

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT  
IN AND FOR ALBANY COUNTY, STATE OF WYOMING

PEOPLE OF THE STATE OF )  
WYOMING, )

Plaintiffs, )

vs. )

MOUNTAIN CEMENT COMPANY, )  
a Wyoming joint venture, )

Defendant. )

APR 18 1994

Docket No. 23766

**STIPULATION FOR ENTRY OF CONSENT DECREE**

Plaintiff, Wyoming Department of Environmental Quality ("DEQ"), on behalf of the People of the State of Wyoming, and defendant, Mountain Cement Company ("Mountain Cement"), a Wyoming joint venture, hereby stipulate and agree as follows:

1. The parties executed a *Joint Stipulation Regarding Facts, Issues and Scheduling* dated November 19, 1993, which was filed in this matter on November 22, 1993 ("*Joint Stipulation*"). The *Joint Stipulation* is incorporated herein by this reference. In addition to the facts and statements of law stipulated to in the *Joint Stipulation*, the parties hereto further stipulate to the following facts, statements of law, and terms for purposes of resolving all issues raised by the complaint as well as the defenses and matters in extenuation and mitigation filed and addressed herein.

2. This Court has jurisdiction over the subject matter and the parties in this civil action pursuant to W.S. 35-11-901(a) & (q).

3. This civil action should now be resolved by the Court's entry of a Consent Decree incorporating this Stipulation.

4. Mountain Cement Company, a Nevada corporation, purchased the cement plant located south of Laramie, in Albany County, Wyoming from Monolith Portland Cement Company ("MPCC") on January 27, 1986. Mountain Cement Company, the Nevada corporation, changed its name to MCC, Inc., on April 30, 1987. Mountain Cement, a Wyoming joint venture, acquired the Laramie cement plant from MCC, Inc., on May 1, 1987. MCC, Inc. is the managing partner of Mountain Cement. *Joint Stipulation* ##1.-2.

**I. Construction of drive over hopper; unloading of clinker from railcars; and use of crusher to crush stockpiled clinker.**

**A. Issues.**

5. Construction of the drive over hopper, unloading of clinker from railcars, and use of a portable crusher to crush stockpiled clinker concern the question of when Mountain Cement shall (1) give the Air Quality Division advanced notice of, or (2) obtain a new construction or modification permit before undertaking, an activity not expressly authorized or contemplated by Mountain Cement's existing air quality permits.

6. Resolution of these issues involves interpretation of the Wyoming Environmental Quality Act § 35-11-801 (the "Act"), the Wyoming Air Quality Standards as well as Mountain Cement's Air Quality Permit No. MD. 73.

7. The parties agree that the unloading, handling and crushing of raw materials and clinker may cause fugitive dust emissions which may increase ambient air concentrations for particulate matter. *Joint Stipulation* ##A.7., B.14., B.16., C.22.

The Act and Wyoming Air Quality Standards require that such activities be effectively controlled, which may require in some instances that the activity be conducted in an enclosed facility.

8. W.S. 35-11-801(c) and Section 21 of the Wyoming Air Quality Standards & Regulations require a permit prior to construction or modification of an industrial facility capable of causing or increasing air pollution.

9. Wyoming Air Quality Standards Section 21(k) sets forth certain exceptions to the obligation to obtain a permit for certain activities, including installation of pollution control equipment and exceptions for minor sources, which the Administrator determines to be insignificant.

10. Section 14(f) of the Wyoming Air Quality Standards requires all persons handling, transporting, or storing any material to limit fugitive dust emissions.

11. Mountain Cement and DEQ's Air Quality Division have had differences about when and whether certain activities such as unloading, handling and crushing of raw materials and clinker require prior notice to the Air Quality Division, approval of the Air Quality Division's Administrator pursuant to § 21(k) of the Wyoming Air Quality Standards, a new permit, or a modification permit.

**B. Stipulated resolution to the above issues.**

12. Both parties agree to utilize the following procedure to avoid future misunderstandings concerning these issues:

- a. Mountain Cement agrees to give the Air Quality Division advance written notice before beginning construction, modification or operation of any source or process which is capable of causing or increasing particulate emissions or other air pollutants;
- b. The Air Quality Division agrees to advise promptly Mountain Cement in writing of the procedure required before the proposed construction, modification or operation may begin (For example, whether no approval is required, Administrator approval is required pursuant to §21(k), or a permit is required);
- c. If Mountain Cement disagrees with the Air Quality Division's decision on any such issue, it may appeal the Administrator's decision to the Environmental Quality Council;
- d. Mountain Cement agrees it will not commence the activity in question until the Administrator's decision is reversed or until it has complied with the procedural requirements prescribed by the Administrator.

**II. Reporting upset condition causing excess opacity emissions, excess opacity emissions, and compliance with opacity limits.**

**A. Issues.**

13. Wyoming Air Quality Standards limit kiln stack gas emissions to 20% opacity.

14. Mountain Cement is required by condition no. 7 to its Air Quality Permit No. MD-73 to monitor the opacity of its kiln stack emissions in accordance with Section 22, Subpart F of the Wyoming Air Quality Standards. To accomplish this, Mountain Cement operates and maintains an opacity monitor in its kiln stack. Monitored opacity levels are permanently recorded on strip charts.

15. Mountain Cement is also required to report quarterly all exceedances of emissions in excess of 20% to the Air Quality Division for all 6 minute periods.

