

**FILED**

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

**Jim Ruby, Executive Secretary  
Environmental Quality Council**

IN THE MATTER OF THE OBJECTION ) Docket No. 09-4801  
TO THE SMALL MINE PERMIT OF ) FINDINGS OF FACT, CONCLUSIONS  
EVANS CONSTRUCTION, INC. ) OF LAW, DECISION AND ORDER  
TFN 36/302 )

This matter came on for hearing before the Environmental Quality Council on April 30th, 2009 in Jackson, Wyoming at 9:00 a.m. Present for the Council was the Presiding Officer John Morris, Chairman Dennis Boal, Councilwoman Cathy Guschewsky and Councilman David Searle. The Department was present through legal counsel John Burbridge, Assistant Attorney General. The permittee was present through the President of Evans Construction Company, Lane Bybee. The following objectors were present through legal counsel, Ms. Koeckeritz, Julie Obering, Kindred, LLC, and Linda and Harold Williams. The objector, Eleanor Onyon was not present at the hearing, nor did she have legal counsel present..

All parties were given notice of the date, time and place of the hearing through a prehearing conference and Order.

**FINDINGS OF FACT**

1. Evans Construction Company filed an initial application for surface mining permit with the Land Quality Division of the Wyoming Department of Environmental Quality. Notice was published on March 11<sup>th</sup> and March 18<sup>th</sup>, 2009
2. The deadline for filing objections was April 17, 2009.
3. Julie Obering filed her objection on April 8, 2009. Linda and Harold Williams filed their objection on March 23, 2009 and Eleanor Onyon filed her objection on April 15, 2009.
4. All of the objectors own land within the general vicinity of the proposed mining site.

5. There is not actual mining that occurs within the boundaries set forth in the application for a small mining permit.

6. The Department of Environmental Quality determined on October 17, 2008 that the application of Evans Construction Company was complete.

#### CONCLUSIONS OF LAW

7. "Any interested person has the right to file written objections to the application [for mining permit] with the administrator within thirty (30) days after the last publication of the above notice. . . . The council or director shall publish notice of the time, date and location of the hearing or conference in a newspaper of general circulation in the locality of the proposed operation once a week for two (2) consecutive weeks immediately prior to the hearing or conference. The hearing shall be conducted as a contested case in accordance with the Wyoming Administrative Procedure Act, and right of judicial review shall be afforded as provided in that act." Wyo. Stat. Ann. § 35-11-406 (k) (LEXIS 2006), the Wyoming Administrative Procedure Act, WYO. STAT. ANN. §§ 16-3-101 through 16-3-115 (LEXIS 2006) and the Environmental Quality Council's Administrative Rules and Regulations (2001).

8. "The council shall act as the hearing examiner for the department and shall hear and determine all cases or issues arising under the laws, rules, regulations, standards or orders issued or administered by the department or its air quality, land quality, solid and hazardous waste management or water quality divisions." WYO. Stat. Ann. § 35-11-112(a).

9. The council shall, "Conduct hearings in any case contesting the grant, denial, suspension, revocation or renewal of any permit, license, certification or variance authorized or required by this act." WYO. Stat. Ann. § 35-11-112(a)(iv) .

10. Evans Construction Company bears the burden of proof in the proceedings herein.

"The general rule in administrative law is that, unless a statute otherwise assigns the burden of proof, the proponent of an order has the burden of proof" *JM v. Department of Family Services*, 922 P.2d 219,221 (Wyo. 1996) (citation omitted).

11. Wyo. Stat. Ann. § 35-11-406 (m) provides as follows:

The requested permit, other than a surface coal mining permit, shall be granted if the applicant demonstrates that the application complies with the requirements of this act and all applicable federal and state laws. The director shall not deny a permit except for one (1) or more of the following reasons:

- (i) The application is incomplete;
- (ii) The applicant has not properly paid the required fee;
- (iii) Any part of the proposed operation, reclamation program, or the proposed future use is contrary to the law or policy of this state, or the United States;
- (iv) The proposed mining operation would irreparably harm, destroy, or materially impair any area that has been designated by the council a rare or uncommon area and having particular historical, archaeological, wildlife, surface geological, botanical or scenic value;
- (v) If the proposed mining operation will cause pollution of any waters in violation of the laws of this state or of the federal government;
- (vi) If the applicant has had any other permit or license issued hereunder revoked, or any bond posted to comply with this act forfeited;
- (vii) The proposed operation constitutes a public nuisance or endangers

the public health and safety;

(viii) The affected land lies within three hundred (300) feet of any existing occupied dwelling, home, public building, school, church, community or institutional building, park or cemetery, unless the landowner's consent has been obtained. The provisions of this subsection shall not apply to operations conducted under an approved permit issued by the state land commissioner in compliance with the "Open Cut Land Reclamation Act of 1969";

(ix) The operator is unable to produce the bonds required;

(x) If written objections are filed by an interested person under subsection (g) of this section;

(xi) If information in the application or information obtained through the director's investigation shows that reclamation cannot be accomplished consistent with the purposes and provisions of this act;

(xii) through (xiv) Repealed by Laws 1980, ch. 64, § 3.

(xv) If the applicant has been and continues to be in violation of the provisions of this act;

(xvi) No permit shall be denied on the basis that the applicant has been in actual violation of the provisions of this act if the violation has been corrected or discontinued.

12. Wyo. Stat. Ann. § 35-11-406(j) "The applicant shall cause notice of the application to be published in a newspaper of general circulation in the locality of the proposed mining site once a week for four (4) consecutive weeks commencing within fifteen (15)

days after being notified by the administrator.

**DECISION**

13. Ms. Obering, Mr. and Mrs. Williams and Ms. Onyon are interested persons with the right to file written objections to the application.

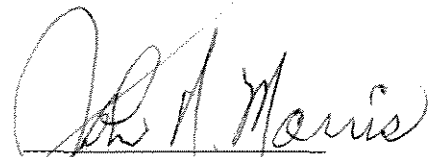
14. The applicant has the burden of establishing that the application is in compliance with this act and all applicable state laws.

15. The applicant has met their burden of proof.

16. Pursuant to the authority vested in the Environmental Quality Council by WYO. STAT.ANN. § 35-11-406, the Council hereby **FINDS** that the Permit Application submitted by Evans Construction Inc. regarding Mine Permit No. TFN 36/302 is **COMPLETE.**

**ORDER**

IT IS THEREFORE ORDERED that the Permit Application filed by Evans Construction Inc. for Permit No., TFN 36/302 is hereby **GRANTED**  
SO ORDERED this 23<sup>rd</sup> day of June, 2009.

  
John Morris, Presiding Officer  
Environmental Quality Council  
122 West 25th Street  
Herschler Bldg., Rm. 1714  
Cheyenne, Wyoming 82002  
(307) 777-7170

**CERTIFICATE OF SERVICE**

I hereby certify that the original of the foregoing document was served upon the Environmental Quality Council and a true and correct copy was served upon the parties by mailing same, postage prepaid, on the 23<sup>rd</sup> day of June, 2009, addressed to the following:

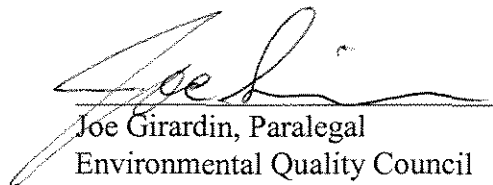
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and electronic mail to the following:

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Joe Girardin, Paralegal  
Environmental Quality Council