

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
LAND QUALITY DIVISION  
STATE OF WYOMING

**FILED**

OCT 23 2006

Terri A. Lorenzon, Director  
Environmental Quality Council

IN THE MATTER OF THE MINE PERMIT AMENDMENT )  
APPLICATION OF MOUNTAIN CEMENT COMPANY, )  
TO PERMIT NO. 298C- A5; TFN 4 4/296. )

**MOTION TO DISMISS**

Applicant, Mountain Cement Company, files the following *Motion to Dismiss*, requesting the dismissal of Docket No. 03-4805 before the Environmental Quality Council. In support of their motion Mountain Cement Company states as follows:

A. Mountain Cement Company (MCC) filed an application with the Department of Environmental Quality, Land Quality Division (LQD) to revise its mining permit 298C-A5 which was first approved January 5, 1998, by the LQD. The purpose of the application is to allow mining to take place in more than one mine sequence area at the same time and to immediately open a quarry in Mine Sequence Area 5.

B. MCC's application was protested by Brian R. Waitkus in a letter dated September 6, 2006.

C. An informal meeting was held by the LQD on September 21, 2006, at LQD's offices in Cheyenne, Wyoming, to attempt resolution of the protest filed by Mr. Waitkus. The meeting was attended by the Administrator and Staff of LQD, representatives of MCC, and Mr. Waitkus. Those negotiations were there after continued, resulting in an agreement between the parties, resolving Mr. Waitkus's objections.

D. On October 16, 2006, the parties entered into and executed a *Stipulated Resolution to Objections*, (Attached as Exhibit A hereto) resolving the objections raised by Mr. Waitkus to the issuance of the TFN 4 4/296 application. MCC and Mr. Waitkus have agreed to additional conditions to the approval of MCC's permit application.

E. The *Stipulated Resolution* provides: "Based upon the foregoing stipulations, Mr. Waitkus does hereby withdraw his objections to the proposed issuance of Land Quality Permit No. TFN 4 4/296 to MCC." (See Exhibit A, Paragraph III)

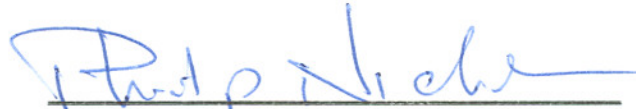
F. The *Stipulated Resolution* is fully executing, such that it constitutes a withdraw of Mr. Waitkus's objection. The *Resolution* further provides that Mr. Waitkus waives his right to a hearing

on the objection. As a result, the EQC has the authority to dismiss the appeal without hearing.

Wherefore, Mountain Cement Company respectfully requests the dismissal of Docket No. 03-4805 before the Environmental Quality Council.

Dated: October 23, 2006.

Mountain Cement Company, a Nevada Corporation



Philip A. Nicholas  
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(307) 742-7140  
Attorneys for Applicant Mountain Cement Company


**CERTIFICATE OF SERVICE**

I, Philip Nicholas, hereby certify that I served a true and correct copy of the foregoing *Request for Extension of Time*, by U.S. Mail postage prepaid on this 27<sup>th</sup> day of September to the following:

Brian R. Waitkus  
80 Eagle Nest Lane  
Laramie, Wyoming 82070

John S. Burbridge, Esq.  
Wyoming Attorney General's Office  
123 Capitol Building  
Cheyenne, WY 82002

Terri A. Lorenzon, Esq.  
State of Wyoming, Environmental Quality Council  
Herschler Building, Room 1714  
122 West 25<sup>th</sup> Street  
Cheyenne, WY 82002



Philip A. Nicholas

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
LAND QUALITY DIVISION  
STATE OF WYOMING

Motion to Dismiss  
EXHIBIT A

IN THE MATTER OF THE MINE PERMIT AMENDMENT )  
APPLICATION OF MOUNTAIN CEMENT COMPANY, )  
TO PERMIT NO. 298C- A5; TFN 4 4/296. )

**STIPULATED RESOLUTION TO OBJECTIONS**

**I. RECITALS.**

A. Mountain Cement Company (MCC) filed an application with the Department of Environmental Quality, Land Quality Division (LQD) to revise its mining permit 298C-A5 which was first approved January 5, 1998, by the LQD. The purpose of this application is to allow mining to take place in more than one mine sequence area at the same time and to immediately open a quarry in Mine Sequence Area 5.

