

To Office of the Attorney General
Attention: John Burbridge

By Fax 307 777 - 3542

From Judith Bush

613-392-2313

Date March 3, 2010

FILED

Re: Croell Redi-Mix Proposed Findings of Fact,
Conclusions of Law and Order

MAR 04 2010

Jim Ruby, Executive Secretary
Environmental Quality Council

I, of course, think the application should be denied.



In the matter of the Objection
to the mine Permit of
Croell Redi-Mix, Inc, TFN 5 6/072

Docket No. 09-4806

Proposed findings of Fact, Conclusions of Law and Order

This matter was brought before the Environmental Quality Council (EQC) on December 21, 2009, in Gillette, Wyoming at 1:00 pm. Present for the EQC was the Presiding Officer David Searle; Councilwoman Cathy Guschewsky and Councilmen Tim Flitner and Thomas Coverdale participated by telephone. The Department of Environmental Quality (DEQ)/ Land Quality Division (LQD) was present through legal counsel John Burbridge, Senior Assistant Attorney General. The permittee, Croell Redi-Mix, Inc. (Croell), was present through the President of Croell, Roger Croell. The following objectors were present, Paul Tomer, Judith Bush and Les & Karen Turgeon; and Judith Hamm who participated by telephone (collectively Objectors). Exhibits 1 - 26 were received into evidence at the hearing. The Council has considered the evidence and arguments of the parties, and makes the following:

Comments

- 1) Mr. Croell represented Croell Redi-Mix, Inc. at this public hearing.
- 2) Croell Redi-Mix was the applicant.
- 3) Croell Redi-Mix is the permittee of a number of mining permits in Wyoming.
- 4) Croell-Redi-Mix is the permittee of the LMO at the Rogers Pit (1396 ET)
- 5) Mr Croell testified that he and his sons own Croell Redi-Mix, Inc.
- 6) Mr. Croell testified that he is the owner of the 600+ acres included in the enlarged mine site designated in the application to the LQD. the proposed mine site.
- 7) I am more than pleased to be grouped together with Les and Karen Turgeon, Paul Tomer and Judith Hamm. I will however, point out that I had not met any of these good people prior to the day of the hearing, and my impression was that each of us had our own personal concerns which had brought us to the December 21, 2009 public hearing

- 8) ... Exhibits 1 - 26 were received into evidence at the hearing
 The Council has considered the evidence and arguments of the parties ...

my comments regarding exhibits

Matters relating to Exhibits

Although none of the parties had any objection to my exhibits being marked as exhibits, apart from a color topographic map of our ranch (Exhibit 26), and my witness Margaret Turbiville's photograph of the intersection of the Rifle Pit Road with the access road for the Rogers Pit, during my testimony on December 21, 2009, Council did not permit me to refer to my exhibits, to explain their significance, by virtue of refusing to hear any testimony relating to the Croell Redi-Mix LMO at the Rogers Pit at the time when I testified *transcript page 182 line 9 through page 185 line 10*

The Croell Redi-Mix LMO at the Rogers Pit, is the same operation which the Croell Redi-Mix Application seeks to expand into a regular mine operation with a 600 + acre mine site, and its permit is still in effect at this time

Exhibit 25
 not entered in
 Docket 09-4806

The last time I checked, Exhibit 25 had not been entered into the record of Docket 09-4806. It was not entered into the record of Docket 09-4806 when Council voted on this matter in mid-January of 2009. I have to assume that Exhibit 25 was not considered by the EQC when they met and voted to approve the Croell Redi-Mix application to LQD to expand their limerock mining and crushing operations at the Rogers Pit

Exhibit 25 is a photograph taken by my witness, Margaret Turbiville from inside her car facing west on the Rifle Pit Road. It showed that traffic traveling west along the Rifle Pit Road could not see the intersection of the new access road with the Rifle Pit road. This road is being used as the sole entry to and exit from the Rogers Pit (*transcript page 150 line 12 - page 156 line 1*)

It was raised as a safety issue and relates to Environmental Quality Act 35-11-406 (m). Mr. Croell stated that he hires out the trucking aspect of his business, and as such is not responsible for safety on the Rifle Pit Road. (*transcript page 157 lines 20 -22*)

Exhibit 26
 not entered in
 Docket 09-4806

The last time I checked, Exhibit 25 had not been entered into the record of Docket 09-4806. It was not entered into the record of Docket 09-4806 when Council voted on this matter in mid-January of 2009. I have to assume that Exhibit 25 was not considered by the EQC when they met and voted to approve the Croell Redi-Mix application to LQD to expand their limerock mining and crushing operations at the Rogers Pit

Exhibit 26 is an 8 1/2" x 11" color topographic map showing the terrain of our scenic, wooded 7000+ acre ranch, its proximity to the proposed 600 + acre mine site (it borders the mine site) , as well as the 640 acre school section (also bordering the proposed mine site) which we lease from the State of Wyoming. (transcript pages 172 -176)

Exhibits 3-10
not intended as
exhibits

On December 16, 2009, I copied the EQC on two letters which I had written to the Air Quality Division of the DEQ regarding the Croell Redi-Mix application to AQD to expand ("modify) its operations at the Rogers Pit. its operations at Rogers Pit (essentially a companion application to the Land Quality application which is the subject of Docket 09-4806.

I did not ask that these letters be labeled as exhibits, and was surprised to find that this had occurred when I discovered the EQC web pages containing Docket 09-4806 in January of 2010.

(At the December 16, 2009 pre-hearing conference, I had agreed to have a 1 page letter, also dated December 16, 2009 (which dealt with inadequate public notice of the public hearing) marked as an exhibit. This letter was not made an exhibit, is filed under the wrong date (December 17, 2009) in Docket 09-4806. Another letter, faxed to the EQC on December 17 2009, is not included in Docket 09-4806)

I copied the EQC on my lettersto the Air Quality division because matters discussed in those letters, although addressed to the Air Quality Division, had relevance to matters relating to Docket -09-4806.

The cover letter to the EQC, dated December 16, 2009, which explained the two letters and related them to Land Quality issues, was not entered in Docket 09-4806..

Information contained in the cover letter was necessary to make sense out of these two letters from a LQD point of view. Breaking these letters down into different exhibits and losing the cover letter did nothing to facilitate understanding of the matters raised in these letters.

During my testimony at the December 21, 2009 public hearing, I was not permitted to refer to: matters contained in exhibits 3 - 10, which included three Notices of Violation issued to Croell Redi-Mix in 2007, 2008 and 2009 respectively. I was also not permitted to give testimony regarding the terms of the settlement agreement that Croell Redi-Mix reached with the LQD regarding its 2008 Notice of Violation relating to its LMO operations at the Rogers Pit. (The Croell Redi-Mix LMO at the Rogers Pit (1396 ET) is the LMO that the Croell Redi-Mix is proposing to absorb into its expanded operation at the Rogers Pit if and when this application is approved.)

I was told that past examples of bad faith on the part of Croell Redi-Mix

had no bearing on whether or not the current application would be approved, and that only bad faith examples contained within the current application would be heard. *transcript page 182 line 9 through page 183 line 18 transcript page 190 line 10 - 20*

This reasoning makes not sense to me. Bad Faith and matters which Bad Faith is attempting to conceal are two different things. Just because someone is caught out in concealing something and made to put whatever it is they were trying to conceal right, does not mean that bad faith did not occur.

The Environmental Quality act does not state that if it is discovered that a permittee is has misrepresented or concealed something, whatever that so something is has to be corrected. The Environmental Quality Act states the following:

Environmental Quality Act
Permit revocation

35-11-409 (a) The director shall revoke a mining permit if at any time he determines that the permit holder intentionally misstated or failed to provide any fact that would have resulted in the denial of a mining permit and which good faith compliance with the policies, purposes, and provisions of this act would have required him to provide

How the EQC broke down the copies of two letters (one with attachments) which I had not requested to be labelled as exhibits)

Letter # 1		<i>cover letter not in</i>
1)	explanatory cover letter addressed to EQC	<i>3 pages in Docket 09-4806</i>
2)	November 2, 2009 letter to David Finley AQD	Exhibit 3
Letter # 2		
3)	December 16 letter to David Finley AQD	Exhibit 4
4)	Dec 4 / 09 thank you letter for information received and request for information not sent	Exhibit 5
5)	Dec 11 / 09 follow-up letter when no response	Exhibit 6
6)	Dec 11 / 09 fax from AQD Gina Johnson (unsigned)	Exhibit 7
7)	LQD Notice of Violation to Croell Redi-Mix Dec 27 / 07	Exhibit 8
8)	LQD Notice of Violation to Croell Redi-Mix Nov 5 / 08 (Notice of Violation for LMO at Rogers Plt)	Exhibit 9
9)	LQD Settlement Agreement re Nov 5/08 NV above	Exhibit 10
10)	LQD NV to Croell Redi-Mix Aug 1009	last page of Exhibit 10 (no exhibit label)

I was not permitted to refer these matters during my testimony. I was instructed by Chairman Searle that matters relating to the LMO, including

issue of trespass, LQD Notices of Violation, anything not relating to the current application was irrelevant.

I do not believe that a history of bad faith dealing is irrelevant. I believe that the Environmental Quality Act takes the issue of bad faith very seriously.

Examples of bad faith

Among other things, these letters document a crushing operation at the Rogers Pit, permitted by the Air Quality Division of the DEQ, which seemed enormously out of scale with the operation of a ten acre LMO. The result of the increased crushing capacity was an extra 10 + acres of disturbed land (measured by GPS), lands which were not included in the 10 acre minesite. Croell Redi-Mix was essentially mining this land without a permit. without a permit).

When the LQD discovered the expanded area of disturbed land, it issued a Notice of Violation, which apparent led to the suggestion that things could be put right if Croell Redi-Mix applied for a regular mining permit. I think that the logic of this, if it can be called logic, is something like, if Croell Redi-Mix had had a regular mine permit at the time they exceeded the permit restrictions of the LMO permit under which they were operating, they would not have been in violation of the regular mine permit (which they did not have at the time the violation occurred. Kind of makes your head swim. Certainly looks like the DEQ was bending over backwards to help Croell Redi-Mix out of the mess they had literally dug themselves into.

Much of this did make it into the transcript, in spite of my not being permitted to touch on these subjects during my testimony.

Julie Ewing
John Burbridge
Brian Marchant
contents of Settlement Agreement

As exhibits, these letters and attachments were not placed in the record of Docket 09-4806 until the day of the hearing (December 21, 2009). I was not permitted to refer to them during my testimony.

I believe that not having placed exhibits in Docket 09-4806 on the day these were received by the EQC is a violation of the Rules of Practice and Procedure, Chapter II Section 2 (a) (see below).

No Exhibits added to Docket 09-4806 until day of day of public hearing None of the exhibits, mine, Judith Hamm's, and most importantly the LQD's exhibit (which was the Croell Redi-Mix Application), were posted on the web pages until December 21, 2009, the day the hearing took place.

