



Department of Environmental Quality

To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.



Matthew H. Mead, Governor

Todd Parfitt, Director

October 16, 2013

Mr. Andy MacClugage
Mountain Cement Co.
5 Sand Creek Road
Laramie, WY 82070

RE: TFN 5 1/110 Amendment to Permit 298C, Technically Adequate and Acceptable for the 2nd Public Notice, Mountain Cement Co., Permit 298C

Dear Mr. MacClugage:

This letter is to inform you that Mountain Cement Company's application for the amendment to Permit 298C is **technically adequate** as described in W.S. § 35-11-406(j). The fourth round review of comments is attached. All comments have been adequately addressed including four draft conditions that will be attached to the approval of the Form 1. The first of these conditions is the standard condition related to the unanticipated discovery of cultural or paleontological material as follows:

If, during the course of mining operations, previously unidentified, cultural resources are discovered, the operator shall ensure that the site(s) is not disturbed and shall notify the WDEQ/LQD. The operator shall ensure that the resource(s) is properly evaluated in terms of National Register Eligibility Criteria. Should a resource be found eligible for listing, in consultation with the WDEQ/LQD and the State Historical and Preservation Office, the operator shall confer with and obtain the approval of these agencies concerning development and implementation of mitigation measures.

The second condition is for the protection of Threatened and Endangered species in Section 31, T15N, R72W as follows:

Mountain Cement Company will submit for WDEQ-LQD approval a revision package for the protection of any plant species listed on the Wyoming Plant Species of Special Concern, prior to the disturbance of any lands in Section 31, T15N, R72W.

The third condition is to track the status of the Memorandum of Agreement (MOA) that is being written by the Bureau of Land Management (BLM) for the protection and mitigation measures for the Cheyenne Pass Trail as follows:

Herschler Building · 122 West 25th Street · Cheyenne, WY 82002 · <http://deq.state.wy.us>

ADMIN/OUTREACH (307) 777-7758 FAX 777-7682	ABANDONED MINES (307) 777-6145 FAX 777-6462	AIR QUALITY (307) 777-7391 FAX 777-5616	INDUSTRIAL SITING (307) 777-7369 FAX 777-5973	LAND QUALITY (307) 777-7756 FAX 777-5864	SOLID & HAZ. WASTE (307) 777-7752 FAX 777-5973	WATER QUALITY (307) 777-7781 FAX 777-5973
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Finalization of the Memorandum of Agreement (MOA) for protection and mitigation measures for disturbance adjacent to the Cheyenne Pass Trail is pending approval by all cooperating parties and final signatures. The MOA must be signed by MCC once this MOA is completed to their satisfaction. Mountain Cement Company (MCC) must abide with the stipulations and tasks specific to MCC as outlined in the MOA after the MOA is finalized with all signatures.

The fourth condition is to finalize the groundwater monitoring for the future mining as the mining progresses to the east in 60 to 125 years. This draft condition is as follows:

Mining will generally progress from the west uphill to the east into the Laramie Range. The life of mine is 125 years. Mining within the amendment area east of the current Etchepare Permit will not be initiated for more than 15 years. MCC must meet with the LQD groundwater hydrologist within 90 days of approval of this amendment to identify the locations of monitoring wells as mining expands to the east and south in Sections 17, 20, 21, 28, 29, 32, 33 T15N R72W and Section 36 T15N R73W. MCC must submit the expanded groundwater monitoring plan through a Non-significant Revision to the permit within 120 days of approval of this amendment.

All other outstanding conditions listed on the previous Form 1's and Form 11's for Permit 298C have been addressed and satisfied.

Mountain Cement Company may now **proceed with the second publication** for this application. Instructions and the format example of this publication are attached for your information. A four week public notice period followed by a 30 day public comment period is required for regular mine permit amendment applications. The draft copy of the public notice should be faxed to the LQD office at 307 777-5864 or emailed to me at lowell.spackman@wyo.gov. We will let you know if the draft is acceptable for publication after our review.

The current bond of \$809,000 is adequate for this amendment as required by W.S. § 35-11-417(c)(i). This bond amount represents the estimated cost of reclaiming the affected land by the LQD. The most recent bond increase was approved on July 31, 2013.

