

**BEFORE THE  
ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING**

IN THE MATTER OF OBJECTION TO )  
THE MINING PERMIT APPLICATION )  
OF MOUNTAIN CEMENT COMPANY ) DOCKET NO. 07-4804  
PERMIT NO. 298C, TFN 4 2/220 )

**MOTION IN LIMINE & REQUEST FOR HEARING**

Mountain Cement Company (MCC) submits this Motion In Limine & Request for Hearing, respectfully moving that a pre-hearing hearing be conducted and an order entered to exclude the following exhibits as inadmissible in accordance with the Wyoming Administrative Procedure Act, Wyo. Stat. § 16-3-108, and the Environmental Quality Council *Rules of Practice and Procedure Applicable to Hearings in Contested Cases*. The following exhibits, proposed by Mr. Waitkus, are inadmissible and should be excluded for at least the following reasons:

**Exhibit 1** - Exhibit 1 is not the best evidence, contains irrelevant and immaterial handwriting, and is unduly repetitious. While Exhibit 1 purports to be a page from MCC's permit amendment application, the Exhibit contains handwriting that is not part of the application. The handwriting is irrelevant, immaterial, and prejudicial to Mountain Cement. The permit amendment application is available, without handwritten notes; if Mr. Waitkus wishes to produce, admit, or refer to pages from the permit amendment application he can properly rely upon the permit application as it was submitted to and approved by DEQ/LQD and presented for public notice. The permit amendment application will be part of the record.

**Exhibit 2**- Exhibit 2 contains a series of photographs which lack proper foundation, and are irrelevant and immaterial to MCC permit amendment application and whether it should be granted.

**Exhibit 3** - Exhibit 3 is not the best evidence, contains irrelevant and immaterial handwriting, and is unduly repetitious. While Exhibit 3 purports to be a page from MCC's permit amendment application, the Exhibit contains handwriting that is not part of the application. The handwriting is irrelevant, immaterial, and prejudicial to Mountain Cement. The permit amendment application is available, without handwritten notes; if Mr. Waitkus wishes to produce, admit, or refer to pages from the permit amendment application he can properly rely upon the permit application as it was submitted to and approved by DEQ/LQD and presented for public notice. The permit amendment application will be part of the record.

**Exhibit 4** - Exhibit 4 is a letter from Mr. Ver Ploeg which constitutes hearsay, and which is irrelevant and immaterial to MCC's permit amendment application. Additionally, MCC has not had an opportunity to cross examine Mr. Ver Ploeg.

**Exhibit 5** - Exhibit 5 is not the best evidence, contains irrelevant and immaterial handwriting, and is unduly repetitious. While Exhibit 5 purports to be a page from MCC's permit amendment application, the Exhibit contains handwriting that is not part of the application. The handwriting is irrelevant, immaterial, and prejudicial to Mountain Cement. The permit amendment application is available, without handwritten notes; if Mr. Waitkus wishes to produce, admit, or refer to pages from the permit amendment application he can properly rely upon the permit application as it was submitted to and approved by DEQ/LQD and presented for public notice. The permit amendment application will be part of the record.

**Exhibit 8** - Exhibit 8 lacks foundation, is not the best evidence, and contains irrelevant and immaterial writing.

**Exhibit 9** - Exhibit 9 is not the best evidence, contains irrelevant and immaterial

handwriting, and is unduly repetitious. While Exhibit 9 purports to be a page from MCC's permit amendment application, the Exhibit contains handwriting that is not part of the application. The handwriting is irrelevant, immaterial, and prejudicial to Mountain Cement. The permit amendment application is available, without handwritten notes; if Mr. Waitkus wishes to produce, admit, or refer to pages from the permit amendment application he can properly rely upon the permit application as it was submitted to and approved by DEQ/LQD and presented for public notice. The permit amendment application will be part of the record.

**Exhibit 10** - Exhibit 10 purports to be a print out from the internet which lacks foundation, is irrelevant and immaterial to MCC's permit amendment application, and is not the kind of evidence which is commonly relied upon by reasonably prudent men in the conduct of their serious affairs.

**Exhibit 11** - Exhibit 11 purports to be a print out from the internet which lacks foundation, is irrelevant and immaterial to MCC's permit amendment application, and is not the kind of evidence which is commonly relied upon by reasonably prudent men in the conduct of their serious affairs.

