

FILED

ENVIRONMENTAL QUALITY COUNCIL
Hathaway Building
Cheyenne, Wyoming

JAN 12 1976

Ardelle J. ... Clerk
Environmental Quality Council

IN THE MATTER OF APPLICATION)
FOR A MINING PERMIT BY)
ALTHOFF, INC.)

DOCKET NO. 157-75
BRIEF

FACTS

On or about October 21, 1975 Althoff, Inc. d/b/a Althoff Construction and Sanitation Company of Cody, Wyoming (referred to herein as Althoff) filed with the Department of Environmental Quality its Application for a Permit to Mine and License to Mine dated October 21, 1975.

Pursuant to the requirements of the Wyoming Environmental Quality Act, Althoff caused notice of the Application to be published in the Cody Enterprise on October 29, November 5, 12 and 19, 1975, and further sent by certified mail copies of the notice of the Application to the owners of the surface and mineral rights of the immediately adjacent lands as well as all other persons known to be interested in the Application. Subsequent to such publication and mailing of notice, Merle Byers, Elva Byers, Norman J. Hayes, Norma R. Hayes, Ralph Parkin, Shirley Parkin, Howard Quick and Ella Quick (herein referred to as Petitioners) filed a Notice of Protest within the time permitted by law. The Petitioners' protest, as stated in the said Notice of Protest, was based upon Althoff's alleged continuing violation of the Environmental Quality Act. The Petitioners allege that Althoff, after ceasing operations in a gravel pit east of Cody, pursuant to a Cease and Desist Order, failed to reclaim the area which had been mined by Althoff prior to the issuance of said Cease and Desist Order. No objection has been made to the form or content of the Application for Permit to Mine dated October 21, 1975, nor to the mining plan or reclamation plan contained therein. In connection with said Application Althoff has complied with all requests and requirements of the

Land Quality Division of the Department of Environmental Quality. It would, therefore, appear that the subject matter to be considered by the Council at the hearing on stipulated facts and written briefs is the alleged continuing violation of the provisions of the Environmental Quality Act by Althoff as more particularly set forth in Petitioners' Notice of Protest.

ARGUMENT

For a period of time prior to July 17, 1975 Althoff admittedly mined sand and gravel from lands owned by J. Millard Smith, M.D., east of Cody, Wyoming. Such mining was engaged in on lands previously mined for sand and gravel for many years. The area previously mined before Althoff's operation was relatively large for the Cody area. Althoff was performing the mining operations in ignorance of the requirements of the Wyoming Environmental Quality Act. On or about July 17, 1975 Althoff was served with a Cease and Desist Order and immediately discontinued mining operations. At the time he received the Cease and Desist Order Althoff was not aware of reclamation requirements.

Althoff thereafter, in October of 1975, sought legal assistance in preparing an Application for a small mining permit, and while his attorney, Richard W. Day, was corresponding with the Land Quality Division concerning the Department's rules and regulations, he was advised on October 15, 1975, by Rodney Herrick of the Land Quality Division that no reclamation was ever performed on the mined area east of Cody and was requested to advise the Land Quality Division how Althoff intended to fulfill the reclamation requirements of the Environmental Quality Act.

Althoff had removed less than 2,000 cubic yards of gravel from the mined area east of Cody and upon being advised of the reclamation requirement immediately informed the Land Quality Division that he would backslope the banks and dress up the area where he had removed sand and gravel.

Thereafter between November 5 and November 7, 1975, Althoff performed the reclamation work on the area he had mined east of Cody. Althoff then notified the Land Quality Division of the completion of the reclamation work and assumed after later dis-

cussions with employees of the Land Quality Division, whom he understood had viewed the site, that the reclamation work had been satisfactorily performed.

Perhaps the Petitioners were unaware of the fact that the area east of Cody had been previously mined, without reclamation, by others for many years prior to Althoff's operation in the area and therefore assumed Althoff should perform reclamation work on all the previously mined areas. However, Petitioners, through their attorney, have now learned of the previous mining operations in the area east of Cody and have so stipulated in paragraph 6 of the Stipulation. The Petitioners have further stipulated in paragraph 6 that the Land Quality Division of the Department of Environmental Quality has examined the area and has knowledge of the extent and sufficiency of Althoff's reclamation work.

In conclusion, Althoff submits that although at the time he filed his Application for Permit to Mine dated October 21, 1975, he had not reclaimed the area he had been mining east of Cody prior to the Cease and Desist Order, he has since satisfactorily reclaimed the area he had mined and is not now in violation of the Wyoming Environmental Quality Act. Althoff further submits that he has submitted a full and complete Application for Permit to Mine and for a License to Mine which have not been objected to by Petitioners or any other parties, that the mining area is properly zoned for gravel mining and that there is no reason why the Permit applied for should not be issued.

DATED January 8, 1976.

Respectfully submitted,



Attorney for Althoff, Inc.