BY FAX **EQC Docket 09-4806** **LQD TFN 5 6/072**

To:	Members of EQC & Jim Ruby,	Exec Sec EQC	307-777-6134
To:	John Burbridge	Attorney, DEQ LQD	307-777-3542
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From	Judith Bush	tel / fax	613-392-2313
		please phone before faxing	
date:	May 12, 2010		

Response to Croell Redi-Mix, Inc's Objection to petition for Rehearing; AND

Comments to EQC's planned Amendment to March 12, 2010 Findings of Fact, Conclusions of Law and Order to take place on May 13 or May 14 / 2010 meeting

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The following Rule has been cited as a reason why a rehearing in this matter should not be granted

> **Rules of Practice and Procedure, Chapter 4, Section 1(b)**
> ' Any petition for rehearing filed under this section must be confined to new questions raised by the decision and upon which the petitioner had no opportunity to argue before Council."

I was aware of this Rule cited by both Mr. Burbridge, attorney for the LQD in this matter (as well as the drafter of the EQC's Findings of Fact, Conclusions of Law and Order relating to this matter) and Kim Cannon of Davis & Cannon, Attorney for Croell Redi-Mix in this matter.

The purpose of this Rule appears to be to prevent a rehearing of matters which the person filing for a rehearing had ample opportunity to bring up during the original hearing.

I was not in a position to adequately address issues relating to depth and nature of overburden, depth of Minnekahta Limerock or thickness of Minnekahta limerock deposit because the DEQ LQD failed to comply with the EQC's Order of December 8 that a copy of the DEQ LQD exhibit in this matter be delivered to all parties by noon on December 14, 2009 (see following page).

Failure of DEQ LQD to provide Objecting Parties with a copy of their exhibit (the Croell Redi-Mix Application) in a timely manner

The DEQ LQD (a party to this hearing) received a copy of the December 8, 2009 Notice of Hearing and Order delivered by e-mail on December 8, 2009, according to the Certificate of Service attached to that document. This document required the parties to deliver exhibits to all other parties on or prior to noon December 14, 2009.

I had been told by Don McKenzie, Administrator of LQD, that a CD containing the Croell Redi-Mix Application was being faxed to me along to me with a Mine Plan Map. The map was sent to me by courier on December 9, 2009. When it arrived without the CD, I contacted Mr. McKenzie, who told me that the CD had not yet been sent. I believe that the reason given was that sending the map had been a considerable expense, which did not seem to adequately explain the absence of the CD, which would have cost little or nothing extra to send if sent together with the mine plan map. Mr. McKenzie did eventually follow through on sending me the CD by courier . It was not sent (by courier) on December 17, 2010. The first attempt to deliver the package was on December 21, 2010 when I was in Gillette attending the public hearing.

I filed a motion in my December 14th letter to the EQC (labeled as my pre-hearing Memorandum in the index to Docket 09-4806), requesting that objectors be permitted to purchase a copy of the Croell Redi-Mix application at cost. This motion was never acknowledged or dealt with, but it is on record in this matter.

Mr. Ruby, Executive Secretary of the EQC later write to me that the EQC could not post a copy of the application on their website prior to the hearing because exhibits must be introduced into the record at the hearing and to have them available to Council before the hearing could prejudice the Council in their decision This argument makes no sense with respect to the Application, since the Croell Redi-Mix Application was both the exhibit of the DEQ LQD and the subject of the public hearing. As the latter, I believe that it should have been posted on the website prior to the hearing, and objecting parties should have been informed how to access the application on line.

In retrospect, I questions whether the DEQ LQD was simply unprepared to provide a copy of the exhibit in the timely manner required by the EQC. The DEQ LQD had known from November 18, 2009 when it received a petition objecting to the application signed by 22 residents living in and around Sundance, that a public hearing into this matter would need to be held within 20 days of the end of the period for public comment. As such, the DEQ LQD should have been prepared.to comply with the EQC requirement to provide copies of their exhibit (the application) to the other parties by noon on December 14, 2009.

Because the DEQ LQD received notice of this requirement by e-mail on December 8, 2009, there is no valid argument that an extra three days to comply with that order (similar to Wyoming Rules of Appellate Procedures 14.04 which allows an additional three days to meet deadlines when orders to meet a deadline are delivered by mail) would apply. Furthermore, If LQD was unable for some reason to comply with the EQC's order of December 8, 2009 to by noon on December 14, 2009, the EQC and the objecting parties should have been informed of this circumstance.

I had been working from a copy of the Mine Plan,which I had been told touched upon all matters relating to the application. The Mine Plan makes no reference to the Spearfish Formation.