I believe that this was not consistent with the Rules of Practice and Procedure, Chapter II, Section 2 (a) which states:

Chapter II Rules of Practice and Procedure Applicable to Hearings in Contested Cases

Section 2 Docket

(a) When a hearing is instituted, it shall be assigned a number and entered with the date of its filing on a separate page of a docket provided for such purpose. The Council shall establish a separate file for each such docketed case, in which shall be systematically placed all papers, pleadings, documents, transcripts, evidence and exhibits pertaining thereto, and all such shall have noted thereon the docket number assigned and the date of filing

Judith Hamm's Exhibits 1 & 2

I understand Judith Hamm's exhibits (Exhibit 1 and Exhibit 2) were sent to the EQC considerably ahead of the deadline of noon on December 14, 2009 to deliver exhibits to Council and other parties (as stated in the December 9, 2009 Amended Notice of Hearing and Order).

note The December 9, 2009 "Amended Notice of Hearing and Order has not been included in Docket 09-4806.

My (Judith Bush) exhibits 12-24

My exhibits (Exhibits 12 through 24) were faxed to the EQC by 3:45 pm Wyoming time (5:45 pm my time) on Friday, December 18, 2009. (At the December 16, 2009 pre-hearing conference, I had been given an extension to deliver my exhibits until the close of the business day on December 18, 2009, with which I complied.)

Also on December 18, 2009, I faxed copies of my exhibits 12 - 24 to Mr. Burbridge, attorney for the DEQ LQD and to Croell Redi-Mix, Inc.

Croell Redi-Mix Exhibits

Croell Redi-Mix faxed a copy of a list of intended exhibits (faxed to the EQC and copied to me on Dec 18, 2009 at 5:25 pm (Wyoming time). Croell Redi-Mix did not enter documents mentioned in letter as exhibits before or during the December 21, 2009 public hearing. This letter is not included in the record of Docket 09-4806 (copy attached)

DEQ LQD exhibit (Croell Redi-Mix Application)

I have no idea when the DEQ LQD delivered its exhibit (the Croell Redi-Mix application) to the EQC, because no exhibits regarding Docket 09-4806 bear the EQC "FILED" stamp and the date received, and all were held back from being entered in Docket 09-4806 until the day of the hearing, December 21, 2009.

The LQD exhibit (Exhibit 11) was the Croell Redi-Mix Application to the LQD to expand its operations at the Rogers Pit from its existing 10 acre LMO to a Regular mine permit with a designated mine site of 600 + acres. (the "Application")

The Application was declared complete and ready for final publication by the LQD by October 15, 2009 at the latest. This was the date that Croell Redi-Mix published the first of four final public notices regarding its

Application in the Sundance Times.

There is no reason why the DEQ LQD could not have delivered copies of its exhibit (The Croell Redi-Mix Application) to the opposing parties by December 14, 2009 as this division was instructed to do in the December 9, 2009 "Amended Notice of Hearing and Order" which was mailed to all parties on December 9, 2009.

**DEQ LQD
Pre-Hearing
Disclosures**

This document, along with the DEQ Waiver of Court Reporter noted immediately below was dated and mailed to me from the Office of the Attorney General on December 14, 2009. It stated (in addition to stating that Croell Redi-Mix had applied for a small mine permit on an unspecified date that the exhibit for the DEQ LQD would be the Croell Redi-Mix Application. I received this document on January 4, 2010.

**DEQ Waiver of
Court Reporter for
Dec 16, 2009
Pre-hearing
Conference**

On December 14, 2009, the DEQ waived the court reporter for the Dec 16, 2009 pre-hearing conference. This Waiver was mailed to me on Dec 14, 2009, and arrived on January 4, 2010. At the time that I participated in the Pre-Hearing conference (by telephone) I was under the impression that this conference was being recorded by a court reporter.

**Requests for copy
of Croell-Redi-Mix
Application prior
to Public Hearing
Ignored by EQC**

In two separate letters faxed to the EQC on December 14, 2009, I requested that the opposing parties be permitted to purchase copies of the Croell Redi-Mix Application at cost. My letter dated December 14, 2009 puts this request in the form of a motion. This motion was never considered, and this letter does not bear the EQC "FILED" stamp and date received, as is required by Rules of Practice and Procedure, Chapter II, Section 2 (a)

*Letter dated Dec 12, 2009, noted in Docket index as "Bush Request for Continuance";
Letter dated Dec 14, 2009 noted in Docket Index as "Bush Prehearing Memorandum"*

**Dec 16, 2009
Pre-Hearing
Conference**

I have no recollection of being informed at the pre-hearing conference that the exhibit of the LQD would be the Croell Redi-Mix Application. Neither does Mr. Turgeon.

The December 9, 2009 "Amended Notice of Hearing and Order" informed the parties that the pre-hearing conference would be recorded by a court reporter. The DEQ unilaterally waived the court reporter on December 14, 2009. I received the copy of the Waiver informing me of this on January 4, 2010. There is no record of the pre-hearing conference.

**Dec 17, 2009
Pre-Hearing
Conference Order**

The Pre-Hearing Conference Order also states that the LQD Exhibit for the Public Hearing is the Croell Redi-Mix Application. I did not receive the Pre-Hearing Order until January 5, 2009.

The Pre-Hearing Conference Order also failed to note the strong objection which I made at the hearing to the plan to proceed with the December 21,

2009 hearing date.

I repeated this objection in my letter to the EQC dated December 17, 2009 the day following the pre-hearing conference. This letter, faxed to the EQC on December 17, 2009, has not been entered in the docket, and I am therefore attaching a copy of this letter to this reply.

The Pre-Hearing Conference Order makes no mention of the extension I was given to deliver my exhibits to the EQC and parties by the close of the business day on Friday, December 18.

The Pre-Hearing Conference Order states that I designated my letters of December 16, 2009 as exhibits. I designated one letter as an exhibit. The EQC took the two letters (both wrong), broke these down into eight separate exhibits and deep-sixed the explanatory cover letter. I am attaching a copy of the cover letter which is missing from the record.

LQD failed to provide copies of its Exhibit to opposing parties prior to day of public hearing

The DEQ LQD failed to deliver its exhibit to the opposing parties by noon on December 14, 2009, as required by the December 9, 2009 "Amended Notice of Hearing and Order". The DEQ LQD did not provide me with a copy of the Application until moments before the public hearing was called to order on December 21, 2009. I was asked to return it after the hearing concluded.

CD of Croell Redi-Mix Application (Exhibit 11) couriered by LQD arrived too late

On December 9, 2009 I was told that LQD was couriering me a copy of the Croell Redi-Mix application on CD. This was not couriered until Thursday, December 17, 2009. The first attempt to deliver the CD was on Monday, December 21, 2009, when I was in Gillette Wyoming, taking part in the Public Hearing.

Dec16 / 09 letter which was to be an exhibit was not marked an exhibit

During the December 16, 2009 pre-hearing conference, I objected to the decision to proceed with the December 21, 2009 date to hold the public hearing in spite of the EQC having failed to meet the requirement of public notice for that hearing date as contained in Environmental Quality Act 35-11-406(k) in spite of plenty of time to have met its legal obligation to have done so.

It was suggested when I objected to the decision not to postpone the December 21, 2009 hearing until notice as required by Environmental Quality Act 35-11-406 (k) could be published, (I believe by Chairman Searle) that I submit this letter as an exhibit. I agreed to do so. However, this letter was not marked as an exhibit.

Furthermore, although it bears the EQC "FILED" stamp and shows that it was received on December 16, 2009 (I faxed this letter to the EQC at 7:14 am Wyoming time - 9:14 am my time on December 16, 2009), it is noted

in the index to Docket 09-4806 as my letter dated December 17, 2009. My letter, which put my objection to matters relating to inadequate public notice in writing on December 17, 2009 is missing from the record. I am therefore attaching a copy to this reply.

**EQC Amended
Notice of Hearing
and Order,
dated Dec 9, 2009**

.This document, informing the parties of the date of the December 21, 2009 Public Hearing and the date of the December 16, 2009 pre-hearing Conference, also instructs the parties to deliver copies of their exhibits to the other parties, as well as to the EQC, by noon on December 14, 2009.

I am attaching a copy of the December 9, 2009 "Amended Notice of Hearing and Order, which is missing from the Record.

Please note that this is the only version of the notice of hearing and order which I received from the EQC. To the extent that I have been able to check with other objecting parties, I do not believe that the December 8, 2009 "Notice of Hearing and Order was ever mailed out, at least not to the objecting parties. It notes two different dates for the pre-hearing conference. It does not have the mailing list of objecting parties attached. It is included in Docket 09-4806, implying that notice went out on December 8, to objecting parties. I do not believe that notice of the hearing date and other matters noted above was mailed out to objecting parties until the following day, when the "Amended Notice of Hearing and Order" dated December 9, 2009 was posted.

I only received copies of both of these notices because Don McKenzie at LQD had the courtesy to fax them to me. Had it not been for this, the hearing would have come and gone without my knowing it had been scheduled. The EQC "Amended Notice of Hearing and Order arrived at my home on the December 21, 2009, when I was in Gillette attending the public hearing.

What is the significance of exhibits being received into evidence if I was not permitted to bring up these exhibits and the circumstances which surrounded them at the hearing? To what extent is the information contained in my exhibits be factored into the decision of the EQC in this matter? My exhibits, although I was not allowed to refer to them during my testimony, nevertheless corroborates testimony given by other witnesses during the course of the December 21, 2009 public hearing.

Please note that there was no discovery carried out at the December 21, 2009 public hearing.

1) Croell filed an initial application for surface mining permit with the LQD of the DEQ on September 29, 2009 (Exhibit 11, Cover)

**New Croell Redi-Mix
Croell Application to LQD for
Surface Mine Permit ?**

I am unaware of any initial surface mining application filed by Redi-Mix with the LQD on September 29, 2009.

On September 29, 2009, I believe that a Notice of Violation issued by the LQD to Croell Redi-Mix on August 27, 2009 for a violation relating to a Croell Redi-Mix LMO operation (1212 ET) was still outstanding, and Croell Redi-Mix was not in a state of compliance with the Environmental Quality Act on that Date. This Notice of Violation is contained on the last page of Exhibit 10.

I do not know if it is permissible to file an initial application for a surface mining permit with the LQD at a time when the applicant has a Notice of Violation outstanding

If such an application has been filed with the LQD, a copy of the initial application should also be on file at the Crook County Clerk's Office in Sundance, Wyoming, in accordance with Environmental Quality Act 35-11-406 (d).

Environmental Quality Act statutes 35-11-406 (a) through 35-11-406 (m) describe chronologically the steps involved in the application process.

Proper procedure in this regard was not followed in the case of the Croell Redi-Mix application which was the subject of the December 21, 2009 public hearing (EQC Docket 09-4806)

September 29, 2009

A number of revisions / updates relating to the Croell Redi-Mix Application which is the subject of EQC Docket 09-4806, were received by the LQD on September 29, 2009. These included a number of tables of technical information which must have been reviewed and approved by LQD with whirlwind speed. Some of the information submitted on September 29, 2009 indicates that it was available but presumably never submitted to LQD in the past.

