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Environmental Quality Council

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date: December 30, 2009

cc	Dave Freudenthal	Governor of Wyoming	Fax (307) 632 - 3909
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	Roger Croell	Croell Redi-Mix	Fax (307) 283- 1450
	Don McKenzie	Director, DEQ LQD	Fax (307) 777 - 5864

Re In the Matter of the Objection To the Mine Permit of Croell Redi-Mix, Inc.
TFN 5 6/072 Docket No. 09-4806

no pages 10 including this cover sheet

To: Members of the Environmental Quality Council

Attached are my closing comments.

My motions, as explained in my attached closing comments, are as follows:

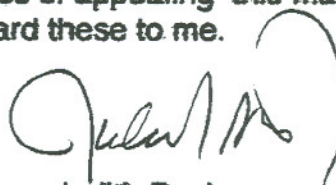
Motion 1) THAT THE CROELL REDI-MIX LMO PERMIT TO OPERATE AT THE ROGERS PIT (1396 ET) BE REVOKED
per Environmental Quality Act 35-11-409 (a)

Motion: 2) THAT THE CROELL REDI-MIX APPLICATION TO EXPAND ITS LMO PERMIT TO OPERATE AT THE ROGERS PIT TO A REGULAR MINING PERMIT DESIGNATING A 600+ ACRE MINE SITE BE DENIED.
per Environmental Quality Act 35-11-406 (m) (vi)

I will be writing shortly regarding procedural and other matters relating to both the hearing which took place on December 21, 2009, as well as pre-hearing matters.

If the Council has information regarding a request for a rehearing before the Council and / or the process of appealing this matter to the District Court, would you please forward these to me.

Yours truly,



Judith Bush

**Closing Comments: In the Matter of the Objection To the
Mine Permit of Croell Redi-Mix, Inc.
TFN 5 6/072 / Docket No. 09-4806**

To: Environmental Quality Council

From: Judith Bush tel / fax 613-392-2313
Managing Partner, Bush Ranches please phone before faxing

Date: December 30, 2009

My motivation in pursuing this matter is, of course, to save our ranch from the ravages which this proposed Regular Mining Permit will certainly inflict. I have mentioned before that environmentally friendly uses for which this sprawling beautiful property is ideally suited will be greatly curtailed if this operation is approved. Our ranching operation will be turned on its head. I do not know how we will manage this. Much of our rugged ranch is inaccessible in the winter. In addition, our cattle must winter in an area where there is sufficient water. Nevertheless, we cannot have our cattle wintering in such an unhealthy environment. Along the same line, our ranch manager, Dewey Turbiville, testified that as a result of the dust (in the air, on the ground and in the water tanks) and the disturbance caused by only the 10 acre LMO, the bulk of the deer, antelope and elk have already voted with their hooves and gone elsewhere.

I understand that these are considerations to which the laws you must apply do not permit you to lend much, if any, weight.

In my closing statements, I am confining myself to matters which relate to applicable statutes. It is unfortunate that some of statutes by which this council must be guided sadly limit and prevent this Council from fully living up to its name.

- 1) In 2007 Croell Redi-Mix was granted an LMO permit from the LQD to operate a 10 acre limestone mining and crushing operation on lands owned by Roger Croell, commonly known as Rogers Pit
- 2) Croell Redi-Mix states that it was unaware when it filed its original application with the LQD for an LMO at the Rogers Pit in late 2006 that the access road which it proposed to use for both entry and exit from the Rogers Pit passed through lands owned by the partners of Bush Ranches (a family owned ranching operation) in order to access the Rifle Pit Road
- 3) Mr. Glenn Mooney testified that LQD failed to notice when the LMO application was approved that the access road for the Rogers Pit crossed land belonging to

the owners of Bush Ranches. He said that failure to have caught this might have been due to the fact that the requirements for applying for an LMO permit were less stringent than those when applying for a regular mining permit.