Extent of Objecting Parties Burden of Proof

Kim Cannon also refers to the fact that I have not attached a copy of my January14, 2010 letter which was ordered sealed by the EQC to my April 1, 2010 Petition for Rehearing. I am unaware if I am permitted to do so. In my Petition for Rehearing, I requested (for the second time) that Council unseal this letter.

An incomplete application is listed in Environmental Quality Act 35-11-406 (m) as cause for the DEQ LQD not to approve an application for a mining permit. I requested that my January 14, 2010 letter to Council, sealed by order of Council on January 15, 2010 be unsealed because it documents the incompleteness of the Croell Redi-Mix Application with respect to depth of overburden, nature of overburden, death of Minnekahta limerock and thickness of Minnekahta deposit .

I believe that there is sufficient information provided in my April 1, 2010 Petition for Rehearing to show that the Croell Redi-Mix Application to the LQD to expand its LMO mining operations at the Rogers Pit (an expansion which incorporates both Croell Redi-Mix LMO 1396 ET and Frost Rock Products LMO 1461 ET into the 600 acre minesite) is incomplete regarding matters of overburden, depth of deposit and thickness of deposit over approximately half of the 600 acres of land which is included in the designated minesite.

In addition, I cite relevant LQD Rules and Regulations regarding assessment of lands to be included in a minesite regarding depth of overburden, depth of deposit and thickness of deposit. I point out that Appendix D5 states that such an assessment has not been carried out for ~ half of that minesite.

I believe that this is sufficient to show that the application is incomplete which is reason not to approve an application for a mining permit from the LQD (Environmental Quality Act 35-11-406 (m) (i). After the incompleteness of the application has been demonstrated, I believe that the burden of proof regarding the areas of the application that are incomplete falls back on the applicant and the DEQ to complete. It is not the responsibility to the objecting parties to to complete the application on behalf of the applicant.

I am attaching several short and relevant excerpts from studies which have included information on the Spearfish Formation. I am including these only to demonstrate that the concern over the presence of the Spearfish Formation overlying the target Minnekahta limerock is not unfounded, and that these aspects of the application demand investigation which the applicant admits in the application has was not done.

Objecting parties have the right to to input into the process once these matters have been assessed. At that point, the burden of proof again falls back on the objecting parties.

Kim Cannon states that questions regarding depth of overburden, nature of overburden, death of Minnekahta limerock and thickness of Minnekahta deposit were covered at the December 21, 2009 public hearing.

I believe that Mr. Mooney did testify that he was satisfied that the matters noted above were adequately addressed in the application.

Nevertheless, it is clear from information contained Appendix D5 of the application that the information provided by the applicant, Croell Redi-Mix, did not fulfill LQD NonCoal Rules and Regulations relating to depth of overburden, nature of overburden, death of Minnekahta limerock and thickness of Minnekahta deposit.

The following are excerpts from Appendix D-5 of the Application (Geology and Overburden Assessment), followed by the LQD NonCoal Rules and Regulation which are applicable.

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from Appendix D-5 - dated Aug / 09 rec'd WDEQ/LQD Sept 2 / 09

GEOLOGY AND OVERBURDEN ASSESSMENT

D5.2.1 Geology

The Permit area is divided into two areas dominated by different types of bedrock.... The eastern portion of the permit area) is underlain by the Permian age "Minnekahta ' limestone" and "Opeche" shale ... whereas the western portion is underlain by the Triassic age "Spearfish" formation.... The base maps of the project area and the four geological maps are of sufficient detail and scale to be able to separate the permit area into two separate portions, the eastern portion underlain by the Minnekahta limestone and the western portion underlain by the Spearfish Formation. Stratigraphically, the Minnekahta limestone immediately underlies the Spearfish formation, so it is assumed that limestone is present at depth below the surficial (superficial? Spearfish?) Formation in the western part of the permit area, but this has not been investigated in the field. Site-specific drilling to assess the limestone reserve has only been completed for the eastern part of the permit area (the LMO area { note - the 10 acre LMO) currently being mined and its extension across the limestone outcrop to its south.

There is a somewhat narrow, generally north-to-south band that separates the distinctive Minnekahta limestone area to the east from the distinctive Spearfish Formation area to the west. ... This delineation has deep soils and it is difficult to determine to which formation the underlying bedrock belongs. ...

D5.2.1.1 Minnekahta Limestone

The Permian Age (286 to 254 million years old) "Minnekahta" limestone is the target limestone bed being mined by Croell Redi-Mix at Rogers Pit Quarry (note - at the current Croell Redi-Mix 10 acre LMO minesite). As a general description of the formation, it is about 40 feet i thickness and consists of light-gray limestone with purplish laminate with individual limestone beds ranging i thickness for less than 1 inch to 3 feet.

