



COUNTY ADMINISTRATOR'S OFFICE

PIMA COUNTY GOVERNMENTAL CENTER
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C. H. HUCKELBERRY
County Administrator

January 2, 2007

Jamie Hogue
Deputy Commissioner
Arizona State Land Department
1616 West Adams Street
Phoenix, Arizona 85007

Re: Decision and Order No. 134-2006/2007

Dear Ms. Hogue:

As we discussed at the December 20, 2006 meeting, Pima County is appealing the State Land Commissioner's decision to approve the Portland Cement leases along Davidson Canyon. If the decision does stand, I would still like you to consider the addition of certain language in the leases. Since you are unwilling to release the actual draft lease language, our additions are based on the 18 conditions listed in the Decision and Order. The language is included below. Additions are capitalized and bolded.

- (3) The Lessee shall accomplish appropriate and complete reclamation as determined by the Department during the term of the leases with the final reclamation to be completed by one hundred and twenty days following the end of the lease term. Reclamation shall include minimization of visual impacts from scenic roads/highways, including contouring and landscaping tailings to ~~match~~ **REPLICATE IN A NATURAL MANNER** the surrounding native landscape and land forms. **RECLAMATION SHALL BE MONITORED BY AN INDEPENDENT INSPECTOR RETAINED BY THE DEPARTMENT, BUT PAID FOR BY THE LESSEE.**

- (8) Lessee shall conduct **PLANT AND ANIMAL** invasive species monitoring during mining operations and Lessee shall implement measures to limit non-native species invasion into the area as determined by the department. In the event non-native invasive species are introduced into the area, Lessee shall undertake appropriate corrective and/or mitigation measures as determined by the **ARIZONA GAME AND FISH DEPARTMENT, IF ANIMALS, OR ARIZONA STATE LAND Department, IF PLANTS. AT NO TIME WILL A PERMANENT BODY OF WATER (QUARRY PIT LAKE) BE MAINTIANED ON THE SITE.**

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- (11) Lessee shall prepare a drainage report which identifies appropriate steps that will be taken to control runoff, minimize erosion, maintain water quality and otherwise prevents any adverse impacts on perennial surface flow, **FOR REVIEW BY THE ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY**. (Note that ADEQ and ASLD already have MOU in place for such services).
- (12) The department is concerned about depletion of groundwater resources in the area of the mining leases. Lessee shall not develop any groundwater on the leased land. Lessee has represented that it intends to acquire water needed for its operation from commercial off-site sources. **OFF SITE SOURCES SHALL NOT INCLUDE GROUNDWATER FROM WITHIN THE DAVIDSON CANYON WATERSHED**. Lessee water use on-site shall be restricted to no more than an annual average maximum of 12,000 gallons per day.

I am still unaware of the size of the reclamation bond that you'll be requiring prior to the issuance of the leases. This is of great concern due to Arizona Portland Cement's history of environmental enforcement action in Pima County. Attached is a summary of actions that took place in 1992, 2003, and 2004. The Arizona Department of Environmental Quality should be able to provide you with the particulars. I recommend that specific dates be written into the lease with regard to when reviews of the reclamation bond amount will take place, as well as making sure that any necessary increases in bond amounts be enforceable.

We have been working with a neighborhood preservation and conservation advocacy-based group called the Empire-Fagan Coalition regarding this issue. This organization is made up of area residents and has been active in sending comments to the Arizona State Land Department regarding this and other mineral leases. Attached are their comments on additional lease language.

It was a pleasure to meet you and I hope that we can continue to work towards outcomes that benefit the Trust as well as the residents of Pima County.

Sincerely,



C.H. Huckelberry
County Administrator

CHH/dr

Attachments

c: Nicole Fyffe, Executive Assistant to the County Administrator

12/27/06

Suggestions from Empire-Fagan Coalition for Comments on the 18 Conditions:

1. Condition #4 – should be more specific, e.g. request a percentage of net profit annually and any amounts not used be used for another purpose to benefit the State.
2. Condition #5 – add more stringent dust control standards (e.g. require them to put down gravel on the roads). Also, do not allow them to use any non-biodegradable chemicals on the roads that might impact groundwater.
3. Condition #9 – do not allow them to create additional roadways accessing the site or modify existing roadways or signage. Local and tourist traffic on Sonoita Highway and Old Sonoita Highway should take priority over and not be impeded by mining traffic. APC should have to pay for any road repairs that result from their activities.
4. Condition #12 – “Lessee’s water usage on-site shall be restricted to no more than an annual average maximum of 12,000 gallons per day.” This should include any groundwater they may strike that fills the pits.
5. Condition #14 – should be modified to include neighbors within a 2 mile radius of the operation. Neighbors should be given individual notice by mail or at a minimum, “reasonable notice” should be defined more clearly.
6. Condition #15 – Lessee should also be required to protect wildlife such as building a fence with a fine mesh at the base around the operation to protect small mammals and reptiles. Measures should also be taken to protect native and migrating birds.

Also, how about something specifying that APC must pay for any damage to neighboring homes and wells that result from their activity?

Contact information for Empire-Fagan Coalition:

Mary Kidwell mary@empirefagan.org 762-0533
Kim Kolba Kim@empirefagan.org



MEMORANDUM

PIMA COUNTY ENVIRONMENTAL QUALITY

DATE: December 11, 2006

TO: Nicole Fyffe
Executive Assistant to the County Administrator

FROM: Ursula Kramer
Director *UK*

RE: Arizona-Portland Cement (APC) Environmental Enforcement Actions

In response to your request for information regarding Arizona Portland Cement (APC) environmental enforcement actions, the Pima County Department of Environmental Quality (PDEQ) has collected the attached information. There have been three significant enforcement actions taken against APC.

In 1992, PDEQ and the Arizona Department of Environmental Quality (ADEQ) began joint enforcement for hazardous waste and air quality violations. The enforcement actions were settled in 1993 and a fine of \$367,840 was levied against the facility. In 1996, the Hess Oil Virgin Islands Company (HOVIC) settled enforcement action with the U.S. Department of Justice. The HOVIC shipped hazardous waste to APC in 1992. Because the case originally began at APC with PDEQ's enforcement actions, the Department of Justice awarded Pima County \$1,000,000 for the County's efforts.

In 2003, the U.S. Environmental Protection Agency (EPA) issued a Notice of Violation to APC for violating Clean Air Act provisions. APC had begun construction at the Rillito facility without obtaining the necessary permits. This case has not been resolved with EPA.

During 2004, ADEQ issued 8 air quality violations to APC. The violations centered around required testing for hazardous air pollutants. ADEQ has settled the violations with APC with a fine of \$300,000, a requirement that the company purchase air purifiers for homes within the Rillito community, a requirement that the company purchase an air conditioning unit for the Rillito Community Center, and a requirement that the company apply dust suppressants on Contractors Way.

Attached is detailed information on each case. If you would like additional information or have questions on this material, I am available to meet at your convenience.

UK/RG/vlb

cc: John Bernal, Deputy County Administrator
Richard Grimaldi, Deputy Director for PDEQ