

BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS

WEDNESDAY, MARCH 9, 2011

4:00 p.m.

-Convene

-Consider the approval of the minutes for December 22, 2010.

CONSENT AGENDA

- (1) (a) Consider approval of Commission Orders; and
- (b) Consider approval of application for an authorized emergency vehicle permit for Robert O. Rombach (Sheriff's Office); and
- (c) Consider authorization for Public Works Director to solicit bids for Project No. 2011-6, pavement rehabilitation work on Route 1061 from US-56 highway to N 1200 Road (Keith Browning)

REGULAR AGENDA

- (2) Consider authorization to pursue Corridor Management Program funding Route 1055/US-56 Intersection Improvements in conjunction with Project 2010-20, reconstruction of Route 1055 (6th Street) from Us-56 Highway to Route 12 (Keith Browning)
- (3) Presentation of the results of the County Sustainability Planning Process (Eileen Horn)-No backup
- (4) Other Business
 - (a) Consider approval of Accounts Payable (if necessary)
 - (b) Appointments
 - (c) Miscellaneous
 - (d) Public Comment

RECESS UNTIL 6:35 P.M.

- (5) Receive compliance review of Big Springs Quarry Consent Decree (6:35 p.m. contact Mary Miller)
- (6) Adjourn

WEDNESDAY, MARCH 16, 2011

No 4:00 p.m.

only 6:35 p.m.

-Consider request by Tenants to Homeowners for land at 25th and Cedarwood to create Active Senior Housing (Rebecca Buford)

WEDNESDAY, MARCH 23, 2011-Light Agenda

WEDNESDAY, MARCH 30, 2011

-Public Hearing Black Jack property?

WEDNESDAY, APRIL 6, 2011

MONDAY, APRIL 11, 2011

9:00 a.m. Election Canvass

WEDNESDAY, APRIL 13, 2011

WEDNESDAY, APRIL 20, 2011

4:00 p.m. -Meeting only

WEDNESDAY, APRIL 27, 2011

WEDNESDAY, MAY 25, 2011 – Light Agenda

Note: *The Douglas County Commission meets regularly on Wednesdays at 4:00 P.M. for administrative items and 6:35 P.M. for public items at the Douglas County Courthouse. Specific regular meeting dates that are not listed above have not been cancelled unless specifically noted on this schedule.*



**DOUGLAS COUNTY
APPLICATION FOR AN AUTHORIZED EMERGENCY VEHICLE PERMIT**

Please type or print the following information:

Check One: New
 Annual Renewal
 (If renewal, attach old permit. **Must be renewed annually by January 31.**)

Name: ROBERT O. ROMBACH

Street Address: 629 N 1500 Rd Phone # (785) 393-9224

City: LAWRENCE State: KS Zip Code: 66044 County: DOUGLAS

Make of Vehicle: ~~BUICK~~ CHEVROLET Year of Vehicle: 2011

Style of Vehicle: CAMARO License Tag #: 5167

VIN #: 2G1FFIED6B9120445 Driver's License #: K01-30-5659

Vehicle Insurance Company Name: STATE FARM INSURANCE Policy #: 207.8697.A26.16J
 **Attach copy of insurance card.

Agency: KANSAS WAKA FIRE DEPARTMENT

Agency Address: 548 E 550 Rd

Agency Head Signature: [Signature]

I HEARBY CERTIFY, I have read and agree to abide by the requirements set forth in Chapter 8 of the Kansas Statutes which relate to the operation of Emergency Vehicles.

I FURTHER CERTIFY, I will drive with due regard for the safety of others as required by K.S.A. 8-1506.

I FURTHER CERTIFY, I will return my permit when requested by the Sheriff. This permit is not transferable to any other person or vehicle.

I FURTHER CERTIFY, violating any of these laws and/or rules and the commission of other serious traffic violations may be grounds for the cancellation of my vehicle being designated as an "Authorized Emergency Vehicle".

[Signature]
 Signature of Applicant

1.31.2011
 Date

[Signature]
 Kenneth M. McGovern, Sheriff

2/24/11 #10
 Date Permit #

Authorization granted by County Commission on this _____ day of _____, 200__.

MEMORANDUM

To : Board of County Commissioners

From : Keith A. Browning, P.E., Director of Public Works/County Engineer

Date : March 3, 2011

Re : Authorization to solicit bids for Route 1061 overlay Project No. 2011-6
Mill, patch, & overlay Route 1061 from US-56 highway to N 1200 Road

As laid out in a late-2010 work session with the BOCC, we plan to mill, patch and overlay Route 1061 from US-56 highway (N 200 Road) to N 1200 Road this year. This ten miles of pavement rehabilitation will be the primary contract maintenance work accomplished this year, save for 1.5 miles of micro-surfacing on Route 442. We plan for construction in August and September this year. While construction is several months out, we feel we'll receive lower bids if we solicit bids very soon as opposed to waiting until summer when contractors are committed to other projects.

Route 1061 is exhibiting surface distress including moderate rutting, widespread shoving and alligator cracking in the wheel paths. Extensive patching will be required after milling and before overlaying. Milling is required due to the narrowness of the roadbed, i.e. simply overlaying will result in unsafe side slopes.

We currently estimate the construction cost to be approximately \$1.515 million. Funds are available in Road & Bridge Fund 201 from the Overlay line item (\$344,520) and the Chip Seal line item (\$790,000). The remaining funds needed are available from the CIP's Annual Contract Pavement Maintenance Projects allocation of \$500,000.

Bids would be opened around April 1. Following the bid opening, a recommended construction contract will be presented to the BOCC for approval.

Action Required: Authorize the Public Works Director to solicit bids for Project No. 2011-6, pavement rehabilitation work on Route 1061 from US-56 highway to N 1200 Road.



DOUGLAS COUNTY PUBLIC WORKS

1242 Massachusetts Street
Lawrence, KS 66044-3350
(785) 832-5293 Fax (785) 841-0943
dgcopubw@douglas-county.com
www.douglas-county.com

Keith A. Browning, P.E.
Director of Public Works/County Engineer

MEMORANDUM

To : Board of County Commissioners

From : Keith A. Browning, P.E., Director of Public Works/County Engineer *KAB*

Date : March 2, 2011

Re : Consider authorization to pursue Corridor Management Program funding
Rte. 1055/US-56 intersection improvements in conjunction with Project 2010-20
Reconstruction of Route 1055 (6th Street) from US-56 highway to Route 12

Design engineering for Project No. 2010-20 is underway. It is becoming clear that improvements to the US-56/Route 1055 intersection, improvements that were not contemplated as part of the project, would significantly improve the functionality and safety of the intersection. Improvements to the intersection were recommended in the US-56 Corridor Study completed in 2010.

We have discussed with KDOT the possibility of constructing the intersection improvements under the Corridor Management construction program. Under this program, KDOT will pay 100% construction costs with local agencies funding all engineering, rights-of-way acquisition, and utility relocation costs. Based on our preliminary discussions with KDOT, we feel very good about our chances of receiving this funding. KDOT indicated if we apply very soon for Corridor Management construction funding, they will make a quick decision on funding approval. Construction of Project No. 2010-20 is scheduled for 2012.

We currently estimate construction costs for the intersection improvements to be approximately \$432,000. There will be some increase in design engineering costs, but the increased amount is not known at the time of this writing. There will be some additional R/W acquisition costs. Under our current project agreement with Baldwin City, the city is responsible for all sidewalk costs, right-of-way acquisition and utility relocation costs within the city limits, and one half of all construction costs except sidewalks. Baldwin City has indicated a desire to pursue Corridor Management funding for the intersection improvements.

