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*Jim Ruby, Executive Secretary
Environmental Quality Council*

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

**In The Matter of Permit No. CT-7066,) DOCKET NO. 08-2801
Touchstone Materials, LLC, and)
Tom Berry and Susie Berry,)
Protestants.)**

MOTION TO DISMISS

Respondent Wyoming Department of Environmental Quality, Air Quality Division (Division), by and through the Office of the Attorney General, and pursuant to Chapter II, § 3 of the Division's Rules of Practice and Procedure Applicable to Hearings in Contested Cases, hereby moves the Environmental Quality Council (EQC) to dismiss with prejudice the appeal filed by Tom Berry and Susie Berry, Protestants, for failure to timely file their Notice of Appeal/Petition for Review and for lack of subject matter jurisdiction in the Council, and as grounds therefore, offers the following:

I. FAILURE TO TIMELY FILE APPEAL.

1. "All persons requesting a hearing or protesting a permit **shall file** two copies of a written petition directed to and served upon both the Chairman of the Council and the Director of the Department" Division General Rules of Practice and Procedure, Chapter 1, § 3(b). Emphasis added.

2. Division 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

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Council from final actions of the Administrators or Director shall be made within sixty (60) days of such action.”

3. On June 2, 2008, the Division took final action by issuing the decision and permit no. CT-7066, to establish the Touchstone mine including gravel screening, exposed acreage, and haul activity. WYO. STAT. ANN. § 35-11-208(b). A copy of the June 2, 2008 decision and permit is attached hereto as Exhibit A.

4. The sixty (60) day deadline for appeal and review of permit no. CT-7066 ended on Friday, August 1, 2008.

5. Protestant’s Notice of Appeal/Request for Review was not received and filed by the EQC until August 4, 2008, sixty three (63) days after the Division’s final action on June 2, 2008. A file stamped copy of the Protestant’s appeal is attached hereto as Exhibit B.

6. 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 Bd. of Equalization*, 992 P.2d 563, 567 (Wyo. 1999).

II. PROTESTANT’S APPEAL RAISES LAND QUALITY ISSUES NOT AIR QUALITY ISSUES.

7. The Division is responsible for the abatement, prevention and control of pollution by setting ambient air standards and emission limits for the protection of air quality in the State of Wyoming. WYO. STAT. ANN. § 35-11-202 (West 2007).

8. Protestant’s appeal only raises issues falling under the authority of the *Land Quality Division* of the Department of Environmental Quality pursuant to WYO. STAT. ANN. § 35-11-406(m). Protestant argues:

a. The application is incomplete.

b. The proposed mining operation would irreparable harm, destroy, or materially impair an uncommon area having particular historical, archaeological, wildlife, surface geological, botanical or scenic value.

c. The proposed mining area will cause pollution of waters in violation of the laws of the State of Wyoming.

d. The proposed operation constitutes a public nuisance and endangers the public health and safety.

e. The affected lands lie within three hundred (300) feet of an existing occupied dwelling or home, all in violation of Wyoming Statute § 35-11-406. WYO. STAT. ANN. § 35-11-406(i), (iv), (v), (vii), and (viii).

9. Protestant's appeal fails to raise any issue relating to air quality regulations or the issuance of air quality permit no. CT-7066, under to WYO. STAT. ANN. §§ 35-11-201 through 214.

10. Protestant's failure to raise any issue appropriate for review of the Division's issuance of air quality permit CT-7066 leaves the EQC without subject matter jurisdiction to hear this case. As such, the EQC is without the power and/or authority to hear Land Quality Division permitting issues in an appeal of an Air Quality Division permit.

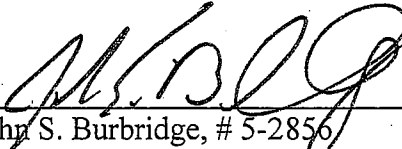
11. "Subject matter jurisdiction refers to 'the power to hear and determine cases of the general class to which the proceedings in question belong.' Like a court, an administrative agency is required to have subject matter jurisdiction before it can hear a case." *Diamond B. Services, Inc. v. Rohde*, 2005 WY 130, ¶13, 120 P.3d 1031, 1038 (Wyo. 2005) (citations omitted).

III. RESPONSE.

12. To the extent that any portion of this Motion to Dismiss may be deemed a response, all allegations contained in Protestant's Notice of Appeal/Petition for Review are hereby denied by the Division.

WHEREFORE, the Department of Environmental Quality/Air Quality Division respectfully request that the Environmental Quality Council dismiss with prejudice Protestant, Tom and Susie Berry's Notice of Appeal/Petition for Review of air quality permit CT-7066 due to lack of jurisdiction.

DATED this 8th day of September, 2008.

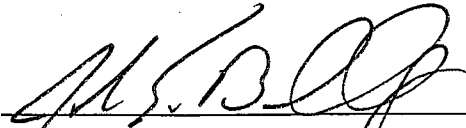


John S. Burbridge, # 5-2856
Senior Assistant Attorney General
123 Capitol Avenue
Cheyenne, Wyoming 82002
307-777-6946

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of September, 2008, a true and correct copy of the foregoing Motion to Dismiss was served by placing same in the United States Mail, postage pre-paid, addressed to:

Greg L. Goddard
412 North Main Street
Buffalo, WY 82834



Wyoming Attorney General's Office

**BEFORE THE STATE OF WYOMING
DEPARTMENT OF ENVIRONMENTAL QUALITY
CHEYENNE, WYOMING**

IN THE MATTER OF PERMIT NO. CT-7066)	
Touchstone Materials, LLC,)	
)	DOCKET NO. 08-2801
and,)	
)	
Tom Berry and Susie Berry,)	
)	
Protestants.)	