**Exhibit 12** - Exhibit 12 purports to be a print out from the internet which lacks foundation, is irrelevant and immaterial to MCC's permit amendment application, and is not the kind of evidence which is commonly relied upon by reasonably prudent men in the conduct of their serious affairs.

**Exhibit 13** - Exhibit 13 is not the best evidence, contains irrelevant and immaterial handwriting, and is unduly repetitious. While Exhibit 13 purports to be a page from MCC's permit amendment application, the Exhibit contains handwriting that is not part of the application. The handwriting is irrelevant, immaterial, and prejudicial to Mountain Cement. The permit amendment application is available, without handwritten notes; if Mr. Waitkus wishes to produce, admit, or refer to pages from the permit amendment application he can properly rely upon the permit application as it was submitted to and approved by DEQ/LQD and presented for public notice. The permit

amendment application will be part of the record.

**Exhibit 14** - Exhibit 14 purports to be a copy of a Notice of Violation to Mountain Cement dated May 18, 2006, which is irrelevant and immaterial to MCC's permit amendment application and which is unduly prejudicial to MCC.

**Exhibit 16** - Exhibit 16 is not the best evidence, contains irrelevant and immaterial handwriting, and is unduly repetitious. While Exhibit 16 purports to be a page from MCC's permit amendment application, the Exhibit contains handwriting that is not part of the application. The handwriting is irrelevant, immaterial, and prejudicial to Mountain Cement. The permit amendment application is available, without handwritten notes; if Mr. Waitkus wishes to produce, admit, or refer to pages from the permit amendment application he can properly rely upon the permit application as it was submitted to and approved by DEQ/LQD and presented for public notice. The permit amendment application will be part of the record.

**Exhibit 17** - Exhibit 17 purports to be a copy of the Permit Application Analysis conducted by Air Quality Division. Exhibit 17 is irrelevant and immaterial to MCC's permit amendment application, and is not the best evidence because it is incomplete and contains handwriting which is not part of the Permit Application Analysis.

**Exhibit 18** - Exhibit 18 is purportedly a letter to the editor by Brian Waitkus. Mr. Waitkus's letter to the editor is irrelevant and immaterial to MCC's mine permit amendment application, lacks proper foundation, and is prejudicial to MCC. Additionally, Mr. Waitkus is available to testify at the hearing.

**Exhibit 19** - Exhibit 19 is purportedly a print out of NOVs issued to Mountain Cement. Exhibit 19 is irrelevant and immaterial to MCC's mine permit amendment application, lacks proper foundation, and is unduly prejudicial to MCC.

**Exhibit 21** - Exhibit 21 is not the best evidence, contains irrelevant and immaterial handwriting, and is unduly repetitious. While Exhibit 21 purports to be a page from MCC's permit amendment application, the Exhibit contains handwriting that is not part of the application. The handwriting is irrelevant, immaterial, and prejudicial to Mountain Cement. The permit amendment application is available, without handwritten notes; if Mr. Waitkus wishes to produce, admit, or refer to pages from the permit amendment application he can properly rely upon the permit application as it was submitted to and approved by DEQ/LQD and presented for public notice. The permit amendment application will be part of the record.

**Exhibit 23** - Exhibit 23 is not the best evidence and is unduly repetitious. While Exhibit 23 purports to be a map from MCC's permit amendment application, the Exhibit is not the entire map and has been modified. The permit amendment application is available as is a correct and accurate copy of the purported map; if Mr. Waitkus wishes to produce, admit, or refer to pages from the permit amendment application he can properly rely upon the permit application as it was submitted to and approved by DEQ/LQD and presented for public notice. The permit amendment application will be part of the record.

**Exhibit 24** - Exhibit 24 is not the best evidence, contains irrelevant and immaterial handwriting, and is unduly repetitious. While Exhibit 24 purports to be a page from MCC's permit amendment application, the Exhibit contains handwriting that is not part of the application. The handwriting is irrelevant, immaterial, and prejudicial to Mountain Cement. The permit amendment application is available, without handwritten notes; if Mr. Waitkus wishes to produce, admit, or refer to pages from the permit amendment application he can properly rely upon the permit application as it was submitted to and approved by DEQ/LQD and presented for public notice. The permit amendment application will be part of the record.

