

BEFORE THE
DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF WYOMING

IN THE MATTER OF A PERMIT)
APPLICATION FROM ALTHOFF)
INCORPORATED, P.O. BOX 2017)
CODY, WYOMING, TO CONSTRUCT)
A NEW SOURCE IN PARK COUNTY,)
WYOMING.)

DOCKET NO. 1501-84

DECISION

I. Introduction

On or about March 9, 1984, Althoff Construction Company made application to the Air Quality Division for a permit to construct a concrete batch plant in Park County, Wyoming. The Division analyzed the application and on July 2, 1984 published a notice in the Cody Enterprise of its intent to propose approval of the application and posted copies of the application and the analysis in the office of the Park County Clerk. During the public comment period, the Division received a request for the holding of a public hearing prior to making a final decision on the application. On August 8, 1984, the Division published a notice in the Cody Enterprise of a public hearing to be held in Cody, Wyoming. On August 22, 1984, such public hearing was held in the City Council Chambers in Cody, Wyoming. A record was made at the hearing and includes information received during the hearing.

II. Issues and Considerations

The following is a summary of the issues raised during the public comment period and at the above noted public hearing and the administrator makes the corresponding findings with the approval of the Director.

A. The Division received a number of comments concerning the location of the proposed facility in a populated area and the potential for the creation of public nuisance in such populated area. In addition, the Division was advised that the Land Use Certification which had been supplied by the applicant which was based upon a zone change provision approved by the County Commission had been appealed and that as a result the proposed facility might at some point in the future not be located in accordance with the approved County Land Use Program. In addition, the Division heard a number of allegations that the construction and operation of the facility would significantly degrade property values in the area. The location of the facility and the question of degradation of property values are issues which are outside of the jurisdiction of the Division. The issue of compliance with proper land use planning as defined by the local land use planning authority, is an issue which must be considered by the Division. In this case, the Division has been provided with a certification of such compatibility and the Division is satisfied that it must act based upon such certification.

B. One commentator objected to the Division's determination that the permit application was approvable since in the opinion of that commentator an adequate site plan was not included in the application. While the Division recognizes that information such as a site plan is required as part of a permit application, the Division also recognizes that a site plan for this particular type of facility is not necessarily very useful. This is especially true when the permit application is for a construction operation and because the equipment normally associated with such facility is of a portable nature and is subject to movement in and around the area. The Division is satisfied that the important information in this type of situation is an identification of the equipment to be operated as part of the facility. In fact if the Division were to decide that a detailed site plan was necessary for all construction related facilities, the Division might also have to take the position that a change of location of one of the pieces of equipment within such site plan could constitute a modification to the facility and thus a permit revision would be required. The Division does not believe this was the intent of the regulation.

C. A number of commentators complained about the lack of follow-up investigation of the existing facility over the past years and specifically a lack of testing on the existing Aedco Asphalt Plant. The Division is not satisfied with the amount of surveillance and inspection activity that it is able to assign to any source in the State of Wyoming and thus cannot state that it believes it has inspected the Althoff facility as frequently as may be desirable. However, the Division would point out that the inspection activity for the years 1983 and 1984 has been at a

relatively high level with four inspections in the year 1983 and five inspections in the year 1984. In addition, the Division observed the stack testing of the Aedco asphalt plant in 1980. A review of the data and information submitted as a result of that test satisfies the Division that the Aedco Plant was operating in compliance and successfully completed the testing. Subsequent inspections of the facility have indicated to the Division that the Aedco plant continued to operate in compliance with the emission regulations. It should be noted that neither the Division nor any other enforcement agency the Division is aware of requires the repeated stack testing of such asphalt plants unless operation of the facility indicates to the regulatory agency that the control system has deteriorated and that such facility is suspected of operating in non-compliance. That is not the case in this instance.

