

AUG 26 1980

Ardelle M. Kissler, Clerk  
Environmental Quality Council

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING

IN THE MATTER OF A	)	
COMPLAINT AGAINST THE	)	
ACCEPTANCE OF A	)	
NOTIFICATION FOR LIMITED	)	Docket No. 713-80
MINING OPERATIONS FROM	)	
HUSMAN, INC., BY THE	)	
DEPARTMENT OF	)	
ENVIRONMENTAL QUALITY.	)	

DIRECTED TO: Mr. Robert Sundin  
 Director, Department of Environmental Quality  
 Cheyenne, Wyoming 82001

Mr. David B. Park  
 Chairman, Department of Environmental Quality  
 Cheyenne, Wyoming 82001

PETITION FOR HEARING

Protestants, P K Ranch Co., a corporation, and Eaton Bros., Inc., a corporation, appear and protest the acceptance of a notification of a Limited Mining Operation from Husman, Inc., by Order of the Department of Environmental Quality dated August 13, 1980. Protestants request a public hearing before the Environmental Quality Council in Sheridan County, Wyoming under the provisions of § 35-11-701(c) Repub. Wyo. Stat.

In support of this Petition for Hearing, P K Ranch Co. and Eaton Bros., Inc. indicate their interest and the reasons the hearing is warranted as follows:

1.

P K Ranch Co., a corporation, whose address is: Route 2, Box 500, Sheridan, Wyoming 82801, is the owner of the following described property:

TOWNSHIP 55 NORTH, RANGE 86 WEST, 6TH P.M.

Section 15: S $\frac{1}{2}$ SW $\frac{1}{4}$   
Sheridan County, Wyoming

The above described property of the P K Ranch will be the most directly affected by the proposed mine project by reason of a mine haul road to be constructed on that property.

2.

P K Ranch Co. is a working ranch and in the area surrounding the proposed mine project runs approximately 1400 head of cattle, many of which will be disturbed by blasting and the increased truck traffic on the graveled haul road. This increased traffic will cause dust to settle on the grass land rendering it unpalatable to livestock and will cause irritation to the eyes and noses of livestock necessitating medical treatment and causing loss of forage. The ranch is one of the oldest established ranches in the county and in the state; it was begun in 1876 and in over 100 years has had only four owners. The ranch is located in an area of spectacular beauty against the Big Horn Mountains. As such the land has value not only for grazing but for scenic and recreation uses as well, which use will be diminished by blasting and industrial activity, truck haul traffic etc., which will depreciate the property value of the ranch.

3.

Eaton Bros., Inc., a corporation, whose address is: Wolf, Wyoming 82644, is the owner of the following described real property:

TOWNSHIP 55 NORTH, RANGE 86 WEST, 6TH P.M.

Section 16: SE $\frac{1}{4}$ SE $\frac{1}{4}$   
Sheridan County, Wyoming

The above described property is the portion of the Eaton Ranch which will be the most directly affected by the proposed mine project by reason of a mine haul road to be constructed on this property and the blasting to be conducted adjacent to their property.

4.

Eaton Ranch is a working cowboy and dude ranch. The Eaton Ranch was first established in the late 1880's and was purchased by the Eaton family in 1904. Beginning

in 1904 and ever since then the dude ranching aspect of the ranch business has steadily increased until today it constitutes seventy-five percent of the yearly business of the Eaton Ranch. As such, it is one of the oldest working dude ranches in the United States.

The success of the Eaton Ranch dude operation is due in part to its scenic location, nestled in the foothills of the Big Horn Mountains, secluded from any major population center, heavily traveled roads, and any commercial or industrial activities in an area of abundant wildlife and quietude.

5.

Each year during the tourist season, approximately 700 paying dude guests spend a minimum of one week, usually two weeks, relaxing and enjoying the western outdoor life in the Big Horn Mountains. Hikes, trail rides and countryside picnics all form a part of the Eaton Ranch entertainment.