EQC Docket 09-4806

**Croell Redi-Mix Initial
Application for
Regular Mine Permit
(EQC Docket 09-4806)**

Mr. Mooney (LQD Sheridan) testified at the December 21, 2009 public hearing that LQD received the Croell Redi-Mix Application to expand its LMO operation at the Rogers pit to a regular mine on December 8, 2008. (transcript page 34 lines 12 - 16)

a regular mining permit is dated November 24, 2008, stamped received by LQD on December 11, 2008.

note

This original application for a regular mine permit proposed to use the original access road which crossed our land without our consent, the same road that the limerock mining and crushing LMO operation at the Rogers Pit had been using since start-up in 2007. Mr. Croell testified at the public hearing on December 21, 2009 that he had a survey and had been aware of the issue of trespass since December of 2007. *(transcript page 213 lines 20 - 21)*

Mr. Mooney testified at the December 21, 2009 public hearing that it was from looking at maps attached to this application that he could see that the crushing operations at the Rogers Pit did not have legal access to the Rifle Pit Road. *transcript Page 48 line 13 - 19*

Application for a Regular Mine Permit was a condition for settling Nov 5, 2008 Notice of violation at the Rogers Pit LMO operation

The November 5, 2008 Notice of Violation at the Rogers Pit was issued by the LQD after it discovered that the limerock mining and crushing operation at the Rogers Pit had expanded to disturb more than its 10 acre permitted mine site to cover 20.5 acres. (Exhibit 9)

Julie Ewing, Health and Safety Director for Croell Redi-Mix testified at the December 21, 2009 public hearing that this was the case. *(transcript page 233 Line 9 through page 234 Line 9)*

Brian Marchant, General Manager, Croell Redi-Mix, testified at the December 21, 2009 public hearing that only the topsoil was removed from the excess disturbed acres. *transcript page 239 - line 20 through page 240 line 6*

Settlement Agreement (Exhibit # 10) between Croell Redi-Mix and the LQD regarding the November 5, 2009 LQD Notice of Violation at the Rogers Pit states the following:

Settlement Agreement signed by Brian Marchant on December 14, 2008

8. Croell agrees to immediately halt all mining associated activities at LMO 1396 ET that will extend the area of disturbance beyond the approved ten acre limit. Croell will be allowed to remove currently blasted and stockpile products for further processing and sale. Croell will not expand the area of disturbance beyond the approved ten acre limit until the Regular Mine Permit submitted to the LQD on December 9, 2008 is approved *Exhibit 10*

**Application to LQD
Small Mine Permit**

Both the DEQ LQD Pre-Hearing Disclosures and annual reports from the Croell Redi-Mix LMO operation at the Rogers Pit (ET 1396) state that the application began as an application for a Small Mine Permit. There is no record of that previous application, although the time when the Soil survey of the mine-site was carried out (spring of 2008) points to an earlier application which I have not seen.

DEQ LQD Pre-Hearing Disclosure, Exhibit 18 and Exhibit 19

2) The LQD determined on October 9, 2009, that Croell's application was technically complete (transcript at 36)

Mr. Mooney stated that the technical review was completed on August 10, 2009. He stated that he declared it technically acceptable on October 9, 2009. What happened between August 10, 2009 and October 9, 2009 is unclear from the transcript (transcript, page 36)

3) Notice that the application was technically complete was published in the Sundance Times on October 15, 2009, October 22, 2009; October 29, 2009 and November 5, 2009. (EX 11, Proof of Publication)

There is nothing contained in this public notice stating that the application is technically complete.

This notice does state that a contested public hearing, if held, will be advertised once a week for two consecutive weeks immediately prior to the hearing, which was not done prior to the December 21, 2009 public hearing.

Nothing contained in this notice served to make the public aware of the magnitude of the expansion of this mining operation or specified the type of a mining permit being sought.

4) The deadline for filing objections to Croell's application was December 7, 2009 (transcript at 5, Ex 11, Proof of Publication)

Deadline published in Sundance Times for the notices noted above was December 5, 2009. This resulted in a deadline of December 25, 2009 for the adversarial public hearing to be held. Objecting Parties were informed that the public hearing had to take place prior to December 25, 2009. When the deadline for filing objections was extended, the deadline for holding the public hearing was not, or at least objectors were not informed of that possible alternative.

The deadline was moved to December 7, 2009 because December 5, 2009 fell on a Saturday. This moved the deadline for holding an adversarial public hearing to December 27, 2009. December 27, 2009 fell on a Sunday. The public hearing could have been held on Monday, December 28 and fallen within the timeframe stated in Environmental Quality Act 35-11-406 (k).

This would have provided extra time for the EQC to correct its failure to provide public notice for the public hearing also in accordance with Environmental Quality Act 35-11-406 (k).

Objecting parties were not informed of this option - which was legal and in accordance with the Environmental Quality Act in all respects, to hold this hearing a week later on Monday, December 28, 2009. I was repeatedly told that the hearing would have to be held before Christmas Day, December 25, 2009.

5) Croell's application was available for public viewing in the Crook County Clerk's Office and at the LQD's Sheridan and Cheyenne offices (transcript at 37-8)

Final Public Notice Oct 15, 2009, Oct 22, 2009, Oct 29, 2009 and Nov 4, 2009

The above refers to the four (final) public notices mentioned in 2) above. (published in October and early November of 2009, and is correct.

Initial Public Notice June 4, 2009 and June 11, 2009

Please note that the initial application for the regular mine permit application which was filed with the DEQ on December 8, 2008. should have also been filed at the Crook County Clerks Office in Sundance at the same time.

(Environmental Quality Act 35-11-406 (d).

As such, it should have been available for public inspection at the Crook County Clerk's Office when initial public notice appeared in the Sundance Times on June 4th and June 11th of 2009

According to Mr. Mooney's testimony at the public hearing, the preliminary application was not made available for public inspection at the Crook County Clerk's office when the initial public notice was published, nor was it required to be. This was incorrect, and in general Mr. Mooney's explanation of the initial public process is not consistent with the Environmental Quality Act, which in 35-11-406 (a) through (m) which describes chronologically the legal requirements applying to the LQD for a mining permit.

Mr. Mooney testified essentially that when the application is given its first public notice (in this case on June 4 and June 11 of 2009), public comments are not entertained. This was incorrect.

(transcript Mr. Mooney's testimony Pages 23 line 21 -> page 25 line 10)

Environmental Quality Act 35-11-406 (g)

35-11-406 (g) After the application is determined complete, the applicant shall publish a notice of the filing of the application once each week for two (2) consecutive weeks in a newspaper of general circulation in the locality of the proposed mining site.

Environmental Quality Act 35-11-406 (m) (x)

35-11-406 (m) 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:

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

It is possible that Mr. Mooney's description of the requirements for public notice after an application has been filed but before all of the requirements necessary for the LQD to recommend approval of the application, may reflect the policy of the DEQ and the LQD, in which case DEQ/LQD policy is not consistent with the statutes which dictate such policy.

Furthermore, Mr. Mooney states that the fill-in-the-blank form for initial public notice of an application has been designed by the EQC or their lawyers.

transcript pages 74 - 75

The June 4th and 11th, 2009 public notice fails to state that the application should be available at the Office of the County Clerk (Environmental Quality Act 35-11-406 (d)), and specifically states that the time for public comment will be later (i.e. is not now). This is misinformation on a grand scale. It is a public notice which actively discourages the public from responding to a public notice at a time when response to the public could make a difference.

In addition, please note that when the initial public notice of the Croell Redi-Mix Application to the LQD to expand its existing 10 acre operation at the Rogers Pit, an operation governed by a regular mining permit with a designated mine site of 600+ acres, was published in the Sundance Times on June 4, 2009 and June 11, 2009, this application still specified the old access road which crossed our property without our consent as the sole means of entrance and exit for the mining operation between the Rogers Pit and the Rifle Pit Road. Mr. Glenn Mooney (LQD/Sheridan) stated at the December 21, 2009 public hearing that he first became aware of this situation (which amounts to trespass - a violation of Wyoming State law) in December of 2008. Mr. Rogaczewski (Land Quality Division, Sheridan) testified that he inspected the Rogers Pit LMO in

- 6) **Paul Tomer, Richard & Judith Hamm and Les & Karen Turgeon filed their objections to Croell's application on November 18, 2009. Judith Bush filed her objection on December 6, 2009 (A.R., Objection letter and Bush objection letter)**

I tried to fax my objection letter to the DEQ LQD on Saturday, December 5, 2009, the deadline stated in the public notice. All DEQ fax machines I tried were not receiving. Because of this, I faxed my objection to the Governor's Office, on Saturday December 5, 2009. On Sunday, faxes were working at the the DEQ, and I faxed my objection to the LQD.

7) The objectors made the following objections:

- 1) A part of the proposed operation, reclamation plan is contrary to the law or policy of this state or the United States**
- 2) The proposed operation constitutes a public nuisance or endangers the public health and safety**
- 3) The application is incomplete.**

I believe that I made an excellent case of the application being incomplete in my letter dated January 14, 2010. The EQC voted to to seal this letter on January 15, 2010, because it arrived after the deadline for submitting evidence.

It was a little difficult for me to define areas of incompleteness in the application in a timely manner when I was not provided with a copy of the application in a timely manner.

In spite of written requests, the obligation of the LQD to provide a copy of the application (Exhibit 11) to the objecting parties, the EQC's responsibility to enter exhibits into Docket 09-4806 as they arrived and presumably to inform the objecting parties that all matters regarding Docket 09-4806 should be available to them on these web pages, I did not have a complete copy of the Application to work from in preparing for this contested public hearing.

My January 14, 2009 letter to the EQC should be unsealed and the substantial matters discussed in that letter should be assessed by professionals before this matter proceeds further. They are important.

Members of the EQC had access to the Application prior to the hearing.
(transcript page 267 - Mr. Cloverdale says he would like time opportunity to reread the permit)

Chairman Searle stated at the outset of the public hearing that the burden of proof lay on the objecting to show why the application should not be approved, and further stated that the presumption was that the DEQ had followed the statutes, rules and regulations governing the permit process.
(transcript, page 8)

Assuming that the above paragraph is correct, the least that those

involved in this hearing (the EQC, the DEQ, the Office of the Attorney General) could have done would have been to facilitate timely access to the application, to which objectors were legal entitled.

It is disgraceful that the EQC exercised its discretionary power to seal my January 14, 2010 in light of the circumstances described above.

4) The proposed mining operation will cause pollution of any waters in violation of the laws of this state or the federal government.

Never mind the state and federal laws, pollution of waters in this area is a valid concern voiced by Mr. Turgeon at the public hearing. It has not been properly addressed in the application.

