

BY FAX**307-777-6134****EQC Docket****09-4806****LQD File # TFN 5 6/072****FILED**

To: Members of the Environmental Quality Council
and Jim Ruby Executive Secretary, EQC

APR 01 2010

Re: Docket # 09-4806
Amended Findings of Fact, Conclusions of Law, and Order
Croell Redi-Mix Application to DEQ LQD for regular mine permit

Jim Ruby, Executive Secretary
Environmental Quality Council

From: Judith Bush, Managing Partner Bush Ranches
ph / fax 613-392-2313 please phone before faxing

cc	Dave Freudenthal	Gov of Wyoming	307-632-3909
	Don McKenzie	Director LQD	307-777-5864
	John Burbridge	Sr Asst Att Gen	307-777-3542
	John Corra	Administrator DEQ	307-777-7682

encl map of exploratory drill holes (a part of Appendix D-5 of the Croell Redi-Mix Application
copy of my letter to Council dated March 2, 2010
copy of my letter to Governor Freudenthal dated March 1, 2010
copy of December 9, 2009 Amended Notice of Hearing and Order
copy of transcript of hearing - page 66 line 13 through page 69 line 1

date: April 1, 2010 No. pgs 15

PETITION FOR REHEARING

Dear Members of EQC,

On March 2, 2010 I faxed Council requesting that my letter dated January 14, 2010 be unsealed. I received no response from the EQC to this letter. (I am attaching a copy of that letter, as well as a copy of my letter sent to Governor Freudenthal which explained why I believed that the unsealing of my letter was warranted).

I am once again asking that my letter dated January 14, 2010 be unsealed, and that matters contained in this letter be addressed by Croell Redi-Mix, the DEQ LQD, and that objecting parties in this matter be given the opportunity to respond to the assessment of Croell Redi-Mix and / or the LQD in this matter. Studies by Croell Redi-Mix and an Assessment of this matter by the LQD should have been undertaken prior to LQD having considered the application complete.

There were extenuating circumstances surrounding the lateness of my January 14, 2010 letter to Council, as noted in the following pages. This is a substantial concern. There is potential for irreparable harm. No land within the designated minesite which is overlain by the Spearfish Formation should be disturbed prior to this matter being fully assessed.

The Administrative Procedures Act 15--114 states that a review by the District Court of a decision such as this decision of Council's may proceed when administrative remedies have been exhausted. ¹ Bearing that in mind, I am requesting that my letter be unsealed, and that the EQC hear the matters contained in this letter.

In accordance with General Rules of Practice and Procedure, Chapter IV Rehearing 2, I am petitioning for a rehearing before the EQC of matters relating to the incompleteness of the Croell Redi-Mix Decision as described in my letter to members of the EQC dated January 14, 2010 .

This letter was sealed by order of Council because it arrived after the December 21, 2009 hearing. I believe that the decision of Council to seal my letter represented an misuse of Council's discretionary powers for the following reasons:

¹ **Administrative Procedures Act**
16-3-114 **Judicial review of agency actions; district courts**

- (a) Subject to the requirement that administrative remedies be exhausted and in the absence of any statutory or common-law provision precluding or limiting judicial review, any person aggrieved or adversely affected in fact by a final decision of an agency in a contested case, or by other agency action or inaction, or any person affected in fact by a rule adopted by an agency, is entitled to judicial review in the district court for the county in which the administrative action or inaction was taken, or in which any real property affected by the administrative action or inaction is located, or if no real property is involved, in the district court for the county in which the party aggrieved or adversely affected by the administrative action or inaction resides or has its principal place of business. The procedure to be followed in the proceeding before the district court shall be in accordance with rules heretofore or hereinafter adopted by the Wyoming supreme court.

