

FILED

MAY 27 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)

**RESPONSE OF PROTESTANTS GARY AND SHARON CRANE
TO RESPONDENT'S MOTION TO DISMISS APPEAL**

COMES NOW Protestants Gary and Sharon Crane ("Crane") (collectively "Protestants"), and in response to Respondent Wyoming Department of Environmental Quality's Motion to Dismiss Appeal of Gary and Sharon Crane, advises the Council as follows:

1. Nowhere in the DEQ General Rules of Practice and Procedure does it require an appeal from final actions to be received within 60 days of such action. Instead, Chapter 1, § 3(b) provides that persons requesting a hearing or protesting a permit must serve their written petition upon the Chairman of the Council and the Director of the Department. "Original service shall be by registered mail, return receipt requested. Thereafter, all service shall be proved in accordance with the Wyoming Rules of Civil Procedure." Chapter 1, § 3(b)(i). Pursuant to Rule 6(b) of the Wyoming Rules of Civil Procedure, service by mail is complete upon mailing or dispatch.

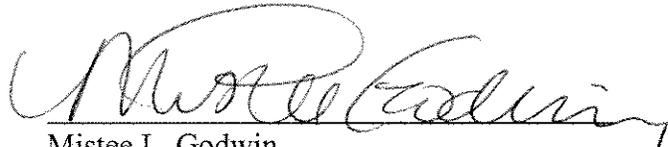
2. The Crane's satisfied this original service requirement by sending their protest to the permit at issue via certified mail, return receipt requested, on September 29, 2004, nearly a week before the expiration of the time period allowed to make an appeal. (See Exhibit "A" attached hereto.) Moreover, it is evident from the attached return receipts that the Director of the Department, John Corra, actually received his copy of the

protest prior to the appeal deadline. It is unknown why the copies going to the Council and Mr. Olson of Air Quality were not received until four days later on October 5, 2004 despite the fact that all three copies were sent on the same date to the same address at the Herschler Building. It does not matter, though, because each copy was served via the appropriate means on September 29th, well before the appeal deadline.

3. The Crane's appeal was timely filed and should not be dismissed.

WHEREFORE, for the reasons stated herein, the Cranes respectfully request that Respondent's motion to dismiss be denied.

DATED this 25th day of May, 2005.



Mistee L. Godwin
Brown, Drew & Massey, LLP
45 East Loucks Street, Suite 109
Sheridan, WY 82801
(307) 673-8565

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 25th day of May, 2005, a true and correct copy of the foregoing was addressed to and served upon the following in the manner set forth below:

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

- By Facsimile
- By U. S. Mail - postage prepaid
- By Hand Delivery
- By Overnight Courier

John Corra, Director
Department of Environmental Quality
122 W. 25th Street, Herschler Bldg.
Cheyenne, WY 82002

- By Facsimile
- By U. S. Mail - postage prepaid
- By Hand Delivery
- By Overnight Courier

Dan Olson, Administrator
Air Quality Division
122 W. 25th Street, Herschler Bldg.
Cheyenne, WY 82002

- By Facsimile
- By U. S. Mail - postage prepaid
- By Hand Delivery
- By Overnight Courier

Nancy Vehr
Senior Assistant Attorney General
123 Capitol Building
Cheyenne, WY 82001

- By Facsimile
- By U. S. Mail - postage prepaid
- By Hand Delivery
- By Overnight Courier

Sandy Padilla, Executive Assistant
Environmental Quality Council
122 W. 25th Street, Herschler Bldg.
Cheyenne, WY 82002

- By Facsimile
- By U. S. Mail - postage prepaid
- By Hand Delivery
- By Overnight Courier



Mistee L. Godwin

Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
 Print your name and address on the reverse so that we can return the card to you.
 Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
 Mr. John Corra
 Director DEQ
 122 W. 25th St.
 Herschler Bldg
 Cheyenne, WY 82002

2. Article Number (Transfer from service label) **7004 1350 0001 8689 1625**

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-00-1040

A. Signature
 Agent
 Addressee

B. Received by (Printed Name) _____ **C. Date of Delivery** _____

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

01 OCT RECD

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
 Print your name and address on the reverse so that we can return the card to you.
 Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
 Environmental Quality
 Council
 122 W. 25th St.
 Herschler Bldg.
 Cheyenne, WY 82002

2. Article Number (Transfer from service label) **7004 1350 0001 8689 1649**

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-00-1040

A. Signature
 Agent
 Addressee

B. Received by (Printed Name) _____ **C. Date of Delivery** _____

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

05 OCT RECD

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
 Print your name and address on the reverse so that we can return the card to you.
 Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
 Mr. Dan Olson
 122 W. 25th St.
 Herschler Bldg
 Cheyenne, WY 82002

