

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

FILED

JAN 09 2014

Jim Ruby, Executive Secretary
Environmental Quality Council

IN THE MATTER OF OBJECTION TO)
THE MINING PERMIT AMENDMENT)
OF MOUNTAIN CEMENT COMPANY)
TFN 5 1/100)

DOCKET NO. 13-4807

MOTION TO DISMISS OBJECTIONS

Mountain Cement Company (“MCC”) hereby moves the Environmental Quality Council for an order dismissing the objections and entering judgment as a matter of law in its favor, authorizing and ordering the Wyoming Department of Environmental Quality to issue Mountain Cement Company’s Permit Amendment (TFN 5 1/100) forthwith. In support of its motion, MCC shows as follows:

1. The statutory standard governing the approval or denial of surface mining permits for non-coal operations is set forth at WYO. STAT. § 35-11-406 (m):

m) The requested permit, other than a surface coal mining permit, shall be granted if the applicant demonstrates that the application complies with the requirements of this act and all applicable federal and state laws. **The director shall not deny a permit except for one (1) or more of the following reasons:**

- (i) The application is incomplete;
- (ii) The applicant has not properly paid the required fee;
- (iii) Any part of the proposed operation, reclamation program, or the proposed future use is contrary to the law or policy of this state, or the United States;
- (iv) The proposed mining operation would irreparably harm, destroy, or materially impair any area that has been designated by the council a rare or uncommon area and having particular historical, archaeological, wildlife, surface geological, botanical or scenic value;

(v) If the proposed mining operation will cause pollution of any waters in violation of the laws of this state or of the federal government;

(vi) If the applicant has had any other permit or license issued hereunder revoked, or any bond posted to comply with this act forfeited;

(vii) The proposed operation constitutes a public nuisance or endangers the public health and safety;

(viii) The affected land lies within three hundred (300) feet of any existing occupied dwelling, home, public building, school, church, community or institutional building, park or cemetery, unless the landowner's consent has been obtained. The provisions of this subsection shall not apply to operations conducted under an approved permit issued by the state land commissioner in compliance with the "Open Cut Land Reclamation Act of 1969";

(ix) The operator is unable to produce the bonds required;

(x) If written objections are filed by an interested person under subsection (g) of this section; (*not applicable to EQC decision*)

(xi) If information in the application or information obtained through the director's investigation shows that reclamation cannot be accomplished consistent with the purposes and provisions of this act;

(xii) through (xiv) Repealed by Laws 1980, ch. 64, § 3.

(xv) If the applicant has been and continues to be in violation of the provisions of this act;

(xvi) No permit shall be denied on the basis that the applicant has been in actual violation of the provisions of this act if the violation has been corrected or discontinued.

2. MCC's application is complete and deemed complete by the WDEQ.
3. MCC paid the required fee with the submission of its application to the WDEQ.
4. MCC's proposed operation is not contrary to the law or policy of Wyoming or the

United States.

5. The area has not been designated by the council as a rare or uncommon area having particular historical, archaeological, wildlife, surface geological, botanical or scenic value; and, MCC's mining operation would not irreparably harm, destroy or materially impair any such area. MCC has been mining in this exact area for decades.

6. MCC's proposed operation will not cause pollution of any waters in violation of any laws of this state or the federal government.

7. MCC has not had any other permit revoked, or any bond posted to comply with the Environmental Quality Act forfeited.

8. MCC's proposed operation does not constitute a public nuisance or endanger the public health and safety. Generally, public nuisance is: "An unreasonable interference with a right common to the general public, such as a condition dangerous to health, offensive to community moral standards, or unlawfully obstructing the public in free use of public property." Black's Law Dictionary, 1095 (7th ed. 1999).

9. The affected lands do not lie within three hundred feet of any existing occupied dwelling, home, public building, school, church, community or institutional building, park or cemetery.

10. MCC's is able to produce the required bonds, and has shown its ability to produce the required bonds through its existing bonds.

11. The Wyoming Department of Environmental Qualities investigation shows that reclamation can be accomplished consistent with the purposes and provisions of the Environmental Quality Act.

12. MCC is not in violation of the provisions of the Environmental Quality Act, and any violations it has had in the past have been corrected and/or discontinued.

13. None of the objections raised by Mr. Waitkus meet the statutorily enumerated reasons for the denial of MCC's Permit Amendment.

- a. Mr. Waitkus complains that MCC is not planting enough sagebrush; however, the major property owner, Mountain Land & Cattle Co., does not wish to have sagebrush planted but to let it grow naturally; and neither of the other property owners, the Bureau of Land Management or the State of Wyoming has objected in any fashion to MCC's reclamation plan or reseeding protocols. Furthermore, planting sagebrush is not the best management practices for revegetation of the affected area, and Mr. Waitkus has no competent evidence in support of his position.
- b. Mr. Waitkus's objection complains that MCC is not allowed to mine in Area C, as a result of a stipulation entered into between Mr. Waitkus and MCC in 2004 (*Stipulated Resolution to Objections dated January 11, 2004 in TFN 4 3/119*); however, that stipulation was specifically superseded and replaced by *Stipulated Resolution to Objections dated October 16, 2006 in TFN 4 4/296*. The 2006 Stipulation provides: "The *Stipulated Resolution to Objections dated January 11, 2004 in TFN 4 3/119* entered into between Brian R. Waitkus and Mountain Cement Company and any conditions adopted by the DEQ implementing that agreement, are hereby rescinded and replaced in total by this agreement and the conditions to be adopted herein." The 2006 Stipulation does not prohibit MCC from mining in Area C, particularly in that area south of the southern drainage.

Wherefore, pursuant to WYO. STAT. § 35-11-406 (m), MCC is entitled to the approval of its Permit Amendment. MCC respectfully requests that the Environmental Quality Council dismiss Mr. Waitkus's objections, and order that the Wyoming Department of Environmental Quality issue MCC's Permit Amendment forthwith.

DATED: January 9, 2014

Mountain Cement Company

/s/ Mitchell Edwards

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing was served electronically to the following people on the 9th day of January, 2014:

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