² **General Rules of Practice and Procedure - Chapter IV - Rehearing**
Section 1 Petition for Rehearing

- (a) Any Party seeking any change in any decision of the Council may file a Petition for rehearing within twenty (20) days after the written decision of the Council has been issued.
- (b) Any petition for rehearing filed under this section must be confined to new questions raised by the decision and upon which the petitioner had no opportunity to argue before the Council
- (c) Any petition for rehearing must specify whether the prayer is for reconsideration, rehearing, further hearing, modification of effective date, vacation, suspension or otherwise.
- (d) Except as the Council may otherwise direct, the filing of a petition under this section shall not stay the effectiveness of any decision respecting the promulgation, amendment, or repeal of any rule or rules

Section 2 Scope

- (a) A petition for rehearing may be filed in hearing conducted under Chapter II or Chapter III
- (b) the granting of a petition to rehear is solely within the discretion of the Council.

- * *failure of the DEQ LQD to provide objecting parties with a copy of their exhibit in this matter (the Croell Redi-Mix Application) as was required according to Nos. 4 of both the Notice and Order portions of the December 9, 2009 Notice of Hearing and Order which was mailed to parties on December 9, 2009 (copy attached)*
- * *Failure of the EQC to consider the motion contained in my December 14, 2009 letter to Council (noted in in the EQC index as my pre-hearing memorandum) that objectors be permitted to purchase a copy of the application at cost.*
- * *The lack of a copy of the DEQ LQD exhibit (exhibit 11) prior to December 21, 2009 made it impossible for me to assess the completeness of the application prior to the hearing.*
- * *My Cross-Examination of Glenn Mooney (DEQ LQD Sheridan) regarding a map of exploratory drill holes carried out on the the mine site (which had been handed to me in the course of my cross-examination of Mr. Mooney when I questioned the extent to which the proposed 600 + acre minesite had been assessed both for depth and thickness of the Minnehata limestone deposit) was, I believe, inappropriately interrupted by Chairman Searle.*

This map was a part of Exhibit 11 (Appendix D-5 - Geology and Overburden). The map was contained no legal description, no orientation of direction, no absolute scale, and was, in fact, completely deficient in terms of the requirements of the DEQ LQD Noncoal Rules and Regulations Section 1 (c) ³ regarding maps submitted to that Division.

(copy of map attached)

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**DEQ LQD Noncoal Rules and Regulations
Section 1 General Requirements**

- (c) Maps submitted with the application shall be , or be the equivalent of a U.S. Geological Survey topographic map at a scale determined by the Administrator, but in no event smaller than 1: 24,000. All maps shall contain a title relating to the subject matter of the map, a map number, legend, and show the limits of the permit area

I believe that cutting off my cross-examination of Mr. Mooney at this point was a violation of the Administrative Procedures Act 16-3-108(c).⁴ Mr. Mooney (DEQ LQD Sheridan) was the person who was in charge of both the previous Croell Redi-Mix application for an LMO mining permit at the Rogers Pit, and the Croell Redi-Mix application for a regular mining permit to expand its existing LMO operation at the Rogers Pit. He was the appropriate person to be asking about the map which had been handed to me. Continuation of this cross-examination could have led to demonstration of the incompleteness of the application.

(see attached transcript excerpt.)

Once again, my January 14, 2010 letter, sealed by the order of Council, deals with substantial matters which have the potential to damage underground water flow, springs and streams. There is no indication that LQD even considered these matters when they determined that this application was complete.

Appendix D-5 (received by the LQD on September 2, 2009) notes that the Spearfish Formation overlies the Minnehata limerock in approximately half of the 600+ acre designated minesite. There is no map delineating the boundaries of this formation. There has been no investigation of the depth of the Spearfish formation, the depth at which the Minnehata limestone lies in this area or or thickness of the Minnehata limerock in this area. This is contrary to portions of Chapter 2 of the DEQ LQD Noncoal Rules and Regulations regarding overburden, depth and thickness of deposit as follows:⁵

