



BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

FILED
MAY 11 1992

In the Matter of the)
Permit Application of)
RISSLER & MCMURRY CO.,)
TFN 2 6/247)

Docket No. 2373-92

Thad A. Lorenson, Administrator
Environmental Quality Council

PREHEARING MEMORANDUM

COMES NOW the Plaintiff, Rissler & McMurry Co., and files its Prehearing Memorandum as follows:

I. NATURE OF THE CASE

This is a contested case hearing on the above-captioned permit, brought pursuant to Wyo. Stat. § 35-11-406 et seq.

II. CONTENTIONS OF THE PARTIES.

1. The application for the permit is complete.
2. The applicant has paid the required fee.
3. No 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.
4. The proposed mining operation will cause pollution of any waters in violation of the laws of this state or the federal government.
5. The applicant has not had any other permit or leases issued under the Environmental Quality Act revoked or forfeited.
6. The proposed operation does not constitute a public nuisance or endanger the public health or safety.
7. The affected lands do not lie within 300 feet of any existing occupied dwelling, home, public building, school, church, community or institutional building, park or cemetery.
8. The operator is able to produce the bonds required.
9. No written objections have been filed under subsection (g) of Wyo. Stat. § 35-11-406. Subsection (g) states:

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.
10. Information upon the application and information obtained



through the directors investigation demonstrates that reclamation can be accomplished consistent with the purposes of § 35-11-406.

11. The applicant is not in violation of any of the provisions of Wyo. Stat. § 35-11-406.

Applicant contends that the Environmental Quality Counsel should not apply Wyo. Stat. § 35-11-406(iv) to this application. In the event it does apply Wyo. Stat. § 35-11-406(v), Applicant contends that the objectors should have the burden of proof to show that "the proposed mining operation would irreparably harm, destroy or materially impair these lands that have been designated rare and uncommon pursuant to Wyo. Stat. § 35-11-112(v)".

III. ISSUES OF LAW.

The designation of these lands as rare and uncommon is objected to by the applicant. These lands were designated *ex post facto* to the permit application. Applicant objects to the application of any of the criteria set out in the rare and uncommon designation to this permit application because the Department of Environmental Quality has already determined the application to be complete.

Said designation violates Article 1 § 6 ; Article 1 § 7; Article 1 § 34 and Article 1 § 35 of the Wyoming State Constitution as well as similar provisions of the United States Constitution.

Further, Applicant objects to the determination of these lands as rare and uncommon because the actions of the Environmental Quality Counsel were arbitrary, capricious and an abuse of discretion. Further, the grounds for delineating the lands have not been set out in a final order. Applicant especially objects to the use of fossils as a criteria for rare and uncommon. Fossils are not one of the criteria set out in Wyo. Stat. § 35-11-112 (v) and therefore the Environmental Quality Counsel lacks legislative authority to include fossils within the definition without promulgating rules pursuant to their rule making authority.

Applicant objects to any attempt to remand Rissler & McMurry Co.'s permit application back to the Department of Environmental

Quality once the application has been deemed by the Environmental Quality Counsel to be technically complete. Such action would be a clear violation of Wyo. Stat. § 35-11-406(k).

Applicant objects to all late filed objections including the objections of Mr. Snodgrass which were mailed on April 22, 1992.

IV. ISSUES OF FACT.

Applicant adopts the Department of Environmental Quality Statement of Facts as follows:

On December 19, 1991, the Department of Environmental Quality received an application for a small mine permit from Rissler & McMurry Co. The Department of Environmental Quality proceeded to review the application to ensure that it was complete and technically adequate, pursuant to Wyo. Stat. § 35-11-406. On January 3, 1992, the Department of Environmental Quality requested comments from the Game and Fish Department. On January 9, 1992, the Department of Environmental Quality notified Rissler & McMurry Co. that its application was not complete or technically inadequate.

On January 16, 1992, the Game and Fish Department submitted comments to the Department of Environmental Quality. It provided information concerning animal herds in the vicinity of the proposed mining operation. It further expressed some concern about the Speas Springs, which supplies water to the Speas Fish Hatchery. According to the Game and Fish Department, there is some evidence that blasting at the existing mine has caused silt concentrations to increase in the water coming from the spring. It further stated that excessive silt levels could be detrimental to the fish hatchery.