In the permit area the Minnekahta limestone is located i an elongate band that extends from north to south across the middle of Section 25 , T52N, R62W. The Limestone outcrops, or thinly subcrops, across much of this area. The current LMO mining is in the northern part of this area.

A site-specific study of the exposed limestone area was conducted for Croell Redi-Mix by Mr. E.B. Olson and/or Mr. James McLellan in May and June of 2007 (McLellan, 2007). The proposed quarry site was called the "Harper Quarry" at the time. Although it is said he didn't produce a written report of his field study, he did produce 9!) a "Figure 1" map showing the location of 27 test holes, 3 surface samples, and 2 cross sections of the limestone area (Figures 2 and 30, (2) some laboratory results of the 3 limestone surface samples, and 1 combined crushed limestone core, and (3) the description logs of the 27 drill holes. a copy of these study deliverables is attached to this report as Addendum 1. An electronic version was not available.

...Figures 4 and 5 show the distribution of the Minnekahta limestone across the current LMO mining area as well as the immediate area to its south . The limestone is described as "very dense, pink to grey, Limestone, dry" and is approximately 10 to 15 feet thick, although at least one small drainage has cut across the area and eroded the limestone in one narrow band....

D5.2.1.2 Spearfish Formation

The Permian - Triassic Age (286 to 225 million years old) Spearfish" Formation composed of dark red, friable, fine-grained sandstone, maroon siltstone, and interbedded shale with several beds of gypsum in the lower part of the formation. Oxidation of iron minerals causes the redness of the rocks. These highly oxidized sands and shale Beds have have the

appearance of deposits found in modern arid intertidal flat environments. Dissolution of the gypsum and anhydrite has resulted in the development of several small, scattered sinkholes and other karstic (see below) features. Fossils have not been reported in the Spearfish Formation (Robinson et.al.,1964).

The Spearfish Formation "rests with sharp contact but no apparent unconformity on the underlying Minnekahta limestone" (Robinson et.al.,1964). The Spearfish formation rocks were laid down in a shallow sea during the late Permian-early Triassic time. Outcrops of the Spearfish Formation encircle the Black Hills forming a topographic depression known as the "racetrack" because it is exposed as an irregular oval around the entire Black Hills. Where the Spearfish Formation outcrops in the western part of the permit area, it is capped by scattered, small areas of gypsum, an evaporitic mineral.

As stated at the beginning of this report,no drilling for limestone has been conducted in the western part of the permit area, the area underlain by the Spearfish Formation. As a result, the thickness of the Spearfish Formation in the permit area and whether or not the underlying Minnekahta limestone is at a reasonable depth for mining, is not known at this time.

D5.2.2 Overburden

... Although individual soil types were fully described and sampled for laboratory characterization from one to several times each, permit area overburden was not sampled for laboratory analysis. In addition, overburden was only investigated for the Minnekahta limestone area and not for the Spearfish Formation area.

D5.2.2.1 Minnekahta Limestone

For the main Minnekahta limestone area, excluding the narrow band to its west where the grass hayland fields exist and limestone may or may not be present below the deep soil, both soil and overburden were investigated....

As stated above, the previous geological study of the limestone area (McLellan, 2007) included measurements of the overburden above the "dense limestone". The 27 drill hole logs included depth measurements of "weathered limestone and silt", "weathered limestone and clay", and "fractured limestone and silt". The thickness of these overburden materials ranged from less than 1 foot to a few feet at their maximum. The "Materials Deposit Layout Sheet" concluded that 20,000 cubic yards of overburden, probably including the topsoil, are present in the limestone study area (McLellan, 2007)

* *Note that the scale of the map is 1 inch = 100 feet. This map encompasses a small acreage, provides no information regarding the legal description of the lands, and is named the "Harper Pit". At the hearing, when I questioned what this map was, it was quickly withdrawn. (copy attached)*

D5.2.2.2 Spearfish Formation

As stated before, there has been no study of either the limestone resource or the overburden in the Spearfish Formation portion of the permit area. Only the soil portion of the overburden has been investigated. The detailed soil survey ... composed of the very shallow to shallow, loamy Rekop soil and the moderately deep (20 to 40 inches to reddish siltstone or gypsum bedrock), fine-silty Gystrum soil.

DEQ LQD Noncoal Rules and Regulations

Section 2. General Application Content Requirements.

(a) In addition to that information required by W.s. 35011-406(a), each application for a mining permit shall contain:

(I) a description of the lands to be affected within the permit area, how these lands will be affected, for what purpose these areas will be used during the course of the mining operation, and a time schedule for affecting these lands.

