

MAY 13 1985

Ardelle M. Kissler, Clerk  
Environmental Quality Council

BEFORE THE WYOMING  
ENVIRONMENTAL QUALITY COUNCIL

IN THE MATTER OF OBJECTIONS )  
TO THE PERMIT REVISION ) Docket No.  
APPLICATION OF RISSLER AND ) TFN 1 6/359  
MCMURRY COMPANY, )  
TFN 1 6/359 )

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

Pursuant to notice duly given to all parties in interest, this matter came on for hearing on the 28th day of January, 1985, at 2:00 p.m. in the hearing room of the Oil and Gas Commission, 777 West 1st Street, Casper, Wyoming. Dr. Harold L. Bergman and Mr. John C. Shiffer, members of the Environmental Quality Council, presided as hearing officers.

The applicant appeared and was represented by Susan K. Overeem, attorney at law. The protestants appeared without an attorney and the Department of Environmental Quality, Land Quality Division was represented by Mr. Weldon S. Caldbeck, Assistant Attorney General.

With all parties participating in the hearing, the Environmental Quality Council having taken this matter under advisement and having been fully advised and having considered all the testimony and evidence submitted by the parties, now makes its Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Rissler and McMurry Company, hereafter referred to as the applicant, has filed an application, TFN 1 6/359, for a permit to mine sand and gravel from the North Platte River Gravel Project, west of Casper in Natrona County, Wyoming.

2. The applicant proposes by the revision to conduct maintenance operations at the mine area until 1:30 a.m. All other terms of the existing permit are to remain unchanged.

3. Pursuant to the provisions of W.S. 35-11-406 (k) the Land Quality Division received objections from numerous private citizens to the issuance of a permit revision. The protestants testified to the disruption of their residential area due to truck traffic, noise, dust, and lights used by the existing operation. The protestants stated that many of the problems they experience with the Rissler & McMurry operation were a result of the company's operations conducted at night.

4. The existing permit held by the applicant restricts mining operations to the hours of 7:00 a.m. to 5:00 p.m. seven days per week, with maintenance operations being permitted only during daylight hours. The existing permit conditions resulted from a prior hearing before the Council in which many private citizens participated.

5. When the existing permit was issued the Council stated in its Order that the operation would constitute a public nuisance if it were not conducted according to the specified conditions in the Order.

6. The applicant admitted that current contracts could be met under the restrictions of the existing permit.

7. A need for extended operating hours beyond the terms of the existing permit was not established by the evidence.

#### CONCLUSIONS OF LAW

1. The Environmental Quality Council has jurisdiction over both the subject matter and the parties of this proceeding.

2. Due and proper notice of the hearing in this matter was given in all respects as required by law.

3. W.S. 35-11-406(m)(vii) requires the applicant to demonstrate that the proposed mining operation does not constitute a public nuisance or endanger the public's health and safety. Such demonstration was not made by the applicant.

ORDER

WHEREFORE, PURSUANT TO W.S. 35-11-112(c)(ii) and W.S. 35-11-406(p), IT IS HEREBY ORDERED THAT:

1. The permit revision application TFN 1 6/359 is denied for failure to demonstrate pursuant to W.S. 35-11-406(m)(vii) that the proposed revised mining operation does not constitute a public nuisance or endanger the public's health and safety.

DATED this 7<sup>th</sup> day of ~~April~~<sup>May</sup>, 1985.

Environmental Quality Council

By: Harold Bergman  
Harold Bergman, Member.