On January 17, 1992, Rissler & McMurry Co. submitted additional information in response to the Department of Environmental Quality comments. That information included an application for a license to mine, the requisite fee, a revised map, and evidence of its right to access the proposed operation site. On January 24, 1992, the Department of Environmental Quality contacted the State Historic Preservation Office to obtain records

of any known archeological areas in the vicinity of the proposed mine site.

On January 28, 1992, the Department of Environmental Quality notified Rissler & McMurry Co. that its application was complete. The Department of Environmental Quality further notified the company that its application was still technically inadequate, and asked the company to provide additional information which would address the Department of Environmental Quality's technical concerns. On February 4, 1992, the Department of Environmental Quality provided Rissler & McMurry Co. with additional technical comments to address in order to make the application technically adequate. On February 21, 1992, Rissler & McMurry Co. responded to the Department of Environmental Quality's technical comments.

On March 13, 1992, the Department of Environmental Quality responded to the Game and Fish Department's comments. The Department of Environmental Quality notified the Game and Fish Department that it would require protective measures for sensitive habitats. The Department of Environmental Quality further stated that, based on its information, there is no reason to believe that the proposed operation would in any way adversely impact the Speas Spring or the fish hatchery.

Also on March 13, 1992, the Department of Environmental Quality notified Rissler & McMurry Co. that its application is complete and technically adequate, and that Rissler & McMurry Co. should cause notice of its application to be published, pursuant to Wyo. Stat. § 35-11-406. On April 3, 1992, Rissler & McMurry Co. provided the Department of Environmental Quality with an affidavit, evidencing that it had caused notice to be published in the Casper Star Tribune. However, that affidavit did not address each publication. On April 7, 1992, the Department of Environmental Quality notified Rissler & McMurry Co. that it needed to provide evidence of all publications. On April 10, 1992 Rissler & McMurry Co. complied with the Department of Environmental Quality's request for additional evidence by providing other affidavits.

V. WITNESSES

Rissler and McMurry Company may call any of the following witness but not necessarily in this order:

1. Ernest Skretteberg
c/o Rissler & McMurry Co.
3245 Salt Creek Highway
Casper WY

Mr. Skretteberg has been primarily responsible for the mine application, the mine plan, the reclamation plan. He will testify about the permitting process, the mine plan and reclamation plan. Mr. Skretteberg may also testify about the blasting plan and the documentation. He is also the safety supervisor. He may testify about the safety aspects of the operation including, but not limited to the DOT requirements for truck drivers, maintenance schedules on trucks, urine analysis on the drivers, certification and other safety aspects. He may also testify about steps taken to insure safe blasting to the public and Speas Spring. He will also testify about the excavation of fossils and protection for wildlife and historic sites within the mining area.

2. W.N. McMurry
c/o Rissler & McMurry Co.

Mr. McMurry may testify, if deemed relevant, about the choice of Bessemer as his site for the mine; his survey of other sites and why he chose Bessemer.

Mr. McMurry may also testify, if deemed relevant, as to his negotiations with the State Land Commission wherein Rissler & McMurry Co. agreed to pay \$0.50 per ton royalties when \$0.25 per ton is statutory. Mr. McMurry may testify as to the value of the minerals and their importance to the state and his company.

Mr. McMurry will testify about the necessity of blasting at the quarry and the results of rock testing to determine if the limestone could have been ripped.

Mr. McMurry may also testify as to the necessary aspects of Rissler & McMurry Co.'s mining plan and reclamation plan.

Mr. McMurry will testify that his company has never forfeited a reclamation bond and is not presently in violation of any of the laws.

3. Ron McMurry
c/o Rissler & McMurry Co.

Mr. Ron McMurry will testify as to his use of the DS-227 blast monitoring device. He will testify as to his training and how it is used and that the machine was working properly when he monitored the blast on October 25, 1991.

4. Pat McMurry
c/o Rissler & McMurry Co.

Mr. Pat McMurry will testify as to his use of the DS-277 blast monitoring device. He will testify as to his training and how it is used and that the machine was working properly when he monitored the blast on October 8, 1991.

5. John Merrick
c/o Rissler & McMurry Co.

Mr. Merrick may testify as an expert. Mr. Merrick will

testify as to his experience in the field of geophysics and his knowledge of blasting techniques. He will testify as to all aspects of the blasting done at the Bessemer Quarry. He may render an opinion as to the effects of blasting on geologic structures. He may also testify as to safe blasting techniques.

