

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

FILED
FEB 18 1986

Terri A. Lorenzon, Adm. Aide
Environmental Quality Council

IN THE MATTER OF AIR QUALITY)
PERMIT CT-583 ISSUED TO ALTHOFF)
CONSTRUCTION, INC., TO CONSTRUCT)
A NEW SOURCE IN PARK COUNTY,)
WYOMING)

DOCKET NO. 1501-84

AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The protest of an Air Quality permit, No. CT-583, issued to Althoff Construction, Inc., of Cody, Wyoming, by the Air Quality Division of the Department of Environmental Quality was considered by the Environmental Quality Council at a public meeting on December 11, 1985. Pursuant to a stipulation by the parties, this matter was considered on the record submitted by the parties, and no public hearing was held. Althoff Construction was represented in this matter by Sox B. Freeman, III, of McCarty, Bormuth and Freeman in Cody, Wyoming. The Protestants, Merle Byers, Elva Byers, Norman J. Hayes, and Norma R. Hayes were represented by Kenneth M. Koski of Powell, Wyoming. The Department of Environmental Quality, Air Quality Division, was represented by Steven R. Shanahan, a Senior Assistant Attorney General.

Having considered the evidence presented in the record and the arguments of counsel, the Environmental Quality Council hereby finds and concludes as follows:

FINDINGS OF FACT

1. This proceeding arises from the application of Althoff Construction, Inc. (Althoff Construction) on March 9, 1984, for an Air Quality permit to construct a concrete batch plant in Park County, Wyoming.

2. On July 2, 1984, the Department of Environmental Quality, Air Quality Division (Air Quality) published a notice of its intent to approve the application.

3. During the public comment period, the Division received a request for a public hearing, and on July 17, 1984, an employee of the Air Quality Division inspected the Althoff Construction facilities and observed that the proposed concrete batch plant had already been constructed and was operating in violation of Section 21(a) of the Air Quality Standards and Regulations.

4. A Notice of Violation, Docket No. 1466-84, dated August 7, 1984, was issued to Althoff Construction notifying them of the violation.

5. On August 8, 1984, notice of a public hearing was published, and on August 22, 1984 a public hearing was held in Cody, Wyoming. At the public hearing, Merle Byers, Elva Byers, Norman J. Hayes, and Norma R. Hayes (the Protestants) were represented and participated in the public hearing.

6. On October 24, 1984, the decision of the Administrator of the Air Quality Division and the Director of the Department of Environmental Quality was released, and said decision granted the requested permit.

7. The Protestants filed a protest to the issuance of the Air Quality Permit No. CT-583 with the Environmental Quality Council (the Council) on November 26, 1984.

8. All parties to this proceeding stipulated that this matter will be submitted to the Council upon a record consisting of the permit file of the Air Quality Division, including but not limited to the application of Althoff Construction, the decision of the Division on the permit, and all reports and memoranda of the Division concerning the permitted facility. The record also contained the hearing transcript and exhibits received by the Division at the public hearing held in Cody on August 22, 1984.

9. The Protestants filed a motion to supplement the record with information from other permit files pertaining to Althoff Construction in the Air Quality Division. These permit files, with the exception of some limited information pertaining to Permit No. CT-583, concerned a civil action in District Court in Park County, and permits other than the permit under review with this application.

10. The Council received the additional information into the record. However, consideration of these additional materials are not necessary to a decision in this matter.

11. No enforcement action, other than the issuance of a Notice of Violation mentioned heretofore, was taken by the Department of Environmental Quality.

12. Althoff Construction had full knowledge of the requirements of the Wyoming Air Quality Standards and Regulations and the Environmental Quality Act governing the construction of facilities which may emit contaminants into the air of the state, when it constructed a concrete batch plant.

CONCLUSIONS OF LAW

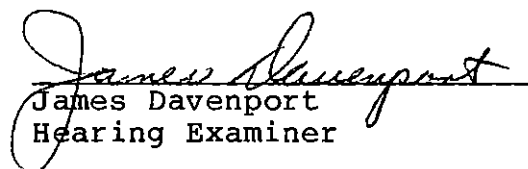
1. This proceeding is under the Environmental Quality Act, W.S. 35-11-101 through 35-11-1207.

2. Permit CT-583 should be denied as the Applicant, Althoff Construction, in knowing violation of the law, constructed its concrete batch plant without seeking the necessary permit.

ORDER

IT IS HEREBY ORDERED THAT that CT-583 is denied, this document supersedes the Findings of Fact, Conclusions of Law and Order issued on February 4, 1986.

DATED this 15th day of February, 1986.


James Davenport
Hearing Examiner