D. One of the commentators stated that because of the past violations in and around the Althoff facility that the current permit application should not be approved. The Division is satisfied that the Althoff facility is currently operating in compliance with the provisions of the Rules and Regulations with the exception that the concrete batch plant which is the subject of this permit analysis was constructed prior to the issuance of a permit. A notice of violation has been issued to Althoff as a result of such construction. If a permit is subsequently issued, that violation in and of itself will be remedied. Therefore, if the permit is issued, the Division would be satisfied that the facility has been operated and can be operated in the future in compliance with the rules and regulations. The Division is satisfied that the issuance of a permit is required to be predicated upon the Division's analysis of the applicant's ability to operate the proposed facility in compliance without regard to past problems which the applicant may have had in operation in compliance. In addition, the commentator noted that under Section 21.e., the issuance of a permit to operate requires a showing that the operator can operate in compliance and that previous operations provided a negative demonstration of compliance. The provisions of Section 21.e. apply to the operation of a facility subsequent to the issuance of a construction permit. The operating permit provision is designed to provide an ability to review operation of a new facility after construction. In this particular case the application of Section 21.e. would be to the operation of the concrete batch plant. If subsequent operation of the concrete batch plant demonstrates to the Division that compliance has been achieved then an operating permit can be issued.

E. The major focus of most of the air quality related concerns was on the control or lack of control of fugitive emissions in and around the facility and on the ingress/egress road to the facility. The Division recognized that fugitive emissions from this type of facility can be significant. As a result, in its analysis of the application and in its proposed decision the Division proposed to require a fabric filter to control the silo vent emissions, and the installation and use of a loading chute type device for controlling emissions at the point of discharge of the product cement to the transport trucks. In addition, the Division proposed to require the application of water or chemical dust suppressants on working areas, stock piles, and non paved access road as necessary to effectively control fugitive dust emissions. In response to questions at the public hearing, Althoff Incorporated advised that the ingress/egress road would be surfaced with a chip and seal material. The Division will also thus require such road surfacing as a permit condition to address fugitive emissions from this new ingress/egress road. The Division will also specifically require water sprays to be installed and operated on the crushing and screening equipment located at the facility. Based upon discussions at the hearing it is apparent that a major source of fugitive emissions in and around the facility is the disturbance of topsoil material either in the operation of uncovering the gravel material used at the facility or in the leveling of the land upon which the facility sits. Based upon questions and answers regarding such topsoil moving activity the Division as a condition of the permit will require the use of a water sprinkling system to abate fugitive emissions during such topsoil operations.

F. A major point made by the protestants was that the Division had an obligation to enforce permit conditions designed to reduce emissions and to require compliance with such conditions. The Division recognizes this obligation and will require compliance with the duly imposed permit conditions. Althoff Construction Company will be advised of its requirement to comply with the permit conditions.

G. The protestants commented that the Division's reliance upon the Air Quality Monitoring Data gathered in the area in the past in determining that the facility had operated in compliance in the past was flawed because the Air Quality monitor had not operated during the busiest time of the year. The Division continues to

believe that the Air Quality data was representative of the activity in the area and thus is indicative of compliance with ambient standards. However, in order to assure continuing compliance and to provide a further basis for decisions on the future issuance of an operating permit under Section 21.e. the Air Quality Division will install and operate a particulate monitoring device in the area for the 1985 construction season.

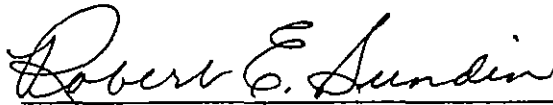
III. Conclusions

As a result of the analyses of the permit application, comments received at and prior to the public hearing and analysis of these comments, the Administrator has determined that the permit shall be issued. The permit shall be based upon the application as submitted and shall contain a number of conditions regarding control of fugitive emissions, the utilization of a baghouse on the cement bin loading vent, the use of a loading chute for the concrete material, the installation of water sprays on the crushing and screening equipment, and the use of water sprinkling equipment during topsoil handling activities.

October 24th, 1984



Randolph Wood, Administrator
Air Quality Division



Robert E. Sundin, Director
Department of Environmental Quality