

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

FILED

Dec 07, 2010

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

IN THE MATTER OF THE OBJECTION)
TO THE SMALL MINE PERMIT OF)
McMURRAY READY MIX CO.)
TFN 5 3/143)

Docket No. 10-4803

**BOULDER RESIDENT OBJECTORS' LIST OF WITNESSES AND EXHIBITS
AND STATEMENT OF ISSUES**

Objectors Dave and Sandra Goodwin, Harv and Denise Hastings, Debbra White, David Payne, Randy Simpson, and Kelly Garside (collectively the "Boulder Residents") respectfully submit this list of witnesses and exhibits and statement of issues, as required by the Order of Schedule entered in this matter on December 1, 2010.

I. List of Witnesses

Each of the objectors set forth below intend to testify at the hearing, work and weather permitting. Each is a resident of Boulder, Wyoming and owns property very near the proposed mine. Each will testify regarding the location of their property in proximity to the mine and their experience with the mine and its related truck traffic. They will recount the noise, dust, and public safety problems caused by the truck traffic and the operation of the mine itself. They will also share their observations of sage grouse activity in the area, and the impact that mine operation has had on the number of such birds frequenting the area. The objectors that will testify are:

1. David Goodwin
96 South County Road 133
Boulder, WY 82923

2. Sandra Goodwin

96 South County Road 133
Boulder, WY 82923

3. Harv Hastings
241 South County Road 133
Boulder, WY 82923
4. Denise Hastings
241 South County Road 133
Boulder, WY 82923
5. Debra White
51 Jackrabbit Lane
Boulder, WY 82923
6. David Payne
51 Jackrabbit Lane
Boulder, WY 82923
7. Randy Simpson
48 South County Road 133
Boulder, WY 82923
8. Kelly Garside

Objectors furthermore reserve the right to call any witness listed by the Applicant, the DEQ or the other objectors, and reserve the right to call rebuttal witnesses necessary to rebut testimony or exhibits propounded by any party.

II. List of Exhibits

The Boulder Residents may introduce one or more of the following Exhibits.

1. Short film of Truck Traffic on County Road 133. This film consists of approximately 6 minutes of video, all shot by Objector Sandra Goodwin, depicting heavy truck traffic from the McMurray Mine. The film has been edited and condensed from an approximately 24 minute tape, which can be made available to any party on request pursuant to W.S. § 16-3-108.

2. Memorandum From Jennifer Frazier to Dave Finley, Bob Gill and Tony Hoyt dated November 30, 2008, re: "East Fork Ranch Pit and the Bousman Pit (2 Complaints)
3. Map of Area showing leks, mines, and Mathis Lane Alternative (Exhibit F to Boulder Residents' LQD comment letter)
4. November 20, 2009 Letter from MDS to Sublette County Board of County Commissioners w/attachments
5. Sunrise/Sunset Calendar for 12 months from November, 2009 to December 2010.
6. Summary of Adverse Health Effects of Noise Pollution prepared by Louis Hagler
7. August 19, 2010 Letter from Commissioner Kramer to Chad Schlichtemeir, DEQ AQD
8. DEQ AQD Permit Application Analysis
9. *Greater Sage-grouse Winter Habitat Selection in the Upper Green River Basin, Wyoming*, December 2007
10. Sublette County Zoning and Development Permit Issued to McMurry Ready Mix Co, dated 3/18/2008.
11. "Commissioners discuss new rezone applications, Joint Powers dissolves," Pinedale Roundup, 10/22/2010.
12. E-mail from Tanya King to Kelly Garside dated November 11, 2010
13. List of Sublette County Permitted Uses Dated October 27, 2010
14. Photos of Entrance to Mine Taken by Kelly Garside
15. Photos of Dust Taken by Kelly Garside
16. Executive Order 2008-2