- 4) In addition to requiring the legal description of the lands included in the LMO, The Land Quality Noncoal Rules and Regulations require the following information:

Ch 10 Sec 1 (a) (vi) (vi) a USGS topographic map:
 (A) each notification (Form 10) must be accompanied by an original quadrangle map (photo copies or other similar copies are not acceptable unless prior approval is obtained from the Land Quality Division)
 (B) The following information shall be shown on the quadrangle map:
 (i) a legal description of the ten acres or less of land to be affected.
 (iii) Show any existing or proposed access or haul roads into, or away from the proposed mining operation .. *underlining added*

- 5) The original access road passes through our land in the NE 1/4 NW 1/4 of Section 25 T52N R 62 W before reaching the Rifle Pit Road. Mr. Croell does not own the NE 1/4 NW 1/4 of Section 25 T52N R 62 W. The owners of Bush Ranches own this land. It is not clear to me how, given the requirements noted above, this could have been easily missed.
- 6) Croell Redi-Mix did not notify the owners of Bush Ranches at the time when the company applied for this LMO permit. LMO applicants are not required to notify adjacent landowners when they apply for a permit to establish a limited mining operation (of less than 10 acres).
- 7) However, written consent of surface landowners whose lands are affected is required, as follows:

Land Quality Noncoal Rules and Regulations
 Chapter 10 Limited Mining Operations for ten acres or less
 Section 1 commencement
 (a) Prior to the commencement of surface mining operations for the removal of...limestone... from an area of ten acres or less of affected land, a notification shall be submitted by the operator to the Administrator on forms supplied by the Division and shall contain the following:
 (i) The written consent for the operation from the surface owner and surface lessee, if any, of the land to be affected. *(underlining added)*

- 8) Operation of Rogers Pit began in 2007. The two tire track road passing through Bush Ranches lands was dozed, graded, and a wide lime-rock surfaced road was constructed to serve as both entry and exit to and from the Rifle Pit Road

for the Rogers Pit LMO operation. I would say that this qualifies as affecting our land.

- 9) Both Roger Croell and Glenn Mooney (LQD Sheridan) testified that they were unaware when the operation at the Rogers Pit commenced in 2007 that the access road for that operation crossed our land. Had this been known at the time, the Rogers Pit would not have been permitted to commence operation prior to written surface owner consent having been obtained, per Land Quality Noncoal Rules and Regulations Ch 10 Sec 1 (a) (ii) quoted in 7) above.
- 10) Operations at the Rogers Pit were not in compliance with the LQD Noncoal Rules and Regulations governing LMO's . There was no written surface landowner consent. However, both Croell Redi-Mix and the LQD state that the fact that the access road crossed our land had slipped past them unnoticed at this time (2006 / 2007).
- 11) The owners of Bush Ranches have at no time given consent, written or otherwise, for the access road to the Rogers pit to cross our land.
- 12) Mr. Roger Croell, owner of the land on which the Rogers Pit is situate, as well as owner (along with his sons) of Croell Redi-Mix, testified at the hearing that he first became aware in December of 2008 that the access road which his crushing operation had been using to travel back and forth between the Rogers Pit and the Rifle Pit Road crossed our land.
- 13) Mr. Glenn Mooney (LQD Sheridan) testified that he first became aware that the access road from the Rogers Pit to the Rifle Pit Road crossed our land in December of 2008, when Croell Redi-Mix submitted its application to expand its 10 acre LMO (1396 ET) to a regular mining permit
- 14) Glenn Mooney testified that he immediately informed Croell Redi-Mix that the access road to the Rogers Pit crossed lands belonging to the owners of Bush Ranches, and that written surface owner consent was required.
- 15) After this time it was known both by Croell Redi-Mix and by the LQD that the Croell Redi-Mix LMO crushing operation at the Rogers Pit (ET 1396) was crossing Bush Ranches land without written consent from the owners of Bush Ranches to do so, and, as such, that this LMO was not operating in compliance with Land Quality Noncoal Rules and Regulations Ch 10 Sec 1 (a) (ii) as previously quoted in 7) above.
- 16) As such, at the very least, operations at the Rogers Pit should have been suspended by the LQD pending Croell Redi-Mix either obtaining the written consent of the owners of Bush Ranches to cross their land, or , alternatively, pending completed construction of an access road which did not cross lands belonging to the owners of Bush Ranches.

