

FILED

AUG 18 1977

Ardeite M. Kissler, Clerk
Environmental Quality Council

STATE OF WYOMING
BEFORE THE ENVIRONMENTAL QUALITY COUNCIL

IN THE MATTER OF OBJECTIONS TO)
THE REQUEST OF RISSLER-MCMURRY) Docket No. 205-76
COMPANY'S APPLICATION FOR A)
MINING PERMIT.)

ENVIRONMENTAL QUALITY COUNCIL FINDINGS
OF FACTS, CONCLUSIONS OF LAW, AND ORDER

FINDINGS OF FACT

1. Rissler & McMurry Company is a Wyoming Corporation engaged in highway construction, construction and extraction of sand and gravel.

2. Rissler & McMurry Company has made application to the Administrator for a permit to mine sand and gravel from an area known as the Rimrock Pit.

Said gravel pit is located in Section 28, T 33 N, R 80 W of the 6th P.M., Natrona County, Wyoming.

3. Rissler & McMurry has a lease for the extraction of sand and gravel from the Rimrock Livestock Company, P. O. Box 554, Mills, Wyoming, the owners of the land and minerals to be extracted.

4. The prior use of said property was livestock grazing. The primary use for the immediate area of the property in question is agricultural with some residential housing now in existence.

5. All record owners of surface rights within one-half mile and all persons owning mineral rights of record within the area statutorially defined, have been noticed by publication and direct mail.

6. Seven (7) individuals protested the application pursuant to W.S. 35-502.24(g) and appeared at the hearing to protest the issuance of the permit.

Two of the homeowners listed as protestants in the above-entitled matter, to-wit: William C. and Delores E. Pope and Stanley S. and Irma H. Stolt have homes located within 800 feet of the affected land.

7. A contested case hearing was held pursuant to W.S. 35-502.24(g) at which all parties were present and offered evidence. Ron Surdam, Environmental Quality Council member, served as the hearing examiner.

8. The applicant began mining of sand and gravel in the spring of 1976 pursuant to the five acre exemption then allowed under W.S. 35-502.20(d). The mining operation removed sand and gravel from an area of approximately 3.9 acres.

9. The operation included a haul road which was constructed in April, 1976 pursuant to the five acre exemption. A road of some type existed in that location prior to the commencement of the mining operation. The road will remain after the mining operation to serve as an access road for the landowner. The road crosses, at an undetermined point, the Oregon Trail. The Oregon Trail was designated by the Environmental Quality Council pursuant to W.S. 35-502.12(a)(v).

10. The applicant's reclamation plan provides for leaving two final pit areas which will impound ground water. The suggested use of these pits was stockwatering. The pits are located

in close proximity to the North Platte River. Testimony indicated that during the winter the ponds would freeze sooner than the river. Additional fill material is available to the applicant.

11. The pit is located within the standard project flood plain, but remains outside of the 100 year flood plain as described by the Bureau of Reclamation. The expert testimony indicated the presence of the mining operation would not significantly affect the course of a project flood.

12. The mining operation, as previously conducted, was a rock crushing operation. The mining and maintenance of equipment continued throughout the nighttime hours. Substantial noise was generated by the crushing operation, and its associated equipment. Electric lights were used during the night operation.

13. The original mining operation was conducted without an air quality permit and its requisite dust abatement procedures. Dust created by the operation was substantial.

14. The mining operation as described by applicant's testimony will be:

- A. Hydraulic - with wet aggregate being passed over a screen and hauled away.
- B. Performed during normal working hours five days a week.
- C. Hauled on a haul road away from protestants.
- D. Performed with the use of one diesel engine emitting noise comparable to a semi-truck on the highway.

15. The pit created by the operation will not exceed 10 acres at any one time.

16. The hydraulic operation will result in less equipment

noise and less fugitive dust emissions than the previous crushing operation.

17. Exclusive of the final impoundments and the public nuisance factors, the remainder of the mining and reclamation plan complies with the Environmental Quality Act.

CONCLUSIONS OF LAW

1. The applicant is not operating in violation of the Environmental Quality Act by mining without a permit because the operation was exempt from the permit requirement if the pit area remained less than five acres.

2. As the future use of the final impoundments was not justified by the evidence, the reclamation plan including these two pits in close proximity to the North Platte River does not return the area to a use equal to the highest previous use which was grazing.

3. The haul road does not significantly impair the Oregon Trail (the historically designated area) by crossing it at one location.

4. Location of the mining operation outside of the 100 year flood plain will pose no threat of injury to the public health and safety due to increased flooding possibilities on the North Platte River.

5. As previously conducted the operation, including the noise, the nighttime operation and the dust, constituted a public nuisance by interfering with the residential use of the neighboring property.

6. Assuming the mining operation is conducted as a hydraulic operation, during the daylight hours, in compliance with the air quality permit, it will not constitute a public nui-

sance.

7. The remainder of the mining operation complies with all statutory requirements.

ORDER

Based on the foregoing, the Environmental Quality Council orders that the mining permit be issued to Rissler McMurry conditioned upon the following requirements.

1. No rock crusher will be used at the site.
2. No material, exclusive of large aggregate and properly treated topsoil, shall be stockpiled on the site.
3. The mining operation shall be conducted between the hours of 7 a.m. to 5 p.m. only. Equipment maintenance shall be conducted only during the daylight hours.
4. The operator shall make all attempts to properly muffle all equipment used.
5. The one hundred year flood plain shall be staked by the operator, in consultation with Department of Environmental Quality personnel, and the pit area shall remain twenty feet from such boundary.
6. The entire permit area shall be returned to the approximate original contour and no water filled depressions at normal water level shall be left.
7. The haul road shall be oiled or given a semi-permanent treatment.

So ordered this 1st day of August, 1977.


Environmental Quality
Council

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the above and foregoing Environmental Quality Council Findings of Fact, Conclusions of Law, and Order were served by placing same in the United States Mail, postage prepaid, addressed as follows:

Mr. James W. Owens
Murane, Bostick, McDaniel,
Scott, Greenlee & Owens
Suite 500, Wyoming Building
Casper, WY 82601

Mr. Harry E. Leimback
Attorney at Law
430 East First Street
Casper, WY 82601.

Dated this 17th day of August, 1977.


