

May 4, 2005

(AR-18J)

Mr. John Mayo
JM Products, Inc.
1185 Akiwenzii
Minocqua, Wisconsin 54548

Dear Mr. Mayo:

This letter is in response to the April 7, 2005 letter from Eleni Kouimelis to Cheryl Newton withdrawing your Prevention of Significant Deterioration (PSD) permit. In the letter, Ms. Kouimelis provided her analysis of why the PSD regulations do not apply to JM Products. We have reviewed the letter and have discussed with Ms. Kouimelis the need for sending follow-up questions to better understand your business's planned operations.

The PSD regulations define a stationary source as all of the pollutant-emitting activities that belong to the same industrial grouping, are located on one or more adjacent or contiguous properties, and are under the control of the same person. 40 C.F.R. 51.166(b)(5)-(6). In the letter, Ms. Kouimelis addressed seven questions posed in a September 18, 1995 letter from Region 7. On the basis of her analysis of these questions, she concluded that the operations which will take place at the JM Products gravel pit site will not be under the "common control" of you or your business, JM Products.

As the Region 7 letter notes, "our [U.S. EPA's] approach to looking at control is based in part on regulatory background information, prior EPA guidance materials, common sense, and limited formal decision on the matter" (p. 3). Therefore, "the list of questions is not exhaustive; they only serve as a screening tool" (p. 2) and were not meant to be a limitation on the scope of EPA's inquiry in other cases. While we have reviewed Ms. Kouimelis's discussion of these questions, our inquiry must also consider the great deal of information submitted by you and your consultants in the course of both your NPDES and PSD permit applications.

As you may be aware, the Stormwater Pollution Prevention Plan (SWPPP, signed by you as owner/operator on September 19, 2003 and submitted to EPA under cover letter dated October 30, 2003), as well as other information you or your consultants submitted in the course of your application for coverage under the National Pollutant Discharge Elimination System (NPDES) construction stormwater discharge permit program, provides a full description of the operations of JM Products. This description includes many activities, such as the creation and management of stockpiles of aggregates; construction of access roads and material handling sites (including loading, unloading, transportation, conveyance of raw materials, gravel washing); disposal of wastewater; creation of and maintenance of ponds for discharge of construction stormwater runoff to ensure that the facility remains internally drained (and therefore remains exempt from NPDES industrial operating permit requirements per letter from Rebecca Harvey to John Mayo, February 13, 2004); construction of berms; inspection of facility; cleaning of equipment; and response to on-site hazardous spills.

We still lack an unambiguous description of the project, however. It is unclear how to reconcile the April 7 letter from Ms. Kouimelis with the above description and with representations made in the Environmental Assessment submitted on September 17, 2003 and revised on January 20, 2004; the Gravel Pit Plan (Mission Statement); the Notices of Intent for Stormwater Discharge Associated with Construction Activity Under a NPDES Permit (identifying you as owner/operator) submitted on March 2, 2004; the November 13, 2003 and December 2, 2003 letters from Griffin Consulting Company to the Lac du Flambeau Band of Lake Superior Chippewa Indians notifying the tribe that the proposed scope of the JM Products project has changed; and other e-mail correspondence from your consultant, John Griffin.

Ms. Kouimelis's letter appears to present a different view of site operations from the description provided to U.S. EPA prior to her letter. The apparent conflict between these two descriptions of the projected site operations must be resolved before any determination could be made regarding the appropriate permit requirements which might apply to your operations under either the Clean Water Act's NPDES program or under Clean Air Act permitting programs (e.g. PSD, Title V operating permit program, New Source Performance Standards (NSPS)).

Accordingly, to resolve these issues and to expeditiously conclude our inquiry, we request that you provide a comprehensive description of the nature of the activities you intend to conduct at the project site and the relationship between your business and contractors and subcontractors. This description should also reconcile the differing views you have provided to U.S. EPA regarding the nature of your planned on-site operations.

In addition, please respond specifically to the following questions:

1. If you and your employees will not be conducting and managing the on-site activities described in the SWPPP and documents submitted to EPA pursuant to establishing permit coverage under the National Stormwater Construction Discharge General Permit, please explain how and by whom the activities described in the SWPPP will be completed.
2. Please provide a copy of or fully describe the terms and conditions of the "contract with JM Products to access and remove gravel" which is described as being part of the "typical scenario" on p. 2 of the April 7 letter. The description should include: (1) what rights of access to the site are given under the contract (or how access to the site is otherwise conferred), (2) what will be done with the sand or gravel that, after screening, does not meet the aggregate specifications (oversized/undersized aggregate) of a particular contract (e.g. will it be stockpiled, sold directly by you, or other arrangement), (3) describe how you are informed of the start and end date of the independent contractor's presence on the site, and (4) how you will be informed of any incidents (e.g. accidents, hazardous chemical spills) that may occur while the contractor is present.
3. Please describe how the independent contractor will be informed of (1) the provisions of the SWPPP, (2) any limitation on hours of operation, (3) any guidelines or limitations on processes used to extract sand and gravel (e.g. use of power shovels, draglines, front end loaders, bucket wheel excavators), (4) how proper slope-angles or supports within the gravel pit will be maintained to prevent collapse of the pit sidewalls, (5) who will have authority to direct the location of and control over aggregate piles on site, and (6) how site "housekeeping" practices (e.g. directing construction stormwater discharges to

drainage ponds; constructing of berms; responding to spills; maintaining roads; control of fugitive emissions from roads, gravel pit, aggregate piles and gravel washing practices) will be communicated to workers on site, and how these practices will be monitored and/or implemented.

4. What control, if any, will there be on the number of independent contractors operating at the site at any given time?

5. Will JM Products or any of its full-time or part-time employees maintain or operate any equipment on site (e.g. gravel washers, aggregate washing ponds, wells or other water sources, water pumps, conveyors) or participate in "different operations such as concrete products, asphalt and sale of different materials provided by the pit area" (Mission Statement)? If so, please list and describe any and all such equipment JM Products will own, rent, or lease that will operate on either Parcel 1 or Parcel 2, and any and all such operations in which JM Products employees will participate.

6. Please state whether JM Products will sell sand and/or gravel pit materials (e.g. fill, bedding, subbase, basecourse) directly to customers, in addition to arrangements made with the independent contractors described in the letter of April 7, 2005, from either Parcel 1 or Parcel 2.

7. To the extent of your knowledge and information, please state whether JM Products will allow "affected facilities" subject to NSPS Subpart 000 (rock crushers) and/or Subpart I (hot-mix asphalt plants) to locate on Parcel 1 or Parcel 2.

8. Please state whether blasting may be utilized by JM Products or any other entity to loosen material within the gravel pit.

9. Please state whether JM Products will direct the location within the gravel pit from which sand and gravel will be removed.

10. Please provide documents of incorporation for JM Products including the most recent list of officers and directors, and the most recently submitted corporate annual report.

Upon receipt of this information, we are committed to providing a timely response that will clarify your obligations under PSD, specifically, and the Clean Air Act, generally. Please note

that the information you submit may affect your or your contractors' and subcontractors' permitting obligations under the NPDES permit program as well.

Please feel free to contact Kaushal Gupta, of my staff, at (312) 886-6803 if you have any questions regarding PSD issues, or Brian Bell of the Region 5 Water Division at (312) 886-0981 if you have any questions regarding NPDES issues.

Thank you.

Sincerely,

/s/

Pamela Blakley, Chief
Air Permits Section

cc: Eleni Kouimelis
Winston & Strwan LLP

Larry Wawronowicz, Deputy Administrator
Lac du Flambeau Band of Lake Superior Chippewa Indians