2. Article Number (Transfer from service label) **7004 1350 0001 8689 1632**

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-00-1040

A. Signature
 Agent
 Addressee

B. Received by (Printed Name) _____ **C. Date of Delivery** _____

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

05 OCT RECD

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

SENDER'S RESPONSIBILITY SECTION ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mail piece, or on the front if space permits.		ADDRESSEE'S RESPONSIBILITY SECTION A. Signature: <input checked="" type="checkbox"/> X <input type="checkbox"/> Agent <input type="checkbox"/> Address see B. Received by: Printed Name: _____ C. Date of Delivery: _____ D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below: _____	
1. Article Addressed to: Mr. John Corra Director DEQ 122 W. 25 th St. Herschler Bldg. Cheyenne, WY 82002		01 OCT RECD	
2. Article Number: <u>7004 1350 0001 8689 1625</u> <small>(Transfer from serv: _____)</small>		3. Service Type: <input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D. 4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
PS Form 3811, February 2004 Domestic Return Receipt		10294-D-1A-154C	

SENDER'S RESPONSIBILITY SECTION ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mail piece, or on the front if space permits.		ADDRESSEE'S RESPONSIBILITY SECTION A. Signature: <input checked="" type="checkbox"/> X <input type="checkbox"/> Agent <input type="checkbox"/> Address see B. Received by: Printed Name: _____ C. Date of Delivery: _____ D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below: _____	
1. Article Addressed to: Environmental Quality Council 122 W. 25 th St. Herschler Bldg. Cheyenne, WY 82002		03 OCT RECD	
2. Article Number: <u>7004 1350 0001 8689 1649</u> <small>(Transfer from service id: _____)</small>		3. Service Type: <input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D. 4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
PS Form 3811, February 2004 Domestic Return Receipt		10294-D-1A-154C	

SENDER'S RESPONSIBILITY SECTION ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mail piece, or on the front if space permits.		ADDRESSEE'S RESPONSIBILITY SECTION A. Signature: <input checked="" type="checkbox"/> X <input type="checkbox"/> Agent <input type="checkbox"/> Address see B. Received by: Printed Name: _____ C. Date of Delivery: _____ D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below: _____	
1. Article Addressed to: Mr. Dan Olson 122 W. 25 th St. Herschler Bldg. Cheyenne, WY 82002		05 OCT RECD	
2. Article Number: <u>7004 1350 0001 8689 1632</u> <small>(Transfer from serv: _____)</small>		3. Service Type: <input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D. 4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
PS Form 3811, February 2004 Domestic Return Receipt		10294-D-1A-154C	

7004 1350 0001 6669 1649

U.S. Postal Service
CERTIFIED MAIL RECEIPT

Cheylene, WY 82002

Postage	0.37	UNIT ID: 0499
Postmark	2.30	None
Postage Insurance Fee (Maximum \$500)	1.75	Clerk: J30680
Registered Mail Fee (Maximum \$5000)		09/29/04
Total Postage & Fees	\$ 4.42	

Send To:
 Environmental Quality Council
 122 W. 252 St. Herschler
 Cheylene, WY 82002 Bldg

5297 6999 1000 05ET 4002

U.S. Postal Service
CERTIFIED MAIL RECEIPT

Cheylene, WY 82002

Postage	0.37	UNIT ID: 0499
Postmark	2.30	None
Postage Insurance Fee (Maximum \$500)	1.75	Clerk: J30680
Registered Mail Fee (Maximum \$5000)		09/29/04
Total Postage & Fees	\$ 4.42	

Send To:
 Mr. John Corra Director DEQ
 122 W. 252 St. Herschler Bldg
 Cheylene, WY 82443

2897 6999 1000 05ET 4002

U.S. Postal Service
CERTIFIED MAIL RECEIPT

Cheylene, WY 82002

Postage	0.37	UNIT ID: 0499
Postmark	2.30	None
Postage Insurance Fee (Maximum \$500)	1.75	Clerk: J30680
Registered Mail Fee (Maximum \$5000)		09/29/04
Total Postage & Fees	\$ 4.42	

Send To:
 Mr. Dan Olson, Air Quality Adm
 122 W. 252 St. Herschler Bldg
 Cheylene, WY 82443

5291 6999 1000 05ET 4000

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only. No Insurance Coverage Provided)

For delivery information, visit our website at www.usps.com.

CHEYENNE, WY 82002

U.S. Postage	\$ 0.37	UNIT ID: 0499
Certified Fee	2.30	
Restricted Delivery Fee (Signature Required)	1.75	
Total Package & Fees	\$ 4.42	09/29/04

Postmark: 09/29/04

Send To:
 Mr. Dan Olson, Air Quality Mgr.
 122 W. 25th St.
 Herschler Bldg.
 Cheyenne, WY 82443

5291 6999 1000 05ET 4000

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Total Package & Fees	\$ 4.42	09/29/04

Postmark: 09/29/04

Send To:
 Mr. John Corley, Director DEW
 122 W. 25th St.
 Herschler Bldg.
 Cheyenne, WY 82443