

C. BASIS FOR PETITION

3. Shredded tires as scrap tire are considered “solid waste” under the SWRR and thus, must be disposed of in accordance with the permitting requirements of the SWRR. Chapter 1, Section 1(l)(xxi) creates a permit exemption for “the reuse of wastes in a manner which is both beneficial and protective of human health and the environment, as approved by the administrator.”

4. MDC applied for an exemption on February 11, 2010 asking for authority to use approximately 526,500 cubic feet of shredded tire material on lot 18 at Elton Ct. After leveling the area MDC would place fill dirt covered with gravel. The shredded tires would be provided by Wyoming Tire and would be more cost effective than other sources of fill material.

5. The Administrator of the SHWD denied the exemption two months after it was requested, based on his conclusions that the use of the tire shreds would not bring any “unique” benefits to the project and would not be protective of human health and the environment, asserting that the tire shreds would be in contact with wetlands and associated waters and therefore, would not be protective of human health and the environment.

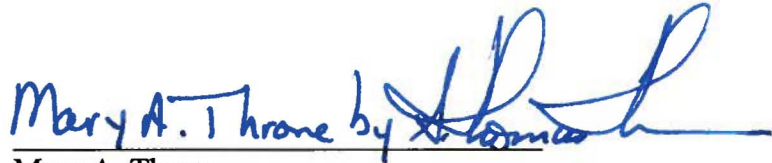
6. The Administrator’s denial based on the lack of “unique” benefit to the project is contrary to the law as it reads a new requirement into the language of the exemption. The law does not require any “unique” benefit, only that the waste be put to a beneficial use. The beneficial use proposed by MDC was as “fill” and is similar to other beneficial uses previously approved by the Solid and Hazardous Waste Administrator. Thus, the denial of the beneficial use for MDC was both contrary to the language of the regulation and arbitrary in that it was inconsistent with previous agency decisions allowing the use of tire material for construction projects.

7. The Administrator's decision that the placement of tire shreds would not be protective of human health and the environment is without support. There is no evidence tire shreds pose a threat to water and in the past, the agency has approved project that had the potential of bringing scrap tires in contact with water.

8. The Administrator's decision to deny the beneficial use exemption is without support, is contrary to law, and is inconsistent with previous agency decisions allowing a variety of uses of scrap tires. As a result, the decision is arbitrary and capricious and MDC respectfully requests the EQC overturn the agency's decision.

9. MDC requests a hearing in this matter.

Submitted this 14th day of June, 2010



Mary A. Throne
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Cheyenne, WY 82001
307-637-2822

Counsel for Milne Development Corp.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 14th day of June, 2010, in accordance with the requirements of Chapter 1, Section 3(b) of the Wyoming Department of Environmental Quality Rules of Practice and Procedure, this Appeal and Petition for Review was served as follows:

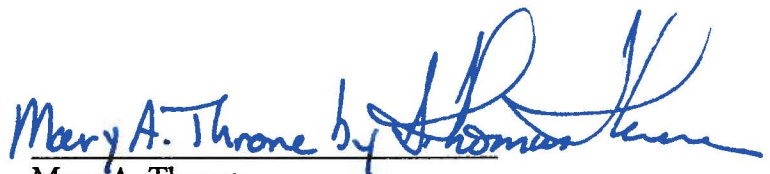
Two copies were served upon the Chairman of the Environmental Quality Council, Tim Flitner, 122 West 25th Street, Herschler Building, Room 1714, Cheyenne, Wyoming 82002, by registered mail, return receipt requested, and by hand delivery of a copy to the offices of the Council mentioned above.

Two copies were served upon the Director of the Department of Environmental Quality, John Corra, 122 West 25th Street, Herschler Building, 4th Floor West, Cheyenne, Wyoming 82002, by registered mail, return receipt requested of a copy to the Office of the Director.

Copies were also served by registered mail, return receipt requested and hand delivery to the following:

Bruce Salzburg
Wyoming Attorney General
123 Capitol Building
200 W. 24th Street
Cheyenne, WY 82002

Carl Anderson, Administrator
Solid and Hazardous Waste Division
Wyoming Department of Environmental Quality
122 West 25th Street, Herschler Building
Cheyenne, WY 82002

Handwritten signature in blue ink that reads "Mary A. Throne by [illegible signature]".

Mary A. Throne
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Department of Environmental Quality



To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.

Dave Freudenthal, Governor

John Corra, Director

April 14, 2010

Ken Milne, CEO
Milne Development Corporation (MDC)
P. O. Box 2259
Mills, Wyoming 82644

RE: Beneficial Use Request

Dear Mr. Milne:

On February 11, 2010, the Wyoming Department of Environmental Quality, Solid Waste Permitting and Corrective Action Program (Department) received a request regarding the beneficial use of tire shreds on your facility located on Lot 18, Elton Court, Casper, Wyoming. The State of Wyoming defines used tires and tire shreds as a Solid Waste that must be managed in accordance with the Solid Waste Rules and Regulations. The Department considers "Beneficial Use" requests under permit exemptions in accordance with Chapter 1, Section 1(I)(xxi) of the Solid Waste Rules and Regulations.

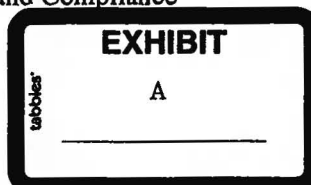
Your request indicated that approximately 526,500 cubic feet (19,500 cubic yards) of tire shreds would be required to fill in an existing unlevel area, and would then be covered with fill dirt and gravel. The Department has determined that the use of tire shreds in the proposed manner does not provide any unique properties or benefits to the project, and basically constitutes landfilling of the tire shreds. In addition, the Department has determined, based on site inspection and review of the photos submitted, that 'landfilling' of the tire shreds in these areas would place them in direct contact with wetlands and associated waters and, therefore, would not be protective of human health and the environment.

The Department has determined that a permit exemption (beneficial use approval) cannot be issued for this proposal. If you have any questions regarding this determination, please contact Patrick Troxel in Lander at 307.335.6950.

Sincerely,

Carl Anderson, PhD
Solid and Hazardous Waste Division Administrator

Cc: Bob Doctor, DEQ Solid Waste Program Manager
Patrick Troxel, DEQ District #2 Supervisor
Gary Keene, DEQ Inspection and Compliance



Herschler Building • 122 West 25th Street • Cheyenne, WY 82002 • <http://deq.state.wy.us>

ADMIN/OUTREACH (307) 777-7758 FAX 777-3610	ABANDONED MINES (307) 777-6145 FAX 777-6462	AIR QUALITY (307) 777-7391 FAX 777-5616	INDUSTRIAL SITING (307) 777-7369 FAX 777-6937	LAND QUALITY (307) 777-7756 FAX 777-5864	SOLID & HAZ. WASTE (307) 777-7752 FAX 777-5973	WATER QUALITY (307) 777-7781 FAX 777-5973
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