

FILED

JAN 12 1976

Ardelle M. Kissler, Clerk
Environmental Quality Council

IN THE MATTER OF THE APPLICATION FOR
MINING PERMIT FILED BY ALTHOFF, INC., d/b/a ALTHOFF
CONSTRUCTION AND SANITATION COMPANY

PETITIONERS: Merle Byers, Elva Byers, Norman J. Hayes, Norma
Rae Hayes, Ralph Parkin, Shirley Parkin, Howard
Quick and Ella Quick

ARGUMENT OF PETITIONERS

IN THIS CASE the petitioners have not tested the adequacy
or inadequacy of the mining application including the proposed
reclamation program. The reason for this action is twofold:

FIRST, the petitioners lack the necessary funds with
which to hire engineers and hydrologists to evaluate the
proposed Application Reclamation Program in conjunction
with the mining site,

SECOND, Mr. Walter Ackerman and his staff have reviewed
all aspects of this case.

Petitioners do protest the granting of a mining permit
to the applicant both in law and philosophy. Petitioners have,
in their notice of protest, stated that the actions of the
applicant are in violation of the provisions contained and set
forth in §35-502.24(g) (XII). That sub-section (g) provides in
part "...The directors shall not deny a permit except for (1)
or more of the following reasons:" and sub-section (XII) provides
as follows; "If the applicant has been and continues to be in
violation of the provisions of this act".

The parties have entered into a Stipulation of Facts and
it now is a matter of record that the applicant did prior to
July 17, 1975, commence mining operations without obtaining
a permit. The Department did, on or about July 17, 1975, serve
the applicant with a Cease and Desist Order concerning his
mining sand and gravel from lands owned by J. Willard Smith,
M.D. east of Cody, Wyoming. It can be argued that the applicant

prior to being served the Cease and Desist Order was not aware of Wyoming law and that subsequently he should not be punished for his mining activities prior to July 17, 1975.

However, It cannot be denied that after the applicant was served with the Cease and Desist Order on July 17, 1975 that he was made aware of Wyoming law with regards to the filing of an application for a mining permit. The applicant totally and willfully ignored the provisions of the law and again commenced a mining operation north of Cody, Wyoming. Again, concerned citizens complained about the applicant's actions and on or about October 8, 1975, the applicant was again served with a cease and desist order concerning his mining sand and gravel from lands being purchased by the applicant located north of Cody, Wyoming. It is this same site located north of Cody, Wyoming, that the applicant was served the cease and desist order, for which the applicant has now made application for a mining permit.

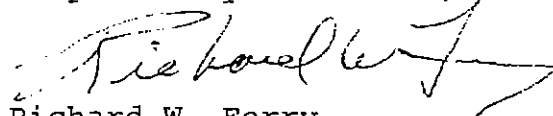
Petitioners believe that this constitutes a willful violation of the laws of the State of Wyoming and that the applicant should be denied a mining permit.

It is stipulated that the petitioners claim that the applicant has not reclaimed the area mined east of Cody although applicant believes he has completed and made proper reclamation of the area he has mined. Again, the Department of Environmental Quality has made its own investigation and has facts at its disposal upon which a determination can be made as to the reclamation of the mined area east of Cody, Wyoming. The petitioners have observed this area in the immediate past and to their untrained eyes, the entire area has not been reclaimed. It may be argued that the applicant only had to reclaim that portion of that particular gravel pit that he had mined. Petitioners argue otherwise, contending that the applicant was the last known person to mine

from the pit located east of Cody and therefore he has the duty and responsibility of reclaiming the entire pit. It has further been stipulated that the applicant, subsequent to the above mentioned cease and desist orders being issued, has not mined sand or gravel under the definition of mining that is contained within the act, but that he has removed stock-piled materials from both mining operations located east and north of Cody, Wyoming. It is petitioners' contention that the applicant, by being allowed to remove the products of an illegal operation, has benefited financially and subsequently has subverted the purposes and intent of the act. This is especially true if the mining application permit is approved.

In conclusion, the applicant's application should be denied because the application is in violation of the rules and regulations of the Department of Environmental Quality; and further to grant the application at this particular point in time would be to allow the applicant to profit by his flaunting of the law and rules of the Department of Environmental Quality.

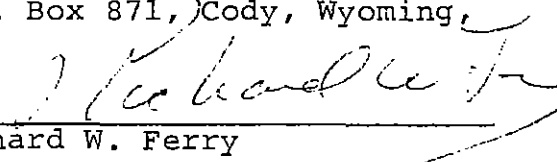
Respectfully Submitted,



Richard W. Ferry
Attorney for Petitioners
P. O. Box 589
Cody, Wyoming 82414

CERTIFICATE OF SERVICE

I, Richard W. Ferry, hereby certify that on this 8th day of January, 1976, I served a copy of the foregoing Argument by depositing the same in the U. S. Mail, postage prepaid, duly enveloped and addressed to Mr. Richard W. Day, Goppert, Fitzstephens, Day and Olson, P. O. Box 871, Cody, Wyoming, Attorneys for Applicant.



Richard W. Ferry