5) The applicant had another permit or license issued hereunder revoked, or any bond posted to comply with the act forfeited (AR, Prehearing Conference Order at 2)

What I believe I said at the pre-hearing conference (and repeated at the public hearing) was that Croell Redi-Mix had demonstrated a contempt for the statutes, rules and regulations governing the DEQ LQD. At the December 21, 2009 hearing, I pointed out that this past history did not bode well for future compliance if and when the LMO permit is expanded into a regular mining permit. *(transcript page 184 lines 9 - 12)*

Mr. Croell testified at the public hearing that he had been in possession of a survey showing that he did not own land which he had previously thought he owned since December of 2007, and that he had been aware since that time that the Access road from the Rogers Pit crushing operation joined the Rifle Pit Road met the Rifle Pit Road since December of 2007, and that he had been aware since December of 2007 that the crushing operation at Croell Redi-Mix was crossing our land without our consent to reach the Rifle Pit Road .

transcript page 213 lines 1 - 23 and page 209 line 20 through page 210 line 1

Croell Redi-Mix was still keeping silent on the subject of lack of legal access to and from the Rogers Pit when, In December of 2008, the Croell Redi-Mix application to expand its LMO operation at the Rogers Pit to a Regular Mining operation was filed with the DEQ. At that time, Croell Redi-Mix proposed to continue using the same access road, which Mr. Croell was aware was crossed our land without our consent.

This was when Mr. Mooney testified that he first noticed that the LMO did not have legal access to the Rifle Pit Road *transcript page 48 Lines 13 - 19*

At this time, according to his own testimony, he had known for a year that the access to the Rogers Pit was illegal. *transcript page 213 lines 1 - 23*

The Environmental Quality Act states:

Permit revocation 35-11-409 (a)

The director shall revoke a mining permit if at any time he determines that the permit holder intentionally misstated or failed to provide any fact that would have resulted in the denial of a mining permit and which good faith compliance with the policies, purposes, and provisions of this act would have required him to provide

After becoming aware in December of 2007 that legal access between the Rogers Pit and the Rifle Pit Road was not in place, Croell Redi-Mix (or Mr. Croell, both the owner of lands operating as Rogers Pit and President of Croell Redi-Mix Inc.) said nothing, continued the mining operations at Rogers Pit, and even applied of a regular mining permit, proposing to continue to use the original access road for the expanded operation, in spite of being aware that this access to the site was not legal.

That Croell Redi-Mix LMO permit at the Rogers Pit (1396 ET) is still in effect, and should be revoked. Mr. Croell is both the owner of the lands operating as Rogers Pit and the President of Croell Redi-Mix, Inc, the Permittee at the Rogers Pit. After Mr. Croell's testimony at the December 21, 2009 public hearing, stating that he was in possession of a survey (which he did not share with the LQD) since December of 2007 and that as a result of that survey was aware of lack of legal access since December of 2007, the DEQ LQD is legally obligated to revoke this LMO permit (1396 ET)

note The DEQ unilaterally waived the court reporter for the pre-hearing conference which took place at 2:30 pm on December 16, 2009 and as a result there is no transcript of this conference. I received notification of this waiver in the mail on January 4, 2010. At the time that the pre-hearing conference took place, I was under the misimpression that the hearing was being recorded by a court reporter, as had been stated in the December 9, 2009 "Amended Notice of Hearing and Order". The Prehearing Conference Order does not coincide well with my memory of that conference. If AR stands for Audio Recording, would you please let me know how I can receive a recording of the Pre-hearing Conference .

missing from the reasons presented, as I recall them:

addition

- 6) DEQ LQD has failed to enforce the statutes, rules and regulations which govern it as these apply to the Croell Red-Mix LMO at the Rogers Pit (ET 1396)**

Legal access from a mining operation to a public road is a requirement for approval of any type of mining permit. The LQD is not permitted to issue a mining permit without the applicant demonstrating that the access from the mine site to the first public road is legal.

Not having legal access to a public road and driving across someone else's property to reach a public road without the consent of the landowner is trespassing. The last I heard, trespassing was still illegal in Wyoming.

Environmental Quality Act 35-11-406 (m)

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.

Mr. Mooney testified that he (and by extension the LQD) first became aware that legal access to and from the Rogers Pit was not in place when the first version of the Croell Redi-Mix application to expand the Croell Redi-Mix LMO operations at the Rogers Pit (1396 ET) to a Regular Mining operation reached his desk in December of 2008. (transcript page 48 Lines 13 - 19; also transcript page 55 Lines lines 2 - 16)

Mr. Mooney became aware of this by looking at a map submitted with the application in Decemer of 2008. Croell Redi Mix did not inform him that it had discovered that it lacked legal access to the mine site, as good faith dealing required. Croell Redi-Mix had not given the LQD a copy of the survey which had been completed a year earlier. Mr. Mooney testified that at the time that he realized that legal access to and from the Rogers Pit to the Rifle Pit Road was not in place, he had not seen a copy of a survey. transcript page 76 lines 15 - 19

Disregarding for the moment the element of bad faith dealing on the part of Croell Redi-Mix, once the LQD became aware that the Croell Redi-Mix LMO limerock mining and crushing operation at the Rogers Pit, 1396 ET, was crossing our land without our consent to access the Rifle Pit Road, the LQD was legally obligated to shut the operation down. Failing to do so is the equivalent of aiding and abetting trespass. The LQD allowed this situation to continue, and it continued for a year after the LQC had become aware of the situation. (transcript page138 line 21 through page139 line 9)

Croell Redi-Mix's bad faith dealing the LQD did not stop prior to the new application being filed with the LQD in December of 2008..

In August of 2009, a revised mine plan for the Croell Redi-Mix Application to expand the Rogers Pit LMO to a regular mine operation was filed with the LQD. It stated that there was a new access road for the mining operation serving the Rogers Pit, that it had been completed and was in use. It furthe stated that the old access road (which at this point both Croell Redi-Mix and the LQD were aware passed through our property without our consent) had been closed off. This was not correct at the time it was written. The new road was barely begun, and the old road passing through our land was servingl aspects of the mining operations at the Rogers Pit.

The LQD accepted that the new road was complete without checking.
(transcript page 49 lines 4 -12.)

Stating that the road was complete when it was not served Croell Redi-Mix's interests because the continued use of the old access road and the trespass it entailed was cause to shut down operations at the Rogers Pit.

It was also in the interest of LQD to accept that the new access road was complete and operational even if it was not, since all of the time since December of 2008 (when the LQD learned that Croell Redi-Mix did not have legal access to the Rifle Pit Road and was in fact trespassing) the LQD, by virtue of not having shut down operations at the Rogers Pit, was in violation of the statutes and regulations which govern its actions, and was , in fact, sanctioning trespass.

8) Notice of the time and place of the hearing in this proceeding was sent to the parties on December 8, 2009, with an amended notice of hearing sent on December 9, 2009 (transcript at 5)

December 8, 2009 "Notice of Hearing and Order"

I did not receive a copy of the December 8, 2009 Notice of Hearing and Order in the mail from the EQC.

This document was amended for two reasons.

- 1) It gave two conflicting dates for the prehearing conference
- 2) It did not contain the list of Objectors

note: I have checked with two of the other objecting parties, and they not receive a copy of the December 8 "Notice of Hearing and Order" either.

I believe that only the December 9, 2009 "Amended notice of hearing and Order" was mailed to the objecting parties by the EQC

December 9, 2009 Amended Notice of Hearing and Order

I did receive a copy of the December 9, 2009 Amended Notice of Hearing and Order. It was delivered on December 21, 2009, the day that the public hearing took place in Gillette, Wyoming

If Mr. McKenzie, Adm DEQ had not had the courtesy to fax me copies of both of this document (and a copy of the December 8th document, the hearing would have been over before I knew it had been scheduled.)

Once again, I do not believe that notice was mailed to objecting parties informing them of the date of both the December 16, 2009 pre-hearing conference and the December 21, 2009 public hearing until December 9, 2009.

The last time I checked, the December 9, 2009 "Amended Notice and Order" was not included in Docket 09-4806, in violation of Rules of Practice and Procedure Chapter II, Section 2 (a)

- 9) **Notice of the hearing was published in the Sundance Times on December 17, 2009 and on December 19 and 20, 2009, in the Casper Star-Tribune, pursuant to Wyo. Stat Ann. 35-11-406 K (A.R., Affidavit of Publication, Sundance & Affidavit of Publication, Casper Star).**

The public notice provided for the public hearing which took place in Gillette on December 21, 2009 was not given public notice in accordance with the requirements set out in Environmental Quality Act 35-11-406 (k) which states that public notice of the public hearing must be published once weekly during the during the two weeks immediately preceding the public hearing

Notice was published 5 days before the hearing, two days before the public hearing and the day before the public hearing.

The notice published five days before the public hearing (on December 17, 2009 in the Sundance Times) was published in the correct newspaper, but gave the wrong date for the hearing, stating that it would take place on December 23, 2009 instead of on December 21, 2009.

The two notices published in the Casper Star-Tribune were published in the weekend editions immediately preceding the Monday hearing. People living in and around Sundance, Wyoming, do not look for public notices regarding mining applications sited in Crook County in the Casper Star-Tribune, assuming that they even read this newspaper.

Negligence in arranging timely public notice of the December 21, 2009 public hearing to appear in two consecutive editions of the Sundance Times (which publishes once weekly and is the publication where residents of Crook County do look for notices regarding local mining applications) was the reason this notice was published in the Casper-Star Tribune.

The EQC and the LQD both knew by November 19th, 2009, when the EQC Docket 09-4806 was opened in this matter with a letter containing twenty - two signatures was that a public hearing would need to be scheduled. There was no reason why public notice for this hearing could not have been published as required by Environmental Quality Act 35-11-406 (k).

Because the deadline for submitting comments to the LQD was extended from the December 5, 2009 date noted in the public notice regarding this Croell Redi-Mix Application (published from mid-October to early December of 2009), the hearing could have legally been held on Monday, December 28, 2009, and timely notice of the public hearing could have been provided in spite of the EQC's initial negligence in this matter. Objecting parties were consistently told that the hearing had to take place before December 25, 2009, which was not the case.

I personally wrote numerous letters to the EQC objecting to this matter, one of which is missing from the record, and another of which has been misfiled in Docket 09-4806.

Docket 09-4806 shows that affidavits regarding public notice of the December 21, 2009 public hearing were placed in this docket on December 28, 2009. The affidavits were placed in the Docket until sometime after January 20, 2010. I believe they were added to the Docket on February 11 2010. They do not bear the EQC "FILED" stamp and date to indicate when they were received. I believe that all of this is contrary to Rules of Practice and Procedures Chapter II Section 2 (a).

Both Mr. Turgeon and I have written to the Attorney General requesting a ruling regarding the lack of timely and correct public notice of the December 21, 2009 public hearing required by Environmental Quality Act 35-11- 406 (k).

**10) The Objectors asserted that Croell's proposed mining permit would create dust that could pose a potential risk to humans and livestock
(Tr. at 137, 194)**

Our ranch manager, Dewey Turbiville, testified that Bush Ranches cattle graze on land next to the existing (LMO) pit in the spring and summer, that cattle winter on that ground, that dust blows in every direction, that the water in the tank is coated with dust, that snow is coated with dust, that dust gets in the hay and settles thickly in the grass where the cattle graze, and that dust pneumonia could result from this. (This level of dust is from the current LMO operation).

transcript page 137 pages 141 - 144

Judith Hamm submitted evidence documenting the hazards to human health cause by dust pollution, which carries the EPA seal of approval.

transcript pages 194 - 197

(Mr. Turbiville checks our cattle tank daily in the summer, and feeds cattle through the winter, so he would be breathing the dust from this operator on a daily basis for most of the year as well)

- 11) **The Objectors asserted that truck traffic from Croell's proposed mining operation would create excessive dust and hazardous driving conditions on Rifle Pit Road. (Transcript at 145)**

The discussion of the safety of the access road, and the source of the dust are all topics that are considered at considerable length in the transcript (*transcript page 144 line 22 through page 158 line 4*)

Dust was not cited as a primary safety hazard on these pages, although I'm sure it could be a contributing factor. Nevertheless, dust was primarily cited as a health hazard and a nuisance, both of which it is in spades.

