

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

FILED

JAN 21 2010

*Jim Ruby, Executive Secretary
Environmental Quality Council*

IN THE MATTER OF:)
Mullinax Concrete Services Co.)
Limited Mining Operation Application)
TFN 5 4/123)

DOCKET NO. 09-4602

**ORDER DENYING MOTION TO DISMISS, SETTING RESPONDENT'S RESPONSE
TIME AND ASSIGNING HEARING OFFICER**

THIS matter came on for public hearing on January 15, 2010 at 10:00 a.m. (MST) pursuant to the December 15, 2009 and January 14, 2010 Hearing Orders of the Environmental Quality Council ("Council"). The hearing was held in the Herschler Building, 122 West 25th Street, Cheyenne, Wyoming. The matter heard was the argument on the December 3, 2009 Motion To Dismiss filed by the Respondent, Department of Environmental Quality ("DEQ").

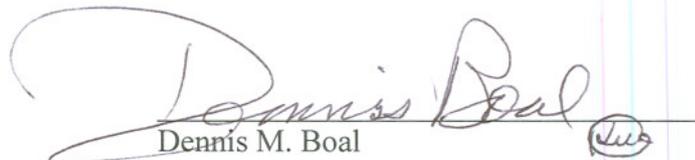
Council members present were: Dennis M. Boal, Chairperson, Thomas Coverdale, Vice-Chairperson, F. David Searle, Tim Flitner, and Catherine Guschewsky; Mr. Coverdale participated by videoconference. Present in person on behalf of the DEQ was John Burbridge, Senior Assistant Attorney General for the State of Wyoming. Anthony Wendtland of Sheridan, Wyoming appeared by telephone pursuant to the Council's January 14, 2010 hearing order on behalf of Petitioner, Mullinax Concrete Service Company, Inc. ("Mullinax").

During the public hearing, and after review of the written submissions of the parties and after hearing argument from counsel, Mr. Searle moved to grant the DEQ's December 3, 2009 Motion To Dismiss and Mr. Flitner seconded that motion. The Council then deliberated on the

matter and voted against Mr. Searle's motion with Ms. Guschewsky, Mr. Morris, Mr. Boal, Mr. Flitner and Mr. Searle voting against the motion and with Mr. Coverdale voting for the motion.

The Council further granted the DEQ thirty (30) days from the date of this Order to file its response to Petitioner Mullinax's December 14, 2009 Supplemental Petition. The Council further assigned Mr. Searle to serve as the Hearing Officer for this matter.

DATED this 21st day of January, 2010.


Dennis M. Boal
Chairperson for the Environmental Quality Council

Approved as to form:

Counsel for Petitioner Mullinax


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CERTIFICATE OF SERVICE

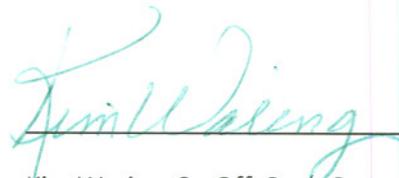
I, Kim Waring, certify that at Cheyenne, Wyoming, on the 21st day of January, 2010, I served a copy of the foregoing **ORDER DENYING MOTION TO DISMISS, SETTING RESPONDENT'S RESPONSE TIME AND ASSIGNING HEARING OFFICER** by electronic mail to the following:

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