**Exhibit 25** - Exhibit 25 is not the best evidence, contains irrelevant and immaterial handwriting, and is unduly repetitious. While Exhibit 1 purports to be a page from MCC's permit amendment application, the Exhibit contains handwriting that is not part of the application. The handwriting is irrelevant, immaterial, and prejudicial to Mountain Cement. The permit amendment application is available, without handwritten notes; if Mr. Waitkus wishes to produce, admit, or refer to pages from the permit amendment application he can properly rely upon the permit application as it was submitted to and approved by DEQ/LQD and presented for public notice. The permit amendment application will be part of the record.

**Exhibit 26** - Exhibit 26 is not the best evidence and is unduly repetitious. While Exhibit 26 purports to be a map from MCC's permit amendment application, the Exhibit is not the entire map and has been modified. The permit amendment application is available as is a correct and accurate copy of the purported map; if Mr. Waitkus wishes to produce, admit, or refer to pages from the permit amendment application he can properly rely upon the permit application as it was submitted to and approved by DEQ/LQD and presented for public notice. The permit amendment application will be part of the record.

**Exhibit 27** - Exhibit 27 is not the best evidence, contains irrelevant and immaterial handwriting, and is unduly repetitious. While Exhibit 27 purports to be a page from MCC's permit amendment application, the Exhibit contains handwriting that is not part of the application. The handwriting is irrelevant, immaterial, and prejudicial to Mountain Cement. The permit amendment application is available, without handwritten notes; if Mr. Waitkus wishes to produce, admit, or refer to pages from the permit amendment application he can properly rely upon the permit application as it was submitted to and approved by DEQ/LQD and presented for public notice. The permit amendment application will be part of the record.

**Exhibit 28** - Exhibit 28 is not the best evidence, contains irrelevant and immaterial handwriting, and is unduly repetitious. While Exhibit 28 purports to be a page from MCC's permit amendment application, the Exhibit contains handwriting that is not part of the application. The handwriting is irrelevant, immaterial, and prejudicial to Mountain Cement. The permit amendment application is available, without handwritten notes; if Mr. Waitkus wishes to produce, admit, or refer to pages from the permit amendment application he can properly rely upon the permit application as it was submitted to and approved by DEQ/LQD and presented for public notice. The permit amendment application will be part of the record.

**Exhibit 29** - Exhibit 29 is not the best evidence, is irrelevant and immaterial to MCC's permit amendment application, and contains irrelevant and immaterial handwriting. In addition the proposed exhibit was superseded and replaced by *Stipulated Resolution to Objections* dated October 16, 2006.

**Exhibit 30** - Exhibit 30 is irrelevant and immaterial to whether MCC's permit amendment application should be granted.

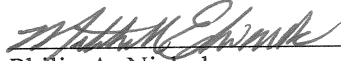
**Exhibit 32** - Exhibit 32 is not the best evidence and is unduly repetitious. While Exhibit 32 purports to be a map from MCC's permit amendment application, the Exhibit is not the entire map and has been modified. The permit amendment application is available as is a correct and accurate copy of the purported map; if Mr. Waitkus wishes to produce, admit, or refer to pages from the permit amendment application he can properly rely upon the permit application as it was submitted to and approved by DEQ/LQD and presented for public notice. The permit amendment application will be part of the record.

THEREFORE, MCC respectfully requests that a hearing be conducted on its *Motion In Limine* prior to the start of the hearing on Mr. Waitkus's objections to MCC's permit amendment

application, and that the above listed exhibits be held inadmissible.

DATED October 25, 2007

Mountain Cement Company



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#### CERTIFICATE OF SERVICE

I, Mitchell H. Edwards, certify that the foregoing was served by U.S. Mail, postage prepaid,  
and by e-mail to the following people on the 25th day of October, 2007:

Mr. Brian R. Waitkus  
80 Eagle Nest Lane  
Laramie, Wyoming 82070  
[wildphoto1@juno.com](mailto:wildphoto1@juno.com)  
Objector

John S. Burbridge  
Senior Assistant Attorney General  
Wyoming Attorney General's Office  
123 Capitol Building  
Cheyenne, Wyoming 82001  
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