The safety hazards relating to the new access road include :

- * the steepness of the new access road as it descends to intersect with the Rifle Pit Road *transcript page 146 line 20 though page 147 line 6*
- * loaded gravel trucks pulling out onto the Rifle Pit Road without stopping (and depending on the weather not being able to stop. *transcript page 146 line 20 though page 147 line 6 ; transcript page*
- * The lack of visibility afforded both to trucks exiting the site of traffic on the Rifle Pit Road and cars driving along the Rifle Pit Road of the intersection with the access Road and loaded trucks driving down the access road to turn onto the Rifle Pit Road *transcript page 146 line 23 - 25*
- * Blind spot where the new access road meets the Rifle Pit Road - access road meets Rifle Pit Road on a curve in the Rifle Pit Road *transcript page 150 line 10 through 150 line 18*
- * **Exhibit 25** - photograph taken by Mrs Margaret Turbiville taken from taken from inside her car facing west on Rifle Pit Road - illustrating virtually no visibility afforded to drivers heading west along the Rifle Pit Road of the intersection of the new access road with the Rifle Pit Road.

This exhibit was not noted in Docket 09-4806 at the time when the Environmental Quality Council met to vote on this matter I can only assume that Council failed to consider this exhibit prior to voting on this matter.

11) continued

The record shows that Rifle Pit Road is a state road up to the entrance of Croell's proposed mining operation and that it is a county road thereafter (Transcript at 151)

This is not correct.

Wyoming Department of Transport has jurisdiction along the Rifle Pit Road extending in both directions from the intersection of the new access road with the Rifle Pit Road, (far enough in either direction of that intersection for the safety issues raised to exist along the stretch of the Rifle Pit Road under the jurisdiction of the Wyoming Department of Transport.)

Mrs Turbiville testified that the state has jurisdiction over the first 1/2 mile of the Rifle Pit Road. *transcript page 151 lines 11 - 14*

Mr. Croell testified that from the time his trucks turn onto the Rifle Pit Road until it intersects with Highway 14 is 586 feet. That 586 feet of the Rifle Pit Road (which travels west under Interstate 90 before intersecting Highway 14, is all under WDOT jurisdiction. *transcript page 209 1 - 4*

Chairman Searle stated that the EQC does have the ability to regulate the access road be before it intersects with the Rifle Pit Road - (which would include the issue of the safety as it relates to the steepness of the road noted above *transcript page 152 lines 2 - 7*

Margaret Turbiville's testimony states that WDOT has jurisdiction over the Rifle Pit Road (for 1/2 mile) until the cattle gate crossing the Rifle Pit Road - this road is considerably further to the east.

Mr Croell testified that he hires out the trucking and is therefore not responsible for the drivers who haul out of the Rogers Pit. *transcript page 157 line 20 - 22*

11 continued**Dual Purpose Road - Permit for New Access Road**

When Questions came up at the hearing regarding whether it was necessary for the LQD to ascertain if the applicant had actually obtained all necessary permits, or whether it was sufficient for the applicant to state had he either had obtained necessary permits, or that it was his intent to do so, counsel for the LQD asked Mr. Mooney whether an applicant had to have a permit before an application would be considered, which was not the right question to ask.

The right question to ask is whether the applicant has to have a permit in place before the LQD will recommend the approval of a permit and tell the applicant to go ahead and give public notice of the application.

Mr. Mooney's answer was that the LQD did not check. *(transcript page 29 lines 8 - page 30 line 21)*

However, the Environmental Quality Act Statute stated below indicates that maybe the LQD should be checking.

35-11-406 (m)

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.

"Demonstrates" means to show or to prove, not just to state, swear under oath or promise.

The new access road has been described as dual purpose, serving as access for Mr. Croell's ranching operations and hayfields, as well as the sole entry and exit from the expanded mining operation.

These are two very different purposes, one posing a relatively small safety risk, the other posing considerably greater risk. If it is in fact the responsibility of the LQD to make sure that a permit (in this case a Wyoming Department of Transportation permit) permitting this road to serve as access to and from the Rogers Pit has been granted, the LQD should be requiring the applicant to demonstrate that a permit allowing such a use exists.

Also, I am assuming that from the statute quoted above, that this should have been verified before the LQD recommended approval of this application.

(Likewise, Mr. Croell stated he would be using the water from his new well to be watering his stock and that he assumed that he could use his well water for any purpose. This may be correct. However, water rights for wells used solely for stock purposes generally limit those water rights regardless of the flow capacity of the well. This should also be checked.

Although Mr Croell did estimate at the public hearing how much water he thought would be required for dust abatement, I could not find any such statement in the application.

- 12) Croell is not currently in violation of the Act and the evidence presented by the Objectors did not show a history of violations by Croell that would allow denial of a mining permit under the application being considered in this proceeding.**

(transcript 132-134)

Mr. Rogaczewski's testimony noted above was somewhat deceptive in that he stated that he was aware of only one Notice of Violation, when what he meant was that he was aware of only one Notice of Violation issued to Croell Redi-Mix for violations at its Rogers Pit LMO (ET 1396) (This violation was a whopper).

However, if this statement means that Croell Redi-Mix does not currently have any DEQ LQD Notices of Violation outstanding, as far as I know this is correct.

Croell Redi-Mix has had three Notices of Violation issued to it in as many years. The most recent of the three Notices of Violation which have been issued to Croell Redi-Mix by the LQD - page 3 of Exhibit 10, was issued in August of 2009.

I believe that the Croell Redi-Mix LMO operation at the Rogers Pit is currently in violation of the rules and regulations which govern an LMO permitted mining operation. The cardinal definition of an LMO is that the operation disturbs no more than ten acres of land. Croell Redi-Mix disturbed more than double the number of acres designated as its minesite. *(The November 5, 2008 Notice of Violation issued by the Land Quality Division for violations which occurred at the Rogers Pit is Exhibit 9.)*

Julie Ewing testified at the December 21, 2009 public hearing that Croell Redi-Mix ceased operations as a result of the settlement agreement. *(see discussion of this and related matters in Transcript page 232 line 11 through 234 line 18.)*

The settlement agreement states that Croell Redi-Mix must agree not to disturb more land than its permitted 10 acres, but that it can continue to crush and sell limerock already blasted. Croell Redi-Mix is still hauling limerock off of the site today.

The only way for Croell Redi-Mix to become compliant with the rules and regulations which still govern its LMO at the Rogers Pit today (these regulations are a part of the LQD Noncoal Rules and Regulations) would be to reclaim all land in excess of ten acres. If the existing ten acre mine site is mined out, the only way to remain compliant with the Rules and Regulations governing an LMO is to reclaim the original ten acre mine site as well. Croell Redi-Mix is doing neither, and as a result I do not believe that it is compliant with the rules and regulations which govern that operation.

The permit for the Croell Redi-Mix operation at the Rogers Pit has not been revoked. The Croell Redi-Mix minesite at the Rogers Pit LMO has considerably in excess 10 acres of ground disturbed. It is irrelevant that at the present time Croell Redi-Mix is not making the situation worse by disturbing more land. Croell Redi-Mix is not in compliance with the terms of its LMO Permit.

The LQD is aware of this situation. However, it did not insist that Croell Redi Mix put its LMO at the Rogers Pit back into a state of compliance by reclaiming the land which it should not have disturbed in the first place. It was the responsibility of the LQD to have demanded this back in November of 2008 when it discovered that this LMO had expanded to more than twice its permitted size.

It seems to me that doubling the number of acres you are permitted to mine shows contempt for the rules and regulations of the Land Quality Division.

The LQD is equally culpable because it has failed to carry out its responsibility to oversee this LMO and to bring it back into a state of compliance with the rules and regulations which currently govern this LMO.

Instead, *(-see transcript page 232 line 11 through 234 line 18.)* LQD told Croell Redi Mix to apply for a regular mine permit which would - retroactively - bring it back into a state of compliance with the Environmental Quality Act. This is ridiculous.. The LQD saw that Croell had violated his LMO bigtime. It essentially said, Oh, this LMO isn't big enough for you. We'll get you a bigger permit. Don't worry about trying to fix this. We'll cover it up.

For as long as a permittee is operating under one set of rules (in this case the rules governing and LMO) the LQD is responsible for enforcing those rules.

My suspicion is that your average rancher operating an LMO to keep his ranching operation afloat would see his permit yanked away pretty fast if he doubled his acreage without telling anyone.

If Croell Redi-Mix had been operating under a small mine permit, it would still have been in violation of the rules and regulations governing that type of permit.

As long as the Croell Redi-Mix operations at the Rogers Pit retained its LMO permit and LQD did not insist on reclamation of the disturbed land in excess of the permitted mine site of that permit, not only was the Croell Redi-Mix in violation of the terms governing the operation of its LMO, the LQD was also failing in its responsibility to regulate the Croell Redi-Mix LMO in accordance with the regulations governing an LMO operation.

LQD was for whatever reason reluctant to enforce its rules and regulations at the Rogers Pit, but this left it essentially as a partner in crime with Croell Redi-Mix. So it proposed that Croell Redi-Mix apply for a large enough type of mining permit that the company had not already exceeded the limit of the permit before it acquired the permit.

It is the failure of the LQD to carry out its own responsibilities to regulate Mining operations in accordance with the rules and regulations governing the type of permit a permittee holds, which has put our ranch in the position it is in today.

The topographic map of our 7000 + acre ranch (Exhibit 26) is not noted in the

record of Docket 09-4806. It is an 8 1/2" X 11" map which is easily scannable into the record by anyone with the equipment to do so. It shows the lay of the land, which is rugged and scenic. It shows the long border that our ranch will share with the mining operation. I pointed out in my testimony that the area adjacent to the minesite is where we winter our cattle. We also graze in summer. We have haygrounds near the minesite. Our well is piped up to the lands where the cattle graze in summer and winter over. The view overlooking Red Canyon from on top of the William's Divide makes the cover of the Sundance Times about once a year. Pretty soon that view will afford a good look at the expanded minesite.

Our ranch is largely stream watered. Mr. Turgeon testified correctly, as I have learned, that the purity of our water and even the flow of our springs are threatened by this mining project. It is a disaster for our ranch.

I can understand if not sympathize with a mine permittee wanting to make money with little regard for the beauty of the lands in Crook County. What I cannot fathom is the LQD failing to follow its enforce its own rules and regulations to contain a permittee who has operated well outside of the rules which governed his LMO permit.

Given the difficulty of accessing parts of our ranch in spring and winter, and given that much of the ranch which we can access in winter gives the cattle access to the pine forests which cover much of our land (if the cattle eat the pine needles, it causes them to abort their calves) and given much of our water is comes from springs emerging in forested areas, we are trying to work out the feasibility of continuing our cattle operation if the expanded operation gets up and running.