- ⁴ **Administrative Procedures Act, Contested cases; admissible evidence; cross-examination; judicial notice**
- 16-3-108 (c) A party may conduct cross-examinations required for a full and true disclosure of the facts and a party is entitled to confront all opposing witnesses.
- ⁵ **Chapter 2 Regular Noncoal Mine Permit Applications**
- Sec 2 General Application Content Requirements**
In addition to information required by W.S. 35-11-406 each application for a mining permit shall contain:
- (a) each application for a mining permit shall contain:
- (i) A description of the lands affected within the permit area, how these lands will be affected, for what purpose these areas will be used during the course of the mining operation, and a time schedule for affecting these lands. This description shall include:
- (F) Overburden, topsoil, subsoil, mineral seams or other deposits.
- (i) Overburden Ch 2 Sec 2(a)(i)(F)(i)
The operator shall submit a description including the thickness, geological nature (rock type, orientation, etc), the presence of toxic, acid forming, or vegetative-retarding substances, or any other factor that will influence the mining or reclamation activities.
- (iv) Mineral seams or other deposits Ch 2 Sec 2(a)(i)(F)(iv)
The operator shall submit a description of the mineral seams in the proposed permit area, including but not limited to, their depth, thickness, orientation (strike and dip), and rock or mineral type. Maps or geologic crosssections may be used to illustrate the description of the mineral seams.

A glaring omission from this application is the lack of any mention of the relationship between the Spearfish Formation and the role that this formation plays in the replenishment of underground water, the feeding of springs and flowing surface streams.

Appendix D-5 was not received by the DEQ until September of 2009. It is not clear that there has been any on the ground assessment of concerns raised by the presence of the Spearfish Formation.

I do not know to what extent Appendix D-5 was reviewed by the DEQ after it was received at that late date. From my perspective, given that the DEQ has geologists on staff, it seems almost beyond comprehension that the correlation between underground water, springs and streams and the presence of the Spearfish formation overlying the Minnekhata Limerock would not have rung some bells somewhere at the LQD. I consider it irresponsible of the LQD not to have demanded further investigation of the matter when Appendix D-5 was received in September of 2009.

I do not know whether or not Council read my letter before determining that it should be sealed because it arrived late. I do believe that matters raised in that letter are of a sufficiently serious nature that they should not have been dismissed as a matter of procedure, which is apparently what happened.

I am requesting a rehearing so that matters contained in my January 14, 2010 letter can be heard by the EQC. I am also requesting that prior to this occurring, matters addressed in my letter be assessed by Croell Redi-Mix and by the LQD; that objectors be provided with a copy of the assessment of this matter; and that objectors be provided with both the time to assess and the opportunity to respond to the investigations into this matter by Croell Redi-Mix and by the LQD. All of this should have occurred before the Application was ever pronounced complete by LQD. Under no circumstances should lands within the minesite where the Spearfish Formation overlies the Minnekhata Limerock be disturbed prior to a thorough assessment of the negative impact that this could have on surrounding springs, and streams, and to the quality of these waters.

I believe that the process leading up to and including the hearing of December 21, 2009 was deeply flawed. I am assuming from the similarity of the Findings of Fact, Conclusions of law and Order approved by Council on March 12, 2010 to the Proposed Findings of Fact, Conclusions of Law and Order which objectors were invited to comment upon prior to Council's decision, that Council is not movable on these issues and that all administrative remedies have been exhausted. Please let me know if this is not the case.

I am limiting this letter to matters to which I have received no response to date and which I believe it is both irresponsible and unreasonable for Council to ignore. My thanks and gratitude to Council Members who had the courage to buck the trend and who voted to deny this permit.

Yours truly,


Judith Bush, Managing Partner, Bush Ranches

BY FAX (307) 777 - 6134

To: Jim Ruby, Executive Secretary EQC
From: Judith Bush tel / fax 613-392-2313
please phone before faxing

Re: **Docket 09-4806 LQD TFN 5 6/072**

**Request for Review by EQC of its January 15, 2010 Order
which sealed my letter to the EQC dated January 14, 2010**

cc	Dave Freudenthal	Governor if Wyoming	307-632-3909
	Don McKenzie	Administrator LQD	307-777-5864
	John Burbridge	Sr Assistant Attorney General	307-777-3542
	John Corra	Director DEQ	307-777-7682

No pages 3 including attachment
date: March 2, 2009

Dear Mr. Ruby,

The January 15, 2010 EQC Order sealing my January 14, 2010 letter to the Council was mailed to me on January 19, 2010 (received January 28, 2010). No information was enclosed informing me of steps I could take to appeal the Council's Order to seal this letter.

