

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

IN THE MATTER OF THE OBJECTION)
TO THE SMALL MINE PERMIT OF)
EVANS CONSTRUCTION COMPANY)
TFN 5 6/149)

Docket No. 10-4802

FILED
NOV 19 2010
Jim Ruby, Executive Secretary
Environmental Quality Council

ORDER GRANTING SMALL MINE PERMIT TFN 5 6/149

This matter came before the Environmental Quality Council (EQC) for hearing on September 10, 2010, in Evanston, Wyoming. Tim Flitner, EQC Chairman, conducted the hearing and was assisted by James Ruby, EQC Executive Secretary. Evans Construction Company (Evans) was represented by Christopher F. Jorgenson. The State of Wyoming, Department of Environmental Quality, Land Quality Division (DEQ) was represented by Lucas J. Esch, Assistant Attorney General. The Petitioner, Timothy J. Bommer, represented himself.

Findings of Fact

1. On February 5, 2010, Evans applied for Small Mine Permit number TFN 5 6/149.
2. The DEQ reviewed the application and found it complete and suitable for publication.

3. Timothy J. Bommer filed timely objection to the issuance of the permit, objecting to the application on the following grounds: 1.) Evans' application was void from the beginning due to cessation or termination of mining at the original site by Evans; 2.) Evans failed to provide proper notice to David C. Hansen, a surface owner within ½ mile of the proposed mining site; 3.) the application failed to adequately provide procedures to avoid potential public nuisance, the endangering of public safety and the endangering of human and animal life; and 4.) the granting of Evans' permit will irreparably harm the scenic value and result in a public nuisance.

4. Since 2006, Evans has been operating a Limited Mining Operation, identified by the exemption number 378, at the location of the mine proposed under permit TFN 5 6/149.

5. At no time has Evans' existing gravel mining operation conducted pursuant to exemption number 378 ever ceased or been terminated.

6. While Evans was applying for a small mining permit with the DEQ, Evans also applied for a Conditional Use Permit (CUP) with Lincoln County, Wyoming. Evans was granted a CUP that provided only for a gravel mining operation, and did not provide for operating a hot batch plant.

7. Presently, interested parties are appealing Lincoln County's decision to grant Evans a CUP.

8. The granting of a small mining permit by the DEQ would not, in and of itself, permit Evans to operate a hot batch plant.

9. The appeal of Lincoln County's decision to grant Evans a CUP is not sufficient grounds to deny Evans a small mining permit.

10. Evans mailed notice of its small mining permit to neighboring land owners and land owners located within a ½ mile radius of the proposed mining site.

11. Evans obtained the mailing addresses for land owners requiring notice of the permit application from a list of land owners' addresses maintained by the Lincoln County Assessor's Office.

12. David C. Hansen and Timothy J. Bommer own real property that is located within a ½ mile radius from the proposed mining site ("Property").

13. The Warranty Deed conveying title to the Property in David C. Hansen and Timothy J. Bommer lists an address of P.O. Box 1728 Jackson, WY 83001 for both David C. Hansen and Timothy J. Bommer.

14. The address listed by the Lincoln County Assessor's Office for the Property is P.O. Box 1728 Jackson, WY 83001, and lists the land owner as Timothy J. Bommer, et al.

15. Evans provided notice of its small mining permit application, addressed to Timothy J. Bommer, et al., and mailed to P.O. Box 1728 Jackson, WY 83001.

16. Although Evans did not mail notice specifically addressed to David C. Hansen, the notice addressed to Timothy J. Bommer, et al. and addressed to P.O. Box 1728, Jackson, WY 83001 was sufficient to provide notice to David C. Hansen.

17. David C. Hansen received additional notice of Evans' small mining permit application through the public comment period associated with Evans' CUP application process, as well as a public meeting organized by Evans regarding expansion of its Etna gravel pit.

18. Timothy J. Bommer, the party raising objection to Evans' application, was not prejudiced by the notice that was mailed to P.O. Box 1728, Jackson, WY 83001 and addressed to Timothy J. Bommer, et al.

19. The DEQ properly handled its review of Evans' permit application.

Conclusions of Law

1. The EQC has jurisdiction over the parties and the subject matter of this proceeding pursuant to W.S. §§ 35-11-112(a)(iv) and 406(k).

2. All notice requirements have been met.

3. Evans' permit application meets statutory and regulatory requirements.

4. None of the grounds enumerated in W.S. § 35-11-406(m) exist to deny the issuance of Evans small mine permit TFN 5 6/149.

5. Evans has met its burden of demonstrating that its small mining permit should be issued.

Order

IT IS HEREBY ORDERED that the small mine permit identified as TFN 5 6/149 be issued by the DEQ to Evans Construction Company.

DATED this 18 day of 11, 2010.



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CERTIFICATE OF SERVICE

I, Kim Waring, certify that at Cheyenne, Wyoming, on the 19th day of November, 2010, I served a copy of the foregoing **ORDER GRANTING SMALL MINE PERMIT TFN 5 6/149** by electronic mail to the following:

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