MOTION TO DISMISS – EXHIBIT A



Department of Environmental Quality



To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.

Dave Freudenthal, Governor

John Corra, Director

June 2, 2008

Ms. Mary Ann Porter
Manager
Touchstone Materials, LLC
PO Box 735
Meridian, ID 83680-0735

Permit No. CT-7066

Dear Ms. Porter:

The Division of Air Quality of the Wyoming Department of Environmental Quality has completed final review of Touchstone Materials, LLC's application for an air quality permit to establish the Touchstone Mine, which will include gravel screening, exposed acreage, and haul activity, located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 24, T51N, R82W and the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 19, T51N, R81W, approximately three (3) miles northeast of Buffalo, in Johnson County, Wyoming. The applicant estimates an annual production rate of 20,000 tons. No asphalt plants, crushing equipment or concrete batch plants are authorized for this site.

Following this agency's proposed approval of the request as published February 14, 2008 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 new source, and an opportunity for a public hearing. Public comments were received and were considered in the final permit. Therefore, on the basis of the information provided to us, approval to construct the Touchstone Mine 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, 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. All notifications, reports and correspondence associated with this permit shall be submitted to the Stationary Source Compliance Program Manager, Air Quality Division, 122 West 25th Street, Cheyenne, WY 82002 and a copy shall be submitted to the District Engineer, Air Quality Division, 1866 South Sheridan Avenue, Sheridan, WY 82801.
4. The owner or operator shall furnish the Administrator written notification of: (i) the anticipated date of initial startup not more than 60 days or less than 30 days prior to such date, and; (ii) the actual date of initial start-up within 15 days after such date in accordance with Chapter 6, Section 2(i) of the WAQSR.

EXHIBIT A

Herschler Building • 122 West 25th Street • Cheyenne, WY 82002 • <http://deq.state.wy.us>

ADMIN/OUTREACH (307) 777-7937 FAX 777-3610	ABANDONED MINES (307) 777-6145 FAX 777-6462	AIR QUALITY (307) 777-7391 FAX 777-5616	INDUSTRIAL SITING (307) 777-7369 FAX 777-5973	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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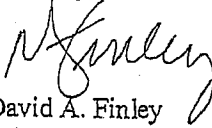


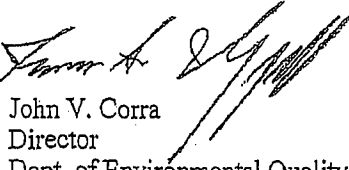
5. The date of commencement of construction shall be reported to the Administrator within 30 days of such date. The permit shall become invalid if construction or modification is not commenced within 24 months of the date of permit issuance or if construction is discontinued for a period of 24 months or more in accordance with Chapter 6, Section 2(h) of the WAQSR. The Administrator may extend such time period(s) upon a satisfactory showing that an extension is justified.
6. Any screening equipment shall have separate valid air quality permit(s) prior to locating/operating at this site.
7. That the screening equipment shall be equipped with a wet suppression system to control fugitive emissions from the screening equipment. The wet suppression system shall be operated to the extent necessary to limit visible emissions to twenty (20) percent opacity or applicable limits set forth by Wyoming Air Quality Standards and Regulations, Chapter 5, Section 2, Subpart 000, as determined by 40 CFR, Part 60, Appendix A, Method 9.
8. Hot mix asphalt plants, crushing equipment or concrete batch plants cannot be located/operated at this site unless authorized by an appropriate permit modification.
9. That all work areas, disturbed areas, and stockpiles shall be treated with water and/or chemical dust suppressants on a schedule sufficient to control fugitive dust.
10. All unpaved haul roads shall be treated with water and/or chemical dust suppressants on a schedule sufficient to control fugitive dust from vehicular traffic.

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, which details the requirements for compliance with conditions 4 and 5. 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,


David A. Finley
Administrator
Air Quality Division


John V. Corra
Director
Dept. of Environmental Quality

cc: Tanner Shatto

Table 1: Estimated Emissions, TPY ¹		
Source	TSP	PM ₁₀
Screening	0.1	<0.1
Stockpiling	0.4	0.2
Exposed Acreage	1.9	0.6
Total Emissions	2.4	0.8

¹Emissions estimated to nearest 0.1

Table 2: Haul Road Emissions, TPY ¹		
Source	TSP	PM ₁₀
Haul Road	7.1	2.0

¹Emissions estimated to nearest 0.1

IN THE MATTER OF A PERMIT APPLICATION (AP-7066) FROM TOUCHSTONE MATERIALS, LLC TO ESTABLISH THE TOUCHSTONE MINE WHICH WILL INCLUDE GRAVEL SCREENING, EXPOSED ACREAGE, AND HAUL ACTIVITY APPROXIMATELY THREE (3) MILES NORTHEAST OF BUFFALO, IN JOHNSON COUNTY, WYOMING.

