

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING
Docket No. _____

IN THE MATTER OF AN OBJECTION)
TO A MINING PERMIT APPLICATION)
OF MONOLITH PORTLAND CEMENT CO.)
TFN 1 2/236)

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

Pursuant to notice duly given to all interested parties, this matter came on for hearing on the 25th day of March 1982, at 2:00 p.m. in the Wind River Room, School of Extended Studies, University of Wyoming, Laramie, Wyoming. Mr. Ronald C. Surdan, a member of the Environmental Quality Council presided as hearing officer.

The Applicant appeared and was represented by Mr. Philip A. Nicholas. The Protestant, Mr. Raymond McKinsey, appeared and was represented by Mr. Norman B. Johnson. The Department of Environmental Quality, Land Quality Division, was represented by Mr. Weldon S. Caldbeck, Assistant Attorney General.

The Environmental Quality Council having taken this matter under advisement and having been fully advised and having considered all the testimony and evidence submitted by the parties, now makes its finding of fact, conclusions of law and order.

FINDING OF FACT

1. Monolith Portland Cement Co., hereinafter referred to as Applicant, has filed an application, TFN 1 2/236, for a permit to mine. The application, if approved, will amend Permit to Mine No. 299C currently held by the Applicant. The mining operation will be for sand and gravel and will take place in Albany County, Wyoming, on Sections 23, 24, 25 and 26, in T15N, R74W.

2. On January 25, 1982, an objection was filed to the application by Raymond McKinsey, hereinafter referred to as Protestant.

3. Protestant owns property adjacent to the Applicant's operation. He has owned this property since 1966.

4. The City of Laramie owns the property upon which the sand and gravel operation is proposed. The existing sand and gravel operation was approved on March 26, 1975, as a conversion permit from the Open-Cut Land Reclamation Act of 1969.

5. Applicant uses a road through Protestant's property to gain access to the gravel pit and has used that road since 1940. Applicant uses the road for access in hauling.

6. The road is not maintained by the county, state or federal government. It is used by many persons other than the Applicant and the Protestant.

7. The Applicant uses the road for approximately seven months between April and November. The Protestant uses the road year round.

4. The road is not a private road as it is not used solely by the Applicant.

5. The record does not contain substantial evidence to support a conclusion that any part of the road used by the Applicant requires extensive regrading and resurfacing in order to render the road usable; or that upgrading of the road requires cuts, fills and borrow areas.

6. Therefore, the road need not be a part of the permit area under this permit.

7. W.S. 35-11-406(b)(xiii) establishes that an applicant must "avoid constituting a public nuisance, endangering the public safety, human or animal life, property, wildlife and plant life in or adjacent to the permit area".

8. The aforementioned dust pollution constitutes a public nuisance which may endanger the public safety.

9. The failure to maintain the cattle guards constitutes a nuisance which may endanger animal life adjacent to the permit area.

10. The increased use and increased maintenance of the road will cause the road to wear down below the surrounding grade. When these areas are filled with snow, this constitutes a public nuisance which endangers the public safety adjacent to the permit area.

ORDER

WHEREFORE, PURSUANT TO W.S. 35-11-112(c)(ii), IT IS HEREBY ORDERED THAT:

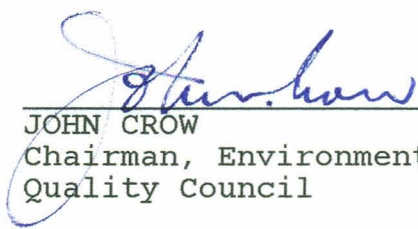
1. The Director of the Department of Environmental

Quality and the Administrator of the Land Quality Division shall issue the amendment to Permit to Mine No. 299C as requested in the application of Monolith Portland Cement Co. subject to conditions which may be attached in accordance with law and W.S. 35-11-801(a).

2. The Council shall retain jurisdiction over this matter in order to determine what conditions shall be imposed. The Applicant and the Department of Land Quality are instructed to attempt to work out an agreement to deal with the problems identified in paragraphs 8, 9 and 10 of the Conclusions of Law set out above and to make a report to the Council at that time on the appropriate measures to be taken to alleviate said problems.

3. The Applicant is authorized to commence mining and hauling pending the determination of the appropriate conditions which will be attached to the permit.

DATED this 3rd day of June, 1982.



JOHN CROW
Chairman, Environmental
Quality Council