(F) Overburden, topsoils, subsoil, mineral seams or other deposits

(I) Overburden
Overburden - the operator shall submit a description including the thickness, geologic nature (rock type, orientation, etc), the presence of toxic, acid-forming, or vegetative-retarding substances, or any other factor that will influence the mining or reclamation activities

(IV) Mineral seams or other deposits
Mineral seams or other deposits - the operator shall submit a description of the mineral seams in the proposed permit area,including, but not limited to, their depth, thickness, orientation (strike and dip), and rock or mineral type. Maps or geologic crosssections may be used to illustrate the description of the mineral seams.

Matters relating to the hearing were rushed. Reasonable Notice containing the date and venue of the public hearing, the date of pre-hearing conference and of other shorter deadlines with which it was stated that it was necessary to comply in order to retain party status were not were not mailed to Objecting Parties in a timely manner.

In addition to being unreasonable, the shortness of notice was almost certainly also illegal. It had the effect of further discouraging public participation already made difficult by failure to hold the hearing in its proper local venue (Crook County) and the proximity of the hearing date to the Christmas holidays

Basic Fact 4 [1] of the March 12, 2010 Findings of Fact, Conclusions of Law and Order states falsely states the following:

> **4) Notice of the time and place for the hearing in this proceeding was sent to the parties on December 8, 2009. An amended notice of hearing sent on December 9, 2009 (Tr. at 5).**

The Certificate of Service attached to that December 8, 2009 document attests to the falsity of the above statement. Objecting parties were not mailed this Notice of Hearing and Order. It was, however, e-mailed in house to Mr. McKenzie (Administrator LQD) , Mr. Burbridge (Attorney for the LQD in this matter) and Mr. Corra (Director of the DEQ). It was also mailed to the Applicant by regular US mail on December 8, 2009.. However, once again, it was never mailed to the objecting parties

The December 9, 2009 Amended Notice of Hearing and Order was mailed by regular US post to objecting parties on Wednesday, December 9, 2009. That document contained the following deadlines.

1) parties to provide copies of exhibits to all other parties by noon on Monday, December 14..

2) parties to call in with phone number where they could be reached to attend the pre-hearing conference to take place on Wednesday December 16, 2009 by Monday, December 14 or be dismissed from the case

3) parties to attend December 16, 2009 pre-conference hearing scheduled to take place at 2:30 in the afternoon or be dismissed from the case.

4) parties to attend the hearing in Gillette (as opposed to Sundance where this hearing should have taken place) on Monday December 21, 2009 or be dismissed from the case.

I am assuming that notices and orders of the EQC delivered by mail are subject to a rule similar to Wyoming Rules of Appellate Procedures 14.04. If this is not the case, the argument of reasonable notice of orders delivered by mail still applies.

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1 The first tact numbered as 4 - Due to a numbering glitch in the March 12 Findings of Fact, Conclusions [illegible] numbered as number 4 and two different facts numbered

The December 9, 2009 Amended Notice of Hearing and Order mailed by the EQC to Objecting Parties on Wednesday, December 9, 2009 did not provide sufficient notice for Objecting Parties to comply with Orders contained in that document with a deadline of noon on Monday, December 14

If rules similar to Wyoming Rules of Appellate Procedure 14.04 guide the EQC in its procedure, the timing of the delivery to objecting Parties by mail of the December 9, 2009 Notice of Hearing and Order was not only unreasonable, it was also not legal. If the EQC is not governed by such a rule, nevertheless the arguments for reasonable notice with which this rule attempts to deal are still be relevant.

FYI **Wyoming Rules of Appellate Procedures**

Rule 14. **Service of papers and computation of time**

14.02 Computation of time

In computing any period of time prescribed or allowed by these rules, or by order of court, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of a paper, a day on which weather or other conditions have closed the office of the clerk of the court, in which event the period runs until the end of the next day which is not one of the above described days. As used in this rule "legal holiday" includes any day officially recognized as a legal holiday in this state by designation of the legislature or appointment as a holiday by the chief justice of the Wyoming Supreme Court.

14.04 Additional time for service by mail.

Whenever a party has the right, or is required to do some act or take some proceedings within a prescribed period from or after the service of a brief, notice or other paper upon that party, and the brief, notice or other paper, is served upon the party by mail or by delivery to the clerk, three days shall be added to the prescribed period.

I believe that the EQC was aware of the unreasonableness (and illegality) of such short notice provided to the objecting parties by mail.

Four out of a total of 23 objecting parties attended the December 16, 2009 Pre-Hearing Conference.

In the transcript of the Pre-Hearing Conference, it was stated that the Notice of Hearing and Order was mailed to the parties on December 8, 2009 (which was false).

When the Pre-hearing Conference took place on December 16, I was unaware that the December 8, 2009 Notice of Hearing and Order had not been mailed to objecting parties. However, I was aware that this notice contained errors which had been corrected in the December 9, 2009 amended version of that document.