DECISION

I. Introduction

The Air Quality Division received a permit application from Touchstone Materials, LLC, on December 7, 2007, to establish the Touchstone Mine which will include gravel screening, exposed acreage, and haul activity. The applicant estimates an annual production rate of 20,000 tons. The Touchstone Mine is located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 24, T51N, R82W and the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 19, T51N, R81W, approximately three (3) miles northeast of Buffalo, in Johnson County, Wyoming. The Air Quality Division conducted an analysis of this application and on February 14, 2008, published in the Buffalo Bulletin in Buffalo, 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 Johnson County Clerk in accordance with regulations. The public notice period ran from February 14, 2008 through March 17, 2008. 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 April 21, 2008, at the Johnson County Fire Hall, located at 314 Railroad Avenue in Buffalo, Wyoming.

II. Analysis of Public Comments:

Emissions Impacts - A common issue to most commentors, both written and verbal, was the potential impact due to dust and other pollutants generated by the gravel mine operation. Touchstone Materials, LLC will be subject to the terms of the permit, which includes controlling fugitive dust. 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. Proposed permit conditions will require Touchstone Materials, LLC to control fugitive emissions at the mine. Conditions that address dust control are as follows:

- i. That the screening equipment shall be equipped with a wet suppression system to control fugitive emissions from the screening equipment. The wet suppression system shall be operated to the extent necessary to limit visible emissions to twenty (20) percent opacity or applicable limits set forth by Wyoming Air Quality Standards and Regulations, Chapter 5, Section 2, Subpart 000, as determined by 40 CFR, Part 60, Appendix A, Method 9.
- ii. That all work areas, disturbed areas, and stockpiles shall be treated with water and/or chemical dust suppressants on a schedule sufficient to control fugitive dust.
- iii. All unpaved haul roads shall be treated with water and/or chemical dust suppressants on a schedule sufficient to control fugitive dust from vehicular traffic.

The proposed conditions represent BACT for mine operations and emissions from portable crushing/screening equipment. The Division generally does not require modeling or monitoring for a quarry of this size. In previous permitting actions, the Division has modeled coal mines with production rates in the millions of tons per year and the results have demonstrated compliance with particulate and nitrogen dioxide annual ambient standards. There is also a 24-hour particulate standard. Mines/quarries are considered fugitive sources, meaning the emissions are not emitted through a stack, and currently there is not a dispersion model that adequately predicts short term particulate impacts. Therefore, the Division relies on monitoring to demonstrate compliance with the 24-hour particulate standard. Based on experience, the Division is satisfied that properly controlled gravel mine operations, as required through conditions of the permit with application of BACT, will not result in an exceedance of air quality standards. However, compliance with the ambient air quality standards does not mean there will be no air quality impact.

Health Effects: Ambient air quality standards listed in the Wyoming Air Quality Standards and Regulations are health-based standards. As stated, the Division is satisfied that properly controlled gravel mine operations, as required through conditions of the permit with application of BACT, will not result in an exceedance of air quality standards

Hours of Operation: The Division is satisfied that the control requirements established through the BACT process will ensure the mine complies with all applicable requirements of the Wyoming Air Quality Standards and Regulations. Therefore, the Division does not believe it is necessary to establish limited operating hours to ensure compliance with ambient air standards. Touchstone Materials, LLC has indicated in their response to comments that the hours of operation will be less than or equal to 10 hours per day, 6 days per week, 52 weeks per year.

Location Not Suitable for Mine Operations: Multiple comments were received suggesting the location is not suitable for a gravel mine mining operation. It was also stated that the properties surrounding the mine are subject to covenants that the mine is not. There are no distance restrictions contained in the Air Quality Standards and Regulations. 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. As part of this permitting action, Touchstone Materials, LLC provided a letter from the Johnson County Commissioners stating Johnson County does not have zoning regulations in effect. Touchstone Materials, LLC has complied with the siting requirements of Chapter 6, Section 2 of the Wyoming Air Quality Standards and Regulations.

Clarification of Equipment/Operations: Touchstone Materials, LLC indicated in their response to comments that a concrete batch plant is no longer proposed for the Touchstone Mine. Crushing has not been indicated by the applicant and will not be allowed under the Air Quality Permit. Should Touchstone Materials, LLC intend to operate a crusher or concrete batch plant in the future, a new application must be submitted to the Division and will be subject to the full application process, including public notice.

Application Completeness: Comments were received suggesting that the application was incomplete. The Division reviewed the application for completeness, and in a letter dated January 15, 2008 deemed the application complete. The Division utilized the Air Quality forms as the basis for the permit analysis. The Air Quality Division does not have authority over Land Quality concerns, which

includes the content of the Mine Plan.

Facility Inspections: Division personnel conduct announced inspections to ensure compliance with the permit conditions and unannounced inspections in response to public complaint as Division resources allow. Questions regarding compliance with the permit conditions should be directed to the District Engineer at 1866 S. Sheridan Avenue, Sheridan, WY 82801 (307) 672-6457.

Water Source: The conditions of the permit require water to be used to control fugitive emissions, but the Division does not require applicants to identify the source of the water. In their response to comments, Touchstone Materials, LLC indicated that water would be purchased offsite.

Dust Control during Winter Months: Comments were received regarding potential freezing of water spray systems during the winter, as well as concerns over dust suppression on the stockpiles during the winter. In their response to comments, Touchstone Materials, LLC indicated that a surfactant will be utilized during winter months to control dust. The permit requires year-round operation of dust control measures, and Touchstone Materials, LLC will be responsible for complying with the conditions of the permit.

