

FILED

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

SEP 14 2004

Terri A. Lorenzon, Director
Environmental Quality Council

IN THE MATTER OBJECTIONS TO THE)
SMALL MINING PERMIT APPLICATION)
OF DAVE'S ASPHALT COMPANY) DOCKET NO. 04-4800
TFN 4 2/127)

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER**

This matter came to hearing before the Environmental Quality Council (EQC) on May 11, 2004, in Riverton, Wyoming. EQC members Jon Brady, Rick Moore, Olin Sims, and Mark Gordon were present, with Jon Brady serving as hearing examiner, and EQC attorney Terri A. Lorenzon advising the EQC. The Department of Environmental Quality, Land Quality Division (LQD) was represented by John S. Burbridge, Assistant Attorney General. Dave's Asphalt Company (DAC) was represented by Dave Long. Protestants, Leora M. Kennedy, and Rex & Margaret Rogers were present at the hearing and represented themselves. Immediately following the close of the hearing, the EQC held a public meeting and reached the following decision.

FINDINGS OF FACT:

1. In December of 2003, DAC, the Applicant, applied for Small Mine Permit # TFN 4 2/127. DAC currently operates a sand and gravel pit (1101ET) on the edge of the town of Riverton.
2. The DEQ proposed approval of Permit # TFN 4 2/127 and DAC published notice of the pending permit pursuant to the Environmental Quality Act, Section § 35-11-406, W.S. 2000.
3. Petitioners filed timely objections to the issuance of the permit. They objected to the permit on the following grounds: 1) the mine will produce excessive dust from the crushing operations; 2) noise from the mining operations will be excessive; 3) the longer hours of operation will create a public nuisance; and 4) additional truck

- traffic caused by the new mining area will be unsafe on the existing roads.
4. Testimony indicated that mining operations and the crusher generate dust and noise.
 5. During a tour of the mine site, the EQC and the parties observed operation of the crusher and front-end loader.
 6. The Petitioners testified about a loud metallic noise, "like a hammer hitting a barrel," coming from the mine between the hours of 7:00 A.M. and 5:00 P.M. The EQC observed the mines front-end loader creating the metallic noise by hitting the top of the crusher in order to clear the crusher's screen.
 7. To reduce noise, DAC operates its crusher in the pit when possible. At the hearing, DAC agreed that the method used to clear the crusher's screen is noisy. DAC is currently and will continue to investigate other alternatives to clear the crusher's screen.
 8. In order to control dust leaving the mine site, the DEQ has required and DAC has obtained, four Air Quality Permits; three cover the operation of the equipment and one covers the entire mine operation.
 9. The roads used by "haul trucks" going to and leaving the mine are county roads. Fremont County is responsible for the construction, maintenance and traffic control for these roads.
 10. The permit application states that the operating hours are to run from sunrise to sunset. DAC testified although the permit application shows the operating hours are from sunrise until sunset the normal operating hours are from 7:00 A.M. until 5:00 P.M. The Protestants testimony verified DAC's claim. The Protestants were still concerned that the normal operating hours would be abandoned once the small mine permit is issued.
 11. Under the EQC's examination, DAC agreed the operating hours in the mine plan could be modified from "between sunrise and sunset" to "between 6:30 A.M. and sunset."
 12. The testimony and evidence presented by the Petitioners does not show that the small mine permit will create a public nuisance or endanger the public health and safety.

CONCLUSIONS OF LAW

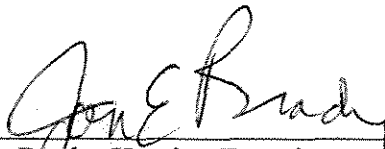
1. The Environmental Quality Council has jurisdiction over the subject matter of and the parties to this proceeding.
2. Wyo. Stat. § 35-11-406(m)(vii) states a permit can be denied if it constitutes a public nuisance or endangers the public health and safety.
3. The objections to the small mine permit, filed by the Protestants, did not rise to the level of a public nuisance or demonstrate an endangerment to the public health and safety.
4. DAC's permit application meets the requirements of the Environmental Quality Act and the regulations pertinent to small mine operations.

IT IS HEREBY ORDERED THAT:

The Director of the Department of Environmental Quality shall issue Permit TFN 4 2/127 to Dave's Asphalt Company with the following condition:

The first sentence of paragraph H2 of the mining plan shall be changed to read, "On-site equipment operation and hauling will typically be conducted between 6:30 A.M. and sunset, Monday through Saturday."

DATED this 13 day of September, 2004.



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