

FILED

MAY 11 2005

Terri A. Lorenzon, Director
Environmental Quality Council

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

IN THE MATTER OF OBJECTIONS TO THE)
AIR QUALITY PERMIT NO. MD-1041) Docket No. 04-2801
OF KEN HARVEY RABBIT PIT)

**RESPONDENT WYOMING DEPARTMENT OF ENVIRONMENTAL
QUALITY'S MOTION TO DISMISS APPEAL OF GARY AND SHARON CRANE**

Respondent Wyoming Department of Environmental Quality (DEQ) by and through the Office of Attorney General, pursuant to Chapter 2, § 3 of the DEQ Rules of Practice and Procedure Applicable to Hearings in Contested Cases, moves the Environmental Quality Council (EQC) to dismiss with prejudice the appeal filed by Gary and Sharon Crane in the above-captioned matter for the following reasons:

1. DEQ General Rules of Practice and Procedure, Chapter 1 § 16(a) states: "Unless otherwise provided by these Rules or the Environmental Quality Act, all appeals to Council from final actions of the Administrators or Director shall be made within sixty (60) days of such action."

2. On August 3, 2004, DEQ took final action by issuing the decision and permit no. MD-1041 for modifications to the Rabbit Gravel Pit. A copy of the August 3, 2004 decision and permit no. MD-1041 is attached hereto as Attachment A.

3. The sixty day filing deadline for appeals of permit no. MD-1041 ended on Saturday, October 2, 2004, sixty days after DEQ's final action.

4. DEQ General Rules of Practice and Procedure, Chapter 1 § 10(a) states: "When time prescribed by these rules or by order of the council for doing any act expires on a Saturday or legal holiday, such time shall extend to and include the next succeeding business day."

5. The next succeeding business day after Saturday, October 2, 2004 was Monday, October 4, 2004.

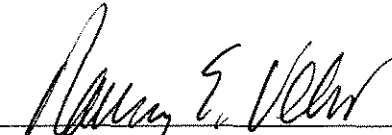
6. Thus, the timely filing deadline of appeals of permit no. MD-1041 was actually October 4, 2004.

7. Gary and Sharon Crane's appeal was received and filed by the EQC on October 5, 2004, after the filing deadline for appeals of permit no. MD-1041. A file stamped copy of the Crane's appeal letter is attached hereto as Attachment B.

8. Timely filing of a request for administrative review of an agency decision is mandatory and jurisdictional, and untimely filing deprives the reviewing board of subject matter jurisdiction over the appeal. *Antelope Valley Improvement v. State Board of Equalization*, 992 P.2d 563, 567 (Wyo. 1999).

WHEREFORE, Respondent DEQ respectfully requests the EQC dismiss Gary and Sharon Crane's appeal of permit no. MD-1041 with prejudice due to lack of subject matter jurisdiction.

RESPECTFULLY SUBMITTED this 11th day of May, 2005.



Nancy E. Vehr
Sr. Asst. Attorney General
123 Capitol Building
Cheyenne, WY 8202
PH: 307-777-6946
FAX: 307-777-3542
Attorney for Respondent DEQ

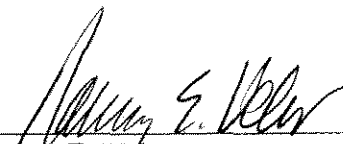
CERTIFICATE OF SERVICE

I certify that on this 11th day of May, 2005, a true and correct copy of RESPONDENT WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY'S MOTION TO DISMISS APPEAL OF GARY AND SHARON CRANE was served via U.S. Mail, postage prepaid, addressed as follows:

Paul and Carrie Galovich
660 East Sunnyside Lane
Thermopolis, WY 82443

Gary and Sharon Crane
659 East Sunnyside Lane
Thermopolis, WY 82443

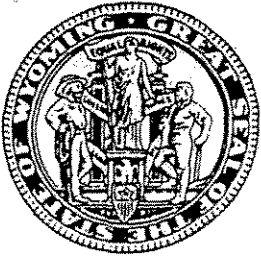
Ken Harvey Rabbit Pit
620 East Sunnyside Lane
Thermopolis, WY 82443



Nancy E. Vehr
Office of the Attorney General

In re Objections to the Air Quality Permit No. MD-1041 of Ken Harvey Rabbit Pit
EQC Docket No. 04-2801

Respondent DEQ's Motion to Dismiss Appeal of Gary and Sharon Crane



The State
of Wyoming



Department of Environmental Quality

Dave Freudenthal, Governor

Herschler Building • 122 West 25th Street • Cheyenne, Wyoming 82002

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) 777-7368 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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August 3, 2004

Mr. Ken Harvey
Owner
Ken Harvey Gravel Pit
622 E Sunnyside
Thermopolis, WY 82443

RE: NOTICE OF DECISION
Permit No. MD-1041

Dear Mr. Harvey:

Enclosed please find the decision and final permit for modifications to the Rabbit Gravel Pit located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 8, T43N, R94W, approximately 6 miles north northeast of Thermopolis, in Hot Springs County, Wyoming.

