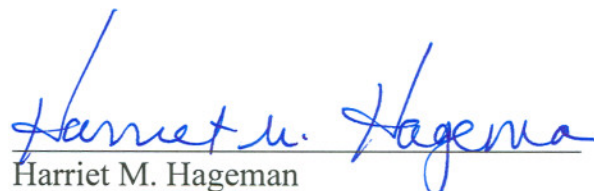
U.S. Mail, Postage Prepaid
 Hand Delivery
 Federal Express
 Facsimile: _____
 Other: Email to Jburbl@state.wy.us

Mike and Cheryl Newberry
P.O. Box 1644
Rawlins, WY 82301

U.S. Mail, Postage Prepaid
 Hand Delivery
 Federal Express
 Facsimile: _____
 Other:

Environmental Quality Council
122 West 25th, Room 1714
Herschler Building
Cheyenne, Wyoming 82002

U.S. Mail, Postage Prepaid
 Hand Delivery
 Federal Express
 Facsimile: _____
 Other: Electronic Mail:
kwarin@wyo.gov and kgirar@wyo.gov


Harriet M. Hageman