I am hereby requesting that the the EQC review their January 15, 2010 decision to seal my letter dated and faxed to the EQC on January 14, 2010.

I believe that matters contained in that letter clearly show that the application is incomplete, and that concerns noted in that letter merit further expert attention.

I am attaching a copy of my letter written to Governor Freudenthal yesterday. This letter sets out the reasons why I believe that the EQC decision to seal my January 14, 2010 letter was both unreasonable and irresponsible.

Please consider the attached letter to Governor Freudenthal an integral part of this formal request to the EQC for a review of their January 15, 2010 decision to order the sealing of my letter dated January 14, 2010.

Yours truly,



Judith Bush
Managing Partner, Bush Ranches

By Fax 307-632-3909

To: Dave Freudenthal Governor of Wyoming 307-632-3909
From: Judith Bush Managing Partner Bush Ranches tel / fax 613-392-2313
Please phone before faxing

date March 1, 2010

Re: **EQC Docket 09-4806 / DEQ LQD File Number TFN 5 6/072**

Croell Redi-Mix Application to the DEQ LQD to expand their 10 acre LMO permit (1396 ET) for Limerock mining and crushing operations located at the Rogers Pit into a Regular Mine Permit with a designated minesite of 600 + acres.

Enc * copy of my Jan 14, 2010 which was ordered sealed by the EQC
* copy of EQC order sealing the letter
* copy of USGS report "Hydrology, Hazards, and Geomorphic Development of Gypsum Karst in the Northern Black Hills, South Dakota and Wyoming"

pages 33 including attachments

Dear Governor Freudenthal,

I have been meaning to send you a copy of my January 14, 2010 letter which was sealed by the EQC because it arrived after the hearing had closed.

You will see that this letter deals with realistic and substantial concerns regarding the effect which this project could have on our ranch and on springs and streams in the surrounding area. This matter was not dealt with at all in the Application which the DEQ LQD proposes to approve.

Because I was not provided with a copy of the application prior to the day of the hearing. I was unaware of this issue at that time. I had requested the application in two separate letters to the EQC, both requests, one in the form of a motion, ignored.

The DEQ LQD, according to the "Amended Notice of Hearing and Order" which was mailed to objecting parties on December 9, 2009, was to have provided the objecting parties with a copy of the Application by noon on December 14, 2009. It failed to do so.

The EQC should have received a copy of the LQD Exhibit on Monday, December 14, 2009, and as I now realize, should have posted the exhibit on its web pages dealing with Docket 09-4806 on the day the exhibit was received.

The EQC did not post the DEQ's exhibit , which was the Application - Exhibit 11 (or any other exhibits) on its web pages until December 21, 2009, the day when the hearing took place. (The EQC exhibits do not bear the EQC "FILED stamp and the date received, which I believe is also in violation of the Rules of Practice and Procedure Chapter II Section 2 (a).

The EQC did not inform me that any matters contained in Docket 09-4806 would be available for viewing on its web pages.

The burden of proof was placed on objecting parties to show why this application should not be approved. There are lamentably few reasons listed in the Environmental Quality Act not to approve a mining application in the State of Wyoming. One of them is if the Application is incomplete.

I think that my December 14, 2010 letter establishes quite clearly that the application was and is incomplete. It was, however, a little difficult to demonstrate the incompleteness of the application, before I had a copy of the application.

Considering the substantive nature of the concerns expressed in my January 14, 2010 letter, as well the circumstances I have just described to you, I find it both both unreasonable and irresponsible that the EQC chose to use its discretionary powers to seal this letter.

