September 20, 2006

(AR-18J)

Mr. John Mayo
JM Products, Inc.
P.O. Box 1174
Lac du Flambeau, Wisconsin 54538

Dear Mr. Mayo:

On April 7, 2005, your legal representative at Winston & Strawn, LLP sent a letter informing us that JM Products, Inc., seeks to withdraw its Prevention of Significant Deterioration (PSD) permit application submitted in April, 2004. This letter is to inform you that based on the information provided, it appears that JM Products does not require a preconstruction permit under its revised business plan. Accordingly, we accept the withdrawal of the PSD permit application.

Winston & Strawn asserts in its letter that JM Products does not need a permit because " there is no stationary source, no common control, and no actual construction that is begun." While we agree with the ultimate conclusion, our analysis differs from the analysis provided in the letter. Our decision is based on a finding that JM Products does not own or operate, and is not in common control of an owner or operator of the stationary sources that will locate on Parcels 1 and 2 within the exterior boundaries of the Lac du Flambeau Indian Reservation.

The sand-and-gravel pit located on these parcels is a stationary source, which is defined in 40 C.F.R. 52.21(b)(6) as any building, structure, facility or installation which emits or may emit a regulated New Source Review (NSR) pollutant. We consider the rock crusher and hot-mix asphalt plant portable sources that generate temporary emissions, not mobile sources.[1] As noted in the November 29, 1991 Memorandum from David C. Bray to Gary McCutchen, portable sources (including portable asphalt batch plants) are required to obtain PSD permits as portable sources if their emissions would exceed major source thresholds. Also

[1] Temporary emissions include emissions from a portable stationary source that would be less than two years in duration, unless the Administrator determines that a longer period would be appropriate. 45 FR 52728.

see 40 C.F.R. 52.21(i)(4)(viii) for the preconstruction permitting requirements that apply to portable sources.

Our finding of no common control is based on statements made in Winston & Strawn's correspondences. (See Enclosure A.) Based on the information provided, it is our understanding that JM Products will not operate any equipment onsite, but instead would allow other companies to mine aggregate from the land and run a hot asphalt mixer on the land for payment of a royalty fee to JM Products. JM Products would maintain some infrastructure to facilitate this land use, such as constructing roads, maintaining aggregate washing ponds, supplying water for dust control, and constructing berms to control noise. JM Products intends to limit the hours of access and size of equipment permitted on site to minimize the impact of the land use on surrounding landowners. Moreover, JM Products will allow individual companies to discard unwanted aggregate onsite (e.g. aggregate that does not meet product specifications) which JM may then sell.

In providing and maintaining a site on which the portable rock crusher and asphalt plant may extract and process mineral resources, JM Products appears to have the role of a land manager providing infrastructure to the pollutant-generating activities, rather than exhibiting common control over those companies' operations. Moreover, JM Products is not the landowner of record, as the land is titled to you, not JM Products.[2]

In sum, we have determined that it is the owners and operators of the portable sources that seek to locate on Parcels 1 and 2 (including rock crushers, asphalt plants and associated internal combustion engines), rather than JM Products, which will own or operate the stationary sources, and it is these companies who may be required to obtain federal permits under the Clean Air Act. Because we have not reviewed the actual contracts that JM Products will be entering with other companies, the above conclusion represents a tentative finding. For example, if JM Products assumes a role beyond land manager and infrastructure provider in its contractual relationships with the other companies, JM Products could exhibit common control of those companies and thus become the operator of the stationary source. Contractual terms that may justify a finding of common control

[2] Although you are the landowner, it does not appear you will own or operate the stationary source located on the land. Nonetheless, if JM Products involvement in the stationary source operations evolves to that of an operator or common control of an operator, and you exhibit common control of JM Products, then you may also be responsible for obtaining the required NSR and Title V permits.

and may result in the need for JM Products to obtain a PSD permit include, but are not limited to:

- Requiring the rock crusher or asphalt plant to sell a portion of their products to JM Products[3];
- Requiring the rock crusher or asphalt plant to sell their products to JM Products at a price substantially below the market rate;
- Requiring the rock crusher or asphalt plant to bid on certain development contracts, or to bid on development contracts at certain prices.

