



MULLINAX
Concrete - Irrigation
Construction Supply
Sheridan, Wyoming

September 24, 2009

Mr. Mark Rogaczewski
Wyoming DEQ
District III office
1866 S. Sheridan Ave.
Sheridan, WY 82801

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Jim Ruby, Executive Secretary
Environmental Quality Council

RE: Limited Mining Operation (LMO) Application, TFN 5 4/123

Dear Mr. Rogaczewski,

Having personally worked very well with the land quality division for several years, I understand that as a DEQ employee it is your job and duty to abide by the rules and regulations set forth by state statutes. I also understand that the land quality division has set standard operating procedures (SOP's) which are not necessarily mandated by statute but intended to eliminate particular practices that have allowed operators to circumvent the original purposes of the permitting process. I know these procedures also serve as a mechanism to ensure equitable consideration for all operators. I do not request or expect DEQ personnel to compromise their integrity by approving unjustifiable permits. I understand that the proposed Piney Creek Hilltop limited mining operation has been denied on the basis that it violates the non-coal standard operating procedures, however, I disagree with such an assessment when one considers the standard operating procedures in their entirety.

The first statement which was cited in the Non-coal SOP 1.6 as grounds to deny our limited mining operation application states that;

- “the same permittee may hold any combination of a LMO and SMP or a LMO and RMP as long as the pit and affected land of each LMO are at least six miles apart, as the crow flies.”

I believe this statement implies that as long as the pits and other affected lands associated with LMO's are not within six miles of each other - pit combinations are acceptable. An operator is limited, according to this statement, to one LMO combination within a six-mile radius. By obtaining the Piney Creek Hilltop LMO, Mullinax would have a “LMO – RMP” combination with no other LMO within six miles.

A second statement in the Non-coal SOP 1.6 document which was used as grounds to deny our application states that;

- “...if the permittee holds a SMP or RMP, the Administrator will not issue a new, separate LMO. The prospective LMO lands must be amended to the existing SMP or RMP.”

This standard operating procedure which, to my knowledge, is not backed by state statute and for which there are “... no known elements of the Wyoming EQA or Non-coal R&R which directly address this topic of proximity of permits” can be justifiably overlooked if: “...a distinct physical barrier, such as an impassable stream or impassable topographic feature, separates the mineral deposits and the two mining operations are conducted entirely separately.” (Non-coal SOP 1.6, Section II A.1.) As alluded to in the LMO application, the site will most assuredly be operated independently from the regular mine site. The purpose for opening the pit is to supply gravel for local roads in the nearby area. Mullinax Concrete will not be conducting a typical excavation and gravel haul as is the case on the regular mine site. In addition to this mine site being operated “entirely separate” from our other site, this proposed LMO is not readily accessible from the existing regular mine site. I would ask you, as the arbiter of this application, to please consider the topography separating the existing regular mine permit (PT 765) and the proposed limited mining operation 220 feet above the regular permit. This elevation difference is not gradual - it is very abrupt without access from the bottom of the property. Although I have not had the Mine Safety and Health Administration (MSHA - which regulates all the health and safety aspects at our mine sites) consider the elevation, I will guess that the inspectors would have serious concerns about the grade of any road built up to the proposed limited mining operation (reference Subpart H of 30 Code of Federal Regulations Part 57.9000 – Part 57.9330). Because hill slides are apparent on this location MSHA would also require regular “ground condition” inspections (reference 30 Code of Federal Regulations Part 57.3401) along the respective hillside if any roads were to be built and utilized. In other words, building, maintaining, and requiring employees to drive loaded haul trucks down a newly constructed road between the two gravel reserves is not a very safe practice and limits our ability to operate the site in conjunction with the existing regular mine site. This topographic feature is the reason the gravel on the hilltop was not included in the regular mine permit. In addition to the safety issue, the amount of disturbance to natural resources by constructing a road up such a steep grade would be significant. However, if allowed to mine and market the hilltop gravel in the unique manner proposed in the LMO application resource disturbance on the face of the hill is unnecessary. Again, the intent of opening this site is for the local Piney Creek area only and traditional, extensive Mullinax gravel hauls will not occur.

As was stated in Mr. Schellinger’s letter of September 17, the Non-coal Standard Operating Procedure 1.6 was approved by the LQD Administrator on January 30, 2006. Even though I believe the above arguments are legitimate and the approval of the proposed LMO would not violate SOP 1.6, there is precedent for allowing separate

mining permits within a six mile radius since the 2006 approval of SOP 1.6. Mullinax Concrete currently has four separate permits in Sheridan County within a six mile radius - two of which were approved following the approval of SOP 1.6. Two of the permits are small mine permits (permit # 691 and permit # 548), one is a regular mine permit (# 742), and one is a limited mine permit (# 1383 ET). Permits 742 and 1383 ET were both approved in the year 2007.

Finally, I would like to mention that permitting the proposed site as a limited mining operation simply makes more sense than amending the regular mine permit to include the new area. It is a proper and legal means of satisfying the requirements of the Department of Environmental Quality when a gravel reserve of approximately four acres exists. When handling these small mineral reserves the limited mining permit is a much more efficient and economical means of permitting not only for the operator but also for DEQ. The regular mine permit # PT765 took approximately eighteen months (once submitted) and cost the operator well over \$20,000 of labor, contracted studies, and other expenses before getting approval. I do not know how much time state employees spent reviewing the application, asking and answering questions, visiting the site, etc. but I'm sure it was significant. It has been my experience that amending small and regular mine permits requires attention and review that parallels the time spent obtaining the original permit. The Wyoming Department of Environmental Quality will have the same opportunity, under a limited mining operation, to ensure that all environmental concerns associated with gravel extraction are monitored and enforced as it would if the site were designated a regular mining operation. The only difference will be the amount of resources (time and money) allocated to the process of permitting the very limited quantity of gravel. Given the current economic situation in the private sector and the tightening of government budgets, it is prudent to choose the most economically efficient route when allocating resources to achieve an outcome. Whether under a limited mining operation designation or a regular mine site designation the ultimate outcome will be the same. However, one route is characterized by sound budgetary resource management and the other is not.

Please understand that Mullinax Concrete is not asking for a limited mining operation to circumvent rules and regulations and please know this plan to mine the Piney Creek Hilltop" site under a limited mining operation developed only this summer (2009), long after the regular mine permit was submitted for review.

Sincerely,

Larry Ligoeki
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