Yours truly,



Judith Bush, Managing Partner, Bush Ranches

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

FILED

DEC 09 2009

*Jim Ruby, Executive Secretary
Environmental Quality Council*

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

Docket No. 09-4806

AMENDED NOTICE OF HEARING AND ORDER

NOTICE IS HEREBY GIVEN THAT:

1. The Environmental Quality Council (the Council) will conduct a hearing on December 21, 2009 at the Campbell County Library, 2101 South 4-J Road, Gillette, Wyoming commencing at 1:00 P.M. This hearing will be conducted as a contested case hearing under the Wyoming Administrative Procedure Act. F. David Searle, a member of the Council will serve as Presiding Officer.
2. This hearing is held pursuant to Sections 35-11-101 through 35-11-1904, W.S. 2008, as amended, regulations promulgated there under, and the Department of Environmental Quality Rules of Practice and Procedure.
3. Croell Redi-Mix, Inc., (Croell) applied for a mining permit from the Department of Environmental Quality (DEQ).
4. Croell and the DEQ contend the permit application is complete and should be granted.
5. The Protestants objected to Croell's mining permit. The particular statutes and rules upon which the Protestants base their objections have not been specified at this time.
6. This matter was scheduled in accordance with the time limitations set forth in Wyo. Stat. § 35-11-406(k). The schedule can only be adjusted at the request and the filing of a joint stipulation and motion for continuance.

NOTICE IS FURTHER GIVEN THAT:

1. A prehearing conference in this matter will be conducted on December 16, 2009 at 2:30 p.m. via telephone conference call. The parties shall inform the EQC office of a telephone number where they can be reached for the prehearing on or before December 14, 2009. Failure to appear at the prehearing conference may result in dismissal from this case.
2. The purpose of the prehearing conference is:

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- a. Identification of witnesses, their addresses, phone numbers, and the substance of their proposed testimony;
 - b. Clarification of the legal issues, both substantive and procedural, of all the parties, including identification of the statutory provisions and regulations that form the basis of the appeal;
 - c. Stipulation to uncontested facts;
 - d. Examination and marking of proposed exhibits and entering into stipulations to the foundation and admissibility of the exhibits and testimony; and
 - e. Pending motions.
3. To facilitate the hearing process, all parties shall deliver a list of witnesses, their addresses, phone numbers, the substance of their proposed testimony, a list of exhibits, and a summation of the facts and legal issues, to all parties to this case (Croell, the Protestants, and the Department of Environmental Quality) and the Environmental Quality Council by 12:00 noon on December 14, 2009.
 4. The Parties shall exchange and submit 3 copies to this office of all exhibits on or before the Prehearing Memorandum due date, December 14, 2009.
 5. In accordance with the DEQ Rules of Practice and Procedure, Chapter 1, Section 6, "Unless otherwise agreed to by the parties and consented to by the Council, all hearings, including all testimony, shall be reported verbatim by a competent reporter. The compensation of such reporter shall be paid as required by law and as ordered by the Council. The Council may direct any party or parties to assume the cost of the transcript." If the Parties do not file a waiver to this section, the DEQ should pay the costs of the transcript.

ORDER

IT IS HEREBY ORDERED THAT:

1. All parties shall appear at the prehearing conference call on December 16, 2009 at 2:30 P.M. Failure to appear at the prehearing will result in dismissal from the case.
2. All parties shall appear on December 21, 2009 at 1:00 P.M. to present evidence. Failure to appear at the hearing will result in dismissal from the case.

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3. A court reporter will transcribe the hearing. If the Parties have not filed a waiver for the prehearing on or before December 14, 2009 a court reporter will transcribe the prehearing. The DEQ shall pay for the transcripts.
4. All parties shall deliver the prehearing document and exhibits in accordance with the schedule set forth in this Notice of Hearing and Order. All other documents shall be filed with the Environmental Quality Council at the address below, and all documents shall be served to all other parties to the case.
5. Documents may be served or delivered by fax transmission or via-email if prior arrangements for the transmission are made with the recipients, the e-mailed document is in either Word for Windows or WordPerfect 6.0, and the original document is mailed to the Council prior to or at the same time as transmission by fax or e-mail. The fax number for the Environmental Quality Council is 307-777-6134 and the e-mail address is kwarin@wyo.gov
6. All motions shall be filed by 12:00 noon December 14, 2009, and parties shall be prepared to argue pending motion(s) at the prehearing; and
7. No continuances shall be granted unless a motion showing good cause for the continuance is filed with the EQC no later than 12:00 noon on December 14, 2009 and the Presiding Officer finds that good cause has been shown.