As we stated earlier, we have determined that the companies with whom JM Products will be entering into contractual agreements may be required to obtain permits, and those companies will have to assess the applicability of NSR and Title V regulations to their operations. Before allowing them to locate and commence operations on Parcels 1 and 2, please have them contact my office to discuss their permitting requirements. Any permits issued by the State of Wisconsin to these companies would not be valid for operation at this stationary source, which is located outside of State jurisdiction.

In JM Products' original PSD application, JM Products indicated that:

> "...under actual operating levels and considering controls, the emissions from criteria pollutants from the proposed facility are below the PSD thresholds. However in absence of a Federal minor source program for sources locating on Indian lands that would allow a source to request enforceable limits, the emissions must be calculated on an unlimited and uncontrolled basis."

For your information, if you were interested, we can establish enforceable limitations through a federally issued permit that will prevent the stationary source from being major. To implement this option, JM Products must assume common control over the stationary source and apply for the federally issued permit. With this permit, any company operating a portable rock crusher, asphalt plant, or internal combustion engine could operate on the land without its own permit, as long as JM Products assures that the emission and operating limitations of the federally issued permit continue to be met. JM Products

[3] We understand that JM Products may purchase some aggregate from the companies operating on the site. A re-evaluation of the relationship with these companies is warranted if JM Products conditions use of the land on selling of aggregate to the company or if JM Products becomes the principle purchaser of the mined aggregate.

should contact the United States Environmental Protection Agency to discuss alternatives for utilizing this permitting option.

Finally, if JM Products' business plans change from how they have been described in the correspondence, or if we have misinterpreted any information in correspondence we've received, please notify us, as the conclusion we reached above may no longer apply.

Please feel free to contact me if you have any questions regarding this letter.

Sincerely yours,

/s/

Pamela Blakley, Chief
Air Permits Section

Enclosure

cc: Congressman Mark Green
U.S. House of Representatives, 8th District, Wisconsin

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

Enclosure A

Representations Supporting a Conclusion of No Common Control

- “JM Products will not operate any equipment onsite.” (July 26, 2005 letter from Winston & Strawn)
- “Because of the site layout, only one gravel-crusher spread and its components and support equipment (loader, dozer, etc.) will be allowed at any one time. This is the same for hot-mix operations.” (July 26 letter)
- “JM Products will not perform any earth-moving activities, including blasting, at the site. Moreover, independent contractors will not be allowed to perform blasting at the site.” (July 26 letter)
- “ the independent contractors own, operate, and control the equipment that they would bring onsite. . . . No JM Products employee would operate the equipment.” (April 7, 2005 letter from Winston & Strawn)
- “JM Products does not share any products with the independent contractors. JM Products receives royalties for the aggregate materials that the contractors access and remove. Importantly, there are no contractual arrangements for exclusivity on the part of either JM Products or an independent contractor.” (April 7 letter)
- “JM Products is not dependent on any one independent contractor to access and remove aggregate materials and has no long-term contracts in place with any individual contractors. Rather, JM Products will enter into separate short-term agreements with various independent contractors depending on the road construction projects on which the independent contractors are bidding.” (April 7 letter)
- “JM Products will have for sale sand and/or gravel that JM Products will purchase from the independent contractors who will be accessing the materials or from the other contractors that JM Products hires to produce a small amount of aggregate at a given time. This is expected to be a **small** portion of JM Products’ business” (emphasis added)(July 26 letter)
- “JM Products and the independent contractors that would be seeking to access and remove aggregate materials do not share a common workforce, manager, security, executive officers, or board of executives. There is not a plan to share such matters in the future.” (April 7 letter)
- “JM Products does not share any of these [common payroll activities, employee benefits, health plans, retirement funds, insurance coverage, or other administrative functions] with the independent contractors.” (April 7 letter