

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

FILED

APR 24 1992

Terri A. Lorenzon, Adm. Aide
Environmental Quality Council

IN THE MATTER OF OBJECTIONS)
TO THE PERMIT APPLICATION OF)
LANDER-READY MIX, INC.,) DOCKET NO. 2334-91
TFN 2 2/183)

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

THIS MATTER came before the Environmental Quality Council for a hearing on January 13, 1992. The hearing was held in Riverton, Wyoming at the Central Wyoming College, Dobler Room, Administration Building. Fred H. Carr, a member of the Environmental Quality Council presided as the Hearing Examiner. John C. Schiffer, a Council member, was also present. Also present was Terri A. Lorenzon, Esq., representing the Environmental Quality Council.

The Petitioners appearing pro se, included Karen Howard, Mrs. Jewell Skaggs and Don Gaddie. Ms. Howard, Mrs. Skaggs and Mr. Gaddie served as spokespersons for those individuals who signed the petitions opposing the permit application of Lander-Ready Mix, Inc., TFN 2 2/183. The permit applicant, Lander-Ready Mix, Inc., also appeared pro se. The Department of Environmental Quality, Land Quality Division was represented by Thomas A. Roan., Assistant Attorney General.

Having considered the evidence before it and the arguments of the parties, the Environmental Quality Council now makes its Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. The Petitioners submitted timely, written objections to Lander-Ready Mix, Inc.'s (also known as Rocky Mountain Pre-Mix or Rocky Mountain)

7. The Petitioner Jewell Skaggs owns property adjacent to the mine's western border.

8. On November 9, 1989, the DEQ inspected the Rocky Mountain pit and determined that the company had exceeded its 10-acre limit. The DEQ then contacted the operator, Rocky Mountain, and requested a survey of the area to determine the extent of the disturbance.

9. Rocky Mountain failed to respond to the request for a survey from the DEQ. The DEQ inspected the site a second time and calculated the land affected by the sand and gravel operation, which area did exceed 10-acres.

10. On April 17, 1990, the DEQ informed Rocky Mountain that the mine operation exceeded 10-acres, and to correct the situation, Rocky Mountain should submit a small mine permit application within 60 days of the receipt of the letter. DEQ set the bond amount for the operation at \$18,000.00.

11. The DEQ received Rocky Mountain's small mine permit application on September 11, 1990, and later found the application to be incomplete and technically inadequate.

12. On September 6, 1991, the DEQ discovered a nonpermitted discharge of pollution to surface water at the Rocky Mountain pit.

13. On October 11, 1991, the DEQ notified Rocky Mountain that the small mine permit application was complete, technically adequate, and ready for public notice.

14. On October 15, 1991, the DEQ informed Rocky Mountain that its discharge of pollution to surface water was illegal under the Environmental Quality Act, and the DEQ suggested that Rocky Mountain immediately cease all discharges and either obtain a discharge permit or utilize a nondischarging system with spray irrigation.

15. On October 25, 1991, Rocky Mountain informed the DEQ that the

24. Evidence introduced at the hearing demonstrated that dust in this area could come from not only the Rocky Mountain operation but also the adjoining agricultural fields, roads, businesses, and vacant lots.

25. Evidence at the hearing demonstrated that the prevailing winds come from a north or northwesterly direction, which winds would blow dust away from the residences of the petitioners.

26. Rocky Mountain has obtained a DEQ air quality permit for its crusher, a significant cause of dust at a sand and gravel operation. This permit requires Rocky Mountain to mitigate dust problems through the use of water sprays.

27. The DEQ will require Rocky Mountain to revegetate affected lands, which action will also minimize dust in this area.

28. No evidence was introduced to support the allegation that Rocky Mountain's proposed expansion will cause an increase in truck traffic or excessive wear and tear on roads in the vicinity of its pit.

29. Truck traffic in Rocky Mountain's proposed operation will depend on the market demand for sand and gravel.

30. The route the trucks will take from the Rocky Mountain site will be on public roads. Monroe Street, a public road that was recently upgraded by local authorities in conjunction with the Wyoming Transportation Department, will be used as the haul route. Monroe Street is used by all industrial traffic in the vicinity of the Rocky Mountain site.

31. Evidence introduced at the hearing showed that water wells in the vicinity of the Rocky Mountain operation have not been affected by that operation, and will not be affected in the future.

32. No evidence was introduced to substantiate allegations that the water used by neighboring residences would be impacted by the operation.

Practice and Procedure, Chapter II, and W.S. 16-3-101 et seq.

3. The EQC afforded all parties due and proper notice of the hearing in this case.
4. Rocky Mountain has violated W.S. 35-11-401(e)(vi) by affecting in excess of ten acres while mining sand and gravel under a ten acre exemption.
5. Rocky Mountain has violated W.S. 35-11-301(a)(i) by discharging pollution to surface waters of the State.
6. Rocky Mountain has satisfied W.S. 35-11-406(m) and (o) with respect to compliance history by correcting the violations identified in paragraphs 4 and 5.
7. The Petitioner's claims concerning property value and aesthetic value are essentially the same claim. Insofar as these claims can be considered as allegations of a public nuisance, they are within the Council's authority under W.S. 35-11-406(m)(vii).
8. Neither this Council nor the DEQ has the authority to enforce the City of Riverton's Conditional Use Permit for the proposed operation; however, both agencies have the authority to enforce any permit granted pursuant to the Environmental Quality Act.
9. This Council may adopt conditions imposed by the City of Riverton by imposing such conditions on any small mine permit issued by the DEQ to Rocky Mountain, but only to the extent such conditions are authorized by the Environmental Quality Act and/or the DEQ Rules and Regulations pertaining to small mine operations.
10. Five of the conditions imposed by the City of Riverton, letters A through E in paragraph 34 of the Findings of Fact can be incorporated into Rocky Mountain's small mine permit as these conditions will mitigate the nuisance impacts of this operation on the neighboring property owners and

Paul Martin

John C. Schaffer

Harold J. Bergman

CERTIFICATE OF SERVICE

I, Terri A. Lorenzon, certify that at Cheyenne, Wyoming, on the 24th day of April, 1992, I served a copy of the foregoing Order by depositing copies of the same in the United States mail, postage prepaid, duly enveloped and addressed to:

Bob Hulme
Lander Ready-Mix, Inc.
P. O. Box 610
Lander, WY 82520

Don Gaddie
P. O. Box 1432
Riverton, WY 82501

Mrs. Jewell Skaggs
1100 E. Monroe Avenue
Riverton, WY 82501

Karen Howard
River Lane, Box 9
Riverton, WY 82501

and by interoffice mail of the same date to:

Roger Shaffer, Administrator
Department of Environmental Quality
122 W. 25th Street, Herschler Building
Cheyenne, WY 82002

Thomas A. Roan
Assistant Attorney General
Attorney General's Office
State Capitol Building
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