Public Notice: Comment was received that the public notice package is required to be published more than once. Chapter 6, Section 2(m) of the Wyoming Air Quality Standards states that after the Administrator has reached a proposed decision based upon the information presented in the permit application to construct or modify, the Division of Air Quality will advertise such proposed decision in a newspaper of general circulation in the county in which the source is proposed. This advertisement will indicate the general nature of the proposed facility, the proposed approval/disapproval of the permit, and a location in the region where the public might inspect the information submitted in support of the requested permit and the Air Quality Division's analysis of the effect on air quality. The Air Quality Division conducted an analysis of this application and on February 14, 2008, published in the Buffalo Bulletin in Buffalo, 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 Johnson County Clerk. The Division has met the public notice requirements for this application.

Johnson County Road Use Agreement: Comment was received regarding Touchstone Materials, LLC signing a road use agreement with the County to assist in the maintenance and dust control of Kumor Road. In their response to comments, Touchstone Materials, LLC indicated that no correspondence from Johnson County has been received regarding a road use agreement and that Touchstone Materials, LLC will not commit to an agreement without first knowing what it might contain. The Division encourages Touchstone Materials, LLC to work with the County, but does not have the regulatory authority to require signing of the road use agreement as a condition of the permit. As discussed, Touchstone Materials, LLC is required by the permit to control emissions from the haul route whether an agreement with the County is in place or not.

Issues which cannot be considered in the issuance of an air quality permit.

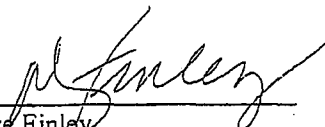
- i. Noise – Comments were received expressing concern about the noise generated by the mining operation, including haul equipment. The Division has no authority to regulate noise pollution.

- ii. Traffic safety - The issue of safety due to increased truck traffic was raised during the hearing. The Air Quality Division has no authority to consider safety issues related to the use of public roads, in determining whether an air quality permit should be granted or denied.
- iii. Haul Road Infrastructure - The issue of road and bridge maintenance due to increased truck traffic was raised. The Air Quality Division has no authority to consider safety issues related to the use of public roads and bridges, in determining whether an air quality permit should be granted or denied.
- iv. Aesthetic Impacts- Comments were made expressing concern with the impact to the surrounding 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.
- v. 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.
- vi. Land Quality Concerns – A comment was received stating that § 35-11-406 has not been met requiring a bond. This regulation is a Land Quality Regulation, not an Air Quality Regulation. The applicant is required to obtain a separate Land Quality permit for this mining operation. The Air Quality Division does not have authority over Land Quality concerns.
- vii. Water Quality Concerns – A comment was received stating that the establishment of the Touchstone Mine will affect water quality, including water that is used for agricultural purposes. The Air Quality Division does not have authority over Water Quality concerns. Water Quality personnel attended the public meeting on April 1, 2008 and will be provided a copy of this decision document.

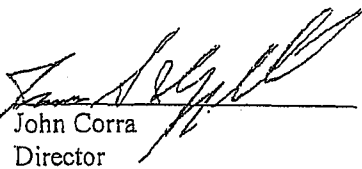
III. Decision:

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 an air quality permit will be issued to Touchstone Materials, LLC, to establish the Touchstone Mine as described in the application.

Dated this 2nd day of June, 2008.



Dave Finley
Administrator
Wyoming Air Quality Division



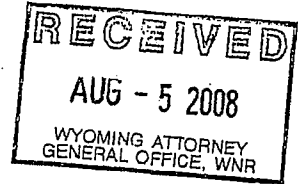
John Corra
Director
Wyoming Department of Environmental Quality

**BEFORE THE STATE OF WYOMING
DEPARTMENT OF ENVIRONMENTAL QUALITY
CHEYENNE, WYOMING**

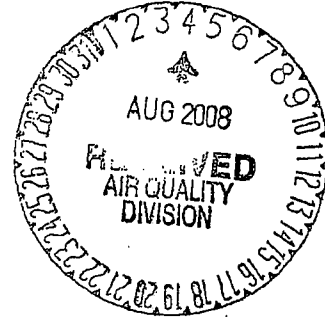
IN THE MATTER OF PERMIT NO. CT-7066)	
Touchstone Materials, LLC,)	
)	DOCKET NO. 08-2801
and,)	
)	
Tom Berry and Susie Berry,)	
)	
Protestants.)	

MOTION TO DISMISS – EXHIBIT B

BEFORE THE STATE OF WYOMING
DEPARTMENT OF ENVIRONMENTAL QUALITY
CHEYENNE, WYOMING



In the Matter of Permit No. CT-7066,)
Touchstone Materials, LLC,)
and)
Tom Berry and Susie Berry,)
Protestants.)



NOTICE OF APPEAL/PETITION FOR REVIEW

COMES NOW your Protestants, Tom Berry and Susie Berry, by and through their undersigned counsel, and for their Petition for Review, would state as follows:

- A. That the Protestants are Tom Berry and Susie Berry whose address is P.O. Box 861, Buffalo, Wyoming, 82834. The Protestants' attorney is Greg L. Goddard, Goddard, Wages & Vogel, 412 North Main Street, Buffalo, Wyoming, 82834.
- B. That this notice is made upon the objection of the Department of Environmental Quality Permit No. CT-7066 issued to Touchstone Materials, LLC.
- C. That the lands subject to this permit are in Johnson County, Wyoming. Venue is proper in Johnson County.
- D. The permit is being protested on the following grounds:
 - a. The application is incomplete.
 - b. The proposed mining operation would irreparably harm, destroy, or materially impair an uncommon area having particular historical, archaeological, wildlife, surface geological, botanical or scenic value.

c. The proposed mining area will cause pollution of waters in violation of the laws of the State of Wyoming.

d. The proposed operation constitutes a public nuisance and endangers the public health and safety.

e. The affected lands lie within three hundred (300) feet of an existing occupied dwelling or home, all in violation of Wyoming Statute §35-11-406.

