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**John Ruby, Executive Secretary
Environmental Quality Council**

**BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
OF THE STATE OF WYOMING**

**IN THE MATTER OF THE OBJECTION)
TO THE MINE PERMIT OF)
Croell Redi-Mix, Inc., TFN 5 6/072)**

Docket No. 09-4806

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This matter was brought before the Environmental Quality Council (EQC) on December 21, 2009, in Gillette, Wyoming at 1:00 p.m. Present for the EQC was the Presiding Officer David Searle; Councilwoman Cathy Guschewsky and Councilmen Tim Flitner and Thomas Coverdale participated by telephone. The Department of Environmental Quality/Land Quality Division (DEQ) was present through legal counsel John S. Burbridge, Senior Assistant Attorney General. The permittee, Croell Redi Mix, Inc. (Croell), was present through its President, Roger Croell. The following objectors were present: Paul Tomer, Judith Bush and Les and Karen Turgeon. Judith Hamm participated by telephone. (Objectors).

Under the Wyoming Environmental Quality Act (Act), the EQC “shall act as the hearing examiner for the department and shall hear and determine all cases or issues arising under the laws, rules, regulations, standards or orders issued or administered by the department or its air quality, land quality, solid and hazardous waste management or water quality divisions.” WYO. STAT. ANN. § 35-11-112(a). The EQC is required to: “Conduct hearings in any case contesting the grant, denial, suspension, revocation, or renewal of any permit, license, certification or variance authorized or required” by the

Act. WYO. STAT. ANN. § 35-11-112(a)(iv). This matter was brought before the EQC pursuant to WYO. STAT. ANN. § 35-11-406(k), concerning the issuance of mining permits. This matter pertained to a limestone mining operation in Crook County, Wyoming. Having received the evidence and argument of the parties, examined Exhibits 1 through 26, read the transcript and deliberated on the matter at its January 14, 2010 meeting, the Council voted to affirm the issuance of the permit. Those voting in favor of the action were Councilmembers Tim Flitner, John Morris, David Searle and Dennis Boal. Those opposed included Councilmembers Tom Coverdale and Cathy Guschewsky. The EQC hereby makes the Findings and Conclusions and issues the Order set out below.

FINDINGS OF FACT

Basic Facts

1. Croell filed an initial application for a surface mining permit with DEQ on December 9, 2009. (Ex. 11, Cover).
2. DEQ determined on October 9, 2009 that Croell's application was technically complete. (Tr. at 36).
3. Notice that the application was technically complete was published in the Sundance Times on October 15, 2009, October 22, 2009, October 29, 2009 and November 5, 2009. (Ex. 11, Proof of Publication).
4. Notice of the time and place for the hearing in this proceeding was sent to the parties on December 8, 2009. An amended notice of hearing sent on December 9, 2009. (Tr. at 5).

5. Notice of the hearing was published in the Sundance Times on December 17, 2009 and on December 19 and 20, 2009, in the Casper Star-Tribune, pursuant to WYO. STAT. ANN. § 35-11-406(k) (West 2009). (A.R., Affidavit of Publication, Sundance Times; Affidavit of Publication, Casper Star Tribune).
4. The deadline for filing objections to Croell's application was December 7, 2009. (Tr. at 5, Ex. 11, Proof of Publication).
5. Prior to the objection deadline, Croell's application was available for public viewing in the Crook County Clerk's office and at the DEQ's Sheridan and Cheyenne offices. (Tr. at 37-8).
6. Objectors Paul Tomer, Richard and Judith Hamm and Les and Karen Turgeon filed their objections to Croell's application on November 18, 2009. Objector Judith Bush filed her objection on December 6, 2009. (A.R., objection letters).
7. The Objectors made the following objections:
 - a.. A part of the proposed operation, reclamation plan is contrary to the law or policy of this state or the United States;
 - b. The proposed operation constitutes a public nuisance or endangers the public health and safety;
 - c. The application is incomplete;
 - d. The proposed mining operation will cause pollution of any waters in violation of the laws of this state or the federal government;
 - e. The applicant has had another permit or license issued hereunder revoked, or a bond posted to comply with the Act forfeited.

(A.R., Prehearing Conference Order at 2).