Proposed intersection improvements include widening the north leg from three lanes to four lanes (northbound: 1 through lane; southbound: 1 left turn lane, 1 through lane, 1 right turn lane) and widening the south leg from two lanes to three lanes (northbound: 1 combined through/right turn lane, 1 left turn lane; southbound: 1 through lane). The northbound and southbound through lanes north and south of the intersection would be aligned.

MEMORANDUM

March 2, 2011

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In developing the Project 2010-20 cost estimate, we contemplated little if any intersection improvements. We anticipated tying into the current 3-lane section on the north side of US-56. KDOT approval of Corridor Management funding for intersection improvements may lower the costs somewhat of the remaining project since the limits of the "intersection" would extend to approximately 300' north of US-56. However, we cannot say at this time that receiving Corridor Management funding for intersection improvements will lower Douglas County's cost for the original project scope. It would, however, provide for a significantly improved project at relatively little additional cost.

Funds are available in the CIP for additional design engineering costs to Douglas County for the intersection improvements.

Action Required: Authorization for the Public Works Director to apply to KDOT for Corridor Management construction funding for US-56/Route 1055 intersection improvements.

Memorandum

Lawrence-Douglas County Metropolitan Planning Office

TO: Board of County Commissioners
FROM: Mary Miller, Planning Staff
CC: Craig Weinaug, County Administrator
Scott McCullough, Director of Planning and Development Services
Date: For March 9, 2011 County Commission Agenda
RE: Compliance review of Big Springs Quarry Consent Decree

Mid-States Materials, operator of the Big Springs Quarry located at 2 N 1700 Road, submitted a request to amend the CUP for the quarry in 2008 [CUP-05-02-08]. Through the review of the CUP application, possible compliance issues were identified and a Consent Decree was executed by Mid-States Materials and the County Commission to resolve these possible issues. The Consent Decree, approved by the County Commission on May 27, 2009, listed actions which Mid-States Materials would take and specified deadlines for these actions.

The attached chart outlines the requirements of the Consent Decree and reviews Mid-States Materials compliance with the decree.

Action required:

No action on this item is necessary. This report is being provided to document that Mid-States Materials has complied with the actions required by the Consent Decree within the specified deadlines.

**Big Springs Quarry Consent Decree
Compliance Review**

BoCC March 9, 2011

The shaded items were listed in the Consent Decree but no action was required.

The signed Consent Decree is included with this report as Attachment A.

1. RECLAMATION PLANS	
CONSENT DECREE REQUIREMENTS	DISCUSSION
a. Mid-States shall attend a pre-submittal meeting with Planning staff.	Pre-submittal meeting held June 25, 2009 CONDITION MET
b. Mid-States shall submit a detailed reclamation plan, which shall include an appropriate drainage study, to Planning Department for Phases 1A, 2, 3 and 4 within 60 days of the date of this agreement.	Agreement approved on May 27, 2009. Reclamation plans due by July 27, 2009 Reclamation plans provided on July 24, 2009 CONDITION MET
c. The detailed reclamation plan for Phase 1A shall provide for the removal of the overburden pile along E 100 Road to an established elevation <ul style="list-style-type: none"> i. include the elevation and grade along the banks of the water feature which will be modified to achieve a 3:1 slope or flatter ii. contain a note establishing a sequencing plan necessary to complete the reclamation iii. provide information on where the overburden material will be used or relocated iv. represent the final grading and contouring after mining and reclamation work is complete for each phase. 	The detailed reclamation plan provided for Phase 1A met these requirements. An amendment was later approved to permit the grade along the banks of the water feature to achieve a slope of greater than 3:1 per the modification requirement in No.15. CONDITION MET
d. Upon formal submittal of the detailed reclamation plan(s) outlined in this Section, the Planning Department will review and make a recommendation to the Board and the Board will approve, approve with conditions, or deny the detailed reclamation plan in accordance with Section VIII of the CUP.	Reclamation plans for Phases 1A, 2, 3, and 4 were approved by the Board of County Commissioners on November 11, 2009. (BoCC 11.11.09 Minutes--Attachment B)
e. The detailed reclamation plans for Phases 1A, 2, 3, and 4 shall be scheduled for the Board of County Commissioners as a regular agenda item. Barring good cause, the Board shall approve the detailed reclamation plans for Phases 1A, 2, 3, and 4 at the same time.	CONDITION MET
2. PHASE 1A RECLAMATION	
CONSENT DECREE REQUIREMENTS	DISCUSSION
f. Phase 1A reclamation (which includes removing, regrading and	The Director of Zoning and Codes conducted regular inspections of the

<p>recontouring of the overburden pile, changing the grade of the banks of the water feature to a 3:1 slope or flatter, and seeding of all disturbed ground, all in accordance with the approved detail plan for Phase 1A and a portion of Phase 2) shall be completed within 12 months from the date of approval of the detailed reclamation plan.</p> <p>COMPLETE: each phase shall be deemed completed upon final grading, contouring and seeding. (Reseeding will be performed as necessary to reestablish permanent vegetation.)</p>	<p>reclamation process and determined that reclamation was complete on November 11, 2010. (Zoning and Codes determination letter dated December 3, 2010— Attachment C)</p> <p>The State Conservation Commission inspected Phase 1A on December 15, 2010 and determined that the reclamation met the requirements of the Consent Decree. (KS Conservation Commission letter dated December 29, 2010--- Attachment D)</p> <p style="text-align: right;">CONDITION MET</p>
<p>g. Mid-states cannot proceed with quarrying in Phase 4 or any other subsequent phase until the moving of soil, overburden, and other materials necessary for the reclamation of Phase 1A is complete.</p>	<p>No quarrying has occurred in Phase 4.</p> <p style="text-align: right;">CONDITION MET</p>
3. Compliance with approved reclamation plans	
CONSENT DECREE REQUIREMENTS	DISCUSSION
<p>Mid-States shall comply with the approved reclamation plans.</p>	<p>The Zoning and Codes Director inspected the site and found Phase 1A to be reclaimed in compliance with the Consent Decree. Kansas Conservation Commission also inspected the site and found reclamation in compliance.</p> <p style="text-align: right;">CONDITION MET</p>
4. Fence repair.	
CONSENT DECREE REQUIREMENTS	DISCUSSION
<p>a. On or before July 1, 2009 the 2-strand barbed wire gate at the southeast corner of phase 2 shall be replaced with a 5-strand fence or gate</p>	<p>The Zoning and Codes Director inspected the fence repairs on June 9, 2009 and determined repairs were compliant with the Consent Decree. (Zoning and Codes letter dated: June 22, 2009-- Attachment E)</p> <p style="text-align: right;">CONDITION MET</p>
<p>b. On or before July 1, 2009 missing fencing and fencing with a single strand of barbed wire along DG county Route 442 (west side of Phase 3) shall be repaired or replaced.</p>	
5. BERMS	
CONSENT DECREE REQUIREMENTS	DISCUSSION
<p>Berms will not be used as vehicular drives to get to different locations on the quarry.</p>	<p>No complaints have been received by the Zoning and Codes Office and no vehicular traffic has been observed on the berms.</p> <p style="text-align: right;">CONDITION MET</p>
6. APPROVED TRUCK ROUTES/TRUCK REQUIREMENTS.	
CONSENT DECREE REQUIREMENTS	DISCUSSION
<p>a. Mid-States shall use its best efforts to require all trucks leaving the quarry to comply with the approved truck routes and truck loading requirements. Mid-states agrees to provide periodic letters to all of</p>	<p>Mid-States provided Planning with reports of meetings they held with their customers regarding truck routes and truck requirements on March 25, 2009, January 13, 2010, July 12, 2010, October 1, 2010,</p>