E. That your Protestants hereby request a hearing of this matter before the Environmental Quality Council.

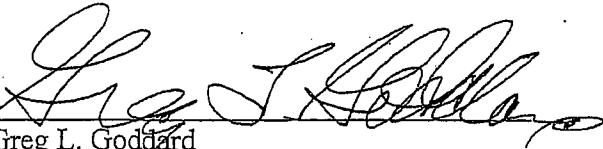
F. The agency from whom review is sought is the Department of Environmental Quality.

G. Your Protestants own lands adjacent to the permittee and own lands affected by the permit and proposed haul road.

H. A copy of the agency decision permit is attached as Appendix A.

DATED this 1st day of August, 2008.

GODDARD, WAGES & VOGEL:

By 
Greg L. Goddard
Wyoming State Bar No. 5-1252
Attorney for Protestants
412 North Main Street
Buffalo, WY 82834
(307) 684-9595

Certificate of Service


I, Greg L. Goddard, attorney for Protestants in the above-entitled matter, do hereby certify that on the 27 day of August, 2008, I caused a true and correct copy of the foregoing Notice of Appeal/Petition for Review to be served as follows:

Dennis M. Boal, Chair	<input checked="" type="checkbox"/>	U.S. Mail
Environmental Quality Council	<input type="checkbox"/>	Fed Ex
Herschler Building	<input type="checkbox"/>	Facsimile
122 West 25 th Street, Room 1714	<input type="checkbox"/>	Hand-Delivered
Cheyenne, WY 82002		

David A. Finley	<input checked="" type="checkbox"/>	U.S. Mail
Administrator, Air Quality Division	<input type="checkbox"/>	Fed Ex
Department of Environmental Quality	<input type="checkbox"/>	Facsimile
Herschler Building	<input type="checkbox"/>	Hand-Delivered
122 West 25 th Street		
Cheyenne, WY 82002		

John V. Cora, Director	<input checked="" type="checkbox"/>	U.S. Mail
Department of Environmental Quality	<input type="checkbox"/>	Fed Ex
Herschler Building	<input type="checkbox"/>	Facsimile
122 West 25 th Street	<input type="checkbox"/>	Hand-Delivered
Cheyenne, WY 82002		

Mary Ann Porter	<input checked="" type="checkbox"/>	U.S. Mail
Manager	<input type="checkbox"/>	Fed Ex
Touchstone Materials, LLC	<input type="checkbox"/>	Facsimile
P.O. Box 735	<input type="checkbox"/>	Hand-Delivered
Meridian, ID 83680-0735		



Greg L. Goddard

IN THE MATTER OF A PERMIT APPLICATION (AP-7066) FROM TOUCHSTONE MATERIALS, LLC TO ESTABLISH THE TOUCHSTONE MINE WHICH WILL INCLUDE GRAVEL SCREENING, EXPOSED ACREAGE, AND HAUL ACTIVITY APPROXIMATELY THREE (3) MILES NORTHEAST OF BUFFALO, IN JOHNSON COUNTY, WYOMING.

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- ii. That all work areas, disturbed areas, and stockpiles shall be treated with water and/or chemical dust suppressants on a schedule sufficient to control fugitive dust.
- iii. All unpaved haul roads shall be treated with water and/or chemical dust suppressants on a schedule sufficient to control fugitive dust from vehicular traffic.

The proposed conditions represent BACT for mine operations and emissions from portable crushing/screening equipment. The Division generally does not require modeling or monitoring for a quarry of this size. In previous permitting actions, the Division has modeled coal mines with production rates in the millions of tons per year and the results have demonstrated compliance with particulate and nitrogen dioxide annual ambient standards. There is also a 24-hour particulate standard. Mines/quarries are considered fugitive sources, meaning the emissions are not emitted through a stack, and currently there is not a dispersion model that adequately predicts short term particulate impacts. Therefore, the Division relies on monitoring to demonstrate compliance with the 24-hour particulate standard. Based on experience, the Division is satisfied that properly controlled gravel mine operations, as required through conditions of the permit with application of BACT, will not result in an exceedance of air quality standards. However, compliance with the ambient air quality standards does not mean there will be no air quality impact.

Health Effects: Ambient air quality standards listed in the Wyoming Air Quality Standards and Regulations are health-based standards. As stated, the Division is satisfied that properly controlled gravel mine operations, as required through conditions of the permit with application of BACT, will not result in an exceedance of air quality standards

Hours of Operation: The Division is satisfied that the control requirements established through the BACT process will ensure the mine complies with all applicable requirements of the Wyoming Air Quality Standards and Regulations. Therefore, the Division does not believe it is necessary to establish limited operating hours to ensure compliance with ambient air standards. Touchstone Materials, LLC has indicated in their response to comments that the hours of operation will be less than or equal to 10 hours per day, 6 days per week, 52 weeks per year.

