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MEMORANDUM

To File: File 1, Permit 298C, Mountain Cement Company
From: Lowell Spackman, District I Supervisor *LS*
Subject: **Update on the Evaluation of Outstanding Conditions for Permit No. 298C**
Date: December 14, 2012

This supplementary review addresses from the WDEQ/LQD District I files regarding outstanding conditions, specifically the following:

- Lowell K. Spackman letter of May 13, 2008 to Bob Kersey with two Attachments related to the status of conditions attached to the 298C Permit.

The following comments discuss whether the outstanding conditions and stipulated resolutions are addressed in the A8 amendment application. The initial comment is followed by an additional comment based on response to the A8 amendment review under TFN 5 1/110.

1. Lowell K. Spackman letter of May 13, 2008 and Attachment No. 2 entitled "List of Outstanding Conditions...(attached to this review) (MCC)"

- a. May 2, 2008, Form 11 Revision (298C-R1)

Mr. Spackman's analysis concludes that "Agreement Nos. 2, 5(ii), 9 and 10 of the ... Stipulated Resolution (To Objections) have not been addressed in any permit revision." This reviewer found no specific components of the A8 amendment application which directly addressed any of these four stipulated conditions (from the October 16, 2006 Stipulated Resolution To Objections signed by Phillip A. Nicholas and Brian R. Waitkus). (BG)

Response is acceptable. **MCC has abided by the stipulated resolution.** The remaining agreements were addressed as follows:

Agreement No. 2 – MCC agreed not to mine Area A as identified on Exhibit A of the resolution. Mining is not shown in the Mine Plan for the amendment in Area A;

Agreement No. 5(ii) – As of November 9, 2012, MCC has completed reseeding of Area C as identified on Exhibit A of the resolution;

Agreement No. 9 – No crushing operations occurred in Area C;

Agreement No. 10 – An overburden berm was constructed, however, no screening occurred in Area C.

- b. May 6, 2003, Form 11 Revision (298C-R2)

Mr. Spackman's document lists two outstanding conditions. The reviewer found no elements in the A8 amendment application which individually and specifically address either of these historical conditions. (BG)

Responses are acceptable.

Condition No. 3: Previous revisions and current haul road designs and locations have been incorporated into the permit before the haul roads were constructed. MCC has included a commitment on Page PMIX-6 to obtain LQD approval for construction of all haul roads with submittal of information on designs and locations. Condition is satisfied.(LS)

Condition No. 4 for protection of plant species of special concern will be forwarded to the Amendment A8 Form 1. **Response is conditionally acceptable. Condition will be forwarded to A8 Amendment.**(LS)

c. January 5, 1998, Form 11 Revision (298C-A5)

i. Condition No. 1: Mr. Spackman's document addresses the WDEQ/LQD's standard condition that details operator actions related to the discovery of previously unidentified cultural resources. The A8 amendment application does not directly address this condition. This condition will be forwarded to the new Form 11. (BG)

Response is conditionally acceptable. As stated in the comment, this is a standard condition that will be brought forward on to the new Form 1. Condition will be forwarded to A8 Amendment. (LS)

ii. Condition No. 5: Mr. Spackman's document also lists a second outstanding condition that details operator actions related to the encounter with any groundwater inflows to any mining pits. The A8 amendment application does not address this condition. This condition will be forwarded to the new Form 11. (BG)

Response is acceptable. MCC has included a commitment on page MPIX-20 on actions that will be taken if groundwater is encountered. Condition is satisfied.(LS)

d. June 16, 1987, Form 11 Revision (298C-A4)

Mr. Spackman's document lists four outstanding conditions from this approved revision. In the reviewer's opinion, MCC could directly address three of the conditions, No. 10 (night time operations), No. 11 (maximum stockpile height) and No. 13 (WDEQ/AQD performance standards), in specific elements of the Mine Plan. The A8 amendment application fails to individually and specifically address these four outstanding conditions. Please consider incorporating these commitments into the Mine Plan. (BG)

Condition No. 8 – No mining is planned NW of the diagonal line. Condition is satisfied.

Condition No. 10 – MCC has included a commitment to shield neighbors from lights as outlined on page MPIX-23. Condition is satisfied.

Condition No. 11 – MCC has now included a commitment to restrict the height of stockpiles to no more than the angle of repose. This condition was placed on the Piper Quarry Amendment area. Since MCC has completed mining in this area, this condition will not be applied to the other mining areas. There are no regulatory requirements restricting the height of stockpiles. Condition is satisfied.

Condition No. 12 – MCC has committed to adhering to WQD requirements for dust suppression and crushing equipment on page MPIX-11. This condition is satisfied.

All of the outstanding conditions (accept the standard condition for cultural resources should be directly addressed in specific elements of the consolidated Mine Plan (and Reclamation Plan where appropriate). Direct address in the permit would remove the WDEQ/LQD's need to attach a laundry list of conditions and would improve WDEQ/LQD's ability to efficiently conduct and document compliance with all elements of the historical Permit No. 298C and all its approved revisions and amendments. (BG)

Responses are acceptable. The outstanding conditions that have been attached to various permitting actions through the history of this permit have either been satisfied or two of these conditions as stated above will be forwarded onto the A8 Amendment Form 1.(LS)