

**FILED**

**DEC 04 2006**

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

Teri A. Lorenzon, Director  
Environmental Quality Council

**IN THE MATTER OF THE OBJECTION )  
TO THE SMALL MINE PERMIT OF ) DOCKET NO. 06-4802  
WESTERN WYOMING CONSTRUCTION )  
COMPANY, TFN 4 4/267 )**

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

THIS MATTER having come before the Environmental Quality Council on July 24, 2006, in Lander, Wyoming with Sara Flitner, Hearing Examiner, and Council member Jon Brady conducting the hearing and Council members John Morris, Mark Gordon, and Richard Moore, fully reviewing the record of the proceeding and the evidence presented and the Council being otherwise well advised in the premises, the Council finds as follows:

1. The Objector, Dr. Dan Ratigan was in attendance at the hearing, and presented evidence related to the matter.
2. Stuart Sims, President, and Scott Sims, Project Superintendent/Authorized DEQ Agent, Western Wyoming Construction Company (WWCC) were in attendance at the hearing and presented evidence related to the matter.
3. Counsel for the Department of Environmental Quality (DEQ), John Burbridge, was in attendance at the hearing and presented evidence related to the matter.
4. WWCC filed an application, TFN 4 4/267 with DEQ to expand its limited mining operation to a small mining operation not to exceed 40 acres.
5. Dr. Ratigan timely objected to the application.
6. WWCC's application is complete, and WWCC has met all the requirements for issuance of this permit.
7. Dust and air emissions are regulated under air quality permits and the permit in question is a land quality permit.

8. The mobile asphalt plant and crusher owned and operated by WWCC and occasionally located at the mine are not regulated under the land quality permit in question.
9. There are no land quality notices of violations regarding this mine site.
10. The mine site is not within three hundred (300) feet of any existing occupied dwelling, home, public building, school, church, community or institutional building, park or cemetery.
11. WWCC has been cooperative and compliant in all regulations and DEQ, from a land quality standpoint, has never observed a violation related to this mine.
12. The evidence submitted regarding notices of violation were not related to WWCC or its current officers, but a company named Brasel and Sims.
13. There have been no direct violations by WWCC and no direct violations by its predecessor Circle Paving.
14. WWCC was incorporated on February 19, 2004 and none of its owners or operators were involved with Brasel and Sims.
16. WWCC has indicated it is willing to shorten its hours of operation in the permit to 5:00 AM -7:00 PM Monday through Saturday.

### **CONCLUSIONS OF LAW**

1. The EQC has jurisdiction over the subject matter and the parties to this proceeding.
2. The Environmental Quality Act, Wyo. Stat. § 35-11-112(b)(iv) grants the EQC authority to conduct hearings in cases contesting permits, and Wyo. Stat. § 35-11-112(c)(ii) provides authority to modify permits. The EQC conducts de novo hearings pursuant to the DEQ Rules of Practice and Procedure, the Wyoming Rules of Evidence, and the Wyoming Rules of Civil Procedure.
3. WYO. STAT. ANN. § 35-11-406 (m) requires that a permit be granted if the applicant demonstrates that the application complies with the requirements of the Environmental Quality Act and all applicable federal and state law. The permit can only be denied for the enumerated criteria in § 35-11-406.

Based on the above findings of fact, the Council concludes that the permit should be granted.

4. WYO. STAT. ANN. § 35-1-406 (o) provides that “no permit shall be issued to an applicant after a finding by the director or council, after opportunity for hearing, that the applicant or operator specified in the application controls or has controlled mining operations with a demonstrated pattern of willful violations or such nature and duration with such resulting irreparable harm to the environment as to indicate reckless, knowing or intentional conduct.” Based on the above findings of fact, the Council concludes that there is no evidence that WWCC or its owners and operators have demonstrated a pattern of willful violations.

**IT IS THEREFORE HEREBY ORDERED THAT:**

The permit is modified to shorten the hours of operation to 5:00AM – 7:00 PM Monday through Saturday as agreed upon by the parties. The permit shall otherwise be issued as written without modification.

DATED this 30<sup>th</sup> day of November, 2006

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Sara Flitner, Hearing Examiner

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Mark Gordon, Chair

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Jon Brady, Vice-Chair

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Richard C. Moore, P.E., Secretary

  
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