Location Not Suitable for Mine Operations: Multiple comments were received suggesting the location is not suitable for a gravel mine mining operation. It was also stated that the properties surrounding the mine are subject to covenants that the mine is not. There are no distance restrictions contained in the Air Quality Standards and Regulations. 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. As part of this permitting action, Touchstone Materials, LLC provided a letter from the Johnson County Commissioners stating Johnson County does not have zoning regulations in effect. Touchstone Materials, LLC has complied with the siting requirements of Chapter 6, Section 2 of the Wyoming Air Quality Standards and Regulations.

Clarification of Equipment/Operations: Touchstone Materials, LLC indicated in their response to comments that a concrete batch plant is no longer proposed for the Touchstone Mine. Crushing has not been indicated by the applicant and will not be allowed under the Air Quality Permit. Should Touchstone Materials, LLC intend to operate a crusher or concrete batch plant in the future, a new application must be submitted to the Division and will be subject to the full application process, including public notice.

Application Completeness: Comments were received suggesting that the application was incomplete. The Division reviewed the application for completeness, and in a letter dated January 15, 2008 deemed the application complete. The Division utilized the Air Quality forms as the basis for the permit analysis. The Air Quality Division does not have authority over Land Quality concerns, which

includes the content of the Mine Plan.

Facility Inspections: Division personnel conduct announced inspections to ensure compliance with the permit conditions and unannounced inspections in response to public complaint as Division resources allow. Questions regarding compliance with the permit conditions should be directed to the District Engineer at 1866 S. Sheridan Avenue, Sheridan, WY 82801 (307) 672-6457.

Water Source: The conditions of the permit require water to be used to control fugitive emissions, but the Division does not require applicants to identify the source of the water. In their response to comments, Touchstone Materials, LLC indicated that water would be purchased offsite.

Dust Control during Winter Months: Comments were received regarding potential freezing of water spray systems during the winter, as well as concerns over dust suppression on the stockpiles during the winter. In their response to comments, Touchstone Materials, LLC indicated that a surfactant will be utilized during winter months to control dust. The permit requires year-round operation of dust control measures, and Touchstone Materials, LLC will be responsible for complying with the conditions of the permit.

Public Notice: Comment was received that the public notice package is required to be published more than once. Chapter 6, Section 2(m) of the Wyoming Air Quality Standards states that after the Administrator has reached a proposed decision based upon the information presented in the permit application to construct or modify, the Division of Air Quality will advertise such proposed decision in a newspaper of general circulation in the county in which the source is proposed. This advertisement will indicate the general nature of the proposed facility, the proposed approval/disapproval of the permit, and a location in the region where the public might inspect the information submitted in support of the requested permit and the Air Quality Division's analysis of the effect on air quality. The Air Quality Division conducted an analysis of this application and on February 14, 2008, published in the Buffalo Bulletin in Buffalo, 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 Johnson County Clerk. The Division has met the public notice requirements for this application.

Johnson County Road Use Agreement: Comment was received regarding Touchstone Materials, LLC signing a road use agreement with the County to assist in the maintenance and dust control of Kumor Road. In their response to comments, Touchstone Materials, LLC indicated that no correspondence from Johnson County has been received regarding a road use agreement and that Touchstone Materials, LLC will not commit to an agreement without first knowing what it might contain. The Division encourages Touchstone Materials, LLC to work with the County, but does not have the regulatory authority to require signing of the road use agreement as a condition of the permit. As discussed, Touchstone Materials, LLC is required by the permit to control emissions from the haul route whether an agreement with the County is in place or not.

Issues which cannot be considered in the issuance of an air quality permit.

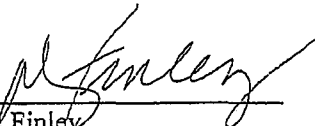
- i. Noise – Comments were received expressing concern about the noise generated by the mining operation, including haul equipment. The Division has no authority to regulate noise pollution.

- ii. Traffic safety - The issue of safety due to increased truck traffic was raised during the hearing. The Air Quality Division has no authority to consider safety issues related to the use of public roads, in determining whether an air quality permit should be granted or denied.
- iii. Haul Road Infrastructure - The issue of road and bridge maintenance due to increased truck traffic was raised. The Air Quality Division has no authority to consider safety issues related to the use of public roads and bridges, in determining whether an air quality permit should be granted or denied.
- iv. Aesthetic Impacts- Comments were made expressing concern with the impact to the surrounding 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.
- v. 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.
- vi. Land Quality Concerns - A comment was received stating that § 35-11-406 has not been met requiring a bond. This regulation is a Land Quality Regulation, not an Air Quality Regulation. The applicant is required to obtain a separate Land Quality permit for this mining operation. The Air Quality Division does not have authority over Land Quality concerns.
- vii. Water Quality Concerns - A comment was received stating that the establishment of the Touchstone Mine will affect water quality, including water that is used for agricultural purposes. The Air Quality Division does not have authority over Water Quality concerns. Water Quality personnel attended the public meeting on April 1, 2008 and will be provided a copy of this decision document.

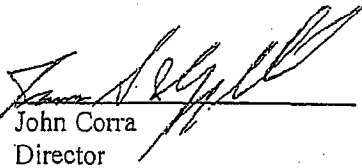
III. **Decision:**

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 an air quality permit will be issued to Touchstone Materials, LLC, to establish the Touchstone Mine as described in the application.

Dated this 2nd day of June, 2008.

