

WYOMING ENVIRONMENTAL QUALITY COUNSEL

FILED

SEP 26 2002

Terri A. Lorenzon, Director
Environmental Quality Council

IN THE MATTER OF)
Appeal of Approval of Application)
AP-W72 to Modify Air Quality)
Permit CT-460)

Petition for Review and Request for Hearing

Rodman and Alice Moorehead ("Protestants"), by and through their attorneys, Moore, Myers & Garland, LLC, and pursuant to Chapter 1 of the "General Rules of Practice and Procedure, Department of Environmental Quality", Section 3, hereby submit their Petition for the Environmental Quality Counsel's ("Council") review of the July 29, 2002 decision of the Department of Environmental Quality, Air Quality Division to approve the Application of Evans Construction Company, Application AP-W72 modifying Air Quality Permit CT-460 (copy attached as **Exhibit 1**). Protestants request a hearing before the Environmental Quality Counsel.

Protestants own real property and a residence thereon located at 1325 Munger Mountain Road, Teton County, Wyoming, which is adjacent to real property owned by Evans Construction Company and upon which Evans operates the gravel mining and processing operation subject to Air Quality Permit CT-460 and MD-745.

By and through the undersigned counsel, the Protestants participated in the public comment process leading up to the Air Quality Division's July 29, 2002 decision to approve the above-referenced application to modify Air Quality Permit CT-460. A copy of our written comments, submitted to the Air Quality Division at a May 15, 2002 public hearing held in Jackson, Wyoming, are attached hereto as **Exhibit 2**.

Protestants contest the Air Quality Division's July 29, 2002 decision as arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law, and without observance of procedure required by law, for the following reasons:

1. The permit is in violation of Chapter 6, Section 2(c)(ii) of the WAQSR because the applicant failed to show its emissions will not cause a violation of the national ambient air quality standards (NAAQS). This

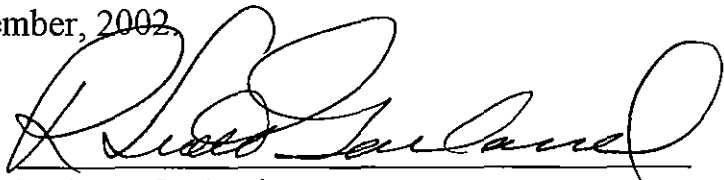
demonstration is required as a condition of permit issuance. Modeling should be performed, applying reasonable emission and dispersion assumptions, to establish that no off-site violations of the NAAQS will occur.

2. The permit is in violation of Chapter 6, Section 2(c) because the applicant failed to show it is in compliance with the intent of the Wyoming Environmental Quality Act. It failed to obtain a construction permit prior to making modifications of the facility. It apparently has exceeded the 20,000 ton process limit in its Small Mining Permit. Violations of the Environmental Quality Act, like the Clean Air Act, should be subject to mandatory penalties. W.S. 35-11-901. Evans has paid no penalty. Thus Evans is not in compliance with the law and should not be granted this permit.

3. The permit fails to require any monitoring by Evans for the opacity limits in conditions 4 and 5 and thus the applicant has failed to show its operation will maintain compliance with such conditions and Chapter 6. The requirement at condition 8 that requires dust suppression "on a schedule sufficient to control fugitive dust for vehicular traffic and wind erosion" is equally vague and unenforceable. Again, the applicant has failed to show it will maintain compliance with Chapter 6.

Protestants request opportunity to submit a more comprehensive, written brief of these issues to the Council prior to the hearing requested above.

DATED this 25th day of September, 2002.



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