I pointed out in my testimony, the miles of scenic ridgetop above Red Canyon will not be suitable for homes.

The elk are back in huge numbers as I write because the Croell Redi-Mix operation at the Rogers Pit at present consists of loading and trucking and not much else and is keeping a low profile until its permit is approved.

Nevertheless, the highest, most ecologically friendly and sustainable uses of our ranch will be no longer possible I believe that this deserves to be looked at. The LQD does have some leeway in determining if land is being put to its best use both environmentally and economically.

The irregularities surrounding the operations of Croell Redi-Mix at the Rogers Pit would have been more than sufficient to cause the LQD to shut down the operation of any rancher keeping afloat with the help of a 10 acre LMO.

The LQD allowed Croell Redi-Mix to continue its crushing operations and sale of aggregate after it became aware that the operation had violated its permit conditions by (illegally) doubling the size of its mines site in November of 2008 (see settlement Agreement Exhibit 10 page 3) and continued to let the LMO operate after it became aware that legal access to the mine site did not exist in December

of 2008 (transcript page 48 Lines 13 - 19 and page 55 Lines lines 2 - 16)

The LQD even approved an LMO permit for another company (Frost Rock Products) to set up an adjacent LMO at the Rogers Pit in February of 2009 using access which it knew to be illegal. (Exhibit 17) LQD approved this LMO mining permit knowing that it was in violation of state law prohibiting trespassing, which is a clear violation of Environmental Quality Act 35-11-406(m).

Bad faith on the part of Croell Redi-Mix plays a big role. Some Council members did their utmost to downplay this issue, but the fact is that the Environmental Quality Act takes dealing in bad faith very seriously - and no wonder - they don't even inspect a minesite before recommending the approval of an application. It's all done on paper.

For a starter. It is a little difficult to believe that an LMO could expand to twice its permitted size (Exhibit 9) without somebody noticing. Croell Redi-Mix did not disclose to the LQD that they had overshot their minesite. Glenn Mooney (LQD Sheridan) discovered it in November of 2008. (Exhibit 9).

At the public hearing the President of Croell Redi-Mix testified under oath that he had possessed a survey since December of 2007, and had been aware since that time that the existing access road passed across Bush Ranches lands to which surface owner consent had not been given. (transcript page 209 line 20 through 210 and page 213 lines 1 - 23). Croell Redi-Mix did not inform the LQD of this fact at the time.

(At that point, I was cut off in my cross-examination by the Chairman, who suggested that the two of us should discuss it over a beer.)

In December 2007 Roger Croell (president of Croell Redi-Mix) first learned in December of 2007 that the access road used by the LMO mining operation (for all purposes related to the limerock mining and crushing and operation) were crossing our land without our consent. (transcript page 213 lines 1 - 23 and page 209 line 20 through 210 line 1)

Croell Redi-Mix should have informed the LQD in December of 2007 that the company did not have legal access to and from the mine site. This was a failure to act in good faith (in violation of 35-11-409 (a)), but the LQD was not aware of either the issue of trespass or the issue of dealing in bad faith in December of 2007.

Environmental Quality Act Permit revocation

35-11-409 (a)

The director shall revoke a mining permit if at any time he determines that the permit holder intentionally misstated or failed to provide any fact that would have resulted in the denial of a mining permit and which good faith compliance with the policies, purposes, and provisions of this act would have required him to provide

(This is one statute which does apply retroactively. Failure to deal in good faith with the LQD does not go away simply because a mining operation is found and made to correct whatever the situation was which was being concealed through lack of good faith.

Land Quality. had they realized that Croell Red--Mix was concealing information regarding illegal access to the site, would have been required by the statute quote above to revoke the LMO permit at the Rogers Pit. Revocation of a permit is considered cause but apparently not a necessary cause) to refuse to approve a mining permit application

in December 2008

The LQD discovered (Croell Redi-Mix did not inform the DEQ) that the Rogers Pit did not have legal access to the Rifle Pit Road. *(transcript page 48 Lines 13 - 19 and page 55 Lines lines 2 - 16)*

The LQD was unaware of bad faith at this time, however, it was legally obligated to shut down operations at the Rogers Pit at this time because it was now aware that trespass was occurring. (Environmental Quality act 35-11-406 (m) - essentially a mining permit cannot be granted (and by implication a mining permit cannot be permitted to remain in effect) unless the operation is compliant with all federal and state laws)

The LQD did not shut down the Croell Redi-Mix LMO operating at the Rogers Pit, in spite of not knowing that trespassing was taking place..

Moreover, LQD approved a permit for another LMO (Frost Rock Products) to operate in the same pit and to use the same illegal access it now knew that Croell Redi-Mix LMO was using. *(confirmation that the trespass noted by Glenn Mooney in December related to the same access road as the access road being used by the Croell Redi-Mix operation at the Rogers Pit at that time Mooney page 48 Lines 13 - 19)*

The granting of a second LMO to operate in the Rogers Pit at a time when LQD was aware that legal access to the mine site was not in place (i.e.trespass) is an absolutely clear failure of the LQD to adhere to the conditions outlined in the Environmental Quality Act when determining when to grant a mine permit. Environmental Quality Act (35-11-406 (m) (since a state law prohibiting trespass was being violated).

Also In December of 2008, Croell Redi-Mix applies for a regular mine permit at the Rogers Pit. The Original Mine Plan for this regular mine permit designated the original access road as the access road for the expanded mine site at a time when Croell Redi-Mix was aware that legal access from the Rifle Pit Road to the mine site along this access road was not in place. This was another example of bad faith. on the part of Croell Reid-Mix. *Environmental Quality Act 35-11-40 (a)*. (The LQD was not aware of bad faith at this time with regard to trespass at this time)

Glenn Mooney spots the trespass at this time i- transcript page 48 Lines 13 - 19 and page 55 Lines lines 2 - 16

In December 2009 Roger Croell (President of Croell Redi-Mix) testified under oath at the December 21, 2009 public hearing that in December of 2007 he possessed a survey and was aware that the access road which the Rogers Pit limerock operation at the Rogers Pit was using to access the Rifle Pit Road passed through land which Mr. Croell did not own and for which surface owner consent had not been given. This statement is in the transcript of the hearing (page 213 lines 1 - 23 and page 209 line 20 through 210 line 1).

In December of 2008, the LQD should have shut down the operation at the Rogers Pit because it had become aware that legal access from the Pit to the Rifle Pit Road did not exist in accordance with Environmental Quality Act 35-11-406(m).

On December 21 of 2009, the LQD became aware that Croell Redi -Mix had knowingly trespassed from December of 2007 until its new road was completed in December of 2009. (In addition, Croell Redi-Mix falsely stated in the mine site plan of its current application which is dated August 2009 that the new access road (which does not cross our land) was complete. The LQD understood that this implied that the situation of trespass had been resolved. However, the road was not completed until December of 2009. The LQD did not visit the mine site to see if the road was complete. They took it on faith that it was.)

This is a complicated situation where both Croell Redi-Mix and the LQD are culpable. Croell Redi-Mix has been involved in the following series of bad faith dealings with the LQD.

- 1) failing to inform the LQD that it was operating two LMOs (one in its own name and one in the name of the company from which it had taken over the operation of the pit *Exhibit 8*)
- 2) failing to inform the LQD that it had extended its mine site to twice the permitted acreage *Exhibit 9*
- 3) failing to inform the LQD that it had a new operator (Bruening Rock) at the Rogers pit (with a greatly increased crushing capacity *Exhibit 9, Exhibit 14, Exhibit 15*)

note A letter faxed to the EQC / Mr Ruby regarding this matter has not been placed in Docket 09-4806

- 4) failing to inform the LQD that it was crossing land without owner consent to reach the Rifle Pit Road

Not only is Croell Redi-Mix not in a state of compliance with the LQD Noncoal Rules and Regulations which govern LMO's - The LQD is in violation of its rules and regulations in not enforcing the terms governing LMO's as they currently apply to the Croell Redi-Mix operations at the Rogers Pit.

The LQD has essentially told Croell Redi-Mix, you have violated the conditions

governing your mining permit. Your mining permit must not be big enough for you. Here, we'll give you a bigger one. But lay low until you get your permit, because legally, we should have shut you down a year ago.

The LQD to is required to regulate the operations of mining operations according to the type of permit issued to any given operation. In the case of the Croell Redi-Mix operation at the Rogers Pit, it has failed to do so.

The Settlement Agreement for the November 5, 2008 Notice of Violation issued to Croell Redi-Mix by the LQD is complex. The position of the LQD is that the terms of this Settlement agreement has put Croell Redi-Mix in compliance with the Environmental Quality Act and LQD Rules and Regulations.

I cannot see this as being the case. It is at best very tricky maneuvering, which does not bode well for how companies will behave in the future.

In the November 5, 2009 Notice of Violation from the LQD (*Exhibit 9*), Croell Redi-Mix is cited for three separate violations. The company disturbed double the number of acres they were permitted to disturb under the terms of their LMO permit, failed to report to LQD that a new crushing operator had been brought in (*Exhibits 14 and 15*) and failed to protect topsoil.

Under the terms of the Settlement Agreement (*Exhibit 10 pages 1 and 2*) Croell Redi-Mix paid a fine, increased their bond to cover 7 additional acres of disturbance (it is unclear how the other 3.1 acres of disturbance were dealt with.), agreed to apply for a Regular Mine Permit, and agreed to disturb no more ground than their original 10 acre designated permit area.

Brian Marchant, Production Manager for Croell Redi-Mix testified that a foreman who didn't know any better stripped 7 acres of topsoil, and that this was the extent of the violation. page 239-line 20 - page 240 line 6.

This does not explain the condition in the Settlement Agreement (*Exhibit 10*) allowing Croell Redi-Mix to remove already blasted limerock for processing and sale, since there would have been no need to include such a condition had the already blasted limerock been on the original 10 acre minesite.

Brian Marchant's (General Manager for Croell Redi-Mix) testimony regarding the number of blasts per year and the amount of limerock blasted each time added up to a greatly increased yearly production than reported in the annual reports. transcript page 245 line 6 through page 246 line 7, transcript page 248 line 22 through page 249 line 9, and Exhibits 18 and 19

Although not mentioned in the Settlement Agreement, another LMO Permit (1461 ET) was granted to Frost Rock Products, Inc to set up a second LMO operation side by side with Croell Redi-Mix in the same pit.

Testimony from Julie Ewing (Health and Safety Director for Croell Redi-Mix) when questioned by Mr. Croell implies a connection between Frost Rock Products presence in the Rogers Pit and a return to compliance for Croell Redi-

to BURBRIDGE

from JUDITH BUSH

CONTINUED

- 13) The Objectors asserted that Croell was acting in bad faith and was attempting to mislead the LQD by stating in its application that a new access road to the proposed mining site had been completed when, in fact, it had not. The record shows that Croell experienced unexpected delays in the permitting for the construction of the access road, but that Croell had completed the access road by the time of the hearing in this proceeding. Croell's representation regarding the access road in its application does not constitute an intentional misrepresentation to the LQD allowing denial of a mining permit to Croell. (transcript at 190-92, 243-44)

This is the only detailed and specific comment I have found in your entire document, and it would be to justify Croell Redi-Mix's most recent example in bad faith / cut corners dealing.