These guests come from approximately 41 states in the nation as well as the Virgin Islands, Canada, Bermuda, Italy, Sweden, France, England and South Africa.

The proposed mine and mine haul road directly threaten the livelihood of the Eaton family and the operation of the historic Eaton Ranch by destroying the quietude and non-commercial nature of the Eaton Ranch and the surrounding Big Horn National Forest.

6.

Husman, Inc. is a Wyoming corporation involved in the construction and mining business. It is the owner of the following described real property:

TOWNSHIP 55 NORTH, RANGE 86 WEST, 6TH P.M.

Section 21:  $W\frac{1}{2}E\frac{1}{2}NE\frac{1}{4}$ ,  $E\frac{1}{2}NW\frac{1}{4}NE\frac{1}{4}$ ,  $SW\frac{1}{4}NE\frac{1}{4}$ ,  $NW\frac{1}{4}SE\frac{1}{4}$   
 $E\frac{1}{2}NE\frac{1}{2}SW\frac{1}{4}$

The above described real property is chiefly mountain property of approximately 160 acres. A portion of this property contains a large limestone deposit.

7.

Husman, Inc. initially proposes to blast the limestone out of the mountain, crush and screen the limestone and transport approximately 40,000 tons per year to Sheridan area purchasers.

8.

In order to transport the limestone out of their property it is necessary that Husman, Inc. construct a mine haul road across P K Ranch Co. property and Eaton Bros., Inc. property and significantly ungrade and widen an unmaintained county road known as P K Lane.

9.

Protestant P K Ranch Co. alleges that an operation of the type and size contemplated by Husman, Inc. would damage the value of P K Ranch as a place of scenic and recreational uses. Also the dust and noise from the mining and transportation of the limestone would damage the cattle operation now being conducted on P K Ranch.

10.

Protestant Eaton Bros., Inc. alleges that an operation of the type and size contemplated by Husman, Inc. would damage the value of Eaton Ranch as a dude ranch with scenic and recreational uses. In particular, Eaton Bros., Inc. uses the meadow immediately adjacent to the proposed mine as a picnic area for the dude guests. Between eight and twenty of the Eaton Ranch guests per week use the area for picnicking, viewing wildlife and trail riding. This area is particularly favored by older dudes who are unable to make the more vigorous climb up into the Big Horn Mountains and National Forest, yet would like to enjoy the mountains close at hand.

The blasting of the limestone out of the mountain, the crushing and screening of the rock and the transportation of the material will effectively curtail all of the above uses by Eaton Ranch guests. The beauty, solitude, and wildlife of the area, which are the major attractions for visiting dudes, will be damaged if Husman, Inc. is allowed to conduct the proposed limestone operation.

11.

Protestants allege that Husman, Inc., is attempting to circumvent the provisions of the Environmental Quality Act by asserting that the above contemplated mining operation is within the ten-acre limitation. The granting of the Ten Acre Permit to Husman, Inc. for their project, is in violation of the following Wyoming Statutes and the rules and regulations of the DEQ promulgated under the statutes.

Wyo. Stat. § 35-11-401(d)(vi), creating this exception to the Environmental Quality Act, provides that the area of affected land be ten acres or less. Wyo. Stat. § 35-11-103, defines affected land as "the area of land from which overburden, development waste rock, or refuse is deposited, or both, access roads, haul roads, mineral stockpiles, mill tailings, impoundment basins, and all other lands whose natural state has been or will be disturbed as a result of the operations."

The Rules and Regulations of the Land Quality Division of the DEQ at Chapter X, Section 1, (a)(6)(b) (iii) describe the roads to be included as "any existing or proposed access or haul roads into, or away from the proposed mining operation. These roads shall be included as part of the (10) acre operation unless they are maintained by the county, state or federal government."

12.

Protestants allege that the Administrator of the Land Quality Division of the Department of Environmental Quality (DEQ) State of Wyoming has never made an investigation which would be adequate for a determination of Husman, Inc.'s compliance with the 10 acre exception under § 35-11-401(d)(vi).

