

H. Chancellor

FILED

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

JAN 16 1996

Terri A. Lorenzon, Attorney
Environmental Quality Council

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1/27/96
on*

IN THE MATTER OF OBJECTIONS)
TO THE SMALL MINING PERMIT)
APPLICATION OF HARRIS TRUCKING)
AND CONSTRUCTION CO., TFN 3 5/15)

DOCKET NO. 2703-95

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Prepare approval
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FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER

The Environmental Quality Council (the Council) held a public hearing on November 28, 1995 in the above entitled matter. The hearing was convened at 9:00 a.m. in the Oil and Gas Commission hearing room at the Basko Building, 777 West First Street, Casper, Wyoming. Kim Cannon, Chairman of the Environmental Quality Council conducted the hearing and Terri A. Lorenzon, Attorney for the Council assisted. Also present were Vincent R. Lee, John Morris, and William B. Harrison. Harris Trucking and Construction Co. was represented by William L. Simpson of Simpson, Kepler and Edwards of Cody, Wyoming. The Department of Environmental Quality, Land Quality Division was represented by Thomas A. Roan, a Senior Assistant Attorney General. The Protestants, Arthur S. Gunderson, Wray Jenson, Karen L. Jenson, Rhonda Hiltz, Ernest Hiltz, Marie Hiltz, Jason Hattan, James Duffy, Russell Jacoby, Kathy Sopko, Bobbye Beck, Russell Beck, Theresa Rettenmair, Robert Rettenmair, and Barb DeCastro did not appear and were not represented at the hearing. Having reviewed the record and heard the arguments of the parties in this case the Council finds, concludes, and orders as follows.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. This case concerns an application for a small mine permit filed pursuant to the Environmental Quality Act (the Act), and objections to issuance of the permit filed by Craig Evans. §§35-11-101 et seq.
2. The parties to this case are the Applicant, Harris Trucking and Construction Company, the DEQ, and the Protestants listed above.
3. On March 14, 1995 the Applicant sought a small mine permit from DEQ pursuant to §35-11-401(j) and DEQ Noncoal Rules, Chapter IX.
4. The DEQ reviewed the application and, on September 18, 1995, found it complete and suitable for publication. §35-11-406(h).



5. The Protestant filed objections to this application in a timely manner, and thereby initiated this proceeding. Notice of the hearing and the hearing were provided in accordance with the Act. §35-11-406(k)

6. Generally the Protestants alleged that the proposed operation would cause much dust, traffic and noise, and safety hazards would result from locating a small mine in close proximity to the area in which the Protestants reside.

7. The Act provides the bases upon which the Council may conclude that the DEQ should deny this permit. Section 406(m)(vii) provides that a permit may be denied if the operation would constitute a public nuisance or endanger the public safety.

8. A Limited Mining Operation identified by the exemption number 552ET has been operated at the location of the mine proposed under permit TFN 3 5/15 since 1984.

9. The site of the proposed mine operation has had the land use classification of Heavy Industrial/Manufacturing (HIM) since June 26, 1984.

10. An air quality permit for this operation was not required by DEQ because the Applicant is not using equipment which will generate significant dust emissions. Should the Applicant decide to move equipment into the mine area that would trigger the requirement for an air quality permit, the Applicant must submit a separate application to DEQ Air Quality.

11. Although the evidence showed that this mine has dust, noise, and traffic associated with it's operation, the Act requires a finding of a public nuisance or a danger to the public health and safety.

12. Although the Protestants were notified of the time and location of the hearing, no Protestant appeared pro se or through legal counsel.

13. Protestants are obligated to come forward with some evidence to support the allegations in their protest letters.

14. In the permit, the Applicant has committed to limit the hours of operation to 7:00 a.m. through 4:30 p.m., Monday through Saturday. The mine plan also states that it plans to haul gravel approximately twenty hours per week during the summer, with reduced traffic in the winter.

15. The Applicant has agreed to take measures that will minimize the dust and noise that concerns the Protestants. Concerns voiced by the Protestant that pertain to the county road that is close to the Protestants' residences must be addressed by local authorities with jurisdiction over the road.

16. If, in the future, Harris Trucking fails to operate its mine in a manner inconsistent with



the terms of its permit, the Act provides the public with the opportunity to file a complaint with DEQ. When complaints are filed, DEQ has the obligation to promptly investigate the complaint and respond to the complainant.

CONCLUSIONS OF LAW

1. The Council has jurisdiction over the parties and the subject matter of this proceeding, pursuant to §§35-11-112(a)(iii) and 406(k).
2. All notice requirements have been met. The Protestants were notified that they would subject to dismissal from the case for failure to appear at the hearing.
3. The proposed permit meets statutory and regulatory requirements.
4. The Applicant has met its burden of demonstrating that the permit should be issued.
5. The Protestants failed to meet their burden of coming forward with evidence to support their allegations and their objections to the permit should be dismissed. The Protestants should be dismissed as parties to this case for failure to appear.

ORDER

IT IS HEREBY ORDERED THAT the small mine permit identified as TFN 3 1/2 be issued by DEQ to Harris Trucking and Construction Company. The Protestants Arthur S. Gunderson, Wray Jenson, Karen L. Jenson, Rhonda Hiltz, Ernest Hiltz, Marie Hiltz, Jason Hattan, James Duffy, Russell Jacoby, Kathy Sopko, Bobbye Beck, Russell Beck, Theresa Rettenmair, Robert Rettenmair, and Barb deCastro and their objections are dismissed.

DATED this 11 day of January, 1996.



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