Public comments received during the public notice period and at the public hearing were considered by the Division. The final permit has been issued as noticed April 29, 2004.

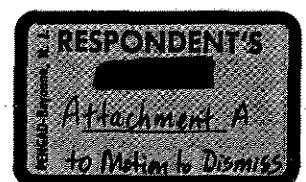
Please note that, given some of the concerns expressed during the comment period and the public hearing, the Division has been in contact with the Land Quality Division regarding the situation. Please contact the Land Quality Division at (307) 777-7756 regarding the requirements for obtaining a Land Quality Permit for the Rabbit Pit.

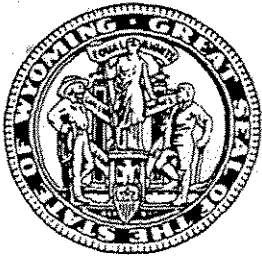
If you have any questions regarding this matter, please contact this office.

Sincerely,

Dan Olson
Administrator
Air Quality Division

cc: Greg Meeker





The State
of Wyoming



Department of Environmental Quality

Dave Freudenthal, Governor

Herschler Building • 122 West 25th Street • Cheyenne, Wyoming 82002

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) 777-7368 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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August 3, 2004

Mr. Ken Harvey
Owner
Ken Harvey Gravel Pit
622 E Sunnyside
Thermopolis, WY 82443

Permit No. MD-1041

Dear Mr. Harvey:

The Division of Air Quality of the Wyoming Department of Environmental Quality has completed final review of Ken Harvey Gravel Pit's application to modify operations at the Rabbit gravel pit, previously permitted by the Wyoming Department of Transportation, to allow for the operation of gravel crushing/screening equipment and/or a hot mix plant or concrete batch plant, as well as stockpiling capabilities, located in the SW¼ NE¼ of Section 8, T43N, R94W, approximately 6 miles north northeast of Thermopolis, in Hot Springs County, Wyoming.

Following this agency's proposed approval of the request as published April 29, 2004 and in accordance with Chapter 6, Section 2(m) of the Wyoming Air Quality Standards and Regulations, the public was afforded a 30-day period in which to submit comments concerning the proposed modification, and an opportunity for a public hearing. Public comments have been received and a public hearing on the proposal was held on June 21, 2004. On the basis of the information provided to us in the application and comments received during the public notice period and at the public hearing, approval to modify the Rabbit Pit as described in the application is hereby granted pursuant to Chapter 6, Section 2 of the regulations with the following conditions:

1. That authorized representatives of the Division of Air Quality be given permission to enter and inspect any property, premise or place on or at which an air pollution source is located or is being constructed or installed for the purpose of investigating actual or potential sources of air pollution, and for determining compliance or non-compliance with any rules, regulations, standards, permits or orders.
2. That all substantive commitments and descriptions set forth in the application for this permit, unless superseded by a specific condition of this permit, are incorporated herein by this reference and are enforceable as conditions of this permit.
3. That any crushing/screening equipment, asphalt plants, or concrete batch plants shall have separate, valid air quality permit(s) prior to locating/operating at this site.

4. That any crushing/screening equipment operated at this site shall utilize water spray control measures at all belt transfer points, shaker screens, and discharge points of the primary and secondary crushers as necessary to limit visible emissions to twenty (20) percent opacity or applicable limits set forth by Wyoming Air Quality Standards & Regulations, Chapter 5, Section 2, Subpart 000, as determined by 40 CFR Part 60, Appendix A, Method 9.
5. That all unpaved portions of the haul roads, access roads, work areas, and stockpiles associated with this facility shall be treated with water and/or chemical dust suppressants on a schedule sufficient to control fugitive dust from vehicular traffic and wind erosion.

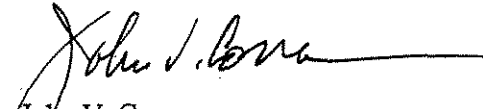
It must be noted that this approval does not relieve you of your obligation to comply with all applicable county, state, and federal standards, regulations or ordinances. Special attention must be given to Chapter 6, Section 2 of the Wyoming Air Quality Standards and Regulations. Any appeal of this permit as a final action of the Department must be made to the Environmental Quality Council within sixty (60) days of permit issuance per Section 16, Chapter I, General Rules of Practice and Procedure, Department of Environmental Quality.

If we may be of further assistance to you, please feel free to contact this office.