The description of the land to be included in the ten acres of affected land is wholly inadequate. Husman, Inc. has not set forth the exact amount of acres required for a quarry large enough to fulfill a yearly production rate of 40,000 tons of limestone.

It has not included all access or mine haul roads, in particular P K Lane which is not and has never been maintained by Sheridan County or any other unit of government. Neither has Husman, Inc. set out the area required for a crusher, pollution control equipment and a turn around area for the haul trucks. Husman, Inc. has not included all of the land whose "natural state has been or will be disturbed as a result of the operations." This would include all land used by wildlife, domestic animals and human neighbors within sight and/or sound of the blasting, crushing and transporting of the limestone material or affected by the dust produced by this proposed mining activity.

13.

Without the above information there is no way the DEQ can make an informed determination that the mining operation of Husman, Inc. is within the requirements of the Ten Acre exception to the Environmental Quality Act. Husman, Inc. has made no affirmative showing that they are within the requirements of the exception. One seeking to be excluded from the operation of a statute must establish that the exception embraces him.

Protestants allege that this has not been done in this case. All the DEQ has before it is the unsupported statement of Husman, Inc. that the quarry operation will fit within the ten acres. No proof has been offered to show that Husman, Inc. can fulfill its present production needs and any future contracts out of a mining operation confined to less than 4.28 acres.

14.

The facts before the Council show that Husman, Inc. must go to great expense to construct a new road suitable for mine hauling consisting of approximately 28.5 acres. They must construct a limestone quarry out of the self-reclaimed remains of a quarry that has not been used in fifty years. Trucks and crushing equipment must be obtained. Expensive improvements on the other county roads to be used by Husman, Inc. are required by the county. Maintenance of these county roads will also be required by the Sheridan County.

Protestants allege that such a large financial outlay to mine less than 4.28 acres and then stop, when a whole mountain of Husman owned limestone remains is not a reasonable inference to be drawn from the facts. The application for an exception to the requirements of the Environmental Quality Act is clearly an attempt to circumvent the protections of that act.

15.

In addition, Protestants allege that the acceptance of the Husman Notification by the Administration of the Land Quality Division of DEQ is not supported by the Agency's own administrative record. The Sheridan office of the DEQ made an on site inspection of the proposed mine area and held several discussions with Husman, Inc.

On the basis of those investigations that office determined that Husman, Inc. was not in compliance with the 10 acre exemption and refused to accept the 10 acre notification.

16.

Protestants further allege that the Administrator's determination that P K Lane, an unmaintained county road, not be included in the 10 acres of affected area is arbitrary, capricious and unsupported legally or factually.

P K Lane leaves the Beckton-Wolf County Road and dead ends into private property. The road is used as a cattle trail and by hunters in the fall. The condemned portion of the Husman, Inc. haul road takes off from P K Lane.

Sheridan County has never maintained P K Lane at any time during its existence. Sheridan County has also stated that it will neither construct nor maintain a mine haul road down P K Lane. It has never stated that it would expend county funds to maintain this dead end road once Husman, Inc. completed their mine project.

The Rules and Regulations of the Land Quality Division of the DEQ at Chapter X, Section 1(a)(6)(b)(iii) state in pertinent part that "These roads shall be included as part of the (10) acre operation unless they are maintained by the County, state or federal government."

This is a statutorily created exception to the requirements of the Environmental Quality Act. As an exception to a statute its provisions must be strictly construed.

The regulations at Chapter X, Section 1(a)(6)(b)(iii) set up a distinction between roads to be included, when computing the ten acres, based on the govern-



mentally maintained or unmaintained status of the roads. The regulation does not speak of the dedicated or undedicated status of the roads, or of roads that should be or may be maintained but of roads that "are maintained" (emphasis added).

Blacks Law Dictionary defines "maintain" in the following terms, "to keep up, preserve, bear the cost of, keep improved, keep in good order, repair." Ballentine's Law Dictionary in like language defines "maintain" as, "to support; to keep in condition; to sustain."