<p>its regular customers, not less than annually (within 30 days of the date of this Agreement and thereafter on or about March 1 of each year) informing them of the approved truck routes and the truck loading requirements, shall retain copies of such letters for a period of 2 years, and shall permit representatives of Douglas County to view such letters upon request.</p>	<p>January 10, 2011 (March 25th comm.--Attachment F) <i>The quarry operator shall continue to keep their customers informed of the requirements with a minimum of an annual letter which they shall retain in their files for 2 years.</i></p> <p style="text-align: right;">CONDITION MET</p>
<p>b. Mid-States shall prohibit its employees from giving weight tickets to drivers of trucks that are flat bed trucks without sides or tailgates, that do not have tailgates in place and in upright position or have loads that are not covered by a tied-down tarp.</p>	<p>No complaints have been received by the Zoning and Codes Office and no non-compliant activity has been observed.</p> <p style="text-align: right;">CONDITION MET</p>
7. SHOP MAINTENANCE FACILITY AND HOURS OF OPERATION	
CONSENT DECREE REQUIREMENTS	DISCUSSION
<p>a. Hours of operation limited to 6AM to 10PM Monday through Thursday and 6AM to 5:30 PM on Friday.</p>	<p>No complaints have been received by the Zoning and Codes Office and no non-compliant activity has been observed.</p> <p style="text-align: right;">CONDITION MET</p>
<p>b. All repair and maintenance activities shall occur in the enclosed shop facility (with exception of some equipment which is too large and immobile to be serviced in the shop facility.)</p>	
<p>c. Repair and maintenance activities shall be limited to service of vehicles and equipment in use at this quarry location.</p>	
8. SUSPENSION OF FORMAL ENFORCEMENT ACTION—no action needed	
9. OTHER CUP REQUIREMENTS AND CONDITIONS—no action needed	
10. PENDING CUP AMENDMENT	
CONSENT DECREE REQUIREMENTS	DISCUSSION
<p>The CUP amendment (CUP-07-05-08) will be withdrawn. Commission recommends no new CUP be filed until after Phase 1A reclamation is completed.</p>	<p>CUP-07-05-08 was withdrawn. No new CUP has been filed. (Closed file memo –Attachment G)</p> <p style="text-align: right;">CONDITION MET</p>
11. BINDING EFFECT AND CONDITION—no action needed	
12. COUNTERPARTS—no action needed	
13. GOVERNING LAW—no action needed	
14. SEVERABILITY—no action needed	
15. MODIFICATIONS	
<p>Amendments or modifications to the consent decree may be made only in writing executed by all parties hereto and expressly stating that it is an amendment to this agreement.</p>	<p>An amendment to the requirement that all slopes be a grade of 3:1 or less was submitted to the County Commission and approved at their September 16, 2009 meeting. (9.16.09 BoCC minutes—Attachment H)</p> <p style="text-align: right;">CONDITION MET</p>

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF DOUGLAS COUNTY, KANSAS

In the matter of Conditional Use Permits for)
 Operation of a Quarry:)
 Mid-States Materials, LLC)
 CUP-7-2-90 (No. 3500); CUP-6-6-92 (No. 3853) &)
 CUP-12-09-06)

CONSENT DECREE

The Board of County Commissioners of Douglas County, Kansas (the "Board") and Mid-States Materials, LLC ("Mid-States") enter into this Consent Decree (this "Agreement") as follows:

RECITALS

- A. Pursuant to Conditional Use Permit-7-2-90 (No. 3500), as amended by Conditional Use Permit-6-6-92 (No. 3853) (collectively the "CUP"), the Board authorized Martin Marietta Aggregates ("Martin Marietta") to operate a quarry in western Douglas County, Kansas through December 19, 2020 (the "Quarry"), all pursuant to and governed by the Restrictions of Use and Conditions of Approval imposed in connection with the Board's granting of the CUP.
- B. On July 17, 2007, pursuant to the provisions of XIV of the CUP, the Board approved and consented to the transfer of the CUP from Martin Marietta to Mid-States, which was assigned Conditional Use Permit-12-09-06 (the "Consent").
- C. At the time of the Consent, the Board made no finding concerning any reclamation deficiencies or that the overburden pile in Phase 1A violated the provisions of the CUP. Mid-States accepted the transfer of the CUP subject to the CUP, pertinent staff reports and Planning Commission minutes, and was of the belief that Martin Marietta's reclamation of Phase 1A was substantially in compliance with the reclamation requirements of the CUP. The Board has now determined that the overburden pile must be reduced to an established elevation and the banks along the water feature in Phase 1A must be recontoured and regraded to reduce the steepness of the slopes. As a representation of good faith, Mid-States enters into this Agreement in an effort to correct these alleged deficiencies that were created by Martin Marietta and which existed at the time of transfer of the CUP.
- D. In an effort to bring clarity to the reclamation issue and to address other matters, Mid-States has filed an application to amend the CUP, which is presently pending before the Lawrence-Douglas County Planning Commission. Mid-States submitted detailed reclamation plans for Phases 1A and 2 with this application.
- E. Mid-States owns and operates the Quarry, and nearby property owners have made allegations and complaints, and the Board has determined, that certain compliance site issues exist at the Quarry, and must be resolved.
- F. The Board and Mid-States enter into this Agreement to document and form a binding agreement between the Board and Mid-States with respect to the matters addressed herein.

TERMS OF AGREEMENT

NOW, THEREFORE, the Board and Mid-States agree as follows:

1. Reclamation Plans. The Board has never approved any detailed reclamation plans for individual phases of the Quarry pursuant to Section VIII of the CUP. Mid-States agrees to submit a detailed reclamation plan, which shall include an appropriate drainage study, to the Planning Department for Phases 1A, 2, 3 and 4 within 60 days of the date of this Agreement, with such submittals being pursuant to Section VIII and X of the CUP and not part of any amendment to the CUP. (Mid-States understand that the CUP requires it to submit a detailed reclamation plan and drainage study to the Planning Department for Phases 5 and 6 for approval before Mid-States begins quarrying in such subsequent phases.) The detailed reclamation plan for Phase 1A shall provide for the removal of the overburden pile along E 100 Road to an established elevation; shall include the elevation and grade along the banks of the water feature which will be modified to achieve a 3:1 slope or flatter, shall contain a note establishing a sequencing plan necessary to complete the reclamation, and shall provide information on where the overburden material will be used or relocated. Prior to formal submittal of the detailed reclamation plan, Mid-States shall attend a pre-submittal meeting with the Planning Department staff to discuss and to receive staff's comments on Mid-State's proposed reclamation plans. Upon formal submittal of the detailed reclamation plan(s) outlined in this Section, the Planning Department will review and make a recommendation to the Board, and the Board will approve, approve with conditions, or deny the detailed reclamation plan in accordance with Section VIII of the CUP. The approved detailed reclamation plans shall represent the final grading and contouring after mining and reclamation work is complete for each phase. Once the Planning Department has forwarded the detailed reclamation plans for Phases 1A, 2, 3, and 4 to the Board, the Board shall schedule the matter as a regular agenda item and receive, review, and, if the Board determines that the detailed reclamation plans comply with this Agreement and the CUP, approve the detailed reclamation plans as expeditiously as reasonably possible. Barring good cause, the Board shall approve the detailed reclamation plans for Phases 1A, 2, 3, and 4 at the same time. If Mid-States does not submit a detailed reclamation plan for Phase 1A providing for removing, regrading and recontouring of the overburden pile, changing the grade of the banks of the water feature to a 3:1 slope or flatter, and seeding of all disturbed ground, reasonably in compliance with the requirements of this Section such that the Board cannot approve it on or before August 31, 2009, the provisions in Section 8 shall not prohibit the Board from its commencement or continuation of additional enforcement action with respect to the matters addressed in this Agreement.