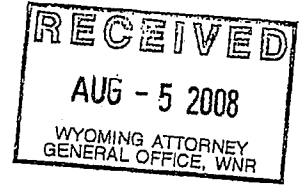


Dave Finley
Administrator
Wyoming Air Quality Division



John Corra
Director
Wyoming Department of Environmental Quality

BEFORE THE STATE OF WYOMING
DEPARTMENT OF ENVIRONMENTAL QUALITY
CHEYENNE, WYOMING



In the Matter of Permit No. CT-7066,)
Touchstone Materials, LLC,)
and)
Tom Berry and Susie Berry,)
Protestants.)



NOTICE OF APPEAL/PETITION FOR REVIEW

COMES NOW your Protestants, Tom Berry and Susie Berry, by and through their undersigned counsel, and for their Petition for Review, would state as follows:

A. That the Protestants are Tom Berry and Susie Berry whose address is P.O. Box 861, Buffalo, Wyoming, 82834. The Protestants' attorney is Greg L. Goddard, Goddard, Wages & Vogel, 412 North Main Street, Buffalo, Wyoming, 82834.

B. That this notice is made upon the objection of the Department of Environmental Quality Permit No. CT-7066 issued to Touchstone Materials, LLC.

C. That the lands subject to this permit are in Johnson County, Wyoming. Venue is proper in Johnson County.

D. The permit is being protested on the following grounds:

a. The application is incomplete.

b. The proposed mining operation would irreparably harm, destroy, or materially impair an uncommon area having particular historical, archaeological, wildlife, surface geological, botanical or scenic value.

c. The proposed mining area will cause pollution of waters in violation of the laws of the State of Wyoming.

d. The proposed operation constitutes a public nuisance and endangers the public health and safety.

e. The affected lands lie within three hundred (300) feet of an existing occupied dwelling or home, all in violation of Wyoming Statute §35-11-406.

E. That your Protestants hereby request a hearing of this matter before the Environmental Quality Council.


F. The agency from whom review is sought is the Department of Environmental Quality.

G. Your Protestants own lands adjacent to the permittee and own lands affected by the permit and proposed haul road.

H. A copy of the agency decision permit is attached as Appendix A.

DATED this 1st day of August, 2008.

GODDARD, WAGES & VOGEL:

By 
Greg L. Goddard
Wyoming State Bar No. 5-1252
Attorney for Protestants
412 North Main Street
Buffalo, WY 82834
(307) 684-9595

Certificate of Service


I, Greg L. Goddard, attorney for Protestants in the above-entitled matter, do hereby certify that on the 27 day of August, 2008, I caused a true and correct copy of the foregoing Notice of Appeal/Petition for Review to be served as follows:

Dennis M. Boal, Chair	<input checked="" type="checkbox"/>	U.S. Mail
Environmental Quality Council	<input type="checkbox"/>	Fed Ex
Herschler Building	<input type="checkbox"/>	Facsimile
122 West 25 th Street, Room 1714	<input type="checkbox"/>	Hand-Delivered
Cheyenne, WY 82002		

David A. Finley	<input checked="" type="checkbox"/>	U.S. Mail
Administrator, Air Quality Division	<input type="checkbox"/>	Fed Ex
Department of Environmental Quality	<input type="checkbox"/>	Facsimile
Herschler Building	<input type="checkbox"/>	Hand-Delivered
122 West 25 th Street		
Cheyenne, WY 82002		

John V. Cora, Director	<input checked="" type="checkbox"/>	U.S. Mail
Department of Environmental Quality	<input type="checkbox"/>	Fed Ex
Herschler Building	<input type="checkbox"/>	Facsimile
122 West 25 th Street	<input type="checkbox"/>	Hand-Delivered
Cheyenne, WY 82002		

Mary Ann Porter	<input checked="" type="checkbox"/>	U.S. Mail
Manager	<input type="checkbox"/>	Fed Ex
Touchstone Materials, LLC	<input type="checkbox"/>	Facsimile
P.O. Box 735	<input type="checkbox"/>	Hand-Delivered
Meridian, ID 83680-0735		


Greg L. Goddard

IN THE MATTER OF A PERMIT APPLICATION (AP-7066) FROM TOUCHSTONE MATERIALS, LLC TO ESTABLISH THE TOUCHSTONE MINE WHICH WILL INCLUDE GRAVEL SCREENING, EXPOSED ACREAGE, AND HAUL ACTIVITY APPROXIMATELY THREE (3) MILES NORTHEAST OF BUFFALO, IN JOHNSON COUNTY, WYOMING.

DECISION

I. Introduction

The Air Quality Division received a permit application from Touchstone Materials, LLC, on December 7, 2007, to establish the Touchstone Mine which will include gravel screening, exposed acreage, and haul activity. The applicant estimates an annual production rate of 20,000 tons. The Touchstone Mine is located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 24, T51N, R82W and the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 19, T51N, R81W, approximately three (3) miles northeast of Buffalo, in Johnson County, Wyoming. The Air Quality Division conducted an analysis of this application and on February 14, 2008, published in the Buffalo Bulletin in Buffalo, 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 Johnson County Clerk in accordance with regulations. The public notice period ran from February 14, 2008 through March 17, 2008. 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 April 21, 2008, at the Johnson County Fire Hall, located at 314 Railroad Avenue in Buffalo, Wyoming.

