

*Dec 07, 2010*

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

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

IN THE MATTER OF THE OBJECTION )  
TO THE SMALL MINE PERMIT OF ) Docket No. 10-4803  
McMURRAY READY MIX CO. )  
TFN 5 3/143 )

**BOULDER RESIDENT OBJECTORS' MOTION TO MODIFY HEARING SCHEDULE**

Objectors Dave and Sandra Goodwin, Harv and Denise Hastings, Debbra White, David Payne and Randy Simpson, and Kelly Garside (the "Boulder Residents") respectfully submit this motion requesting that the order in which evidence is presented to the Environmental Quality Council at the upcoming hearing be modified to comply with the Rules promulgated by the Office of Administrative Hearings ("OAH").

The OAH Rules set forth the procedures to be followed in contested case hearings. Chapter 3, Section 1 establishes the order in which evidence is to be presented. It states as follows:

Unless otherwise provided by law, the party generally with the burden of proof will be the first to present evidence, all other parties being allowed to cross-examine in an orderly fashion. When that party rests, other parties will then be allowed to present their evidence, again allowing for orderly cross-examination. Rebuttal and surrebuttal will be allowed only in the discretion of the presiding officer.

OAH Rules, Chapter 3, Section 1(f). Here, it is the applicant's burden to prove that it is entitled to the permit. The Environmental Quality Act states:

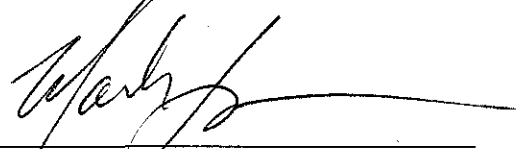
The requested permit, other than a surface coal mining permit, shall be **granted if the applicant demonstrates** that the application complies with the requirements of this act and all applicable federal and state laws.

W.S. § 36-11-406(m) (emphasis added). Thus, the applicant, McMurray Ready Mix Co., generally bears the burden of proof, and should be required to present its evidence first. However, after a short discussion of the matter during the prehearing conference, an Order of Schedule has been issued which requires the Objectors to present their evidence first. This turns the burden of proof on its head, and should be reversed. The Boulder Residences therefore renew their objection to the order of presentation established in the Order of Schedule, and respectfully request that a new Order of Schedule be entered that requires McMurray Ready Mix to first present its evidence in support of its permit application.

Respectfully Submitted,

DATED: December 6, 2010.

Mark D. Sullivan, P.C.



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**CERTIFICATE OF SERVICE**

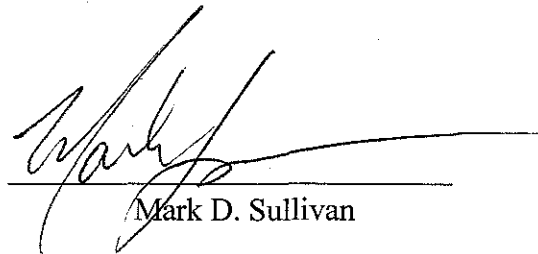
I HEREBY CERTIFY that on the 6<sup>th</sup> day of December, 2010, the foregoing Motion for a New Order of Schedule, was served, by e-mail, on counsel for the parties, and the EQC, at the following addresses:

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