If you should have any questions regarding this letter or the attached comments or public notice procedures, please feel free to contact me at 307-777-7052.

Sincerely,



Lowell K. Spackman
District I Supervisor
Land Quality Division

Enclosures

Noncoal Small and Regular Mining Permits

**NEWSPAPER PUBLICATION AND NOTIFICATION
FOR PROPOSED NONCOAL SMALL OR REGULAR MINING PERMIT OR MINING
PERMIT AMENDMENT**

W.S. §35-11-406(j) - Second Publication

Upon notification by the Land Quality Division the applicant shall commence the following. Please note that public notice or hearing is not required if the area to be included by amendment does not exceed 20 percent of the total permit acreage and is contiguous to the permit area (W.S. §35-11-406(a)(xii)):

1. A copy of the application needs to be filed with the Office of the County Clerk in the counties in which the proposed permit area is located no later than the first day of publication. **THIS COPY SHOULD BE REMOVED FROM THE COUNTY CLERK'S OFFICE AFTER PERMIT APPROVAL. Immediately following filing, submit an affidavit of filing from the office of the County Clerk to the Land Quality Division.**
2. Publish a notice in a newspaper of general circulation in the locality of the proposed operation once a week for four (4) consecutive weeks (see sample format below).
3. Mail within five (5) days after the first publication copies of the notice to all parties as given in W.S. §35-11-406(j) and an application mine plan map to the Wyoming Oil and Gas Commission, P.O. Box 2640, Casper, WY 82602 or 2211 King Blvd., Casper, WY 82604.
4. On completion of publication submit a sworn affidavit from the newspaper and a copy of the notice to the Land Quality Division.
5. As soon as possible and several weeks before the end of the public comment period, submit a sworn statement of mailing to the Land Quality Division. Please use the example affidavit of mailing that is attached.

SECOND PUBLICATION
SAMPLE FORMAT FOR SMALL AND REGULAR NONCOAL MINING
PERMITS/AMENDMENTS

Public Notice

The (Company Name) of (Main Company Location) has applied for a (small or regular) mining permit (amendment) from the Land Quality Division of the Department of Environmental Quality for the State of Wyoming. The mining permit (amendment) area for the mining of (mineral, e.g., sand & gravel, limestone, trona, bentonite, etc.) will be located in: (Legal description of permit area - Section, Township, Range, County Name) County, Wyoming. (The area is) approximately (Locate the area relative to the closest town and a natural landmark, i.e.: a water source or a physical attribute of the area - ex: road, cliff, mountain, canyon, gorge, desert, etc.). The proposed operation is scheduled to begin (month and year) and is estimated to continue until (year).*

Information regarding the proposed mining operation and reclamation procedures may be reviewed in the Office of the Land Quality Division of the Department of Environmental Quality in Cheyenne and (Lander or Sheridan), the office of (Company Name) in (Location), or the (County Name) County Clerk's Office, (City Name), Wyoming. Written objections to the proposed mining operation must be received by the Administrator of the Land Quality Division of the Department of Environmental Quality, Herschler Building, 122 West 25th Street, Cheyenne, WY 82002, before the close of business (Date 30 days after the last publication). If an objection specifically requests a public hearing before the Environmental Quality Council, a public hearing shall be held within twenty (20) days after the final date for filing objections unless a different period is stipulated to by the parties. The Environmental Quality Council or Director shall publish notice of the time, date and location of the hearing or conference in a newspaper of general circulation in the locality of the proposed operation once a week for two (2) consecutive weeks immediately prior to the hearing or conference. The hearing shall be conducted as a contested case in accordance with the Wyoming Administrative Procedure Act (W.S. §16-3-101 through §16-3-115), and the right of judicial review shall be afforded as provided in that Act. All parties as given in W.S. §35-11-406(j) will be mailed a copy of this notice. The Wyoming Oil and Gas Conservation Commission will be mailed a copy of the application mine plan map as required in W.S. §35-11-406(j).

