

FILED

JAN 29 1992

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL

STATE OF WYOMING

Terri A. Lorenzon, Admin. Aide
Environmental Quality Council

IN THE MATTER OF THE PROTEST)	
OF THE TEN ACRE EXEMPTION OF)	DOCKET NO. 2308-91
RISSLER & McMURRY CO.,)	
LIMITED MINING EXEMPTION 767ET)	

RESPONSE TO PETITION

The Department of Environmental Quality, Land Quality Division (DEQ), by and through the Office of the Attorney General, responds to the Petition to protest the ten acre exemption of Rissler & McMurry Co as follows:

1. On September 12, 1991, the Council received a letter from the Petitioner, Catherine Killean, in which she contested the applicability of the 10 acre exemption to the proposed mine site on Bessemer Mountain.
2. The Petitioner appears to protest Rissler & McMurry Co.'s ten acre exemption on the ground that it did not have the required surface owner consent for the mining operation.
3. Pursuant to W.S. 35-11-401(e)(vi) and (vii), any person who wishes to operate a surface mine to remove limestone from an area of affected land equal to or less than 10 acres in size, may do so without a permit from the DEQ, if s/he has permission from the surface owner and lessee, if any, and provided that, prior to commencing mining they:
 - A. notify the DEQ of the location of the operation; and
 - B. file a reclamation performance bond.




11. The Petition should also be rejected because it was not filed on time. DEQ Rules of Practice and Procedure, Chapter I, Section 16(a)

WHEREFORE, the DEQ respectfully requests that this Council enter an Order finding that:

A. the DEQ has not taken a "final action" from which the Petitioner may appeal and, therefore, this petition is dismissed for lack of jurisdiction or, in the alternative, that

B. this petition is not timely, pursuant to Chapter I, Section 16(a) of the DEQ Rules of Practice and Procedure and, therefore, this petition is dismissed for lack of jurisdiction.

DATED this 29th day of January, 1992.


Thomas A. Roan
Assistant Attorney General
123 Capitol Building
Cheyenne, Wyoming 82002
(307) 777-7823

CERTIFICATE OF SERVICE

I, Thomas A. Roan, do hereby certify that the foregoing RESPONSE TO PETITION was served by placing a true and correct copy in the United States mail, postage prepaid, on this 29th day of January, 1992, addressed to the following:


Cathy Killean
5138 Alcova Route, Box 3
Casper, WY 82604

AND by Interoffice Mail to:

Roger Shaffer
Department of Environmental Quality
Herschler Building, 4W
Cheyenne, WY 82002

AND by hand delivery to:

Environmental Quality Council
Barrett Building
Cheyenne, WY 82002



Thomas A. Roan
Assistant Attorney General