

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

**IN THE MATTER OF THE OBJECTION)
TO THE SMALL MINE PERMIT OF) DOCKET NO. 10-4803
McMURRY READY MIX CO.,)
TFN 5 3/143)**

**DEQ'S RESPONSE TO BOULDER RESIDENT OBJECTORS'
MOTION TO MODIFY HEARING SCHEDULE**

The Department of Environmental Quality, Land Quality Division (DEQ/LQD), through the Office of the Attorney General, hereby submits its response to the Boulder Resident Objectors' (Boulder Objectors) Motion to Modify Hearing Schedule. The Environmental Quality Council (Council) should deny the Boulder Objectors' motion because it improperly attempts to reassign the burden to the applicant, the Council has the authority to hear evidence in whatever order they choose, and it promotes judicial efficiency for the Council to determine the order in which it receives evidence.

The heart of the Boulder Objectors' argument for modification of the hearing schedule focuses on one provision of the Environmental Quality Act (EQA) as it pertains to permitting of mines. WYO. STAT. ANN. § 35-11-406(m) states in part:

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 federal and state laws.

The Boulder Objectors misinterpret this provision to require the applicant to bear the burden at the contested case hearing to prove to the Council that the permit satisfies all applicable requirements of the EQA and all other federal and state laws. This is

simply not the case. The applicant has already shown to the satisfaction of DEQ that the permit complies with the requirements of the EQA and all applicable federal and state laws. Otherwise, DEQ would not have authorized public notice of the permit and proposed to issue the permit. It is now up to anyone objecting to that action to bear the burden of showing that DEQ's proposed issuance is not appropriate. "Objectors failed to meet the burden of showing any reason why the permit should not be issued in this case." *In the Matter of the Objection to the Small Mine Permit of Croell Redi-Mix, Inc. TFN 5 6/072*, EQC Docket No. 09-4806. Therefore, the Boulder Objectors bear the burden of putting forth evidence that DEQ's decision to issue the permit is not in accordance with the EQA.

Second, the Council Rules of Practice and Procedure (Rules) provide the Council with the authority to hear evidence in whatever order they choose. Chapter 2, Section 4(a)(v) of the Rules states, "[t]he presiding officer may allow, in his discretion, evidence to be offered in any order." If the presiding officer believes it is more efficient to hear from the objectors first, the Council has the authority to do so.

Finally, requiring the Boulder Objectors to present their evidence first also promotes judicial efficiency. It makes more sense for the objectors in a permit review hearing to present their issues first, and then have the applicant address the issues raised by the objectors. If the opposite were the case, the applicant would have to explain each element of the permit application, and then have the objectors present evidence to the contrary. After the presentation of the objector's issues, the Council would be required to allow the applicant to respond to each of the objector's issues. If the objectors proceed

first, the issues are presented right away and the Council can avoid the unnecessary presentation of evidence on areas of the permit application that are not contested by the objectors.

WHEREFORE, DEQ requests that the Council deny the Boulder Objectors' Motion to Modify the Hearing Schedule.

DATED, this 7th day of December, 2010.



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CERTIFICATE OF SERVICE

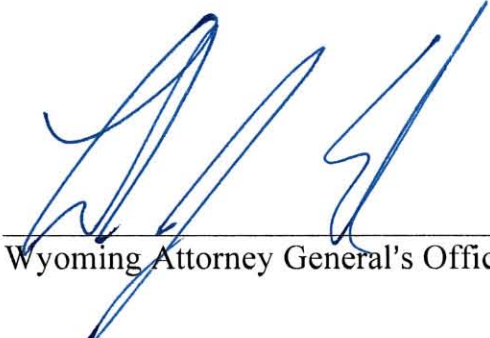
The undersigned hereby certifies that a true and correct copy of the DEQ's Response to Boulder Resident Objectors' Motion to Modify Hearing Schedule was served by electronic mail, this 7th day of December 2010, to the following:

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