* If the amendment application also proposes a major permit revision, provide a general description of the revision within the public notice.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
LAND QUALITY DIVISION

IN THE MATTER OF THE (TYPE OF PERMIT))
PERMIT APPLICATION OF (ENTITY).)
TFN _____)

**AFFIDAVIT OF (NAME OF AFFIANT)
OF NOTICE**

I, (NAME), after being duly sworn upon my oath, deposes and states as follows:

1. I am appointed to the office of (POSITION), for (COMPANY). I am submitting this affidavit to comply with the sworn statement requirement in W.S. §35-11-406(j). In my capacity as (POSITION), I am responsible for ensuring that (COMPANY NAME) has complied with the notice requirements in W.S. §35-11-406(j) for the above-captioned permit application. This application is for a new noncoal (small/regular) mine permit/permit amendment.
2. On (DATE), (COMPANY NAME) received notice from the Department of Environmental Quality, Land Quality Division that it has determined our application is complete and suitable for final publication.
3. On (DATE), (NAME OF NEWSPAPER) printed the first notice in the required four week sequence for final publication of this application. On (DATE), (COMPANY NAME) mailed a copy of the notice to all surface owners of record of the land within the permit area, to all surface owners of record of immediately adjacent lands, and to all surface owners within one-half (1/2) mile of the proposed mining site. On (DATE), (COMPANY NAME) mailed a copy of the application mining plan map to the Wyoming Oil and Gas Commission.

DATED _____

(SIGNATURE HERE)

(TYPE NAME AND TITLE HERE)

STATE OF WYOMING)
) ss
COUNTY OF _____)

Subscribed, sworn to and acknowledged before me by (_____ NAME _____)
on this _____ day of _____, 20 _____.

Notary Public

My Commission expires: _____

**Round 4 - Technical Review of Amendment A8 Permit Application
Permit No. 298C, TFN 5 1/110**

The first round Technical Review addressed the Permit Amendment Application for Permit No. 298C submitted by Mountain Cement Company (MCC). The original comments were generated by Aqua Terra Consultants Inc. (ATC), with input from WDEQ/LQD. Original reviewers include Bob Giurgevich (BG) and Steve Stresky (SJS) of ATC, and Doug Emme (DE) of WDEQ/LQD. Lowell Spackman (LS) and Steve Ingle (SI) provided input during the review. MCC, WDEQ/LQD and Aqua Terra met on June 12, 2012 to discuss the comments before the contract with Aqua Terra expired on June 30, 2012. MCC provided responses to these comments on October 15, 2012. However, the text and map changes were not inserted until November 1, 2012. Second round comments were sent to MCC on December 13, 2012. Second round responses were received from MCC on March 7, 2013 with the responses inserted March 7, 2013. The third round review of these responses was conducted by Lowell Spackman (LS), Steve Ingle (SI), and Craig Hults (CH). Comments were sent to MCC on April 5, 2013. Responses were received on August 27, 2013.

Below are fourth round comments to only those comments that required further responses from MCC. The following comments required further response from MCC: 1a (note Form 1 was updated), 4h, 10a, 11b, 11e.i, and 11g.

All comments have been adequately addressed. Four conditions are proposed for attachment on the Form 1 for the approval of this amendment. These conditions include: the standard conditions for cultural resources, protection of plant species of special concern, completion of the MOA for mitigation of the Cheyenne Pass Trail as drafted by the Bureau of Land Management, and expansion of the groundwater monitoring program to include lands that will be mined 60 to 125 years from now.

Evaluation of Amendment A8 Permit Application for Permit No. 298C

1. Adjudication File

- a. Form 1 – The Form 1 was corrected on 4/4/13 by the LQD. No further response is necessary. (LS)

2. Appendix DIX3

- f. Section DIX3A.3 further states that a cultural resource consultant is preparing a "... draft programmatic agreement and historic preservation plan for ... 48AB543..." Appendix DIX3 lacks a copy of this document. Please provide written documentation of BLM review of and SHPO concurrence for the referenced agreement and plan. (BG)

(12/13/12) Response is not acceptable. Draft document has not been provided. Correspondence provided states that an MOA must be executed prior to disturbance. Please provide a copy of the signed MOA. (CH)