The LQD did not suspend operations at the Rogers Pit at this time, and the Croell Redi-Mix limerock mining and crushing operation was permitted to continue at the Rogers Pit for eight months (until August of 2008) - during which time, as far as we were made aware at the hearing, LQD remained aware of this state of non-compliance and did not act.

- 17) Mark Rogaczewski (LQD Sheridan) testified that our ranch manager, Dewey Turbiville told him in June of 2009 that he believed that trucks from Rogers Pit were crossing our land. Mr. Rogaczewski testified that he had told Mr. Turbiville at that time that he was unaware of this and suggested that we check our deeds.
- 18) In fact, Glenn Mooney (also LQD Sheridan) had already testified that he had become aware of this situation ~ six months earlier, in December of 2008. (Mr. Roger Croell also testified that he was aware of this situation in December of 2008.)
- 19) In August of 2009, Croell Redi-Mix informed the DEQ, [stating in its Mine Plan, dated August 2009 - a part of its application to the LQD to expand its LMO at the Rogers Pit (1396 ET) to a regular mining permit designating a 600+ acre mine site] that a new access road had been constructed, and was in use, and that the old access road (which crossed over our land) was no longer in use, as follows:

MP 3.3

(page MP.9
dated Aug / 09

Access Roads

" The current mine access road to the pit is limited in length and has been relocated from the original access road that was previously used by the landowner for ranch access to the area. ... Side ditches have been established along a portion of the access / haul road where it connects with Rifle Pit Road. The road has a limestone surface. The road functions both to provide site access as well as product haulage out of the permit area. As shown on Map MP-1, the alignment has been chosen to avoid drainages and minimize grades.... "

MP 4.9

(page MP.16)
dated Aug / 09

Public Nuisance And Safety

" ...The northern boundary is adjacent to Rifle Pit Road which is also a public road maintained by Crook County... The new access road was constructed to maximize sight distances and traffic merge areas. ... Truck drivers are aware of speed limits on the State Highway and Interstate 90 and the short section of Rifle Pit Road that they use getting from the permit area to Highway 14 is too short for them to reach the allowed speed on that County road. "

20) These statements were incorrect when they were written in August of 2009. Croell Redi-Mix was still using the access road crossing Bush Ranches lands without our consent for all aspects of its LMO operation at the Rogers Pit in August of 2009. The new road was unfinished and unusable in August of 2009.

21) This misstatement of fact was a violation of the following LQD Noncoal Rules and Regulations:

Land Quality Noncoal Rules and Regulations

Ch 2 Sec 1 (b) Information set forth in the application shall be current...

22) Mr. Brian Marchant, General Manager of Croell Redi-Mix, testified in some detail regarding the great difficulties Croell Redi-Mix had encountered in obtaining the correct permit to construct its new access road. He also testified that Croell Redi-Mix had only just received WDOT Sheridan approval for the new road. (He did not provide documentation of this approval at the hearing, nor did he state for what uses the new road had been approved.)

It is difficult to imagine that the statement contained in the Croell Redi-Mix Mine Plan, dated August 2009, that the road was finished and being used in August of 2009 was an unintentional error, given all of the attention that was being focused on getting this road permitted and completed.

23) Mr. Dewey Turbiville, Manager of Bush Ranches, testified at the hearing that the access road crossing our land without our consent was still serving as the sole access road and was being used by the crushing operation at the Rogers Pit to haul limerock up until ~ two weeks prior to the hearing which took place on December 21, 2009, and that work on the new road continued flat out into December of 2009 to get the new access road finished.

24) Once the new road was usable (although still not approved according to information provided by Brian Marchant at the hearing) urgent attempts to doze and regrade the old access road where it passed through our property were made. This, again, was done without our consent, without informing Bush Ranches, and without asking what type of reclamation Bush Ranches desired to be carried out on their land. Our Ranch Manager, Dewey Turbiville testified that he witnessed these attempts and informed those carrying them out that they were trespassing, which they were.

