



THE STATE OF WYOMING

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May 9, 1991

Environmental Quality Council
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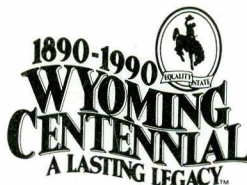
RE: In the Matter of Air Quality Permit No. CT-902
Docket No. 2188-90

Terri A. Lorenzon, Adm. Aide
Environmental Quality Council

To the Council:

By letter dated and filed April 30, 1991, Mr. William Snodgrass, through counsel, requested a hearing before the Council apparently to protest the issuance of Air Quality Permit No. CT-902 to Rissler & McMurry for the Bessemer Bend quarry near Casper. The permit being contested was issued on December 4, 1990, after public hearing, and notice of the Department's decision was sent on or about December 5, 1990 to all parties listed at the hearing, including Mr. Snodgrass. The DEQ/Air Quality Division has the following concerns about Mr. Snodgrass' protest at this time:

1. W.S. 35-11-801(a) places a "duty" upon the director to issue a permit upon proof of compliance with applicable rules and regulations.
2. As a practical matter, the Air Quality Division needs to know at some point that its issuance or denial of permits can be relied upon in analyzing interactions and ambient air impacts for subsequent permit applications.
3. W.S. 35-11-112(a) authorizes the Council to:
 - (i) promulgate rules for administration of the Act;
 - (iv) conduct hearings in any case contesting the grant or denial of a permit.
4. W.S. 35-11-112(f) requires the Council to conduct contested case proceedings in accordance with the Wyoming Administrative Procedure Act (W.S. 16-3-101 et seq.).
5. W.S. 16-3-102(a)(i) provides that each agency shall adopt rules of practice and procedure for contested cases.



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6. Chapter I, Section 16(a) of the Wyoming Department of Environmental Quality Rules of Practice & Procedure requires that appeals to the Council from final decisions of the administrators or director (which includes the issuance or denial of permits) shall be made within 60 days.

7. The April 30th letter on behalf of Mr. Snodgrass appealing a permit issued 5 months ago is about 3 months overdue, and explains neither the reasons for his late filing nor the grounds for his protest, as required under Chapter I, Section 3(c)(3) of the Rules of Practice & Procedure.

Although the opportunity to appeal from permit decisions (both grants and denials) is available, a time limit for filing such appeals is necessary for administration of the state's air quality permit program. Beyond an interest in administrative practicality, the Department recognizes the importance of a permitting process that is fair to both the public and the applicant. Fairness requires that at some identifiable point parties be able to rely on the finality of permit grants or denials. The Department objects to reopening this matter, because departure from the established time limit for appealing either grants or denials would be arbitrary, unfair, and set a precedent that would be disruptive to existing programs.

Sincerely,



Mike Barrash
Senior Assistant
Attorney General

xc: Jeffrey Gosman
Dennis Hemmer
Charles Collins