The transcript of the pre-hearing conference shows that I attempted to correct the record in this matter several time, and each time was ignored.

The transcript also shows that Mr. Ruby, Exec. Sec for the EQC noted how may parties had received the Notice of Hearing and Order and on what days the Notice had been received. It appears from reading the transcript of the Pre-hearing Conference that pretty well everyone except for me had received their mailed copy of this order.

However, the letter to which Mr. Ruby was referring was not the Notice of Hearing and Order. It was the 20 Day Objection Letter which the EQC mailed to all parties on December 8th by certified mail. The 20 day Objection Letter contained no information regarding the date and venue of the hearing or other deadlines noted above. In addition, it incorrectly stated that the hearing must be held by December 25, 2009, when in fact, due to several deadlines falling on the weekend, the deadline for holding the public hearing was actually December 28, 2009. It was signed by Mr. Ruby.

I clearly pointed out to Mr. Burbridge and to the EQC in my comments to two earlier proposed versions of the March 12, 2010 Findings [2] that the December 8, 2009 Notice of Hearing and Order was not mailed to me, to Judy Hamm or to Les Turgeon (all objecting parties in this matter).

The March 12, 2010 Findings of Fact, Conclusions of Law and Order nevertheless still maintains that the December 8, 2009 version of that document was mailed to the objecting parties on December 8, 2009. Once again, the Certificate of Service attached to that document confirms that this is not the case.

Mr. Ruby has written to me stating that the EQC does not intend to correct this error, which I believe the EQC has gone to considerable length to obscure.

Kim Cannon implies that I failed to respond in a timely manner to matters relating depth of overburden, nature of overburden, depth of deposit of Minnekhata Limerock where overlain by the Spearfish Formation and thickness of limerock in this area of the designated minesite.

I believe that I have already partially addressed this matter.

However, I would add that the hearing itself was rushed (once the DEQ had concluded presentation of its case and witnesses). Concluding arguments were not presented at the hearing. Chairman Searle requested instead that concluding arguments of the parties be delivered to the EQC by December 31, 2009. Concluding arguments were confined to matters of record at the time that the hearing was closed, so as far as the hearing process up to December 31, 2009 was concerned, the CD of the Application was still of no use to me. (The Order of Council sealing my January 14, 2010 letter confirmed that December 21, 2010 had been the deadline for evidence to be added to the record.

(I had been given a copy of the CD by Don McKenzie just prior to the hearing being called to order, and by the time I arrived home from the hearing, the same CD (sent to me by courier on December 17, had been delivered.)

When I got to looking at the appendix (D-5) dealing with Geology and Overburden, it was immediately obvious to me, a complete novice in these matters, that something was not right.

That appendix divides the 600 + acre minesite into two separate geological regions which as nearly as I could tell from the written description are ~ equal in area, and that in the portion of the minesite where another geologic layer covered the Minnekahta limerock, stating that there had been no assessment of the nature of the overburden, the depth of the overburden, the depth of the Minnekahta limerock or the thickness of the Minnekahta limerock in the region of the minesite Wheaties overlain by the Spearfish Formation. I wrote to the EQC stating that the application appeared to be incomplete, that this was a substantial matter with a possibility of harm to underground water, particularly the springs and streams supplying the area. I documented my concerns to the best of my ability at the time.

Kim Cannon states that my Petition for Rehearing makes no reference to the March 12 Findings of Fact, Conclusions of Law and Order.

The EQC requested Mr. Burbrdge (attorney for the DEQ LQD in this matter) to draft the Findings of Fact, Conclusions of Law and Order. I believe that this constitutes a conflict of interest on the part of Mr. Burbridge.

The EQC also instructed Mr. Burbridge to solicit comments from the parties regarding two proposed versions of the Findings which preceded the March 12 Findings. I commented extensively on those proposed versions, and my comments are a matter of record. [3]

My Petition for Rehearing contains the following statement alluding to those comments.

> " I believe that the process leading up to and including the hearing of December 21, 2009 was deeply flawed. I am assuming from the similarity of the Findings of Fact, Conclusions of law and Order approved by Council on March 12, 2010 to the Proposed Findings of Fact, Conclusions of Law and Order which objectors were invited to comment upon prior to Council's decision, that Council is not movable on these issues and that all ad ministerial remedies have been exhausted. Please let me know if this is not the case. "

I consider my comments of March 3, 2010 relevant to the March 12, 2010 Finding of Fact, Conclusions of Law and Order. They are a matter of record. [4] I would be pleased for any and all matters included in my March 3, 2010 comments regarding the proposed findings to be included in a reopening of the hearing into this matter.