16-3-110

Wyoming Administrative Procedures Act
Contested cases; final decision; contents;

A final decision or order adverse to a party in a contested case shall be in writing or dictated into the record. The final decision shall include findings of fact and conclusions of law separately stated. Findings of fact if set forth in statutory language shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Parties shall be notified either personally or by mail of any decision or order. A copy of the decision and order shall be delivered or mailed forthwith to each party or to his attorney of record.

It was a misrepresentation which served a purpose. LQD realized in December of 2008 that Croell Redi-Mix was trespassing on our land. Knowing this, LQD was required to shut down the operation, since the Croell Redi-Mix operation at the Rogers Pit was in violation of state trespass law, and the LQD knew it. When Croell Redi-Mix informed the LQD that the road was complete and the LQD to the company at its word Croell Redi-Mix no longer had to worry about its operation being shut down and the LQD had an excuse for not shutting the operation.

Take another look at the statute.

Environmental Quality Act
Permit revocation

35-11-409 (a)

The director shall revoke a mining permit if at any time he determines that the permit holder intentionally misstated or failed to provide any fact that would have resulted in the denial of a mining permit and which good faith compliance with the policies, purposes, and provisions of this act would have required him to provide

When Croell Redi-Mix informed the LQD in its August Mine Plan that it had completed the new road, it was in fact informing the LQD that it was no longer trespassing. This

was false.

Difficulty in getting a road permitted and built as nothing to do stating that something is done when it is not. Information contained in mining applications is to be current

DEQ LQD Noncoal Rules and Regulations

Section 1 General Requirements

- (b) Information set forth in the application shall be current, presented clearly and concisely, and supported or authenticated, when appropriate, by references to technical material, persons, or public or private organizations which were used, consulted, or were responsible for collecting and analyzing the data

The assertion, contained in the Mine Plan dated and received by the DEQ in August of 2009, stated that the road was complete, being used, and that the old access road which passed through property belonging to the owners of Bush Ranches without landowner consent had been closed and was no longer being used. None of this was correct before early December of 2009.

note The earlier December 2008 Mine Plan:

MP3.3 Access Roads

The current mine entrance access road to the pit area is limited in length and is the original access road to the hayfield from "Rifle Pit Road".

- * note that there is no mention of surface owner consent lacking although Mr. Croell testified that he was aware that the access road crossed our land in December of 2007.

transcript page 213 lines 1 - 23 and page 209 line 20 through 210 line 1

Please note that in both the December 2009 version of the mine plan and the August 2009 version of the mine plan, the access road is misportrayed.

Environmental Quality Act 35-11-406 (a) (xv)

- (a) Application for a mining permit shall be made in writing to the administrator and shall contain:
- (xv) such other information as the administrator deems necessary or as good faith compliance with the provisions of this act may require.

14. **The objectors asserted that water runoff from Croell's proposed mining site would pollute surrounding underground and surface waters,**

specifically Sand Dra Creek and Sundance Creek. (Tr. at 201-03). Croell's application shows that hydrology concerns have been adequately addressed. The record shows that runoff within the mining area will flow into the pit and not off the site. (Tr. at 259-62). In addition, Croell's application states that berms and other drainage control methods will be used to prevent runoff from leaving the boundary of the permit area. There is not sufficient evidence to deny Croell's mining permit based on hydrologic and/or water pollution concerns (Ex.11, MP 2.3, 4.7 & 4.8).

These concerns are valid and have absolutely not been met. Because both the EQC and the DEQ LQD failed to provide objectors with a copy of the application prior to the day of the hearing, I did not have access to the appendices when I was preparing for the hearing.

Given time constraints, I am including a copy of the text of a letter I sent to the Governor regarding this matter. Once again, I regard this as a serious matter worthy of expert review.

Dear Governor Freudenthal,

I have been meaning to send you a copy of my January 14, 2010 letter which was sealed by the EQC because it arrived after the hearing had closed.

You will see that this letter deals with realistic and substantial concerns regarding the effect which this project could have on our ranch and on springs and streams in the surrounding area. This matter was not dealt with at all in the Application which the DEQ LQD proposes to approve.

Because I was not provided with a copy of the application prior to the day of the hearing, I was unaware of this issue at that time. I had requested the application in two separate letters to the EQC, both requests, one in the form of a motion, ignored.

The DEQ LQD, according to the "Amended Notice of Hearing and Order" which was mailed to objecting parties on December 9, 2009, was to have provided the objecting parties with a copy of the Application by noon on December 14, 2009. It failed to do so.

The EQC should have received a copy of the LQD Exhibit on Monday, December 14, 2009, and as I now realize, should have posted the exhibit on its web pages dealing with Docket 09-4806 on the day the exhibit was received.

The EQC did not post the DEQ's exhibit, which was the Application - Exhibit 11 (or any other exhibits) on its web pages until December 21, 2009, the day when the hearing took place. (The EQC exhibits do not bear the EQC "FILED stamp and the date received, which I

believe is also in violation of the Rules of Practice and Procedure Chapter II Section 2 (a).

The EQC did not inform me that any matters contained in Docket 09-4806 would be available for viewing on its web pages.

The burden of proof was placed on objecting parties to show why this application should not be approved. There are lamentably few reasons listed in the Environmental Quality Act not to approve a mining application in the State of Wyoming. One of them is if the Application is incomplete.

I think that my December 14, 2010 letter establishes quite clearly that the application was and is incomplete. It was, however, a little difficult to demonstrate the incompleteness of the application before I had a copy of the application.

Considering the substantive nature of the concerns expressed in my January 14, 2010 letter, as well the circumstances I have just described to you, I find it both both unreasonable and irresponsible that the EQC chose to use its discretionary powers to seal this letter.

Once again, the matter of the Karst nature, which is completely uninvestigated in terms of the impact this has on ground water, streams, and springs needs further research and on the ground study, as well as time for objectors to respond to that research. it is noThe issues of soil depth, gypsum deposits, sinkholes, The Spearfish Formation, and ground water need to be looked. at. in an integrative manner. You will see that our ranch has numerous springs listed in the application.

By the way, even without access to exhibits, I was approaching the subject of completeness as it concerns investigation of the proposed mine site. I was cross-examining Mr. Mooney (LQD Sheridan) regarding a map of investigatory drill sites, all of which, as it turns out, were carried out on a very small portion of the proposed 600 acre mine site. I believe that if I had not been interrupted by the Chairman, and peritted t proceed in my cross-examination, I might have been able to show incompleteness of the application even without being provided with a copy of the complete exhibit in a timely manner. This ;matter is also raised in my letter which has been unreasonably sealed. The map, by the way, had no identifying legal description and no scale to show how large an area it covered.. It had nevertheless been accepted by the LQD as the best the the LQD could get the applicant to provide. Who is running the show?

transcript

bottom of page 66, pages 67 & 68)

15) Croell's application contains the name and address of the applicant and

the names and addresses of all managers, partners and executives directly responsible for Croell's mining operations in Wyoming (Ex 11, Form 1)

- 16) Croell's application contains a sworn statement showing the power and legal estate for the right to mine from the land described in the application (Tr at 47, Ex 11, Form 1 & Surface Owner Consent**

Mr. Croell's signature on the Surface Landowner's Consent is dated 2006 and witnessed (but not notarized) on November 24, 2008. It was submitted on September 28, 2009

The sworn statement regarding the accuracy of the application, that it has been read, not having forfeited a bond, etc is dated and notarized November 24, 2008. This application proposed to continue to use the old access road which Mr. Croell knew at this time crossed our land without our consent transcript On November 24, 2008 Mr. Croell was aware that there there was no legal consent to cross our land to access the Rifle Pit Road.

transcript page 213 lines 1 - 23 and page 209 line 20 through 210 line 1

note The earlier December 2008 Mine Plan states the following (also less than forthright) description of the access road:

MP3.3 Access Roads

The current mine entrance access road to the pit area is limited in length and is the original access road to the hayfield from "Rifle Pit Road".

- * note that there is no mention of surface owner consent lacking although Mr. Croell testified that he was aware that the access road crossed our land in December of 2007.

transcript page 213 lines 1 - 23 and page 209 line 20 through 210 line 1

Mr. Mooney did not realize that the access road crossed our land without our consent until December of 2008

- 17) The application contains a sworn statement that Croell has not forfeited a bond posted for reclamation purposes and that all the statements contained in the application are true and correct to the best knowledge of the applicant. *Id.***

not sure

18) **Croell's application contains the last known addresses of the owners of record of the surface and mineral estates on the land covered by the proposed mining permit.**

(Ex 11, Appendices A & B & Map A-1)

not sure

19) **The application contains the names and last known addresses of the owners of record of the surface rights of the lands immediately adjacent to the proposed permit area.**

Id

not sure

20) **Croell's application identifies by legal description the land included in the permit area including the approximate number of acres to be affected and the total number of acres in the area covered by the proposed permit**

(Ex. 11, Form 1)

yes

21) **Croell's application identifies Sundance, Wyoming as the nearest town to the proposed mining operation** *Id*

22) **Croell's application includes a Mine Plan that is consistent with the objectives and purposes of the Act and the LQD non-coal rules and regulations (Ex 11, Mine Plan at MP.1-MP.18)**

not sure

23) **Croell's application includes**

a general description of the land together with its vegetative cover, the annual rainfall,

the general directions and average velocities of the winds,

but he says that the pit is located west of I-90, which is not quite right

indigenous wildlife,

its past a (and) present uses,

hunting is a listed use which was greatly played down during the hearing

its present surface waters,

vague - where are these impoundments
are they licensed

adjudicated water rights and their immediate drainage areas and

uses,

the nature and depth of the overburden, topsoil, subsoil mineral seams and other deposits and subsurface waters known to exist above the deepest projected depth of the proposed mining site

**No - see my January 15, 2010 letter sealed by order of EQC
much of the mine site has not been mapped for depth of
overburden, thickness of deposit**

Tr at 40 and Ex 11

- Appendix D-1 Land Use
- Appendix D-4 Climatology
- Appendix D-5 Topography, Geology and Overburden
- Appendix D-6 Hydrology
- Appendix D-7 Premining Soils Assessment
- Appendix D-8 Premining Vegetation assessment
- Appendix D-9 Wildlife
- Appendix D-10 Wetlands Inventory and Permanent Mitigation Plan
- Appendix E-1 Oil and Gas within 1/2 mile of the permit boundary
- Appendix E-2 Valid Groundwater Rts within 3 Miles of permit area
- Appendix E-3 Surface Water Rights within and adjacent to the permit Boundary

Map E-1

24) Croell's mining operation, reclamation program and future use is not contrary to the law or policy of this state, or the United States.