2. Phase 1A Reclamation. Phase 1A reclamation (which includes removing, regrading and recontouring of the overburden pile, changing the grade of the banks of the water feature to a 3:1 slope or flatter, and seeding of all disturbed ground, all in accordance with the approved detailed reclamation plan for Phase 1A and a portion of Phase 2) shall be completed within 12 months from the date of approval of the detailed reclamation plan (including Phases 1A, 2, 3 and 4). This deadline for reclamation is a strict deadline and not subject to extension without the express written consent of the Board. In order to verify that Mid-States is diligently pursuing reclamation in Phase 1A, a designated representative of Mid-States and of the County shall meet onsite and inspect the progress of reclamation every 3 months until reclamation is complete. As long as Mid-States makes satisfactory progress, according to the County inspections, in reclaiming Phase 1A and Phase 2 in accordance with the approved Phase 1A and Phase 2 detailed reclamation plan and the note to the detailed reclamation plan establishing the sequencing plan, acreage disturbed in Phase 1A and acreage disturbed in the N½ of the SE¼ of the SE¼ of Section 23, Township 12 South, Range 17 East (which is the

northeastern portion of Phase 2, directly south of the Phase 1A water feature and must be disturbed to reduce the slopes to the water feature, as depicted by cross-hatch in Exhibit A) in complying with the detailed reclamation plan of Phase 1A and 2 shall not be counted in the number of open acres as contemplated in Section VII (d) of the CUP. In the event Mid-States fails to complete reclamation of Phase 1A in accordance with the approved detailed reclamation plan by the date specified, Mid-States agrees that the provisions in Section VII(d) of the CUP will require Mid-States to limit quarrying in Phase 3 to 10 acres until County staff confirms in writing that Mid-States has completed reclamation in Phase 1A. In addition, Mid-States understands and agrees that it cannot proceed with quarrying in Phase 4 or any other subsequent phase until the moving of soil, overburden, and other materials as necessary for the reclamation of Phase 1A is complete, according to the detailed reclamation plan. For purposes of this Agreement and for purposes of determining whether reclamation is complete so as to enable Mid-States to quarry in subsequent phases in accordance with Section VII(d) of the CUP, reclamation for each phase shall be deemed completed upon final grading, contouring and seeding, notwithstanding the growth of vegetation or the accumulation of water in planned water features. Notwithstanding the foregoing sentence, Mid-States understands that the reclamation process and the CUP requires revegetation for all Phases, which is the establishment of annual and perennial plant material for long term soil stabilization, and Mid-States agrees to exercise due diligence in proceeding with revegetation of each Phase after final grading and contouring, including reseeding as necessary to reestablish permanent vegetation.

3. Compliance With Approved Reclamation Plans. Upon the Board's approval of the reclamation plans submitted and approved in accordance with Section 1 of this Agreement and Section VIII of the CUP, Mid-States shall comply with the approved reclamation plans, both in accordance with the type and manner of reclamation.

4. Fence Repair. Mid-States acknowledges Section III of the CUP requires that the Quarry site be fenced and the fences be maintained in accordance with Kansas fence laws, with new fencing consisting of five-strand barbed wire fence. On or before July 1, 2009, Mid-States shall (i) either replace the two-strand wire gate at the southeast corner of Phase 2 with a five-strand barbed wire fence or gate that complies with Kansas fence laws, and (ii) fix all missing fencing and fencing with a single strand of barbed wire along Douglas County Route 442 (the west side of Phase 3), either by repair of existing fencing or installation of new fences that comply with Kansas fence laws.

5. Use of Berms. Mid-States acknowledges that the berms around the Quarry were built, in part, to shield neighboring properties from noise and activity of the Quarry. As such, Mid-States agrees not to use the berms as vehicular drives to get to different locations of the Quarry. The foregoing, however, shall not prohibit Mid-States from driving vehicles on the berms in connection with installation of silt fencing and other berm maintenance and berm construction activities.

6. Approved Truck Routes; Truck Requirements. Mid-States acknowledges that Section XI of the CUP provides approved truck routes and imposes certain requirements and prohibitions on loaded trucks leaving the Quarry. Mid-States understands and agrees that the principal truck entrance and exit, whether unloaded or loaded with rock or other materials, is U.S. 40, and that, except for local deliveries (which the parties agree is limited to traveling to and from the Quarry and property in Kanwaka Township and Clinton Township that is west of E 550 Road), all trucks leaving or entering the Quarry to or from County Route 442 are prohibited from traveling to or from the east. Mid-States further acknowledges that the exit from the

Quarry onto Douglas County Route 442 (which turns into 45th Street in Shawnee County) is on the Douglas County side of the county line and, as such, agrees that use of this exit is subject to the terms and conditions of the CUP, including covering loads and following permitted truck routes (even if the truck is carrying rock or other materials originating on the Shawnee County side of the county line); provided that, if Mid-States has the consent of Shawnee County, Mid-States and the Board agree that the CUP does not prohibit or regulate the hours that trucks (other than those carrying rock from the Douglas County portion of the Quarry) may turn west on Douglas County Route 442 and travel into Shawnee County; provided further that, if and to the extent done in compliance with all other applicable governmental rules and regulations, Mid-States and the Board agree that the CUP does not prohibit or regulate the hours that trucks (other than those carrying rock from the Douglas County portion of the Quarry) may use U.S. 40 for ingress and egress. With respect to a road project in Douglas County, if and to the extent that the Board or the Director of the Douglas County Department of Public Works specifically consents, Mid-States and the Board agree that the CUP does not prohibit or regulate the hours that trucks (other than those carrying rock from the Douglas County portion of the Quarry) may use Douglas County Route 442 for ingress and egress. Mid-States agrees to use its best efforts to require all trucks leaving the Quarry (even if carrying rock or other materials originating on the Shawnee County side of the county line) to comply with the approved truck routes and truck loading requirements. Mid-States agrees to provide periodic letters to all of its regular customers, not less than annually (within 30 days of the date of this Agreement and thereafter on or about March 1 of each year), informing them of the approved truck routes and the truck loading requirements, shall retain copies of such letters for a period of two years, and shall permit representatives of Douglas County to view such letters upon request. Furthermore, Mid-States shall prohibit its employees from giving weight tickets to drivers of trucks that are (i) flat bed trucks without sides or tailgates, (ii) do not have tailgates in place and in upright position; or (iii) have loads that are not covered by a tied-down tarp.