Please note that in my opinion, probably the most egregious error of the December 21, 2009 public hearing was Council's refusal to hear my testimony explaining my exhibits (which were entered into the record without objection, and which had been faxed to the EQC, to Mr. Burbridge and to Croell Redi-Mix on Friday, December 18, 2009) and to dismiss such testimony as irrelevant before it had been heard.

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3 Feb 11 /10 Proposed Findings of Fact, Conclusions of Law and Order; and Feb 19 /10 Amended Proposed Findings of Fact, Conclusions of Law and Order

4 The EQC also asked Mr. Burbridge to ask all parties to submit comments to the Proposed Findings I sent my comments to the attention of Mr. Burbridge on March 3, 2010. (Mr. Burbridge had instructed to sent the comments to the EQC by March 3, 2010. I faxed my comments to Mr. Burbridge instead. Mr. Burbridge did not get my comments to the EQC until the following day, March 4, 2010. Mr. Ruby accepted my comments into the record, although the EQC date for receiving them is noted as March 4, 2010, one day past the March 3 deadline for delivering comments. While I should have faxed the comments directly to the EQC, Mr. Burbridge was clearing [illegible] the attorney for the EQC in drafting the Findings.

Map of drill holes - studies submitted by Croell Redi-Mix forming a part of Appendix D5 of the Application (Geology and Overburden Assessment)

The map of drill holes submitted by the applicant contains no legal description, no scale which can be applied, and fails to fulfill the standards of LQD Noncoal Rules and Regulations as follows:

DEQ LQD Noncoal Rules and Regulations
Section 1 General Requirements

(c) Maps submitted with the application shall be , or be the equivalent of a U.S. Geological Survey topographic map at a scale determined by the Administrator, but in no event smaller than 1: 24,000. All maps shall contain a title relating to the subject matter of the map, a map number, legend, and show the limits of the permit area

It states in Appendix D5 that the study was carried out in 2007. In May of 2006, when I spoke with Mr. Roger Croell, he told me that he was now our neighbor, owning the lands, some of which were designated as LMO 1396 the following year.

The map of drill holes (bearing no legal description) describes the lands as the Harper Quarry, and states that the land is owned by Leota Osgard and under contract to Lorin Harper. I have read old letters from my father to his ranch manager , John Miller, dating back to the 1960's. In one of those letters, John Miller tells my father that Leota Osgard has sold her land. I was also under the impression that Mr. Croell had purchased his land from either Lorin Harper or his son.

The same Material s Deposit Layout Sheet (included in Appendix D5) which lists Leota Osgard as the owner of the land contains a legal description which is cut off, but which SE 1/4 of Section 25, as follows:

(cut off)?W 1/4 8 W 1/2 SE1/4 which I find undecipherable

Appendix D5 states the following regarding these geologic reports, some of which does not strike the right chord for a study carried out for Croell Redi-Mix less than three years ago. Perhaps there is a simple explanation that I am missing.

" A site-specific study of the exposed limestone area was conducted for Croell Redi-Mix by Mr. E.B. Olson and/or Mr. James McLellan in May and June of 2007 (McLellan, 2007). The proposed quarry site was called the "Harper Quarry" at the time. Although it is said he didn't produce a written report of his field study, he did produce a "Figure 1" map showing the location of 27 test holes, 3 surface samples, and 2 cross sections of the limestone area (Figures 2 and 30, (2) some laboratory results of the 3 limestone surface samples, and 1 combined crushed limestone core, and (3) the description logs of the 27 drill holes. a copy of these study deliverables is attached to this report as Addendum 1. An electronic version was not available."

LMO 1396, which is as follows:

NE NE SW pit NW SE NW haul and access road [5]

Air Quality permits, and public notices place the location of the 10 acre minesite (which should be the same as the original LMO 1396 permitted by LQD) in the NWNE of Section 25, T 52 N R 62 W. Bush Ranches owns this land.

The applicant, LQD and AQD need to sort this out and get back to the objecting parties.

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[5] LQD Notification and Surface Owner consent for LMO aka Ten Acre Exemption Application (Form 10)
NE NE SW - pit
NW SE NW - haul and access roads - list those portions of newly constructed or upgraded private roads which provide exclusive access to the mining operation
(note - for calculating size of minesite)

October 25, 2006
TFN No. 4 4/315
permit # 1396 ET
District III
stamped received November 2006

No new facts - Spearfish Formation was a new fact to me when I brought this information to the attention of Council in my letter dated January 14, 2010.

No opportunity to argue Spearfish Formation and matters relating to depth and nature of of overburden and, depth of deposit of Minnekahta or thickness of Minnekahta in part of permit area overlain by Spearfish Formation. Through the failure of the DEQ LQD to provide me with a copy of the Application until moments before the Public hearing was called to order, I was unaware these matters when the public hearing took place.

This matter has never been raised before Council.