Ultimate Facts

8. Objectors asserted that Croell's proposed mining permit would create dust that could pose a potential health risk to humans and livestock. (Tr. at 137, 194).
9. Objectors asserted that truck traffic from Croell's proposed mining operation would create excessive dust and hazardous driving conditions on Rifle Pit Road. (Tr. at 145). The record shows that Rifle Pit Road is a state road up to the entrance of Croell's proposed mining operation and that it is a county road thereafter. (Tr. at 151).
10. No evidence was presented to show that Croell is currently in violation of the Act or a history of violations by Croell. (Tr. at 40-1, 132-34).
11. Objectors asserted that Croell was acting in bad faith and attempting to mislead DEQ by stating in its application that a new access road to the proposed mining site had been completed when, in fact, it had not. The record shows that Croell experienced unexpected delays in the permitting for the construction of the access road, and that Croell had completed the access road by the time of the hearing in this proceeding. It shows no evidence of bad faith on this point. (Tr. at 190-92, 243-44).
12. Objectors asserted that water runoff from Croell's proposed mining site would pollute surrounding underground and surface waters, specifically Sand Draw Creek and Sundance Creek. (Tr. at 201-03). Croell's application shows that hydrology concerns have been addressed and that berms and other drainage

control methods will be used to prevent runoff from leaving the boundary of the permit area. Runoff within the mining area will flow into the pit and not off the site. (Tr. at 259-6; Ex. 11, MP 2.3, 4.7 and 4.8).

13. Croell's application contains the name and address of the applicant and the names and addresses of all managers, partners and executives directly responsible for Croell's mining operations in Wyoming. (Ex. 11, Form 1).
14. Croell's application contains a sworn statement showing the power and legal estate for the right to mine from the land described in the application. (Tr. at 47, Ex. 11, Form 1 and Surface Owner Consent).
15. The application contains a sworn statement that Croell has not forfeited a bond posted for reclamation purposes and that all the statements contained in the application are true and correct to the best knowledge of the applicant. *Id.*
16. Croell's application contains the last known addresses of the owners of record of the surface and mineral estates on the land covered by the proposed mining permit. (Ex. 11, Appendices A and B and Map A-1).
17. The application contains the names and last known addresses of the owners of record of the surface rights of the lands immediately adjacent to the proposed permit area. *Id.*
18. Croell's application identifies by legal description the land included in the permit area including the approximate number of acres to be affected and the total number of acres in the area covered by the proposed permit. (Ex. 11, Form 1).

19. Croell's application identifies Sundance, Wyoming as the nearest town to the proposed mining operation. *Id.*
20. Croell's application includes a Mine Plan that is consistent with the objectives and purposes of the Act and DEQ non-coal rules and regulations. (Ex. 11, Mine Plan at MP.1-MP.18).
21. Croell's application includes a general description of the land together with its vegetative cover, the annual rainfall, the general directions and average velocities of the winds, indigenous wildlife, its past and present uses, its present surface waters, adjudicated water rights and their immediate drainage areas and uses, the nature and depth of the overburden, topsoil, subsoil mineral seams and other deposits and any subsurface waters known to exist above the deepest projected depth of the proposed mining operation. (Tr. at 40 and Ex. 11, Appendices D-1 – Land Use, D-4 – Climatology, D-5 – Topography, Geology, and Overburden, D-6 – Hydrology, D-7 – Premining Soils Assessment, D-8 – Premining Vegetation Assessment, D-9 – Wildlife, D10 – Wetlands Inventory and Permanent Mitigation Plan, E-1 – Oil and Gas Within One-half Mile of the Permit Boundary, E-2 – Valid Groundwater Rights Within Three Miles of the Permit Area, E-3 – Surface Water Rights Within and Adjacent to the Permit Boundary, and Map E-1).
22. The evidence showed that Croell's mining operation, reclamation program and future use would not be contrary to the law or policy of this state, or of the United States. (Tr. and Exhibits).