7. Shop Maintenance Facility and Hours of Operation. Mid-States acknowledges that when Martin-Marietta applied for an amendment to the CUP to permit construction and use of the shop maintenance facility, Martin-Marietta requested expanded hours to permit maintenance activities beyond 6AM-10PM, Monday–Thursday and 6AM-5:30PM, Friday. Specifically, Martin-Marietta requested that maintenance hours be extended until 9:00PM, Friday, and also be permitted from 6AM-5PM, Saturdays. Although the Board amended the CUP to permit construction and use of the shop maintenance facility, the Board denied the request for extended maintenance hours. As such, at the time the CUP was amended to permit construction and use of the shop maintenance facility, the intent and understanding of Martin-Marietta, the Planning Department, Lawrence-Douglas County Planning Commission, and the Board was that hours for maintenance operation would remain limited to 6AM-10PM, Monday–Thursday and 6AM-5:30PM, Friday. Absent an amendment to the terms and conditions of the CUP, Mid-States agrees to comply with these times. In addition, Mid-States acknowledges that the Board placed two additional ongoing conditions upon its amending the CUP to permit construction and use of the shop maintenance facility: (1) all repair and maintenance activities shall occur in the enclosed shop facility; and (2) repair and maintenance activities shall be limited to service of vehicles and equipment in use at this specific Quarry location. The parties acknowledge that some equipment, including but not limited to, the crushing plant, is too large and immobile to be serviced in the shop facility. Accordingly, such equipment may be serviced in its present location outside the shop facility.

8. Suspension of Formal Enforcement Action. Provided Mid-States complies with the terms and conditions of this Agreement, including compliance with the approved detailed reclamation plans, the Board will suspend formal enforcement action with respect to the matters

addressed in this Agreement. In the event Mid-States fails to timely comply with any provisions or requirements of this Agreement, the Board will immediately exercise any and all legal enforcement actions, including but not limited to those provided for in Section XVII of the CUP, Article 24 of the Douglas County Zoning Regulations, and K.S.A. 12-761.

9. Other CUP Requirements and Conditions. Nothing in this Agreement overrules or supersedes the various requirements and conditions imposed upon Martin Marietta pursuant to the CUP and assumed by Mid-States pursuant to the Consent, and Mid-States agrees to comply with all such requirements and conditions. By entering into this Agreement, the Board is not limiting or suspending its right to enforce the various requirements and conditions of the CUP that are not expressly addressed in this Agreement.

10. Pending CUP Amendment. Mid-States has filed a CUP application, seeking to make various amendments to the terms and conditions of the CUP, which is currently pending before the Lawrence-Douglas County Planning Commission. By signing this Agreement, Mid-States hereby withdraws such application. Although the Board cannot prohibit Mid-States from filing a new application earlier, Mid-States recognizes that the Board anticipates that Mid-States will wait until it has completed removal of the overburden pile from Phase IA before filing a new application.

11. Binding Effect and Condition. This Agreement shall be binding upon and inure to the benefit of the respective parties, and their successors and assigns, except as otherwise expressly provided herein.

12. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original.

13. Governing Law. This Agreement shall be interpreted and governed by the laws of the State of Kansas.

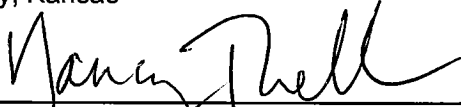
14. Severability. Should any portion, word, clause, phrase, sentence or paragraph of this Agreement be declared void or unenforceable, such portion shall be considered independent and severable from the remainder, the validity of which shall remain unaffected.

15. Modifications. This Agreement may not be amended, altered, modified or otherwise changed except in writing executed by all parties hereto and expressly stating that it is an amendment to this Agreement. The undersigned hereby acknowledge and agree that they, and each of them, will make no claim, and hereafter waive any right that they now have or they hereafter have, based upon any alleged oral alteration, oral amendment, oral modification or other changes based upon any alleged oral warranty, representation or promise except as set forth expressly in this Agreement.


IN WITNESS WHEREOF, this Agreement is approved and effective on this 31st day
of May 2009.

BOARD:

Board of County Commissioners of Douglas
County, Kansas

By: 
Nancy Thellman, Chair

ATTEST:


Jameson D. Shew
Douglas County Clerk

MID-STATES:

Mid-States Materials, LLC
a Kansas limited liability company

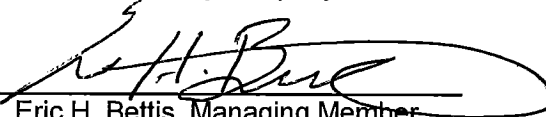
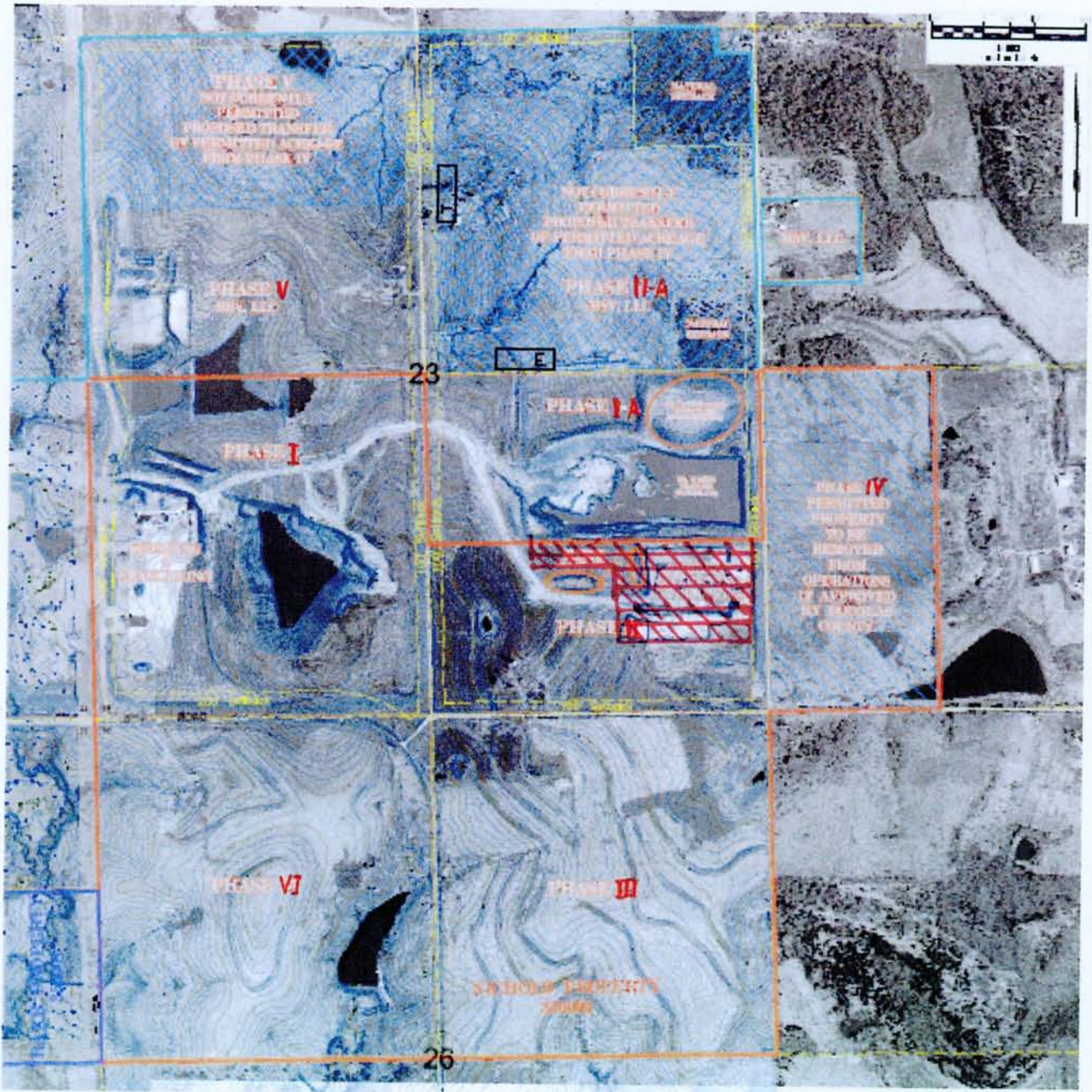
By: 
Eric H. Bettis, Managing Member

Exhibit A
(Phase 1A Reclamation)



Attachment B

PLANNING 11-11-09

The Board considered the appropriate range of final elevations and water feature sizes for the Big Springs Quarry as tabled from the October 21, 2009 meeting. Mary Miller, Lawrence-Douglas County Metropolitan Planning Staff, led the discussion. The goal for this meeting was to determine the appropriate range of variation for the size of the water features and a total surface area of the water bodies.

