

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

FILED

FEB 26 2014

Jim Ruby, Executive Secretary
Environmental Quality Council

IN RE MOUNTAIN CEMENT COMPANY)
TFN 5 5/110)
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DOCKET NO. 13-4807
**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER.**

On the 9th day of January, 2014 at 1:10 p.m. the above entitled matter came on for final hearing in Cheyenne, Wyoming. The Hearing Officer was Tim Flitner. Council members present in person were, Vice-Chairman David Searle, Councilmen Tim Flitner, Councilman Dr. David Bagley and Councilwoman Meghan Lally. Present via video conference was Chairman Tom Coverdale, Councilman Andy Schwartz and Councilman Rich Fairservis. Staff present were Joe Girardin, John Knepper and Jim Ruby.

Representing the Department of Environmental Quality (DEQ) was Andrew Kuhlmann Asst. Attorney General. Representing Mountain Cement Company (MCC) was Philip Nicholas and Mitchell Edwards. The Petitioner, Brian Waitkus (Waitkus) appeared pro se. Petitioner Cotton Holdings LLC. and Kathryn Cotton withdrew their objections to the permit and did not appear at the hearing.

The DEQ did not call any witnesses. The Petitioner testified on his own behalf. MCC did not call any witnesses.

The following Exhibits were offered and received. DEQ 1. Waitkus 1, 2, 3, and 4. MCC 1,2,3,4,5,6,7,8,9, and 10.

FINDINGS OF FACT

1. Mountain Cement Company filed an application with the Land Quality Division of the

Wyoming Department of Environmental Quality (DEQ) for a new noncoal small mine permit for the mining of limestone located in Sections 7,17,18,20,21,28,29,32 and 33 T 15N R 73W of the 6th P.M. Albany County Wyoming. The mine is located approximately 5 miles southeast of the city of Laramie and is immediately south of U.S. Interstate Highway 80 at its entrance to Telephone Canyon.

2. Public notice of the Department's intent to issue a permit to mine to the Company was published for four consecutive weeks on November 2nd, 9th, 16th and 23rd, 2013.

3. The public had 30 days to comment on the proposed permit to mine. On December 19th, 2013 Mr. Waitkus filed an objection to the issuance of the permit to mine and requested a hearing before the Environmental Quality Council (Council). On December 24, 2013 Cotton Holdings LLC and Kathryn Cotton filed an objection to the issuance of the permit.

4. The grounds for objection listed by Waitkus in his letter of objection were:

a. removal of rock outcrops in Pit 1.

b. Restoration seed mix failing to guarantee the minimal amounts of sagebrush seed to be planted to restore wildlife habitat to post mine land use levels and concerns with mountain mahogany restoration.

c. Safety concerns

d. Not following previously approved mining conditions

5. By the time of the hearing the parties had narrowed the issues to two. One was whether or not MCC was prohibited by past agreements from mining an area identified as area C. The Second was whether or not the restoration seed mix complied with state and federal law.

6. DEQ Exhibit 1 was offered and received into evidence. Waitkus took the stand and testified in his case in chief. Upon the conclusion of his testimony MCC moved for a directed

verdict. The parties were given an opportunity to argue the motion.

7. The evidence presented by Mr. Waitkus failed to show that the reclamation plan of the permit application did not comply with state and federal law or was against the public policy of the state.

8. Under oath Mr. Waitkus agreed that the prior agreement between Mr. Waitkus and MCC that he was relying on to restrict mining in area C had been superseded by another agreement.

CONCLUSIONS OF LAW

9. 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) .

10. A directed verdict is appropriate when:

"In reviewing the grant of a directed verdict by a trial court, consideration must be given to all evidence favorable to party against whom the motion is directed, as well as to all reasonable and legitimate inferences which might be drawn therefrom. [Citations.] Whether or not the evidence so viewed is sufficient to create an issue for the jury is solely a question of law to be answered by the trial court. That court must determine whether or not the evidence is such that, without weighing the credibility of the witnesses, or otherwise, considering the weight of the evidence, there is but one conclusion as to verdict which men of reason could reach. * * * " In *Town of Jackson v. Shaw, Wyo.*, 569 P.2d 1250 (1977)

11. In reviewing all the evidence and testimony of the Petitioner there was but one conclusion as to the decision which men of reason could reach.

12. All notice requirements have been met.

13. Mountain Cement Company's application meets all statutory and regulatory requirements. DEQ EXHIBIT 1.

14. None of the grounds enumerated in W.S. 35-11-406(k) exist to deny the issuance of the permit to Mountain Cement Company.

15. The Petitioner bears the burden of proof to show that one of the statutory grounds


enumerated in W.S. 35-11-406(k) exist to deny the issuance of the permit to mine to MCC or that the Department action was arbitrary and capricious or was contrary to law.

- 16. The burden of proof is preponderance of the evidence.
- 17. The Petitioner has failed to meet that burden.
- 18. MCC's application is complete. The permit application complies with all statutory and regulatory requirements.

ORDER

WHEREFORE, it is HEREBY ORDERED that permit identified in **TFN 5 3/062** be issued by the DEQ to Mountain Cement Company.

DATED this 25th day of February, 2014.



Tim Flitner, Presiding Officer
Environmental Quality Council

CERTIFICATE OF SERVICE

I, Tyffanne Rowan, certify that at Cheyenne, Wyoming, on the 27th day of February, 2014, I served a copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** by electronic mail to the following:

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