

**FILED**

JUL 27 1993

Terri A. Lorenzon, Attorney  
Environmental Quality Council

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

**IN THE MATTER OF THE NOTICE )  
OF VIOLATION AND ORDER )  
ISSUED TO CUNDY ASPHALT )  
PAVING CONSTRUCTION, INC., ) DOCKET NO. 2482-93  
MR. BRADLEY A. CUNDY, )  
PRESIDENT, P.O. BOX 2469, )  
GILLETTE, WYOMING 82717-2469 )**

**RESPONSE TO NOTICE OF VIOLATION AND ORDER ISSUED BY THE  
DEPARTMENT OF ENVIRONMENTAL QUALITY AND REQUEST  
FOR HEARING PURSUANT TO W.S. §35-11-701(c)(ii)**

**PRELIMINARY MATTER**

1. The Notice of Violation was issued to Cundy Asphalt Paving Construction, Inc. and Mr. Bradley A. Cundy, President. All future correspondence may be directed to the attorney for the corporation, James L. Edwards, at Post Office Box 1148, Gillette, Wyoming 82717-1148.

2. Request is hereby made for a hearing in front of the Environmental Quality Council pursuant to W.S. §35-11-701(c)(ii). The request for hearing is made on behalf of Cundy Asphalt Paving Construction, Inc. and Bradley A. Cundy, President.

**IN RESPONSE TO THE SPECIFIC ALLEGATIONS** contained in the

Notice of Violation, Cundy Asphalt Paving Construction, Inc. (hereinafter "Cundy") states as follows:

1. Although DEQ, Department of Air Quality, has found Cundy to be in violation of §35-11-201 and §35-11-801, Cundy denies it was in violation of those regulations.

2. Cundy also denies any rule, regulation, or standard adopted by the council was violated by it through the discharge or emission of any air contaminant.

3. Cundy acknowledges that §35-11-801 requires that, "A permit to construct is required before construction or modification of any industrial facility capable of causing or increasing air or water pollution in excess of standards established by the department is commenced." Cundy denies that any standards established by the department were violated.

4. Cundy acknowledges that Section 21(a)(i) of the Wyoming Air Quality Standards and Regulations requires any person who plans to construct any new facility or source, modify any existing facility or source, or to engage in the use of which may cause the issuance of or an increase in the issuance of air contaminants into the air of this state shall obtain a construction permit from the State of Wyoming, DEQ before any actual work is begun on the facility.

5. Cundy denies it violated Air Quality Standards and Regulations as claimed in paragraph 5 of the Notice of Violation.

6. Cundy admits it submitted a permit application form on 19

April 1993 to the Air Quality Division as alleged in paragraph 6 of the Notice of Violation.

7. Cundy admits the public notice of the Air Quality Division's proposed decision to issue a permit was published in the June 17, 1993, issue of the Buffalo Bulletin as alleged in paragraph 7 of the Notice of Violation.

8. Cundy admits a copy of the public notice and permit evaluation was sent to Mr. Bradley A. Cundy under cover of letter dated 9 June 1993; however, Cundy denies operation of the asphalt plant prior to the issuance of the final permit is a violation of Section 21 of the Air Quality Standards and Regulations.

9. Cundy admits that as of the close of business on 15 July 1993, an Air Quality Permit to construct had not been issued as alleged in paragraph 9 of the Notice of Violation.

10. Cundy admits that on 14 July 1993, Richard L. Schrader observed the hot mix asphalt plant operating at the Powder River Interchange on Interstate 90 in Johnson County, Wyoming. However, it is also admitted that no emissions were observed by Mr. Schrader.

11. Cundy admits that on 15 July 1993, Mr. Schrader again observed the CMI hot mix asphalt plant operating in the same location.

12. Cundy acknowledges the allegations contained in paragraph 12 that indicate any person who violates, or any director, officer, or agent of a corporate permittee who willfully and knowingly

authorizes, orders, or carries out the violation of any provision of the Environmental Quality Act is subject to fines; however, Cundy specifically denies that any violation if it did occur was willfully and knowingly done or authorized by Cundy or any officer, director, or agent of Cundy.

**FURTHER, CUNDY RESPONDS** further to the Notice of Violation from the Department of Environmental Quality as follows:

1. Cundy was not advised by Mr. Schrader or any other employee or agent of DEQ that no construction could take place prior to the issuance of the construction permit. See Section 21(a)(i).

2. In all times previous and in the present situation wherein Cundy applied for permits for its asphalt facilities, it was never advised that no construction could take place prior to the issuance of the permit. While this may have been a matter of confusion on Cundy's part, it proceeded with the present plant with the same understanding that sending in the application for permit to construct was sufficient for it to commence construction and start up testing.

3. Cundy further requests that DEQ note that the present asphalt plant is a replacement for an older, out-dated plant. The replacement plant being operated by Cundy meets the standards established by DEQ for emissions. It is anticipated that the test results will show that the emissions of the new plant are well

within the standards established by DEQ.

### ISSUES

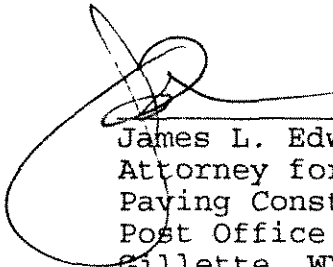
1. Whether the statute cited in the Notice of Violation were violated by Cundy.

2. If a violation is found to have occurred, whether the violation was done knowingly and willfully.

**IT IS RESPECTFULLY REQUESTED** that a hearing be set before the Department of Environmental Quality Council for determination of the issues raised in the Notice of Violation and the response submitted on behalf of Cundy Asphalt Paving Construction, Inc. Any future correspondence may be sent to James L. Edwards, attorney for Cundy Asphalt Paving Construction, Inc., Post Office Box 1148, Gillette, Wyoming 82717-1148, telephone number (307) 682-1444.

DATED this 26<sup>th</sup> day of JULY, 1993.

STEVENS, EDWARDS & HALLOCK, P.C.



James L. Edwards  
Attorney for Cundy Asphalt  
Paving Construction, Inc.  
Post Office Box 1148  
Gillette, WY 82717-1148  
(307) 682-1444

**CERTIFICATE OF SERVICE**

I, James L. Edwards, do hereby certify that I served the above and foregoing RESPONSE TO NOTICE OF VIOLATION AND ORDERED ISSUED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND REQUEST FOR HEARING PURSUANT TO W.S. §35-11-701(c) (ii) upon the following by placing a true and correct copy thereof:

in a prepaid envelope to be delivered by Federal Express, and properly addressed to:

Charles A. Collins, Administrator  
Division of Air Quality  
Department of Environmental Quality  
Herschler Building, Fourth Floor  
122 West 25th Street  
Cheyenne, WY 82002  
(307) 777-7391

in the United States mail, postage prepaid, and properly addressed to:

Ms. Terri A. Lorenzon  
Environmental Quality Council  
Room 407  
Barrett Building  
2301 Central Avenue  
Cheyenne, WY 82002

on this 26 day of JULY, 1993.

  
James L. Edwards