General Note 4 was revised to read as follows: Landforms indicated are general in nature and final elevations may vary as much as 5 ft higher or 10 ft lower than shown on the plan. Water bodies may change relative to size, location, shape and elevation as field conditions indicate. The surface area of any water body or bodies will not exceed 40% of the disturbed area in the watershed contributing to that water body or bodies.

General Note 5 was added stating: The operator shall, in good faith, work with downstream landowners to effectively manage surface water flows for the benefit of said landowners and the quarry at large.

Keith Browning, Director of Public Works, commented that just because the not-to-exceed 40% of surface area is approved, does not mean every water body will have a surface area that large. Flory asked for clarification that the water bodies could not exceed 40% without coming back to the commission for approval. Browning stated that is correct. Browning also stated in regards to the drainage caused by the pond size, the quarry operator is willing to pump water to other ponds or downstream if necessary to alleviate the problems with adjacent property owners.

There was discussion on the runoff to the Lone Oak property regarding concerns addressed in a memo from the engineer for Lone Oak. PEC provided a spillway design for a generic pond with 40% of the disturbed area and looked at 2 acres ponds and those of the maximum size (40% of the disturbed area) and various spillway area configurations varying from 2' width to 20' width. The modeling indicated that a 10' wide spillway seemed to work well for various pond sizes. The volume of water stays relatively the same, but the flow rate decreases considerably. It was determined that the proposed design is sufficient.

Flory noted that because this is a CUP, the Commission has more control over determining the size of the water features. If someone wanted to put a series of ponds on agriculture land, they would not have to come to the board to act.

Thellman stated for clarity that the Board acknowledges there have been a series of complaints on fly rock and setback. They are taking the fly rock complaint seriously and have directed staff to investigate that complaint. The County Counselor has been in contact with the complainant. The Board will not be accepting discussion regarding this issue at this meeting. Comments are to be focused on the range of variation for the reclamation plan of Phases 1A, 2, 3 and 4.

Thellman opened the item for public comment.

John Hutton, attorney representing Mid-States Materials, stated Mike Berry, with PEC engineers, is present to answer questions. Hutton made reference to the comment made by Flory that the quarry has gone through scrutiny because the quarry requires a CUP. There are other landowners who have larger water features. Regarding the fly rock issue, Hutton invited the Commission to the quarry to watch a rock blasting. Flory asked that under Note 5, Hutton's client will exercise a good faith effort to deal with this water issue as best as he can for all parties. Flory trusts that Hutton stands behind that gesture as well as his client. Hutton responded, that is correct.

John Buffo, attorney for Lone Oak, made a presentation from Robert Prager, Lone Oak's engineer.

Bart Christian, owner of Lone Oak, stated he should be protected by the conditions of the CUP. According to Christian, the State made an opinion that the quarry setback should be a 1,000 feet from his wells.

Dave Henry, adjacent property owner, stated he wants the conditions adopted to be complied with. He is upstream from the quarry. He asked for clarification on how staff came up with allowing up to an 8 foot high bank around the water features. Miller stated the reclamation plan states where approved, the height of the rock walls will not exceed 8 feet. This number was intended to provide a height restriction based on comments made by neighbors concerned about 20 ft high walls.

Thellman closed the public comment.

Flory stated the applicant inherited some of these issues. Many of the major issues were worked out. The applicant, the County and landowners, all worked together to come up with the Consent Decree which solved the major issues, clarified responsibilities and required a reclamation plan, which is where we are tonight. At an earlier meeting, this Board came to a consensus that the plan was appropriate, with the only issue of concern being an acceptable range of variation on the water features and elevation. Staff has worked with the applicant and landowners to come up with a reasonable plan. If this weren't a quarry and was instead a farmer who owned land, we would not have this type of control. There is no violation of state law. Professional engineers have looked at this and came up with a reasonable conclusion. He feels the applicant is acting in good faith regarding the water issues. Flory is in favor of approving the reclamation plan.

Gaughan stated the key point in General Note 4, states any variation from the approved plan will require a revision to the reclamation plan. He feels Note 5 shows the spirit of intent by the applicant for his willingness to work with the adjacent landowners. The plan in place will have a strict set of restrictions on the operation, which Gaughan stated satisfies him.

Thellman stated she agrees with the comments by the other Commissioners. The Director of Public Works has followed up on the concerns of the Lone Oak's engineer. She is in favor of supporting the reclamation plan.

Gaughan moved to approve the adoption of the revised reclamation plan as mandated by the Consent Decree with revisions to General Note 4 and the addition of Note 5 as follows:

General Note 4:

- 1) Finished elevation may vary -5 feet or -10 feet;
- 2) Size of water feature(s) may vary up to 40% of the disturbed area within the drainage area for the water feature(s); as shown on Attachment B;
- 3) Location of water features are restricted to a 300 ft separation from perimeter; and
- 4) Shape of water features are restricted to an 8 ft. maximum height for any natural strata with a slope greater than 3:1 which is approved to be retained for stabilization of the bank. Motion was seconded by Flory and carried unanimously.

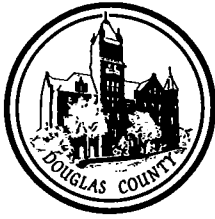
General Note 5:

- 1) The operator shall, in good faith, work with downstream landowners to effectively manage surface water flows for the benefit of said landowners and the quarry at large.

The motion was seconded by Flory and carried unanimously.

At 7:35 p.m., Thellman moved for the Board to recess for 10 minutes. Motion was seconded by Flory and carried.

The Board returned to regular session at 7:45 p.m.



DOUGLAS COUNTY ZONING & CODES

2108 W. 27th Street, Suite I
Lawrence, KS 66047
(785) 331-1343 Fax (785) 331-1347

Sent via Email and First Class Mail

Keith R. Dabney
Director

December 3, 2010

Mid-States Materials, LLC
Attn: Eric Bettis
2 N 1700 Road
Lecompton, KS 66050

RE: Overburden Pile

Dear Eric:

This letter confirms that, on November 11, 2010, County staff toured the location where the Phase 1A overburden pile was previously located. Based upon that site visit and the as-built drawing you subsequently sent to me, it appears to me that Mid-States has complied with its obligations to reclaim the Phase 1A overburden pile as agreed to in the May 27, 2009 Consent Decree entered into between Mid-States and the Board of County Commissioners. This letter only relates to the reclamation of Phase 1A. It is not a finding that Mid-States has complied, or failed to comply, with its other obligations under the Consent Decree.

It is my understanding that you are in the process of having the State Conservation Commission review and approve the reclamation. Please let me know as soon as you have secured that approval. I understand that the State Conservation Commission may not fully approve the reclamation until vegetation is firmly established. For purposes of satisfying the Consent Decree, however, vegetation only need be planted and not fully established. So it may be that the State Conservation Commission will approve the reclamation subject to establishment of the vegetation. At that point it will be appropriate to schedule the matter before the Board of County Commissioners for its review and consideration and to ultimately make a finding that the Phase 1A reclamation is complete.