16. Mountain Cement properly used and maintained its kiln stack opacity monitor. Readings from the monitor were permanently recorded on a strip chart. The strip charts were made available to DEQ for examination.

17. Mountain Cement admits that its Excess Emission Report for the third quarter of 1990 (dated October 29, 1990) understated the number of incidents and the amount of time that its kiln stack emissions were in excess of the 20% opacity limit.

18. With respect to this reporting period, Mountain Cement's former employee asserted that the under reporting occurred as a result of his misunderstanding of the reporting requirements. Mountain Cement's former employee asserts that he reported the exceedances on a per incident basis instead of the correct 6 minute basis. Mountain Cement's former employee states that all required incidents of exceedances were reported. Mountain Cement agrees that this explanation does not account for the discrepancy between the total hours of exceedances reported and those recorded by its opacity monitor. Mountain Cement cannot explain the discrepancy but states that the under reporting was not deliberate.

19. During the period audited, kiln emissions exceeded allowable limits for 144.6 hours, while Mountain Cement reported 30.5 hours of exceedances and 56 hours in start-up or shut-down mode.

20. Mountain Cement's opacity strip charts do not distinguish or designate start-up and shut-down periods.

21. Mountain Cement acknowledges that it was having problems with its production process which led to an abnormal number of start-ups and shut-downs during the period in question as well as an increased load on the ESP. It also acknowledged problems with its ESP.

22. Mountain Cement's problems with its manufacturing process resulted in plant production far below that which was permitted. Problems with its stack emissions were highly publicized. During the time in question, Mountain Cement was attempting to identify and solve problems with its manufacturing process and its ESP.

23. Under Section 19 of the Wyoming Air Quality Standards, excess opacity emissions resulting directly from malfunctions or abnormal or upset conditions beyond control of the owner or operator shall be deemed violations if not reported to the Air Quality Division within 24 hours and an acceptable corrective action program furnished. *Joint Stipulation #D.31.*

24. Section 22 of the Wyoming Air Quality Standards applies to portland cement plants (Subpart F).

25. Section 22(e) (xiv) defines "malfunction" to mean a sudden and unavoidable failure of air pollution control equipment or of a process or process equipment to operate in a normal manner, but does not include preventable upset conditions or equipment breakdowns.

26. On Sunday, July 14, 1991 emissions from Mountain Cement's kiln stack exceeded the 20% opacity limit a number of times, with maximum opacity reaching as much as 90%. *Joint Stipulation #D.30.*

27. Mountain Cement plant personnel called the Air Quality Division on Sunday, July 14, 1991 to report the incident, but the office was closed on Sunday and plant officials did not call back to report the incident on the following Monday. *Joint Stipulation*

#D./ISSUE (5).

28. On Monday, July 15, 1991 the Air Quality Division received a telephone complaint from a Laramie resident concerning emissions from Mountain Cement's kiln stack on the afternoon of Sunday, July 14, 1991. *Joint Stipulation #D.32.*

29. Mountain Cement did not discuss the July 14, 1991 excess opacity incident with the Air Quality Division until Tuesday, July 16, 1991, when Division personnel contacted the plant regarding the citizen complaint. *Joint Stipulation #D.33.*

30. On August 13, 1991 the Air Quality Division issued Notice of Violation & Order No. 2277-91 requiring Mountain Cement to take steps to get the problem of excess opacity emissions under control. *Joint Stipulation #D.34.*

**B. Stipulated resolution to the above issues.**

31. Both parties agree to resolve the above issues as follows:

- a. The Air Quality Division's review of the test report on kiln stack particulate emissions submitted by Mountain Cement with a cover letter dated September 14, 1993 indicates that the corrective action taken by Mountain Cement in response to NOV & Order No. 2277-91 has been successful in reducing particulate emissions from the kiln stack. *Air Quality Division's Dec. 23, 1993 letter to Mountain Cement Company;*
- b. Mountain Cement agrees to keep preventive maintenance logs and make them available to the Air Quality Division to monitor regular daily, monthly, quarterly and annual preventive maintenance of the ESP;
- c. Mountain Cement agrees to continue a personnel training program to assure operation and maintenance of the kiln stack ESP as necessary to minimize emissions in accordance with Section 22(i)(iv) of the Wyoming Air Quality Standards;
- d. Mountain Cement agrees to report on a quarterly basis all incidents and the duration of excess opacity emissions recorded by its kiln stack monitor. W.S. 35-11-110(a)(vii);
- e. Mountain Cement agrees to implement a kiln stack opacity monitoring and/or reporting method approved by the Air Quality Division for distinguishing water vapor from particulates. *Air Quality Division's Sept. 28, 1992 letter (item 2) to Mountain Cement.* Mountain Cement agrees to provide documentation of specific, relevant, atmospheric and other conditions which can be used to evaluate each monitored incident of excess kiln stack opacity in which water vapor is reportedly a factor. W.S. 35-11-110(a)(vii);
- f. The parties agree to file a joint stipulation which stipulates that NOV & Order No. 2277-91 has been abated and resolved and which dismisses with prejudice Mountain Cement's appeal before the Wyoming Environmental Quality Council in Docket No. 2277-91, consistent with this Joint Stipulation; and
- g. Mountain Cement agrees to pay for mitigation for kiln stack emissions in excess of 20% opacity and for failure to report all incidents of excess opacity as agreed to in Section VII below.