6. Martha S. Horn
777 W. First
Casper WY 82001

Ms. Horn is a consulting hydrologist. She may testify as an expert. She will testify about her study of Speas Spring. She will render an opinion that the alleged silting at Speas Spring is likely to be a result of the erosion from runoff, and or heavy foot traffic. She will also render an opinion that the blasting is in no way related to the reported silting.

7. Chuck Dow
341 East "E", Suite 115
Casper, WY 82602

Mr. Chuck Dow is a consulting geophysicist. He will testify as an expert. If he does, he will testify about the science of geophysics. He will testify as to permitted blasting levels near springs as published by the bureau of mines. He will render an opinion that the blasting at Speas Spring was well within permissible levels and in no way would be responsible for the reported silting.

8. Rodger Garling
254 N. Center St.
Casper, WY 82601

Mr. Garling is a chemist by training and part owner of Energy Laboratories, Inc. Mr. Garling will interpret data on water quality at Speas Spring. He will also testify about his water quality testing soon after the blasting ceased at the spring. He may testify about selenium testing he did as it relates to the reclamation plan. Mr. Garling may testify that in his opinion the reported total dissolved solids as reported on the Department of Agriculture water test in May, 1991 (2.01) was enough, in itself to cause silting at the spring. Said Department of Agriculture test was taken prior to any blasting.

9. Rissler & McMurry Co. reserves the right to list additional witnesses and any witnesses listed by any of the other parties in their prehearing memorandum or supplemental list of witnesses.

VI. EXHIBITS.

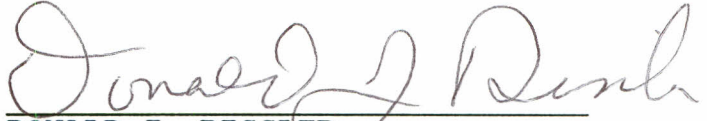
1. Rissler & McMurry Co. Small Mine Permit application.
2. Report by Martha Horn entitled "Origin of Sediment in Speas Spring" on file with the Department of Environmental Quality. Counsel reserves the right to use any of the exhibits therein contained as exhibits.
3. Report by Charles R. Dow in regard to blasting at Bessemer Mt. on file with the Department of Environmental

Quality. Counsel reserves the right to use any of the exhibits therein contained as exhibits.

4. Calibration certificate and user manual for DS-277 blastmate.
5. Four reports of Blasting Operations by John Merrick and the operation of the DS-277.
6. The U.S. Bureau of Mines criteria.
7. Blasting guidelines manual from the office of Surface Mining - Reclamation & Enforcement. (OSMRE).
8. Report on the "Survey of Blasting Effects on Ground Water Supplies in Appalachia". published November, 1980 (USBM).
9. Photograph of mine showing where limestone outcroppings are.
10. Areal photographs of the mine and its distance from the spring.
11. Three photographs of Speas Spring showing erosion of surrounding banks.
12. Report from Caterpillar on the use of a ripper on the limestone at Bessemer Mt.
13. Video tape of the spring showing snow melting.
14. Various water quality analysis from Rodger Garling and the Department of Agriculture.
15. United States Office of Surface Mining Blasting Guidelines Manual (3/87).
16. Atlas Powder Co. Explosives & Rock Blasting (1987).
17. Geologic column showing the formations near Bessemer Mt.
18. Geologic map showing geology.
19. Cross section of formation.
20. Newspaper letters to the Casper Star Tribune, advertisements and handbills circulated by Friends of Bessemer Mt. and objectors asking for letters to be written.

21. Rissler & McMurry Co. reserves the right to list additional exhibits and any exhibits listed by any of the parties in their prehearing memorandum or supplemental list of exhibits.

DATED this 1 day of May, 1992.



DONALD J. RISSLER
Attorney for Applicant
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Casper, Wyoming 82601
307-266-6834

CERTIFICATE OF SERVICE

This is to certify that I served a true and correct copy of the foregoing Prehearing Memorandum upon Jeffrey C. Gosman, 139 W. Second St., Suite 1-A, Casper, Wyoming 82601, Thomas A. Roan, Assistant Attorney General, 123 Capitol Building, Cheyenne, Wyoming 82002 and Terri A. Lorenzon, 2001 Capitol Avenue, Room 304, 116 West 6th Avenue, Cheyenne, Wyoming 82001-1351, by depositing the same in the U.S. Mail, postage prepaid, properly addressed, this 1 day of May, 1992.



Donald J. Rissler