(9/25/13) **Response is conditionally acceptable.** The MOA is currently in progress. The final draft has been completed and is currently being reviewed by MCC and the Wyoming Attorney General's Office for the State Historic and Preservation Office. The

following condition is proposed for attachment on the Form 1 for the approval of this amendment:

Finalization of the Memorandum of Agreement (MOA) for protection and mitigation measures for disturbance adjacent to the Cheyenne Pass Trail is pending approval by all cooperating parties and final signatures. The MOA must be signed by MCC once this MOA is completed to their satisfaction. Mountain Cement Company (MCC) must abide with the stipulations and tasks specific to MCC as outlined in the MOA. (LS)

4. Appendix D6

- h. Section DIX6-3.4: Although Mountain Cement has previously discussed a groundwater monitoring program, a more specific commitment to long-term monitoring must be included in the application. The proximity of the community wells to the amendment area and the CAPP, MCC must consult with the WDEQ/LQD to establish monitoring well locations. This consultation will consider current commitments for both baseline monitoring and monitoring as discussed in Section MPIX4.8.9 of the Mine Plan. (SJS and SI)

(12/13/12) Response is conditionally acceptable. MCC will consult with LQD to establish a groundwater monitoring program. MCC and the LQD should establish a timeline for developing this monitoring program.(SI)

Response conditionally acceptable. The response states: MCC will consult with LQD to establish a groundwater monitoring program. **MCC and the LQD should establish a timeframe for developing this monitoring program. Please contact Steve Ingle to discuss the timeframe for developing the monitoring program.(SI)**

(9/25/13) The following condition is proposed for attachment on the Form 1 for approval of this amendment:

Mining will generally progress from the west uphill to the east into the Laramie Range. The life of mine is 125 years. Mining within the amendment area east of the current Etchepare Permit will not be initiated for more than 15 years. MCC must meet with the LQD groundwater hydrologist within 90 days of approval of this amendment to identify the locations of monitoring wells as mining expands to the east and south in Sections 17, 20, 21, 28, 29, 32, 33 T15N R72W and Section 36 T15N R73W. MCC must submit the expanded groundwater monitoring plan through a Non-significant Revision to the permit within 120 days of approval of this amendment.

10. Mine Plan

- a. Section MPIX-3.2 discusses haul and access roads but the Mine Plan does not include a map which names Mountain Air Lane, Howe Lane or North Piper haul road. The Mine Plan should contain a quality, properly scaled map which shows the name and location

of these roads. Map DIX10-1 would be a good candidate to adopt for this purpose because of its high quality aerial photo base. (BG)

(12/13/12) Response remains outstanding. Further response is pending. NOTE that all Mine and Reclamation Maps must show Area "C" with in the currently approved 298C Permit Area. The thick purple line cuts across the section boundaries instead of outlining Area "C".(LS)

(4/5/13) Response is not acceptable. Map MPIX-1 shows the location of the haulroads listed in the comment, but they are not named. Placing the names of the haulroads on the map was a suggestion and not required. No further response necessary on this portion of the comment. However, MCC has stated they will not mine the northern half of "Area C" (as agreed in the Stipulated Agreement w/ Brian Waitkus). This area still shows a disturbance area. This mining block must be removed from Maps MPIX-1 and MPIX-2.(LS)

(9/25/13) Response is acceptable. Maps MPIX-1 and Maps MPIX-2 have been revised to remove the mining block from the northern portion of "Area C".(LS)

11. Reclamation Plan

- b. Section RPIX-2.0 must more fully address the performance standards of WDEQ/LQD Noncoal R&R Chapter 3, Section 2(b)(ii)(A). The section should generally identify criteria which MCC will use to determine that the entire highwall can be reduced (to a defined maximum slope) in order to blend with backfilled lands. MCC should detail stabilization, terracing, rubble zones, or other engineering techniques for locations where the final pit walls may not be fully reduced and left as a full or partial highwall. (BG)

(12/13/12) Response is not acceptable. Chapter 3, Section 2(b)(ii)(A) requires details in the approved Reclamation Plan. It is not sufficient to state that "Decisions regarding details and location of partially reduced highwalls as permanent reclamation will be done in consultation with the DEQ/LQD and the WGFD." The details outlining the configuration and locations of these features must be included in this application before approval.(LS)