17. Executive Order 2010-4
18. December 18, 2008 letter from MDS to Kate Grimes and Bart Myers re hours of operation
19. December 19, 2008 letter from MDS to Ron McMurray
20. January 5, 2009 letter from Bart Myers to MDS
21. January 8, 2009 letter from MDS to Myers & Hageman
22. January 18, 2010 letter from MDS to Hageman
23. May 12, 2010 letter to Lankford and Commissioners
24. October 28, 2009 letter from MDS to Myers & Hageman
25. November 2, 2009 letter from Hageman to Sullivan
26. November 12, 2009 letter from Myers to McMurray
27. Memorandum from Tanya King to Mary Flanderka and Gwen Booth (G&F) dated January 8, 2010
28. Feb 12, 2010 letter from John Emmerich to DEQ/Moxley
29. June 8, 2010 letter from Wyoming Game & Fish to DEQ
30. DEQ Notice of Violation, Notice of Compliance and Order Approving Notice of Violation and Order, DEQ Docket No. 3384-02
31. DEQ Notice of Violation and Settlement Agreement, DEQ Docket No. 3622-04
32. DEQ Notice of Violation and Notice of Compliance, DEQ Docket No. 3728-05
33. DEQ Notice of Violation and Settlement Agreement, DEQ Docket No. 3823-05

34. DEQ Notice of Violation and Settlement Agreement, DEQ Docket No. 4107-07.

35. DEQ Notice of Violation and Settlement Agreement, DEQ Docket No. 4503-09.

36. DEQ Notice of Violation and Termination Letter, DEQ Docket No. 4557-09.

The Boulder Residents furthermore reserve the right to use and introduce any exhibit listed by any other party, and to use any other documents or things that may be necessary for the purposes of impeachment on cross-examination, or as rebuttal evidence.

III. Statement of Issues

The issue presented to the EQC for adjudication in this contested case hearing is whether a permit may be issued to McMurry Ready Mix Co. for the operation of a 350 acre gravel mine when the operation of that mine constitutes a public nuisance, endangers public health and safety, and is in violation of Wyoming public policy. The mine has been operating since March, 2008 under a conditional use permit and 10 acre limited mining exemption. In the course of the three seasons it has been operating, the mine has turned the lives of the Boulder Residents upside down, and endangered the public health and safety. The noise and dust generated by mine operations, including both on-site activity and resulting heavy truck traffic, constitute an unreasonable interference with the public's right to enjoy peace and tranquility and the right to be free from air pollution. Furthermore, the nearly incessant truck traffic during mine operations has posed a danger to members of the public traveling on area roads. The permit should therefore be denied under W.S. § 35-11-406(m)(vii).

The applicant has also failed to demonstrated that its mine will not adversely affect sage grouse. The applicant has not performed the review required by Executive Order 2010-4, and has not demonstrated compliance with the stipulations set forth in that Executive Order. The

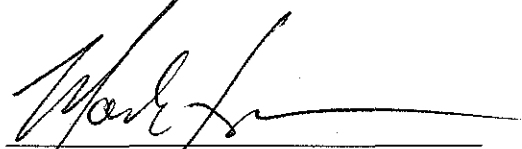
mine permit is therefore in derogation of Wyoming public policy, and should be denied under W.S. § 35-11-406(m)(iii).

Finally, the applicant, McMurry Ready Mix, has demonstrated a pattern of willful violations and wanton disregard for public welfare and safety. This pattern is evidenced by McMurray's callous and intentional disregard of permit conditions both at the Boulder Mine, and in its other operations around the state. Thus, the permit should be denied under W.S. § 35-11-406(o).

Respectfully Submitted,

DATED: December 7, 2010.

Mark D. Sullivan, P.C.



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CERTIFICATE OF SERVICE

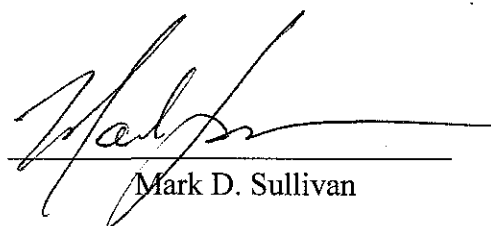
I HEREBY CERTIFY that on the 7th day of December, 2010, the foregoing List of Witnesses and Exhibits and Statement of Issues was served, by e-mail, on counsel for the parties, and the EQC, at the following addresses:

Luke Esch
lesch@state.wy.us

Harriet Hageman
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Jon Aimone
jon@lemichlaw.com

Environmental Quality Council
c/o Jim Ruby and
Kim Waring
kwarin@wyo.gov
jruby@wyo.gov



Mark D. Sullivan