25) LQD was aware but chose to ignore for eight months that required written surface owner consent regarding the access road (our affected land) was lacking, permitting the Croell Redi-Mix LMO operation at the Rogers Pit to continue while in a state of non-compliance with the Land Quality Rules and Regulations Chapter 10 Section 1 (a) (ii) (see 7 above) from December of 2008 until August of 2009. It is unclear why no action was taken by the LQD during this time.

- 26) In August of 2009, Croell Redi-Mix's misinforming the LQD that the new access road was complete and being used, and that the old access road was closed, essentially led the LQD to believe that this LMO operation was now in a state of compliance with Land Quality Rules and Regulations Chapter 10 Section 1 (a) (ii), since surface owner consent for the new road would now be required of Mr. Roger Croell (which written consent Mr. Croell would certainly give) , and not of the owners of Bush Ranches.
- 27) Both Mr. Glenn Mooney and Mr. Mark Rogaczewski of the LQD Sheridan testified that they did not inspect the site to determine if any of the information contained in Croell Redi-Mix's current Application for a regular mining permit (including the assertion that the new road was up and running) was accurate. Both testified that they took this information at face value - ie. in good faith.
- 28) Until the hearing, December 21, 2009, both Glenn Mooney and Mark Rogaczewski were unaware that the new access road had not been completed and was not operational in August of 2009, since Croell Redi-Mix had informed the LQD otherwise.
- 29) The following statute from the Environmental quality act describes perfectly what Croell Redi-Mix accomplished by misinforming the LQD in August of 2009 regarding the completion of the new access road. This statute is very clear regarding the mandatory consequences of such misrepresentation..

Environmental Quality Act

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.

(underlining added)

At the hearing, it was said that it did not matter that Croell Redi-Mix had misstated that the new access road was complete and being used at a time when it was not, because the road was complete and was being used (by the Croell Redi-Mix LMO) at the time that the hearing took place. However, the statute quoted above states clearly that it is to be applied if at any time such a misstatement or failure to inform in good faith comes to light, regardless of when this occurred and regardless of when it was discovered.

- 30) Croell Redi-Mix's 10 acre LMO permit to operate a limerock crushing operation at the Rogers Pit is still in effect. Croell Redi-Mix has misstated facts relating to access to the LQD. This misstatement of facts permitted the operation of 1396 ET to continue between sometime in August and early December of 2009, when, had the situation been accurately represented to the LQD by Croell Redi-

Mix, LQD should have had no choice but to shut this operation down, since surface landowner consent to cross our land was lacking, and the old access road which crossed our land was still being used for all aspects of the crushing operation located at the Rogers Pit. This is in violation of Environmental Quality Act 35-11- 409 (a) noted above, which states essentially that in these circumstances a permit shall be revoked. The LQD has no choice in this matter. It is required by the statute that Croell Redi-Mix's LMO permit for the Rogers Pit (1396 ET) be revoked by the director .

31) All matters relating to the granting the application of Croell Redi-Mix for a Regular Mining permit to expand the operation at Rogers Pit from a 10 acre LMO to a 600+ acre mining site should be put on hold, pending resolution of the revocation of the Croell Redi-Mix LMO permit relating to the Rogers Pit (such revocation in accordance with Environmental Quality Act 35-11-409 (a) noted above 26) above.

32) If the revocation of Croell Redi-Mix's LMO in the Rogers Pit (1396 ET) is unchallenged by Croell Redi-Mix, or if challenges by Croell Redi-Mix to negate the revocation of this LMO permit are unsuccessful, then the current Croell Redi-Mix application to expand the Croell Redi-Mix LMO operating at the Rogers Pit to a Regular Mining Permit with a designated mine site of 600 + acres should be denied in accordance with the Environmental Quality Act 35-11-406 (m) (vi), which states:

33) 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. The director shall not deny a permit except for one (1) of the following reasons:

(vi) If the applicant has had any other permit or license issued hereunder revoked ...