Sincerely,



Dan Olson
Administrator
Air Quality Division



John V. Corra
Director
Dept. of Environmental Quality

cc: Greg Meeker

DO/cs

IN THE MATTER OF A PERMIT APPLICATION (AP-1468) FROM MR. KEN HARVEY TO MODIFY THE EXISTING AIR QUALITY PERMIT TO ALLOW CRUSHING, SCREENING, STOCKPILING, HOT MIX ASPHALT PRODUCTION AT THE GRAVEL PIT KNOWN AS THE RABBIT PIT IN HOT SPRINGS COUNTY, WYOMING.

DECISION

I. Introduction

The Air Quality Division received a permit application from Mr. Ken Harvey on December 10, 2003, to permit modifications of operations at the Rabbit gravel pit previously permitted by the Wyoming Department of Transportation. The facility is located in the SW ¼, NE¼ of Section 8, T43N, R94W in Hot Springs County, Wyoming. The Division of Air Quality conducted an analysis of this application and on April 29, 2004, published in the Thermopolis Independent Record in Thermopolis, Wyoming, a public notice of proposed intent to approve and placed a copy of the application and division's analysis in the office of the Hot Springs County Clerk in accordance with regulations. The public notice period ran from April 29, 2004 through May 31, 2004. Due to written comments received, the Administrator of the Air Quality Division determined that a public hearing would be held. The public hearing was held on June 21, 2004, in the Hot Springs County Library, 344 Arapahoe, Thermopolis, Wyoming.

II. Analysis of Public Comments:

A. Clarifying Issues

1. Permitting/Testing - Concern was expressed over the permitting process by questioning how the Division could permit the gravel pit without knowing what equipment was going to be moved into the pit. The Division permits the gravel pit separately from the equipment that will operate in it. Mr. Harvey will be subject to the terms of the permit, such as controlling fugitive dust, whether construction equipment is located in the pit or not. Nearly all aggregate construction activity in Wyoming is accomplished using portable equipment. Each company engaged in this type of activity is required to hold a separate air quality permit for its crushing equipment, asphalt plants, etc. Emission testing and monitoring requirements, as necessary, are placed on the owners and operators of the equipment as those permits are issued.

2. Asphalt - A question was raised during the public hearing asking specifically of what was asphalt composed. Asphalt is a mixture of various hydrocarbon compounds. While asphalt does occur naturally (such as the La Brea Tar Pits in Los Angeles), the asphalt normally used in hot mix plants is a residue from petroleum refining operations. In a hot mix operation the asphalt is heated and mixed with aggregate to make paving material, which is commonly called asphalt, or "blacktop".

B. Issues which can not be considered in the issuance of an air quality permit.

1. Noise - Written comments and comments received at the public hearing expressed concern about the noise generated by crushing, mining, and hauling equipment. The Division has no doubt that the noise from this operation may impact nearby residents, however, it has no authority to regulate noise pollution.
2. Traffic safety - The issue of safety due to increased truck traffic was mentioned during the hearing. The Air Quality Division has no authority to consider safety issues related to the use of public roads. However, where dust emissions coming from crushing and hauling operations may be reducing visibility on a public road sufficient to cause a traffic hazard, the Division does require controls adequate to meet ambient air quality standards which it believes, if complied with, should reduce emissions to the extent that there should no traffic hazard due to reduced visibility caused by dust emissions.
3. Aesthetic Impacts to Nearby Residences - Comment was made expressing concern with the impact to scenic amenities in the area. The Wyoming Air Quality Standards and Regulations do not allow the Division to consider aesthetics in determining whether an air quality permit can be issued. The Division is required to address the ambient air quality impact of the proposed gravel operation and is satisfied that if the gravel operation is operated within the confines of the permit conditions, ambient air quality standards will not be violated.
4. Zoning Issues - A significant amount of comment, both written and oral, related to the issue of the land use change for the area in question from agricultural to industrial. Land use planning is entirely a local issue over which the Department has no control. However, the Air Quality Division is required by regulation to consider local land use planning prior to issuing a permit. We were provided documentation by the applicant that the Hot Springs County Planning Commission had approved a land use change to industrial that would allow the applicant's proposed operation.

5. Property Values - The effects the proposed industrial operation may have on the values of surrounding residential or agricultural property is likewise not an issue which the Division can consider in determining compliance with standards and regulations and in issuing or denying permits. Again, these are local issues properly resolved by local planning and zoning commissions.
6. Irrigation and Well Water issues - These issues are not issues that can be addressed in the air permit, however, concerns expressed prior to and during the hearing are under consideration within the Department.