23. The evidence showed that Croell's mining operation will not irreparably harm, destroy, or materially impair any area that has been designated as rare or uncommon by the EQC. (Tr. and Ex. 11).
24. The evidence did not show that the area proposed by Croell for its mining operation has any particular historical, archaeological, wildlife, surface, geological, botanical or other scenic values that it will irreparably harm. (*Id.* and Ex. 11, Appendices D-1 – Land use, D-3 – Cultural Resources and D-5 – Geology and Overburden Assessment).
25. Both the Wyoming Game and Fish Department and US Fish and Wildlife Service reviewed the application and neither made a recommendation to deny a mining permit to Croell. (Tr. at 39 and Ex. 11, Appendix D-9 – Wildlife).
26. The evidence showed that Croell's proposed mining operation will not cause pollution of any waters of the state in violation of the laws of the state of Wyoming. (Tr. at 40, Ex. 11, Appendix D-6 – Hydrology, and Ex. MP 4.7-4.8).
27. Croell has not had any other permit or license or bond revoked by DEQ. (Tr. at 40-1).
28. The record does not support a conclusion that Croell's proposed mining operation will constitute a public nuisance or endanger the public health and safety. (Tr. at 41-2 and Ex. MP 4.9).
29. Croell's proposed permit boundaries are not within 300 feet of any occupied structure. (Tr. at 42-3 and Ex. 11, Appendix E at App. E.4).

30. Croell will be able to produce the bond required by the DEQ. (Tr. at 43-4 and Ex. 11, Reclamation Bond).
31. Croell will be able to perform reclamation of the proposed mining site in a manner consistent with the purpose and provisions of the Environmental Quality Act (Act). (Tr. at 44 and Ex. 11, Reclamation Plan).
32. Croell is not currently in violation of the Act. (Tr. at 44, 132-34) .
33. Croell's application, for its proposed mining operation, is complete pursuant to WYO. STAT. ANN. § 35-11-406. (Tr. at 50, 56).
34. To the extent that any of the foregoing findings of fact constitute conclusions of law, they are incorporated as such in this order.

CONCLUSIONS OF LAW

1. The EQC has jurisdiction over the subject matter and the parties to this proceeding, but is without authority to address the air quality issues and concerns raised by the Objectors.
2. All notice requirements for the hearing have been met pursuant to the Act, the EQC rules of practice and procedure and the DEQ non-coal rules and regulations.
3. Croell Redi Mix's application is complete within the meaning of WYO. STAT. ANN. § 35-11-406(m).
4. Croell's representation regarding the access road in its application does not constitute an intentional misrepresentation allowing denial of a mining permit to Croell.

5. The applicant and DEQ met the requirements of WYO. STAT. ANN. § 35-11-406(m) in issuing this permit.. WYO. STAT. ANN. § 35-11-406(m) requires that a permit be granted if the applicant demonstrates that the application complies with the requirements of the Act and all applicable state and federal laws.
6. A permit can only be denied if at least one of the enumerated criteria in WYO. STAT. ANN. § 35-11-406(m) exist. The evidence does not demonstrate that any of these criteria exist in this case.
7. Objectors failed to meet the burden of showing any reason why the permit should not be issued in this case. *JM v. Dep't. of Family Serv.*, 922 P.2d 219, 221 (Wyo. 1996). Objectors did not show by at least a preponderance of the evidence why the permit proposed by DEQ was not “supported by relevant evidence” which a “reasonable mind” might accept. *Penny v. Wyo.*, 2005 WY 117, ¶ 12 , 120 P.3d 152, 160 (Wyo. 2005) and *Dale v. S&S Builders, LLC*, 2008 WY 84, 188 P.3d 554 (Wyo. 2008).

ORDER

Pursuant to the authority vested in the EQC by WYO. STAT. ANN. § 35-11-406, it hereby **FINDS** that the Permit Application submitted by Croell Redi-Mix in this case is **COMPLETE** and that the Permit Application filed by Croell Redi-Mix, Inc. for Permit No., TFN 5 6/072 should be and hereby is **GRANTED**

SO ORDERED this 12th day of March, 2010.



David Searle, Presiding Officer
Environmental Quality Council

CERTIFICATE OF SERVICE

I certify that the foregoing document was served by US. Mail, postage prepaid, and addressed correctly, to the following people on the 12th day of March, 2010:

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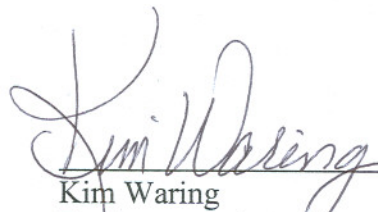
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