Tr at 38

25) Croell's mining operation will not irreparably harm, destroy, or materially impair any area that has been designated as rare or uncommon by the EQC Tr at 39

No, but it sure will destroy the peace and beauty of the surrounding land. the clean fresh pine scented air, the quiet, it will dissipate the elk and deer, and it has a strong potential to irreparably harm the springs which water our ranch as well as water much further away

26) The area proposed by Croell for its mining operation does not have any particular historical, archaeological, wildlife, surface, geological, botanical or other scenic values that it will irreparably harm

Id (Tr at 39)

- and Appendix D-1 Land use
- Appendix D-3 Cultural Resources
- Appendix D-5 Geology and Overburden Assessment

The Geology and Overburden Assessment shows that the area overlain by the Spearfish Formation, containing gypsum deposits, sinkholes, ... has not been investigated and should be.

The thick soil deposits in Mr. Croell's hayfields may indicate running water closer to the surface than the deep aquifers. The underground flowing water feeding our springs comes from somewhere.

Our ranch dips down into Red Canyon. It is treed with old timber with beautiful rosy rimrock (the Minnekahta limestone that Croell Redi-Mix will be mining. The rimrock lines the canyon walls, which makes me wonder about the depth of the limerock deposit and the springs well up from near the bottom of the canyon that the limerock dips, and the water which feeds our springs sustainable uses which will be gone.

- 27) Both the Wyoming Game and Fish Department and US Fish and Wildlife Service reviewed the application, and neither made a recommendation to deny a mining permit to Croell**
Tr at 39
Exhibit 11, Appendix D-9 Wildlife

Wyoming Game and Fish

Sundance Creek is classified as a green category stream, meaning its of interest to local anglers (brooktrout)

We recommend use of best management practices that reduce erosion and sediment from intermittent tributaries to prevent degradation of water quality
 check letters from both Wyoming Game and Fish Department
 US Fish and Wildlife Service

see what concerns were expressed.
 Is it their function to recommend denying permits?

- 28) Croell's proposed mining operation will not cause pollution of any waters of the state in violation of the laws of the state of Wyoming.**
Tr at 40
Exhibit 11, Appendix D-6 - Hydrology, & MP 4.7-4.8

Has the DEQ WQD looked at this application?

- 29) Croell has not had any other permit or license revoked by the LQD.**

If Croell Redi-Mix had been a rancher with a 10 acre LMO and LQD stopped by and saw that more than 20 acres had been disturbed, I bet that the LQD would

have pulled the rancher's permit on t on the spot.

Tr. at 40-1

30) Croell's proposed mining operation will not constitute a public nuisance or endanger the public health and safety.

Sure it will.

Unless we change our ranch plan our ranch manager will be up there breathing dust everytime he hays, checks the water tank and feeds in winter. If that is not a health hazard, I don't know what is.

The dust will pose a health hazard to our cattle, or to the elk, atelope and deer.

Our ranch is scenic, treed and rugged. You can't count on being able to get to some parts of it in the winter, or in the spring. This limits the areas where cattle can winter over. I am not sure we can redesign the cattle operation to work around the

Judith Hamm's Exhibit 1 clearly states the dangers of dust pollution

Our cattle are in danger of dust pneumonia

A gravel pit on the roadside of I-90 will not help the tourist industry

Reclamation in areas with sinkholes is a question

Crook County has an unusually high level of cancers, possibly related to high radioactivity in the region. Pulverizing the rock and putting in the air can compound the problem

Limerock and overburden should be measured for radioactivity
putting dust with higher than normal radioactivity into the air will increase incidences of lung and other cancers.

31) Croell's propose permit boundaries are not within 300 feet of any occupied structure

Tr at 41-2

Exhibit 11

Mine Plan 4/9

32) Croell will be able to produce the bond required by the LQD

Tr at 43-4

Exhibit 11 ReclamatIn Bond

33) Croell will be able to perform reclamation of the proposed mling site in a manner consistent with the purpose and provisions of the Environmental Quality Act

**Tr at 44
Ex 11 ReclamationPlan**

34) Croell is not currently in violation of the Act Tr at 44, 132-34

I think we did this already
His LMO with all those extra acres of affected soil
makes Croell Red-Mix in violation of the rules and regulations
governing LMO's

There is a history of bad faith dealing

35) Croell's application, for its proposed mining operation, is complete pursuant to Wyo. Stat. ANN . 35-11-407

No , it is not

See my letter dated January 14, 2010, sealed by order of the EQC
Half of the land is largely unassessed for depth and nature of overburden
only ~10 acres or s bit more have been drilled to determine depth of
deposit and these figures are being applied generally to mine site.

Croell states in Appendix D-5 that the site consists of two geological different areas, only one of which has been assessed in terms of the above

Conclusions of Law

36) The EQC has jurisdiction over the subject matter and the parties to this proceeding

37) The EQC does not have jurisdiction, in this proceeding, to decide the Air Quality issues raised by Objectors

Where do Air Quality Issues affect Land Quality issues

Air Quality -- regulates annual production - check this

**Bruening Rock by issuing Air Quality Permit for Crusher,
Increased permitted production ten fold**

This entailed a LQD Notice of Violation because

in the process of increasing production, Croell expanded the size of its LMO minesite to more than twice the permitted acreage (maximum 10 acres of disturbed land permitted, 20.5 acres of disturbed land measured by GPS)

**dust on the ground is a Land Quality Issue
 dust on water in tank
 dust on hay in hay field
 dust on grazing land so thick a cloud of dust rises up through the grass when driving a four wheeler**

- 38) All notice requirements for the hearing have been met pursuant to the Act, the EQC Rules of Practice and Procedure and the LQD non-coal rules and regulations

EQC responsibility to provide timely and accurate notice of the Public Hearing per Rules of Practice and Procedure were not met

**Check Notification Requirements in
 Environmental Quality Act
 Rules of Practice and Procedure
 LQD Non-Coal Rules and Regulations**

**My December 16, 2009 letter re this matter is misfiled
 My December 17 letter is missing from the record.
 (check to see how relevant Dec 17 letter is to notice)**

Notice is also dealt with in November 14th letter

Note - My response to first Public Notice of the Application was misdirected other issue, but raise it(38) All notice requirements for the hearing have been met pursuant to the Act, the rules of Practice and Procedure and the LQD non-coal rules and regulations EQC

Absolutely not

Cite relevant passages from:

Environmental Quality Act

Rules of Practice and Procedure

LQD Noncoal Rules and Regulations

- 39) "Any interested person has the right to file written objections to the applications (for

mining permit) with the administrator within thirty (30) days after the last publication of the above noticeThe 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. An. S 35-11-406(k), the Wyoming Administrative Procedure Act, Wyo Stat. Ann SS 16-3-101 through 16-3-115 and the EQC's Administrative Rules and Regulations (2001)

Not sure if EQC's Administrative Rules and Regulations (2001) is the same as the Practice and Procedures - I don't think I have seen this - check at the library - get it

- 40) **"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 S 35-11-112(a).
- 41) **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 S 35-11-112(a)(iv)
- 42) **The objectors bear 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."**

Both I and other objectors had been left with the impression from the pre-hearing order that the applicant was going to present (not defend, just present) his project as the initial step in the hearing, if not earlier. I think you should just advise anyone who wants to take part in a hearing to get a lawyer.

transcript at 8
also see JM v. Dep't of Family Ser 922 P.2d 219, 221
(Wyo 1996) (citation omitted).

- 43) **Wyo. Stat. Ann. S 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;**

The application is incomplete - See my sealed letter dated January 14, 2010

- (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;**

The LQD doesn't require copies of permits prior to advising that an application be approved

I haven't seen anything to make me think that federal transport has approved this application - does the LQD check?

- (iv) The proposed mining operation would irreparably harm, destroy, or materially impair an area that has been designated by the council a rare or common 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**

This is a fragile environment. This is a real possibility. Unseal my January 14, 2010 letter.

- (vi) If the applicant has had any other permit or license issued hereunder revoked or any bond posted to copy with this at forfeited**

Croell's fine (I think at Rogers Pit, but maybe more recent Notice of Violation) was applied against his reclamation bond - is this relevant?

- (vii) The proposed operation constitutes a public nuisance or endangers the public health and safety.**

Our ranch manager, Dewey Turbiville, feeds cattle on lands adjacent to the proposed minesite in the winter.

Mr. Turbiville checks our water tank on lands adjacent to the site in the when our cattle are grazing on these lands

Our cattle winter on these lands and graze them in summer. They eat hay which is grown on these lands.

The Sundance Tourism will suffer -that's another sustainable use that will suffer setbacks from this.

The access road is completely unsuitable for the traffic it will handle. I cannot believe that anyone could with good conscience approve it for an access road to a 600 + acre mine site.

(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 cmetary, unless the landowner;s consent has been obtained. The provisions of this subsection shall not apply to operations conducted nder 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.

I spoke with Glenn Mooney in June of 2009, and he essentially said call back when its ready. There will be lots of time. This seem to be the party line, and it is misinformation that is being handed out to the public to keep them away until it is too late. If the DEQ were lawyers, you would be sured for such advice.

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

(xii) through (Xiv) repealed by Laws 1980, ch. 64 S 3.

(xv) If the appllcant has been and continues to be inviolation 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.

- 44) Wyoming Stat. Ann S 35-11-406(m) requires that a permit be granted if the applicant demonstrates that the application complies with the requirements of the Environmental Quality Act and all applicable state and federal laws. The permit can only be denied for the enumerated criteria in Wyo. Stat. Ann S 35-11-406(m)**

LQD in the settlements of their Notices of Violation with Mr. Croell have gone to extraordinary lengths to see that he stayed in operation at the Rogers Pit. LQD did compel Croell Redi-Mix to comply with the terms of its LMO, they suggested he get a bigger permit instead. LQD turned a blind eye to trespassing, which is illegal. This part of the Environmental Quality Act assues a LQD which does its job in regulating mining operations. When Croell Redi-Mix supplied a useless map of exploratory drilling. It was accepted as the best the could get the applicant to give them.

My feeling is that if the DEQ LQD is not doing its job, that they are very much to blame

DECISION

- 45) Paul Tomer, Judith Bush, Richard & Judith Hamm and Les & Karen Turgeon are interested persons with the right to file written objections to Croell Redi-Mix, Inc's application.
- 46) The Objectors failed to carry the burden of proof in this proceeding that the permit should be denied for any of the reasons set forth in Wyo. Stat. Ann S 35-11-406(m).

based upon exactly what?

Continuous bad faith dealing with the DEQ up to and including the application which was the subject of the December 21, 2009 hearing.

It is the DEQ LQD which should have revoked Mr. Croell's LMO permit at the Rogers Pit according to statute contained in Environmental Quality Act

**Previous permit should have been revoked
Permit under consideration should have been denied for false statement with intent to deceive with demonstrable cause for having done so in present application**

DEQ did not do their job

perimeters of this case are different

- 47) **Croell Redi-Mix's application is complete within the meaning of Wyo. Stat. Ann. S 35-11-406 (m)**

I do not believe that the Croell Redi-Mix application is complete.
See my sealed letter dated January 14, 2010

- 48) Pursuant to the authority vested in the Environmental Quality Council by Wyo. Stat. Ann S 35-12-406, the Council hereby **FINDS** that the Permit Application submitted by Croell Redi-Mix, Inc regarding Mine Permit No. TFN 5 6/072 is **COMPLETE**