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Terri A. Lo... Adm. Aide
Environmental Quality Council

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL

IN THE MATTER OF PERMIT)	
NO. CT-583 ISSUED TO)	
ALTHOFF CONSTRUCTION)	
INCORPORATED, TO)	DOCKET NO. 1501-84
CONSTRUCT A NEW)	
SOURCE IN PARK)	
COUNTY, WYOMING.)	

PETITION FOR REVIEW

COMES NOW Merle Byers, Elva Byers, Norman J. Hayes and Norma R. Hayes, Petitioners, pursuant to the Wyoming Environmental Quality Act (Wyoming Statutes §§35-11-101 through 35-11-1104, as amended), pursuant to the Wyoming Administrative Procedure Act (Wyoming Statutes §§16-3-101 through 16-3-115, as amended), and pursuant to Rule 12 of the Wyoming Rules of Appellate Procedure and hereby petition the Environmental Quality Council for review of the Decision of the Administrator of the Air Quality Division of the Department of Environmental Quality dated October 24, 1984, attached hereto as Exhibit "A".

1. Petitioners are residents of Park County, Wyoming, and are neighboring and adjacent landowners to the operations of Althoff Construction, Incorporated.

2. Respondents, the Administrator of the Air Quality Division of the Department of Environmental Quality and the Director of the Department of Environmental Quality, are the duly authorized and acting officials, charged in their official capacities with the duty of administering and enforcing the provisions of the Wyoming Environmental Quality Act and the existing provisions of the Wyoming Air Quality Standards and Regulations.

3. On October 24, 1984, Respondents issued a written Decision, attached hereto as Exhibit "A", after a public hearing, authorizing the issuance of Permit No. CT-583 to Althoff

Construction, Inc., allowing Althoff Construction, Inc. to construct a new source, a concrete batch plant, in Park County, Wyoming.

4. Petitioners seek relief based upon the fact that said action by the Respondents is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law; is contrary to constitutional right, power, privilege or immunity; is in excess of statutory jurisdiction, authority or limitations or lacking statutory right; is without observance of procedure required by law; and is unsupported by substantial evidence; to-wit:

A. The Decision dated October 24, 1984, issued by Respondents is contrary to and is in direct opposition to the purpose and intent of Wyoming Statutes §§35-11-301 through 35-11-302 (1977) and the Wyoming Air Quality Standards and Regulations.

B. Finding D made by Respondents was made in direct contradiction to Section 21 of the Wyoming Air Quality Standards and Regulations and was contrary to the comments and evidence received at the public hearing held on August 22, 1984. The record clearly and unequivocally shows that Althoff Construction, Inc. constructed and operated the new source, the concrete batch plant, prior to any authorization or issuance by the Air Quality Division of the Department of Environmental Quality of a construction permit or a permit to operate. Section 21(a)(i) of the Wyoming Air Quality Standards and Regulations (hereinafter referred to as A.Q.S.) states that "Any person who plans to construct any new facility or source,...or to engage in the use of which may cause the issuance of or an increase in the issuance of air contaminants into the air of this state shall obtain a construction permit from the State of Wyoming Department of Environmental Quality before any actual work is begun on the

facility." As early as July, 1984, Althoff Construction, Inc. constructed and operated the new source, the concrete batch plant, without any permit or authorization by the Air Quality Division. Section 21(c), A.Q.S., states that, "No approval to construct or modify shall be granted unless the applicant shows to the satisfaction of the Administrator of the Division of Air Quality that: (1) The proposed facility will comply with all the rules and regulations of the Wyoming Department of Environmental Quality, Division of Air Quality, and with the intent of the Wyoming Environmental Quality Act." The purpose and intent of said section is that no permit to construct is to be issued to any new source which is not in compliance with all the rules and regulations of the Wyoming Department of Environmental Quality. Section 21(e), A.Q.S., states, "No permit to operate may be granted until the applicant demonstrates to the satisfaction of the Administrator of the Air Quality that: (1) The facility is complying with the Wyoming Air Quality Standards and Regulations applicable at the time the permit to construct or modify was granted and with the intent of the Wyoming Environmental Quality Act." As stated, the concrete batch plant which was the subject of the permit analysis was constructed and operated prior to the issuance of any permit. No penalty was ever assessed against Althoff Construction, Inc., and Permit CT-583 was issued even though Althoff Construction, Inc. was in violation of the Wyoming Air Quality Standards and Regulations.

C. Finding B made by Respondents was in direct opposition to Section 21 of the Wyoming Air Quality Standards and Regulations and was contrary to the comments and evidence received at the public hearing held on August 22, 1984. Section 21(b)(i), A.Q.S., states: "The application...shall be accompanied by site information, plans, descriptions..." Section 21(g), A.Q.S., states: "If the application is not complete, the

application will be considered inactive and additional information as necessary will be requested." Paragraph 20 of the Permit Application form utilized by the Air Quality Division requires a site map: "A site map should be included indicating the layout of facility at the site. All buildings, pieces of equipment, roads, pits, rivers and other such items should be shown on the layout." No site plan as required was ever submitted or offered by Althoff Construction, Inc. even though the proposed site is located in an irrigated agricultural area.

5. Petitioners designate all transcripts, documents, records, correspondence, permit applications, exhibits and all other items contained in the file on the Matter of the Permit Application from Althoff Construction, Inc., referred to as Docket No. 1501-84 and Permit No. CT-583. Petitioners further designate all records, documents and files concerning Permits CT-29, CT-144, and CT-431 as part of the record on review.

WHEREFORE, Petitioners request the Environmental Quality Council to review the Decision issued on October 24, 1984, by the Air Quality Division concerning Permit No. CT-583 and Docket No. 1501-84; request the Environmental Quality Council to set the matter for hearing; request that the Decision authorizing the issuance of Permit No. CT-583 be overturned and reversed as being arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law; as being contrary to constitutional right, power, privilege or immunity; as being in excess of statutory jurisdiction, authority or limitation or lacking statutory right; as being without observance of procedure required by law; and as being unsupported by substantial evidence; and request such other and further relief as is mandated by law.

DATED this 21st day of November, 1984.

MERLE BYERS, ELVA BYERS,
NORMAN J. HAYES and NORMA R.
HAYES, Petitioners,

BY: Kenneth M. Koski
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CERTIFICATE OF SERVICE

I, Kenneth M. Koski, attorney for Petitioners named herein, do hereby certify that I served a copy of the above and foregoing Petition for Review upon all parties by depositing true and correct copies thereof in the United States mail with sufficient postage prepaid thereon on the 21st day of November, 1984, addressed as follows:

Mr. Robert E. Sundin, Director
Department of Environmental Quality
122 West 25th Street
Cheyenne, Wyoming 82002

Mr. Randolph Wood, Administrator
Air Quality Division
Department of Environmental Quality
122 West 25th Street
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Mr. S. B. Freeman, III
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P. O. Box 550
Cody, Wyoming 82414
Attorney for Althoff Construction, Inc.

DATED this 21st day of November, 1984.

Kenneth M. Koski
KENNETH M. KOSKI