

**BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING**

FILED

AUG 25 2010

*Jim Ruby, Executive Secretary
Environmental Quality Council*

**IN THE MATTER OF THE OBJECTION)
TO THE SMALL MINE PERMIT OF)
EVANS CONSTRUCTION COMPANY)
TFN 5 6/149)** **Docket No. 10-4802**

NOTICE OF HEARING AND ORDER

NOTICE IS HEREBY GIVEN THAT:

1. The Environmental Quality Council (the Council) will conduct a hearing on September 10, 2010 at the Evanston Round House, 1500 Main Street, Evanston, Wyoming commencing at 8:30 A.M. This hearing will be conducted as a contested case hearing under the Wyoming Administrative Procedure Act. Tim Flitner, a member of the Council will serve as Presiding Officer.
2. This hearing is held pursuant to Sections 35-11-101 through 35-11-1904, W.S. 2008, as amended, regulations promulgated there under, and the Department of Environmental Quality Rules of Practice and Procedure.
3. Evans Construction Company, (Evans) applied for a small mining permit from the Department of Environmental Quality (DEQ).
4. Evans and the DEQ contend the permit application is complete and should be granted.
5. The Protestant objected to Evans' small mining permit. The particular statutes and rules upon which the Protestant base his objections have not been specified at this time.
6. This matter was scheduled in accordance with the time limitations set forth in Wyo. Stat. § 35-11-406(k). The schedule can only be adjusted at the request and the filing of a joint stipulation and motion for continuance.

NOTICE IS FURTHER GIVEN THAT:

1. A prehearing conference in this matter will be conducted on September 3, 2009 at 9:00 a.m. via telephone conference call. The parties shall inform the EQC office of a direct telephone number and if possible an email address where they can be reached for the prehearing on or before 12:00 noon September 1, 2010. Failure to appear at the prehearing conference may result in dismissal from this case.

2. The purpose of the prehearing conference is:
 - a. Identification of witnesses, their addresses, phone numbers, and the substance of their proposed testimony;
 - b. Clarification of the legal issues, both substantive and procedural, of all the parties, including identification of the statutory provisions and regulations that form the basis of the appeal;
 - c. Stipulation to uncontested facts;
 - d. Examination and marking of proposed exhibits and entering into stipulations to the foundation and admissibility of the exhibits and testimony; and
 - e. Pending motions.
3. To facilitate the hearing process, all parties shall deliver a list of witnesses, their addresses, phone numbers, the substance of their proposed testimony, a list of exhibits, and a summation of the facts and legal issues, to all parties to this case (Evans, the Protestants, and the Department of Environmental Quality) and the Environmental Quality Council by 12:00 noon on September 1, 2010.
4. The Parties shall exchange and submit 3 copies to this office of all exhibits on or before the Prehearing Memorandum due date, September 1, 2010.
5. In accordance with the DEQ Rules of Practice and Procedure, Chapter 1, Section 6, "Unless otherwise agreed to by the parties and consented to by the Council, all hearings, including all testimony, shall be reported verbatim by a competent reporter. The compensation of such reporter shall be paid as required by law and as ordered by the Council. The Council may direct any party or parties to assume the cost of the transcript." If the Parties do not file a waiver to this section, the DEQ should pay the costs of the transcript.

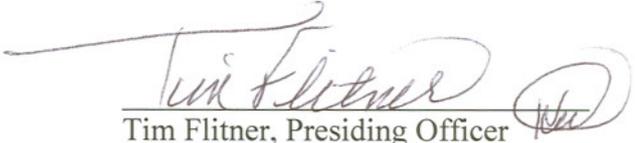
ORDER

IT IS HEREBY ORDERED THAT:

1. All parties shall appear at the prehearing conference call on September 3, 2010 at 9:00 A.M. The parties shall inform the EQC office of a direct telephone number and if possible an email address where they can be reached for the prehearing on or before 12:00 noon September 1, 2010. Failure to appear at the prehearing conference may result in dismissal from this case.

2. All parties shall appear on September 10, 2010 at 8:30 A.M. to present evidence. Failure to appear at the hearing will result in dismissal from the case.
3. A court reporter will transcribe the hearing. If the Parties have not filed a waiver for the prehearing on or before 12:00 noon September 1, 2010 a court reporter will transcribe the prehearing. The DEQ shall pay for the transcripts.
4. All parties shall deliver the prehearing document and exhibits in accordance with the schedule set forth in this Notice of Hearing and Order. All other documents shall be filed with the Environmental Quality Council at the address below, and all documents shall be served to all other parties to the case.
5. Documents may be served or delivered by fax transmission or via-email if prior arrangements for the transmission are made with the recipients, the e-mailed document is in either Word for Windows or WordPerfect 6.0, and the original document is mailed to the Council prior to or at the same time as transmission by fax or e-mail. The fax number for the Environmental Quality Council is 307-777-6134 and the e-mail address is kwarin@wyo.gov
6. All motions shall be filed by 12:00 noon September 1, 2010, and parties shall be prepared to argue pending motion(s) at the prehearing; and
7. No continuances shall be granted unless a motion showing good cause for the continuance is filed with the EQC no later than 12:00 noon on September 1, 2010 and the Presiding Officer finds that good cause has been shown.

DATED this 25th day of August, 2010.


Tim Flitner, Presiding Officer
Environmental Quality Council

CERTIFICATE OF SERVICE

I, Kim Waring, certify that at Cheyenne, Wyoming, on the 25th day of August, 2010, I served a copy of the foregoing **NOTICE OF HEARING AND ORDER** by electronic mail to the following:

John Burbridge
Asst. Attorney General
Jburbl@state.wy.us

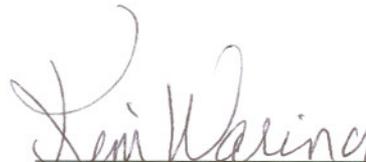
Timothy J. Bommer
Attorney at Law
justice@silverstar.com

Don McKenzie, LQD
Administrator
dmcken@wyo.gov

Mark Moxley
DEQ Land Quality Division
mmoxle@wyo.gov

and by depositing copies of the same in the United States mail, postage prepaid, duly enveloped and addressed to:

Mr. Lane Bybee, President
Evans Construction Company
P.O. Box 4306
Jackson, WY 83001



Kim Waring, Sr. Office Supp. Spec.
Environmental Quality Council
122 W. 25th, Rm. 1714
Herschler Bldg.
Cheyenne, WY 82002
Phone: 307-777-7170
FAX: 307-777-6134