I was aware of the Rule cited both by John Burbridge and Kim Cannon in their objection for a rehearing in this matter, when I filed my Petition for Rehearing on April 1, 2010, as follows:

> **Rules of Practice and Procedure, Chapter 4, Section 1(b) as follows:**
>
> ' Any petition for rehearing filed under this section must be confined to new questions raised by the decision and upon which the petitioner had no opportunity to argue before Council."

* Council did not raise this matter in their decision because it did not come up at the December 21, 2009 pubic hearing
* It did not come up at the hearing because I was unaware of this circumstance at the time.
* I was unaware of this circumstance at the time of the December 21, 2009 public hearing because DEQ LQD failed to provide me with a copy of their exhibit until moments before the hearing began, as required to do according to the December 9, 2009 Amended Notice of Hearing and Order, and in spite of my best efforts to obtain a copy of this application.

Under these circumstances, I think it is unreasonable to enforce the requirement that new questions must be raised by the decision. I think it is sufficient that LQD did not fulfill its obligation to deliver its exhibit to me in a timely fashion as that division was instructed to do by order of the EQC and as a result there are substantial questions relating to this matter which were not raised during the course of the December 21, 2009 public hearing.

Kim Cannon also seems to be saying that it is time to get this matter over and done with. I think the question is do we just want to do it and get it over with, or do we want to do it right. There is information which came out in the course of the December 21, 2009 public hearing which the DEQ and some members of Council just wish would go away.

Amendment to Fact 1

Intention of the EQC to amend Fact 1 contained in the Findings of Fact portion of the March 12 Findings of Fact, Conclusions of Law and Order to be dealt with at the May 14, 2010 meeting of Environmental Council

I understand that either on May 13 or May 14, the EQC will,in addition to considering my April 1 Petition for a Rehearing, will also be amending Fact 1, which states:

1 " Croell filed an initial application for a surface mining permit with DEQ on December 9, 2009. (Ex 11, Cover)"

will be changed to read:

1 Croell filed an initial application for a surface mining permit with DEQ on December 9, 2008. (Ex 11, Cover)"

Evidence presented at the December 21, 2009 public hearing indicates that Croell Redi-Mix filed an application for a regular mining permit in December of 2008, although I have seen no evidence (contained anywhere in Exhibit 11) that indicates that the application was filed on December 9, 2008.

I do not know where the Date December 9, 2009 is documented. Glenn Mooney testified at the December 21, 2009 public hearing that the application (for a regular mine permit) was received on December 8, 2008.

I am assuming that the application was filed with the DEQ LQD (as opposed to having been filed with the DEQ as a whole). . Previous Proposed versions of the March 12 Findings of Fact, Conclusions of Law and Order specified that the application was filed with the LQD, however that information has been omitted from the March 12th Findings

The Application considered at the December 21, 2009 public hearing was for a regular mining permit. The Pre-hearing Memorandum submitted by Mr. Burbridge for the December 16, 2009 Pre-Hearing Conference specified a small mining permit. Mr. Burbridge has confirmed to me that Croell Redi-Mix is presently operating under a Small Mine Permit.

Fact 4 included in the March 12, 2010 Findings of Facts, Conclusions of Law and Order should also be amended. It is false.

Fact 4 *first basic fact 4* **" Notice of the time and place for the hearing in this proceeding was sent to the parties on December 8, 2009. An amended notice of hearing sent on December 9, 2009. (Tr. at 5) "**

Notice for the time and place for the hearing was not sent to the objecting parties on December 8, 2009. This is evidenced by the Certificate of service attached to the December 8, 2009 Notice of Hearing and Order. This notice was e-mailed internally to Don McKenzie, John Corra and John Burbridge. It was mailed by regular mail to the applicant, Roger Croell, Croell Redi-Mix. Objecting Parties did not receive a copy of this December 8, 2009 document.

Please note that amending an error in fact contained in the March 12, 2010 Findings of Fact, Conclusions of Law and Order is different from correcting a typographical error, which is how I suspect the amendment to Fact 1 (discussed on the previous page) is being treated.

I informed Council in my March 3, 2009 response to the Proposed Findings of Fact, Conclusions of Law and Order that the December 8, 2009 Notice of Hearing and Order was not mailed to the objecting parties. (See more comments regarding this matter on pages 8 - 10 of this document.

The Permit issued to Croell Redi-Mix on March 31, 2010 should not have been issued.

Fact 5 in March 12, 2010 Findings of Fact, Conclusions of Law and Order implies a Conclusion of Law which is wrong.

5) " **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) (West 2009) (A.R. Affidavit of Publication. Sundance Times; Affidavit of Publication, Casper Star Tribune).**"

This is a case of not enough information. Notice of the hearing was published in the Sundance Times on December 17, 2009 This was the first public notice for the December 21, 2009 public hearing. The date provided in the Sundance Times was incorrect.