C. Air Quality Issues

1. Emissions Impacts from Equipment- A common issue to most commentors, both written and verbal, was the potential impact due to dust and other pollutants generated by various operations that might locate in the gravel pit. Chapter 6, Section 2 of the Wyoming Air Quality Standards and Regulations requires consideration of Best Available Control Technology (BACT) in all permitting actions in Wyoming. As mentioned above, any equipment located at the Rabbit pit is required to have a separate, valid air quality permit for which BACT will have been applied. The Division has considerable experience in permitting these types of operations throughout the state and has determined for crushing equipment that application of water sprays located at belt transfer points, shaker screens, and the inlet and outlet of crushers is very effective in reducing fugitive dust from these sources, and as such represents BACT for these types of operations. Asphalt plants are generally required to install a baghouse as BACT to control particulate emissions to a specific emissions level and to operate without generating emissions in excess of 20 percent opacity. There are relatively small emissions of volatile organic compounds (VOCs) given off as the asphalt is heated as well as particulate matter as the aggregate is mixed. There are also normal combustion emissions from the engines such as nitrogen oxides, carbon monoxide, and sulfur dioxide, if diesel fuel is used.
2. Emissions Impact from the Pit - Condition 5 of the final permit is a permit condition that is also included in the permits issued to the owners of the equipment. It is included in the permit for the pit to require dust control from wind erosion at all times, whether equipment is present in the pit or not.

III. Decision:

On the basis of comments received during the public notice period and at the public hearing, an analysis of those comments, and representations made by the applicant in the application, the Department has determined that a permit will be issued to Mr. Ken Harvey for the modifications of operations at the Rabbit gravel pit described in the application.

Dated this 3rd day of August, 2004



Dan Olson
Administrator
Wyoming Air Quality Division



John Corra
Director
Wyoming Department of Environmental Quality

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RECEIVED OCT 05 2004

Terri A. Lorenzon, Director
Environmental Quality Council

Gary and Sharon Crane
659 East Sunnyside Lane
Thermopolis, Wyoming 82443
September 29, 2004

Environmental Quality Council
122 West 25th Street
Quality Dept
Herschler Building, 1st Floor West
Cheyenne, WY 82002
West

Mr. Dan Olson
Administrator,
Air Quality Division

Mr. John Corra
Director, Environmental
122 West 25th Street
Herschler Building, 4th Floor
Cheyenne, WY 82002

RE: Permit No. MD-1041

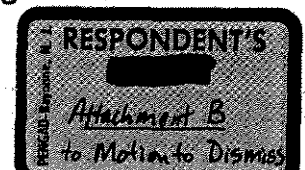
Dear People:

We have read the decision document and letter dated August 3rd, 2004, and sent to us by Mr. Olson of the DEQ Air Quality Department. At the public hearing held in this matter, Mr. Olson promised to carefully consider all oral and written comments, and we thank him for doing that.

We are appealing the decision because we feel the problems and concerns raised in allowing this pit, which is in a residential/agricultural community, to extend its operations to include an asphalt plant and a concrete batch operation are important and deserving of further consideration, and we are incorporating all of the oral and written comments given before, during and after the hearing, held on June 21st, 2004, herein by this reference.

Further, there are significant issues of public health and safety involved in allowing the Harvey Pit to extend into the toxic operations of asphalt and concrete. Several of which were made plain during testimony given at the public hearing and are as follows:

1. All of the permit and contract language used in documents concerning the Harvey Pit and its operations talked about following DEQ



and Wyoming State rules and regulations, but no one involved in a contract was required to do, or did, any testing or monitoring whatever, including the DEQ.

2. There have been numerous violations observed during pit operations by us and other residents of existing permit conditions as they were. When toxics are added to operations, how are we to have any confidence in Mr. Harvey or any contractors to follow DEQ standards set for them, even as strict as they may be? Past precedence leaves us with many concerns in this regard.

3. Many questions were raised during the hearing about who would monitor and how monitoring would be done. While the DEQ has authority to enter the premises to observe and test, how often would this be done? Would it simply be left to residents to endure to the extreme toxic effects of violations and thereafter complain and report?

We have that situation now with an oil well on the north side of our property. Hydrogen sulfide gases have recently been emitting in levels six times acceptable levels. Yet, the operators of the same have not only not monitored its levels, they have not even provided warning of it. Our nearest neighbors to the north were awakened at night with headaches because of the high levels.

These are public health and safety issues that we and other residents here will be impacted by, and our county agencies have been derelict in their duty toward us in allowing toxic operations to proceed here.

Therefore, we have appealed to the DEQ to deny this permit and are appealing to the Council to overturn the decision of the DEQ Air Quality in permitting the above expansion of a previous decision on this pit.

Sincerely,

Sharon A. Crane
Gary W. Crane

Sharon A. Crane
Gary W. Crane