Motion:

- 1) **THAT THE CROELL REDI-MIX LMO PERMIT TO OPERATE AT THE ROGERS PIT BE REVOKED**
per Environmental Quality Act 35-11-409 (a)
- 2) **THAT THE CROELL REDI-MIX APPLICATION TO EXPAND ITS LMO PERMIT TO OPERATE AT THE ROGERS PIT TO A REGULAR MINING PERMIT DESIGNATING A 600 + ACRE MINE SITE BE DENIED.**
per Environmental Quality Act 35-11-406 (m) (vi)

Addendum to Closing Comments Page 1

There is another occasion in the past when it appears that it would have been both appropriate and necessary for the LQD to have revoked the Croell Redi-Mix LMO permit to operate at the Rogers Pit, in accordance with Environmental Quality Act 35-11-409 (a), as follows:

- 1) In October of 2008 (Notice of Violation dated November 5, 2009) Mr. Glenn Mooney used a GPS to ascertain that LMO operations (1396 ET) at the Rogers Pit had been expanded to a 20.5 acre mine site, when an LMO is by definition limited to 10 acres. The limit to a 10 acre mine site is the cardinal rule governing LMO's.
- 2) It is difficult to see how permitting Frost Rock Products to set up a second LMO side by side with the Croell Redi-Mix LMO at the Rogers Pit satisfied anything other than the bonding issue. Such a settlement certainly does nothing to encourage other operators to deal in good faith with the LQD, and by extrapolation, does nothing to protect the interests of people living near or owning land adjacent to mining operations from the kinds of excesses that this type of "settlement" will doubtless encourage in the future.
- 3) At the hearing, Julie Ewing testified that there were 27 acres of disturbed land in the Rogers Pit. Since LMO's are by definition limited to disturbing 10 acres of land or less, even with two LMO's operating side by side in the Rogers Pit, that still leaves 7 acres in excess of what is permitted. It looks like that LQD bent over backwards to settle this Notice of Violation in a manner which would permit the continued operation of the Croell Redi-Mix LMO at the Rogers Pit.
- 4) It also boggles the imagination to fathom how, in early 2009, in the process of "settling" the November 5, 2008 Notice of Violation to Croell Redi-Mix, the LQD could have permitted a second LMO (Frost Rock Products) to set up operations in the Rogers Pit, using the same access road to the Rifle Pit road which was being used by Croell Redi-Mix, since LQD had been aware since December of 2008 that this access road passed over property belonging to the owners of Bush Ranches and that Croell Redi-Mix had not obtained surface owner consent from the owners of Bush Ranches to cross their land.
- 5) Julie Ewing, Health and Safety Director for Croell Redi-Mix testified at the hearing that, regarding the November 5, 2008 Notice of Violation from the LQD, LQD had given Croell Redi-Mix the choice of reclaiming land in excess of 10 acres which they had torn up in violation of their LMO permit, or, alternatively, of applying for a regular mining permit. How on earth does applying for a regular mining permit obviate infractions committed by LMO's in violation of LQD rules and regulations governing LMO's?

Addendum to Closing Comments Page 2**ERRORS and / or INCONSISTENCIES IN TESTIMONIES
and / or MATTERS OF RECORD**

I believe that the good faith issues relating to Croell Redi-Mix that I attempted to raise during the hearing with limited success deserve a closer look.

- 1) Roger Croell testified that his company, Croell Redi-Mix had received only one Notice of Violation in the past. In fact, Croell Redi-Mix has received three Notices of Violation since 2007, relating to three separate LMO permits which Croell Redi-Mix holds. Exhibits which I submitted to the EQC at the hearing (also faxed to the ECQ on December 18, 2009) included copies of these three Notices of Violation. I was not permitted to raise these matters during my testimony at the hearing
- 2) Brian Marchant, General Manager of Croell Redi-Mix, testified regarding the length of time during which blasting takes place each year (somewhere between 20 weeks and 6 months / year) , the frequency of blasting during this period, (every other week / sometimes weekly) and the amount of limerock blasted (~ 40,000 tons per blast, can vary).

When you do the math on these figures, they greatly exceed the figures contained in Croell Redi-Mix yearly reports provided to the LQD.

Two Croell Redi-Mix yearly reports are included in the exhibits I submitted to Council both at the hearing, and by fax on December 18, 2009). I was not permitted to refer to these during my testimony at the hearing.

They also greatly exceed the figures provided for combined product of Croell Redi-Mix and Frost Rock Products testified to at the hearing.