B. MCC's application was protested by Brian R. Waitkus in a letter dated September 6, 2006.

C. An informal meeting was held by the LQD on September 21, 2006, at LQD's offices in Cheyenne, Wyoming, to attempt resolution of the protest filed by Mr. Waitkus. The meeting was attended by the Administrator and Staff of LQD, representatives of MCC, and Mr. Waitkus. Those negotiations were there after continued, resulting in this Stipulated Resolution.

D. MCC and Mr. Waitkus have agreed to the following additional conditions to the approval of MCC's permit application TFN 4 4/296 which revises MCC's existing Permit 298C-A5.

E. This Stipulated Resolution resolves the objections raised by Mr. Waitkus to the issuance of TFN 4 4/296.

F. This Stipulated Resolution to Objections supersedes and replaces 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 approved by the DEQ, resulting in the dismissal of Docket No. 03-4805 before the Environmental Quality Council on January 11, 2004.

**II. ADDITIONAL STIPULATED CONDITIONS/MODIFICATIONS TO PERMIT.**

Mountain Cement Company agrees that the following additional conditions be made a part of TFN 4 4/296 which amends MCC's Permit No. 298C-A5:

1. 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.

2. MCC agrees that it has completed mining limestone in Area A identified on the attached Exhibit A.
3. MCC agrees that it will not mine limestone within the area identified as "Area S-2" on the attached Exhibit A. The foregoing restriction does not prohibit MCC from placing, storing or stockpiling topsoil or overburden within Area S-2.

Area S-2 encompasses an area 200 feet in width along the length of the northern most boundary line of NE1/4NE1/4 of Section 36, T15N, R73W, Albany County, Wyoming.

4. Upon issuance of a permit to mine Area C as identified on Exhibit A, MCC agrees to commence mining limestone from Area C as soon as practicable.
5. Following initial disturbance within Area C as identified on Exhibit A, which is agreed to be the commencement of removing topsoil and overburden, MCC agrees as follows:
  - i. To complete all mining of limestone within Area C as soon as practicable. It is understood that MCC will have to mine from other areas within the Etchepare Quarry to blend with limestone extracted from Area C; and
  - ii. To re-seed Area C north of the southern most drainage within 12 months of completion of mining the limestone north of the southernmost drainage.
6. Upon issuance of TFN 4 4/296, MCC may proceed to mine in areas 7B, 6A and 6B at the same time. This will allow a greater selection of limestone for blending with Area C limestone, to promote faster consumption of the Area C limestone.
7. MCC will restrict its mining within the Etchepare Quarry to Areas 7B, 6A and 6B so long as MCC is mining within Area C.
8. Once MCC completes mining within Area C, it may mine from Etchepare 5 as allowed by TFN 4 4/296.
9. MCC agrees that all crushing operations will be conducted outside of Area C as identified on Exhibit A.
10. In the event that MCC conducts screening operations within Area C, it shall construct a 10 foot high topsoil/overburden berm on the north end of its quarry operation and shall position its screening operations south of the berm.
11. It is understood that MCC's Application to Modify its Permit is granted subject to these additional conditions.

MCC agrees that the above conditions will be made a part of its Permit Application TFN 4 4/296.

**III. FINAL RESOLUTION OF DISPUTES AND WITHDRAWAL OF OBJECTIONS.**

Based upon the foregoing stipulations, Mr. Waitkus does hereby withdraw his objections to the proposed issuance of **Land Quality Permit No. TFN 4 4/296** to MCC.

Mr. Waitkus waives any right to an additional hearing on the permit application before the Environmental Quality Council, and agrees that the Land Quality Division may issue a permit to MCC for its application TFN 4 4/296 with the additional conditions stipulated herein in Part II.

This Stipulated Resolution to Objections may be signed in counterparts by the undersigned. It will become effective when all of the undersigned have signed a copy of this Stipulation.

Mountain Cement Company, a Nevada Corporation



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Attorneys for Applicant Mountain Cement Company  
Date: 10-16-06



Brian R. Waitkus  
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307-745-8723.

Date: 10-16-06