Nowhere has it been shown that the county, or any other governmental entity, has ever "supported", "kept in condition", "kept up" or "preserved" P K Lane.

The language of the regulation speaks in the present, "unless they are maintained". It does not look to what may happen to the road in the future but to what state the road is in now. Even so, nowhere has it been contended that the county will, after Husman, Inc. is finished with P K Lane, expend county funds to maintain P K Lane in its improved state. Protestants further allege that the Board of Sheridan County Commissioners have not taken any valid legal action as regards the maintenance of P K Lane. The letter from the Board sent to the Administrator of Land Quality, which resulted in a reversal of an earlier determination by the Administrator to refuse acceptance of the Husman, Inc. notification, is null and void under 9-11-103(a) Wyo. Stat. Repub. (1977).

17.

Upon information and belief, Protestants allege that it is impossible for Husman, Inc. to fulfill its present production goal of 40,000 tons within the ten-acre limitation, where the ten acres must include the quarry, waste rock piles, crushing equipment, pollution control

devices, a turn around area for the trucks and all access and haul roads.

The Rules and Regulations of the Land Quality Division of DEQ specifically prohibit the use of the Ten Acre Exemption where the operator will conduct more than one operation under the ten acre limitation within adjacent or nearby areas for the same mineral so as to circumvent the general requirements of the Environmental Quality Act. Chapter X, Section 6(a)(1) and (2).

Protestants allege that the facts contained in all of the above paragraphs raise the issue of circumvention by Husman, Inc. in seeking to gain a ten acre exception and thus avoid a damaging environmental examination of the impact their proposed operation will have on the community, environment, and wildlife of Big Goose valley.

18.

The Ten Acre Exception at 35-11-401 (d)(vi) is an unconstitutional and arbitrary distinction. The potential for environmental harm and nuisance problems for residents is as great from a limestone quarry of ten acres as it is from a larger quarry. These concerns should be taken into consideration for all mining operations no matter what size. The statute and regulations promulgated under it are therefore challenged.

WHEREFORE, Protestants request a hearing pursuant to the Environmental Quality Act and further requests that Husman, Inc.'s notification for "Limited Mining Operations for Ten (10) Acres or Less of Affected Land" be denied.

DATED this 22 day of August, 1980.

For Protestant P K Ranch Co.

BURGESS & DAVIS  
P. O. Box 728  
Sheridan, Wyoming 82801

By: Rebecca W. Thomson  
REBECCA W. THOMSON

For Protestant Eaton Bros., Inc.

HOLSTEDT & ARCHIBALD  
P. O. Box 806  
Sheridan, Wyoming 82801

By: Robert S. Ackerman

CERTIFICATE OF SERVICE

I, Rebecca W. Thomson, Attorney for Protestant, P K Ranch Co., hereby certify that on the 22 day of August, 1980, I caused to be served for Protestants a true and correct copy of a Petition for Hearing by placing the same in the United States Mail, postage prepaid at Sheridan, Wyoming, correctly addressed to:

Mr. Robert Sundin  
Director, Department of Environmental  
Quality  
Equality State Bank Building  
19th & Pioneer  
Cheyenne, Wyoming 82002

Mr. David B. Park  
Chairman, Environmental Quality Council  
Equality State Bank Building  
19th & Pioneer  
Cheyenne, Wyoming 82002

Mr. Walter Ackerman  
Administrator, Department of Environmental  
Quality  
Equality State Bank Building  
19th & Pioneer  
Cheyenne, Wyoming 82002

DEQ - Land Quality Division  
30 East Grinnel Avenue  
Sheridan, Wyoming 82801

Husman, Inc.  
c/o Ms. Marilyn S. Kite  
1050 North 3rd, Suite "O"  
Laramie, Wyoming 82070

Foothills Conservation Association  
c/o Mr. Reed Zars  
Powder River Basin Resource Council  
48 North Main Street  
Sheridan, Wyoming 82801

Rebecca W. Thomson  
REBECCA W. THOMSON