The EQC was aware on November 19, 2009 when the Docket for this matter was opened, that there would have to be a public hearing in this case. They e-mailed the Notice of Hearing in house and mailed it to the Applicant on December 8, 2009. They informed objecting parties of the hearing date and venue on December 9, 2009. The Sundance Times published on December 10 and December 17, 2009. There was no good reason why public notice of the hearing could not have appeared in both of these editions of the Sundance Times, fulfilling the requirements of Public Notice to the letter.

<u>There are two statutes which are relevant to the first Basic Fact 5)</u>

1) Environmental Quality Act 35-11-406 (k)

Any interested person has the right to file written objections to the application with the administrator within thirty (30 days after the last publication of the above notice. For surface coal mining operations , the director may hold an informal conference if requested and take action on the application in accordance with the right of appeal to the council which shall be heard de novo. A conference shall be held if the complainants indicates that an attempt to informally resolve the disputes is preferable to a contested case proceeding. An informal conference or a public hearing shall be held within twenty (20) days after the final date for filing objections unless a different period is stipulated to by the parties. The council or director shall publish notice of the time, date and location of the hearing or conference in a newspaper of genera 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.

2) Wyoming Administrative Procedures Act 16-3-110 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. <u>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.</u> 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.

The plain fact is that the date wrong into the Public Notice which was published in the December 17, 2009 Sundance Times. A concise and explicit statement of this circumstance is noticeably missing.

The only correct Public Notice for the December 21, 2009 public hearing was published on the Saturday and Sunday immediately preceding the Monday hearing. The Findings cite "West 2009" as a legal precedent for short public notice when it was not possible to provide notice as set out in 35-11-406 (k) above. I have not read this decision, but under the circumstances just described, I doubt that this precedent applies.

Mr. Burbridge recently informed me that Croell Redi-Mix is presently operating under a small mine permit issued by LQD March 31, 2010.

It is unclear if this permit issued as a result of the December 21, 2009 public hearing process, and if it did, whether a small mining permit could be issued when the application before the EQC was for a regular mining permit.

\It is also unclear whether it was appropriate to issue any type of mine permit prior to the period for filing a Petition for Rehearing before the EQC.

Mr. Burbridge has written that the Small Mine Permit was issued on March 31, 2010. The deadline for filing a Petition for Rehearing was April 1, 2010.

The Rules of Practice and Procedure which govern the Environmental Quality Council state the following regarding Petitions for Rehearing and Scope of Rehearing:

Rules of Practice and Procedure

Chapter IV Rehearing

Section 1 Petition for Rehearing

(a) Any party seeking any change in any decision of the Council may file a petition for rehearing within twenty (20) days after the written decision of the Council has been issued

(b) Any petition for rehearing filed under this section must be confined to new questions raised by the decision and upon which the petitioner had n opportunity to argue before Council.

(c) Any petition for rehearing must specify whether the prayer is for reconsideration, rehearing, further hearing, modification of effective date, vacation, suspension or otherwise.

(d) Except as the Council may otherwise direct, the filing of a petition under this section shall not stay the effectiveness of any decision respecting the promulgation, amendment, or repeal of any rule or rules.

Section 2. **Scope**

(a) A petition for rehearing may be filed in hearings conducted under Chapter II or Chapter III.

(b) The granting of a petition to rehear is solely within the discretion of the Council

If I am reading Section 1 (d) correctly, it refers exclusively to Chapter III of the Rules of Practice and Procedure. Chapter III relates to Rule Making Hearings or hearings by an Administrator of a Division of the DEQ and is not applicable to this Petition for Rehearing. which falls under Chapter II of the Rules of Practice and Procedure - Rules of Practice and Procedure applicable to Hearings in contested Cases.

LQD issued the permit applied for in the application (a regular mine permit with a designated minesite of 600 + acres) to Croell Redi-Mix on March 31, 2010. Mining activities at the expanded operation are currently underway.

It is not clear whether or not the LQD had the authority to issue this or any other permit prior to the deadline for Filing a Petition for Rehearing having passed. The deadline for filing a Petition for Rehearing in this matter was April 1, 2010.

In addition, although Mr. Burbridge stated in the December 14 DEQ LQD Pre-Hearing memorandum that Croell Redi-Mix had applied for a small mine permit, the application which we were considering on December 21, 2009 states in both the first paragraph of the Mine Plan and the first paragraph of Appendix D5 that what is being applied for is a regular mine permit.

How can the subject of a public hearing be one type of mining permit and the permit issued after the hearing be another type of mining permit. Not only are limitations on operations different for regular and small mining permits, permit application requirements also differ.