(4/5/13) Response is conditionally acceptable. Much more detail has been added to the sections describing leaving highwalls as permanent features. However, MCC states that "If LQD wishes, MCC will seek approval of a Non-significant Revision (NSR) to the mining permit before leaving an unreduced highwall." The LQD will require NSR's for any unreduced highwall proposal. The design (length, height, bench height, and any rubble zones used to break up the highwall), stability, public access and safety will need to be addressed for each highwall segment to be left. All highwalls may need to be broken up by vertical rubble zones if the highwalls are more than 50 ft. long or 20 ft. thick. Please include a commitment for LQD approval of a NSR before leaving any highwalls in the post-mining topography.(LS)

(9/25/13) Response is acceptable. MCC will gain approval for any remnant highwall segments before them in the post-mining topography.(LS)

- e. MCC presents haul road reclamation practices in Section RPIX-7.0. MCC should expand this discussion to include:
- i. Presentation of a Reclamation Plan map location of, dimensions (top width, ditch depth and width, etc.) for and surfacing materials for each postmining road on MCC's private surface. (BG)
(12/13/12) Response is partially acceptable. Howe Lane, Mountain Air Road, and North Piper Haul Road will be left in their current condition. Howe Lane and Mountain Air Road are residential roads.
In order for the any haul road including the North Piper Haul Road to be left for the landowner, a letter from the landowner approving that these road be left as currently constructed must be included in the permit before these roads can be left for their post-mining land use.(LS)
(4/5/13) Response is conditionally acceptable. The text on page RP-22 states that the royalty documentation for leaving Howe Road as-is is attached. An attachment could not be found. Please provide the attachment and include a reference to the attachment location in the text on this page. Also, is this attachment related to Rich and Cindy Avery's approval to leave the North Piper Haul Road? If not, this approval is still needed.(LS)
(9/26/13) Response is acceptable. The legal documents for leaving Howe Road and landowner consent to leave the North Piper Road are included on Appendix MPIX-D within the permit amendment application. Reference to these documents is included on page MPIX-5 of the Mine Plan.(LS)
- g. Map RPIX-1 is an 11" x 17" sheet. The size/scale is minimally adequate to portray the "Post-Mine Topography." Please correct the following map components:
- i. The legend entry of "Current 298C Permit Boundary" is incorrectly associated with the entry for "Mining Sequence" units or "Proposed 298C-A8 Disturbance Areas" units as shown on Mine Plan maps. (BG)
 - ii. The legend entry for "Proposed Disturbance Areas" is incorrectly associated with the entry for "Current 298C Permit Boundary". (BG)
 - iii. The line width and color density for the "Proposed 298C Permit Boundary" as shown in the legend does not match the actual line width and color density shown in the body of the map. (BG)
 - iv. The contour interval should be listed. (BG)
(12/13/12) Responses are conditionally acceptable. The map was revised as requested. However, note that all Mine and Reclamation Maps must show Area "C" within the currently approved 298C Permit Area. The thick purple line crosses the section boundaries instead of outlining the Area "C" boundary. (LS)
(4/5/13) Response is not acceptable. MCC has stated they will not to mine the northern half of "Area C" (as agreed in the Stipulated Agreement w/ Brian Waitkus).

This area still shows a disturbance area. This reclamation block must be removed from Maps RPIX-1, RPIX-2, and RPIX-3.(LS)

(9/25/13) Response is acceptable. Maps RPIX-1, RPIX-2, and RPIX-3 have been revised to remove the mining block from the northern portion of "Area C".(LS)

Evaluation of Outstanding Conditions for Permit No. 298C

Two conditions from previous approvals will be forwarded to the approval of this A8 amendment application.

1. Lowell K. Spackman letter of May 13, 2008 and Attachment No. 2 entitled "List of Outstanding Conditions...(attached to this review) (MCC)"
 - b. May 6, 2003, Form 11 Revision

(12/13/12) 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
 - i. 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)

(12/13/12) 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)