II. Analysis of Public Comments:

Emissions Impacts - A common issue to most commentors, both written and verbal, was the potential impact due to dust and other pollutants generated by the gravel mine operation. Touchstone Materials, LLC will be subject to the terms of the permit, which includes controlling fugitive dust. 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. Proposed permit conditions will require Touchstone Materials, LLC to control fugitive emissions at the mine. Conditions that address dust control are as follows:

- i. That the screening equipment shall be equipped with a wet suppression system to control fugitive emissions from the screening equipment. The wet suppression system shall be operated to the extent necessary to limit visible emissions to twenty (20) percent opacity or applicable limits set forth by Wyoming Air Quality Standards and Regulations, Chapter 5, Section 2, Subpart 000, as determined by 40 CFR, Part 60, Appendix A, Method 9.
- ii. That all work areas, disturbed areas, and stockpiles shall be treated with water and/or chemical dust suppressants on a schedule sufficient to control fugitive dust.
- iii. All unpaved haul roads shall be treated with water and/or chemical dust suppressants on a schedule sufficient to control fugitive dust from vehicular traffic.

The proposed conditions represent BACT for mine operations and emissions from portable crushing/screening equipment. The Division generally does not require modeling or monitoring for a quarry of this size. In previous permitting actions, the Division has modeled coal mines with production rates in the millions of tons per year and the results have demonstrated compliance with particulate and nitrogen dioxide annual ambient standards. There is also a 24-hour particulate standard. Mines/quarries are considered fugitive sources, meaning the emissions are not emitted through a stack, and currently there is not a dispersion model that adequately predicts short term particulate impacts. Therefore, the Division relies on monitoring to demonstrate compliance with the 24-hour particulate standard. Based on experience, the Division is satisfied that properly controlled gravel mine operations, as required through conditions of the permit with application of BACT, will not result in an exceedance of air quality standards. However, compliance with the ambient air quality standards does not mean there will be no air quality impact.

Health Effects: Ambient air quality standards listed in the Wyoming Air Quality Standards and Regulations are health-based standards. As stated, the Division is satisfied that properly controlled gravel mine operations, as required through conditions of the permit with application of BACT, will not result in an exceedance of air quality standards

Hours of Operation: The Division is satisfied that the control requirements established through the BACT process will ensure the mine complies with all applicable requirements of the Wyoming Air Quality Standards and Regulations. Therefore, the Division does not believe it is necessary to establish limited operating hours to ensure compliance with ambient air standards. Touchstone Materials, LLC has indicated in their response to comments that the hours of operation will be less than or equal to 10 hours per day, 6 days per week, 52 weeks per year.

Location Not Suitable for Mine Operations: Multiple comments were received suggesting the location is not suitable for a gravel mine mining operation. It was also stated that the properties surrounding the mine are subject to covenants that the mine is not. There are no distance restrictions contained in the Air Quality Standards and Regulations. 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. As part of this permitting action, Touchstone Materials, LLC provided a letter from the Johnson County Commissioners stating Johnson County does not have zoning regulations in effect. Touchstone Materials, LLC has complied with the siting requirements of Chapter 6, Section 2 of the Wyoming Air Quality Standards and Regulations.

Clarification of Equipment/Operations: Touchstone Materials, LLC indicated in their response to comments that a concrete batch plant is no longer proposed for the Touchstone Mine. Crushing has not been indicated by the applicant and will not be allowed under the Air Quality Permit. Should Touchstone Materials, LLC intend to operate a crusher or concrete batch plant in the future, a new application must be submitted to the Division and will be subject to the full application process, including public notice.

Application Completeness: Comments were received suggesting that the application was incomplete. The Division reviewed the application for completeness, and in a letter dated January 15, 2008 deemed the application complete. The Division utilized the Air Quality forms as the basis for the permit analysis. The Air Quality Division does not have authority over Land Quality concerns, which

includes the content of the Mine Plan.

Facility Inspections: Division personnel conduct announced inspections to ensure compliance with the permit conditions and unannounced inspections in response to public complaint as Division resources allow. Questions regarding compliance with the permit conditions should be directed to the District Engineer at 1866 S. Sheridan Avenue, Sheridan, WY 82801 (307) 672-6457.

Water Source: The conditions of the permit require water to be used to control fugitive emissions, but the Division does not require applicants to identify the source of the water. In their response to comments, Touchstone Materials, LLC indicated that water would be purchased offsite.

Dust Control during Winter Months: Comments were received regarding potential freezing of water spray systems during the winter, as well as concerns over dust suppression on the stockpiles during the winter. In their response to comments, Touchstone Materials, LLC indicated that a surfactant will be utilized during winter months to control dust. The permit requires year-round operation of dust control measures, and Touchstone Materials, LLC will be responsible for complying with the conditions of the permit.

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Issues which cannot be considered in the issuance of an air quality permit.


- i. Noise – Comments were received expressing concern about the noise generated by the mining operation, including haul equipment. The Division has no authority to regulate noise pollution.

- ii. Traffic safety - The issue of safety due to increased truck traffic was raised during the hearing. The Air Quality Division has no authority to consider safety issues related to the use of public roads, in determining whether an air quality permit should be granted or denied.
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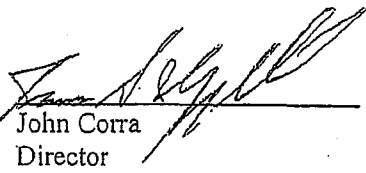
III. Decision:

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 an air quality permit will be issued to Touchstone Materials, LLC, to establish the Touchstone Mine as described in the application.

Dated this 2nd day of June, 2008.



Dave Finley
Administrator
Wyoming Air Quality Division



John Corra
Director
Wyoming Department of Environmental Quality