



**MULLINAX**  
Concrete - Irrigation  
Construction Supply  
*Sheridan, Wyoming*

**FILED**

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Jim Ruby, Executive Secretary  
Environmental Quality Council

October 9, 2009

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

Dear Mr. Rogaczewski,

I appreciate the time you spent discussing the Piney Creek Hilltop ET with me yesterday. Given our conversation and my conversation with Mr. Dave Schellinger, I understand that Mr. John Burbridge and Mr. Don McKenzie believe that the non-coal rule, chapter 10, section 8 substantiates the denial of our proposed limited mining operation near our Piney Creek regular mine site PT765. However, after reading that rule I disagree.

Specifically, I believe you stated that non-coal rule, Chapter 10, Section 8 (a)(ii) is the rule that was being used to support the denial of our proposed LMO. The rule reads:

- (a) The operator will not be allowed to:
  - (ii) Conduct **nearby operations of ten acres or less** so as to circumvent the general requirements of the Environmental Quality Act.

First of all, this rule is a statement limiting the existence of "...nearby operations of ten acres or less..." In other words, two limited mining operations are not allowed in "nearby" proximity. As I have always been told by Land Quality staff, the same operator is not allowed to have two LMO's within six miles of each other. Since I have been performing the permitting duties for Mullinax Concrete Service Company this is the first time this rule has ever been represented as referring to LMO – RMP (regular mine permit) combinations.

Secondly, as I explained in my first letter, dated September 24, concerning this matter Mullinax Concrete is not intentionally circumventing the general requirements of the Environmental Quality Act, as LQD's use of this rule implies. I have enclosed a signed statement from Mr. Jason Kennedy (Exhibit A) in which he acknowledges his role in the

decision to permit the gravel resource in question. His statement establishes the fact that the idea to permit the hilltop adjacent to his property originated during the spring of 2009, well after the January 2008 submittal of the Piney Creek Regular Mine application. If Mullinax had originally planned on permitting the gravel in question, it would have originally been included in the regular mine permit application. Given the situation at hand, we are simply trying to permit the site in the most economical and legally acceptable manner possible. To my knowledge, LMO – RMP combinations by the same permittee are acceptable. Especially, “when the mining operations will be operated entirely separately and a distinct physical barrier separates the mineral deposits” as is the case with this LMO-RMP combination. (Non-coal SOP 1.6) When one considers the fact that Mullinax will not have another LMO within 20 miles it is evident that “LMO abuse” is not an issue in this case.

Having given much consideration to the SOP’s and Wyoming Statutes that have been cited as reasons to deny the Mullinax application, I have come to believe that these particular guidelines would serve as valid justification to approve the proposed limited mining operation in question. When my interpretation of these rules and guidelines is coupled with the precedent set in Sheridan County concerning LMO approval, it is difficult for me to understand where the error in my interpretation exists. I am beginning to believe LQD’s approach to this proposed operation is from the standpoint of trying to prove its inadequacy rather than objectively evaluating the justification for its approval.

Along with this letter, I have enclosed the original letter of concern (Exhibit B) I wrote on September 24 for your reference when considering the SOP 1.6 guidelines. I feel my comments in this letter concerning the LQD alleged SOP violations are valid and have not been addressed. If my point of view and interpretation of these guidelines is completely in error I politely ask for a letter pointing out the specific language I have misinterpreted and the specific reasons that this LMO application is not valid.

I certainly understand that you are busy and I do appreciate your time and consideration.

Sincerely,

Larry Ligocki  
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