DATED this 14 day of December, 2009.


F. David Searle, Presiding Officer
Environmental Quality Council

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CERTIFICATE OF SERVICE

I, Kim Waring, certify that at Cheyenne, Wyoming, on the 9th day of December, 2009, I served a copy of the foregoing **AMENDED NOTICE OF HEARING AND ORDER** by electronic mail to the following:

John Burbridge
Sr. Asst. Attorney General
jburb1@state.wv.us

John Corra
Director, DEQ
jcorra@wyo.gov

Don McKenzie
Land Quality Administrator
dmcken@wyo.gov

also by depositing the same in the United States mail addressed to:)

Mr. Roger Croell
Croell Redi-Mix, Inc.
P.O. Box 1352
Sundance, WY 82729

Gary & Barbara Johnson
300 Moskee Road
Sundance, WY 82729

Les and Karen Turgeon
725 Rifle Pit Road
Beculah, WY 82712

Jace Bo & Monica Waltman
439 Fuller Road
Sundance, WY 82729

Douglas & Phyllis Watson
670 Moskee Road
Sundance, WY 82729

Joan Kokesh
327 Moskee Road
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P.O. Box 1430
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251 Moskee Rd.
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Scott & Julie Wheeler
360 Moskee Road
Sundance, WY 82729

Cindy Lambert
222 Canyon Road
Sundance, WY 82729

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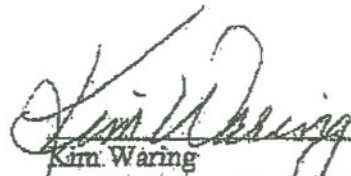
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Transcript pages 66 line 13 through page 69 line 1

- Q Bush And the estimated depth of this limestone is based on what?
- A Mooney The thickness of it.
- Q Bush But as far as exploration, what data were you given?
- A Mooney There is some drilling data in there, yes.
- Q Bush And how large an area is that based on?
- A Mooney Well, the permit area.
- Q Bush The original permit area?
- A Mooney The permit area that's being applied for here.
- Q Bush Have they done drilling outside of the area of the LMO?
- A Mooney Yes.
- Q Bush What I read in the application is that the depth of the limestone was based on -- based on drilling within that small ten-acre area.
- A Mooney I believe it was continuing outside of that area. I think it's in the geology section, the D.5.
- Mr. Burbridge I don't think it's in the application.
Attorney for DEQ LQD
- Q Bush I apologize. so there is - you believe that they did -- are you looking at that now, by any chance?
- A Mooney Yes. On paragraph 3 of page D.5-5, it states there were 27 individual drill holes ranging in depth from ten and a half to 40 feet, with an average depth of 24.3 feet, drilled on the proposed permit area.
- Mr. Searle
Chairman
- A (Mooney) Whatever the permit application is. This is the District copy here.
- Q Bush I can't tell how big of an area we're covering here. Is this the entire new new area in here, or is this the original LMO?
- A Mooney We're up at the top there. No. It's more than the LMO area.
- Q Bush So this is the northern boundary of the new mine site. Is that correct?
- A Mooney No. North is up this direction (indicating).
- Q Bush Okay. So does this specify acreage? I don't know what I'm looking at, but I'm sure you do.
- A Mooney Well, this map is -- the location of it's hard to tell. It's, I have to say, not a very good map. But it was the best one I could get them to supply. But it does show that they did do a considerable number of holes.
- Q Bush They did. I just -- I can't tell considerable number of holes under - now where is the access road? That might help us to see something.
- A Mooney It's somewhere up here (indicating).
- Q Bush Is there a scale on here that we could tell?
- A Mooney I don't believe so.
- Chairman Searle Perhaps this is a question for the acreage area we could save, MsBush Because you'll have a chance -- when Mr. Croell testifies, he may have he may have more specific information.