

FILED

AUG 05 1981

Ardelle M. Kissler, Clerk
Environmental Quality Council

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

IN THE MATTER OF A COMPLAINT)
AGAINST THE ACCEPTANCE OF A)
NOTIFICATION FOR LIMITED)
MINING OPERATIONS FROM) Docket No. 713-80
HUSMAN, INC. BY THE DEPARTMENT)
OF ENVIRONMENTAL QUALITY)

Having reviewed the record in this matter, including the briefs filed by all parties, and having heard argument, the Environmental Quality Council finds and concludes as follows:

FINDINGS OF FACT

1. Husman, Inc. is a Wyoming corporation in the general construction business in Sheridan, Wyoming.
2. Husman filed a Limited Mining Operations Notification of Operator and Consent of Surface Owner and Lessee, with the Land Quality Division, on April 21, 1980.
3. The notification contained all of the information required by W.S. 35-11-401 (e) (vi) and Chapter XX of the Land Quality Rules and Regulations. On May 28, 1980, the Land Quality Division approved the notification.
4. A reclamation bond of \$3,000. was filed by Husman, Inc. in compliance with W.S. 35-11-401 (e) (vi).
5. PK Lane is a dedicated county road, maintained as such by Sheridan County.
6. In a letter dated May 22, 1980, to Mr. Walter C. Ackerman, the Sheridan County Commissioners informed Land Quality Division that PK Lane was a county road and that it was the county's policy to maintain dedicated roads in order of priority based on use, safety, and request of persons using the road. The Commissioners further informed the Land Quality Division that the County requested the road not be reclaimed upon completion of the mining operation.

7. PK Lane has not been regularly worked or upgraded because of a lack of demand for use of the road and financial limitations of the county.

8. Harold and Jack Husman are the owners of the land to be affected by the plant area and the pit, and have given surface owner consent pursuant to W.S. 35-11-401 (e). Husman, Inc. owns the surface rights to the haul road. Those rights were granted by a court decree dated May 8, 1980, which created a right-of-way across lands belonging to Eaton Brothers, Inc. and PK Ranch Company, for purposes of construction and use of a mine haul road.

9. The proposed Husman quarry can be constructed affecting an area of land which is 10 acres or less. Specifically, the haul road from PK Lane to the quarry site can be constructed affecting approximately 2.1 acres, including all cuts and fills. The access road on the Husman property can be constructed affecting approximately .24 acres. The plant equipment area can be constructed affecting approximately 1.11 acres. The maximum area that can be affected by the pit area itself, without exceeding 10 acres, is approximately 6.44 acres. Husman, Inc. could operate at its presently approved production rate of 40,000 tons per year for approximately 25 years and affect a pit area of only 4 acres.

CONCLUSIONS OF LAW

1. "Affected lands", as defined in W.S. 35-11-103 (e) (xvi), are lands on which the natural physical state has been disturbed as a result of mining operations. This definition is directly related to the goal of the Environmental Quality Act to achieve reclamation of the land after the mining activity has ceased. Where no reclamation is needed, such as to correct an increase in noise that results from the mining operation, the land where the noise level is high is not "affected land" if there is no disturbance of the physical state. Similarly, changes in surface ownership or fencing into different parcels does not constitute "affecting" the natural state under the statute or regulations implemented by the Land Quality Division.

2. Husman, Inc. is the owner of the surface rights of all areas to be affected by the proposed operation and has complied with the surface owner consent provisions of W.S. 35-11-401 (e) (vi).

3. The notification filed by Husman, Inc. for the proposed limestone quarry meets the requirements of W.S. 35-11-401 (e) (vi) and Chapter XX of the Land Quality Division Rules and Regulations.

4. A county road which is dedicated and maintained as a county road on the county inventory constitutes a road maintained by a county government pursuant to Chapter XX, Section (a) (6) (b) (iii) of the Land Quality Division Rules and Regulations.

5. The exemption provided by W.S. 35-11-401 (e) allows a mining operation to conduct limestone operations on an area of 10 acres or less without obtaining a mining permit. Neither the statute nor the regulations prohibit later expansion beyond 10 acres so long as a mining permit is obtained.

6. The findings of the Department concerning the approval of the Husman notification and the order dated August 13, 1980, are hereby affirmed.

DATED this 4th day of August, 1981.



Dave Park, Hearing Examiner
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CERTIFICATE OF SERVICE

I, Terri Lorenzon, do certify that at Cheyenne, Wyoming, on the 6th day of August, 1981, I served a copy of the foregoing Findings of Fact and Conclusions of Law, by depositing copies of the same in the United States mail, postage prepaid, duly enveloped and addressed to:

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