We appreciate the diligence with which Mid-States has worked to remove the overburden pile and comply with the reclamation plan and consent decree. Thank you for your devoted attention to that matter.

Warmest Regards,


Keith R. Dabney
Director

KRD:kde

CC: Douglas County Board of County Commissioners
Craig Weinaug, Douglas County Administrator
Evan Ice, Douglas County Counselor
John Hutton, Attorney-At-Law
Mary Miller, Planning & Development Services

December 29, 2010

Keith R. Dabney, Director
Douglas County Department of Zoning and Codes
2108 W. 27th Street, Suite I
Lawrence, Kansas 66047

RE: Big Springs Quarry

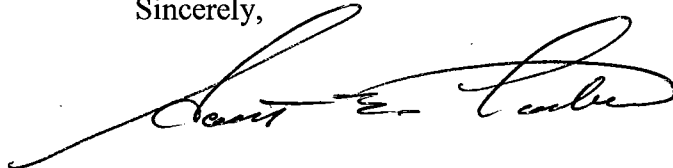
Dear Mr. Dabney,

The State Conservation Commission conducted an inspection at the Big Springs Quarry on December 15, 2010. The purpose of the inspection was to determine conformance with the schedule approved for reclamation activities in Phase 1A pursuant to the consent decree of May 27, 2009 between the Board of County Commissioners, Douglas County, Kansas and Mid-States Materials, LLC. The specific areas of consideration investigated were the formerly large overburden pile in the Northeast Quarter of the Southeast Quarter of Section 23 – Township 12 South – Range 17 East which was left by Martin Marietta when Mid-States Materials purchased the land, and the water feature immediately to the south.

Our inspection determined that the overburden pile has been completely removed, and the resulting land surface has been properly shaped, graded, contoured and seeded. Terraces have been constructed to contain any water that may run off the property in a rainfall event. The runoff water has been routed to the existing lake south of the old overburden area. The elevations and grades around this water feature have been modified to acceptable slopes and grades. It appears that the reclamation work conducted to date is in compliance with the consent decree.

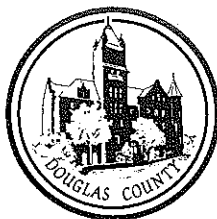
Please feel free to contact us if you have any questions.

Sincerely,



Scott Carlson, Assistant Director / MLRP Manager

pc: Eric Bettis, President – Mid-States Materials



DOUGLAS COUNTY ZONING & CODES

2108 W. 27th Street, Suite I
Lawrence, KS 66047
(785) 331-1343 Fax (785) 331-1347

Keith R. Dabney
Director

June 22, 2009

Mid-States Ventures LLC
Attn: Eric H. Bettis
PO BOX 236
Topeka, KS 66601

RE: Consent Decree Perimeter Fence Repairs

Dear Mr. Bettis:

This letter shall serve as a follow-up to your Friday June 5, 2009 email requesting confirmation regarding fence repairs. I personally inspected the fence on Tuesday June 9, 2009 and confirmed that repairs have been made as required in the Consent Decree.

If I can be of further assistance, please feel free to contact me.

Sincerely yours,

Keith Dabney, Director
Douglas County Zoning & Codes Dept.

CC: Douglas County Board of County Commissioners
Craig Weinaug, Douglas County Administrator
Evan Ice, Douglas County Counselor
John Hutton, Attorney at Law
Mary Miller Planning & Development Services

March 25, 2009

APPROVED TRUCK ROUTES & TRUCK REQUIREMENTS

BIG SPRINGS

Truck Requirements: **All trucks must be tarped from the quarry property to the job site.** No flat bed trucks without sides or tailgates. Tailgates should be in place and upright position.

Approved Truck Route: Hwy 40 entrance to the West and East is an acceptable route. On 45th Street the only acceptable route is on the Shawnee County side towards the West. No trucks are to travel on the Douglas County side of 45th street coming or going to the Quarry. No Township roads shall be used as access to the Quarry. Please follow all posted traffic signs.

PLUMMER

Approved Truck Route: Coming into and leaving the Quarry must be on 189th Westbound towards Hwy 75. 189th Street cannot be taken to the East from the Quarry. All other roads are not authorized truck routes.



MID-STATES MATERIALS LLC

To: Truck Drivers and Truck Owners

From: Mid-States Materials, LLC
Bettis Asphalt & Construction, Inc.

Date: June 22, 2009

Re: Quarterly Big Springs Truck Operations Letter

Pursuant to conditions set forth by both Shawnee County and Douglas County government, all Big Springs Quarry operating entities, which include Bettis Asphalt & Construction, Inc. and Mid-States Materials, LLC are required to conduct quarterly haul truck driver safety and expectation training and provide, at a minimum annual written correspondence to trucking firms and/or customers that do business at the Big Springs Quarry and related property. Enclosed with this correspondence is a written outline and agenda that shall be reviewed to ensure that all parties understand what conditions are in place at the Big Springs quarry and related property to regulate haul truck activities in and around the site. Please allow this correspondence along with the enclosure and agenda items contained therein to serve as our guidance to you for future haul truck activity within the Big Springs Quarry facilities. This written correspondence along with the enclosure is intended to meet our obligations and conditions set forth by both Shawnee County and Douglas County.

Regards,

MID-STATES MATERIALS, LLC

Eric Bettis

Regards,

BETTIS ASPHALT & CONSTRUCTION, INC.

Eric Bettis

Enclosure

Date: June 24, 2009 @ 6:00 a.m.

Re: Truckers Meeting Agenda

Agenda:

1. Circulate sign in sheet. Everyone in attendance must sign in.
2. Active Permits
 - a. Shawnee County
 - I Resolution 91-70
 - II Resolution 90-30
 - III resolution 2007-14
 - IV Resolution 2009-30
 - b. Douglas County
 - I CUP 7-2-90 (No. 3500)
 - II CUP 6-6-92 (No. 3853)
 - III CUP 12-9-09
 - IV Consent Decree, Dated 5-27-09
3. Truck Routes
 - a. Shawnee County
 - I No asphalt and/or ready mix trucks are permitted to use westbound 45th street without Shawnee County government pre-approval. This would include incoming material and/or outgoing material.
 - II The required truck route for all incoming or outgoing asphalt and/or ready-mix related truck traffic shall be via U.S. Highway 40 north of the Big Springs Quarry.
 - III There are *no* limitations or prohibitions on hauling aggregate materials westbound on 45th street from the Big Springs Quarry.
 - IV There are *no* limitations or prohibitions on hauling aggregate materials eastbound or westbound on US Highway 40 from the Big Springs Quarry.
 - b. Douglas County
 - I No quarry related material haul trucks (asphalt, ready-mix, and/or aggregate) are permitted to use Douglas County Route 442, except for local deliveries limited to traveling to and from the east of the Big Springs Quarry and related property in Kanawaka and/or Clinton Township that is west of E550 Road.
 - II The principal main haul truck entrance and exit, whether loaded or unloaded with aggregate, asphalt, and/or ready-mix, shall be US Highway 40 to the north of the Big springs Quarry and related property.
4. Permitted Hours
 - a. Shawnee County permitted hours of operation are Monday through Saturday 6:00am to 10:00pm. Hours may be expanded with permission of Shawnee County Public Works and/or County Commission.
 - b. Douglas County permitted hours of operation are Monday through Friday 6:00am to 10:00pm. Permitted hours for load-out activities are Monday through Friday 6:00am to 5:30pm. Expanded hours for hauling asphalt and/or ready-mix are permissible so long as the approved truck routes are followed and certain county conditions are met.
 - c. Load-out times for aggregate, asphalt, and ready-mix are subject to change and adjustment periodically based upon management's decision.
5. Loading Requirements
 - a. All trucks, both incoming and outgoing, shall be securely tarped. This shall include all trucks hauling aggregate, asphalt, and/or ready-mix.
 - b. Removing secured tarps on any quarry haul roads or within the quarry or related property area is strictly prohibited.
 - c. Tickets and payment vouchers will not be issued until the scale person can visually verify that a load is properly tarped.
 - d. Weight tickets will not be provided to: flat bed trucks without sides or tailgates, trucks that do not have tailgates in place and in an upright position, or trucks whose loads are not properly covered by a tie-down tarp.
 - e. Federal, State, and Local weight limitations and restrictions shall be followed for each incoming and outgoing load.
6. Driver Expectations and Safety
 - a. Safety shall remain of the utmost importance both inside the quarry related property area and outside the quarry facilities.
 - b. Proper insurance shall be maintained at all times.
 - c. Truck owners and drivers shall remain in good standing at all times with the USDOT.
 - d. Drivers shall remain in their trucks at all times while in the quarry and while being loaded.
 - e. Drivers shall follow all federal, State, and Local traffic laws.
 - f. Drivers shall yield to other pedestrians, trucks, and equipment while in the Quarry and related property.
 - g. Drivers shall wear a DOT approved seat belt at all times.
 - h. Drivers shall abide by all posted traffic signs while inside and outside the quarry and related property, including all applicable speed limit signs.
 - i. Driver recklessness will not be tolerated.
 - j. Drivers shall be courteous to others at all times.
 - k. Drivers shall continuously keep the public's general safety in mind at all times.

6-24-09

Bettis Asphalt & Construction, Inc.
Mid-States Materials, LLC

Quarterly Trucking Meeting

Sign in sheet.

Victor Merrifield

Riley R

J D TAGGART

Tom Newell

Larry Stearns

John Easley Jr.

Jerry Caplan

John L Akin

SMOOTS TRUCKING LLC

Rick Smoots

Mike Ketter

Angela L Seastrom

Horse Lanham

Jim Gruber

Jim Bowers

Quinn Jones

Deezy Hammer

Robert Bowers

Francis Bowers

Eric Brown

Dan Truckin

RDR Excavating Inc

RDR Ex

H+H Trucking Inc.

H+H Trucking Inc

ENSLEY TRUCKIN

Caplan T & G

J.L. Akin Trucking

H+H

D+J Trucking

L+H

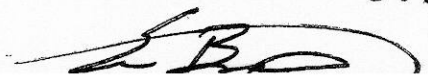
KB Inc

H+H

KB Inc

HB Inc.

Bowers Trucking



Thomas Bew Bob Hauling LU KS
Scott C. Jon Ks Sand + Concrete

Dorlan Roberts KB Inc

CHUCK FLY W & H #5

Arthur Stano KB Inc

John Davis KB Inc
Julio E. Kelly D & J

Daryl Krystofaszy Tomco
Curtis Adams KBI

David E. Anderson KBI

X Luz Duff Betty's Asphalt

you chr Inschw

Shane Fuscho Fuscho Trucking

Phil Hammer L & H

LBJ enterprises

Rick Bradley Bradley Trucking

Ronald Vero KBI

Darren Adolph KBI

Steve Cricqui Steve Cricqui Const
cricqui

Danny Hess BKW

Carl Smith Allen Trucking Co.
Larry Allen



MID-STATES MATERIALS LLC

To: Truck Drivers and Truck Owners

From: Mid-States Materials, LLC
Bettis Asphalt & Construction, Inc.

Date: October 1, 2009

Re: Quarterly Big Springs Truck Operations Letter

Pursuant to conditions set forth by both Shawnee County and Douglas County government, all Big Springs Quarry operating entities, which include Bettis Asphalt & Construction, Inc. and Mid-States Materials, LLC are required to conduct quarterly haul truck driver safety and expectation training and provide, at a minimum annual written correspondence to trucking firms and/or customers that do business at the Big Springs Quarry and related property. Enclosed with this correspondence is a written outline and agenda that shall be reviewed to ensure that all parties understand what conditions are in place at the Big Springs quarry and related property to regulate haul truck activities in and around the site. Please allow this correspondence along with the enclosure and agenda items contained therein to serve as our guidance to you for future haul truck activity within the Big Springs Quarry facilities. This written correspondence along with the enclosure is intended to meet our obligations and conditions set forth by both Shawnee County and Douglas County.

Regards,
MID-STATES MATERIALS, LLC

Eric Bettis

Regards,
BETTIS ASPHALT & CONSTRUCTION, INC.

Eric Bettis

Enclosure

Date: October 1, 2009 @ 6:00 a.m.

Re: Truckers Meeting Agenda
At Big Springs Quarry

Agenda:

1. Circulate sign in sheet. Everyone in attendance must sign in.
2. Active Permits
 - a. Shawnee County
 - I Resolution 91-70
 - II Resolution 90-30
 - III resolution 2007-14
 - IV Resolution 2009-30
 - b. Douglas County
 - I CUP 7-2-90 (No. 3500)
 - II CUP 6-6-92 (No. 3853)
 - III CUP 12-9-09
 - IV Consent Decree, Dated 5-27-09
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 - III There are *no* limitations or prohibitions on hauling aggregate materials westbound on 45th street from the Big Springs Quarry.
 - IV There are *no* limitations or prohibitions on hauling aggregate materials eastbound or westbound on US Highway 40 from the Big Springs Quarry.
 - b. Douglas County
 - I No quarry related material haul trucks (asphalt, ready-mix, and/or aggregate) are permitted to use Douglas County Route 442, except for local deliveries limited to traveling to and from the east of the Big Springs Quarry and related property in Kanawaka and/or Clinton Township that is west of E550 Road.
 - II The principal main haul truck entrance and exit, whether loaded or unloaded with aggregate, asphalt, and/or ready-mix, shall be US Highway 40 to the north of the Big springs Quarry and related property.
4. Permitted Hours
 - a. Shawnee County permitted hours of operation are Monday through Saturday 6:00am to 10:00pm. Hours may be expanded with permission of Shawnee County Public Works and/or County Commission.
 - b. Douglas County permitted hours of operation are Monday through Friday 6:00am to 10:00pm. Permitted hours for load-out activities are Monday through Friday 6:00am to 5:30pm. Expanded hours for hauling asphalt and/or ready-mix are permissible so long as the approved truck routes are followed and certain county conditions are met.
 - c. Load-out times for aggregate, asphalt, and ready-mix are subject to change and adjustment periodically based upon management's decision.
5. Loading Requirements
 - a. All trucks, both incoming and outgoing, shall be securely tarped. This shall include all trucks hauling aggregate, asphalt, and/or ready-mix.
 - b. Removing secured tarps on any quarry haul roads or within the quarry or related property area is strictly prohibited.
 - c. Tickets and payment vouchers will not be issued until the scale person can visually verify that a load is properly tarped.
 - d. Weight tickets will not be provided to: flat bed trucks without sides or tailgates, trucks that do not have tailgates in place and in an upright position, or trucks whose loads are not properly covered by a tie-down tarp.
 - e. Federal, State, and Local weight limitations and restrictions shall be followed for each incoming and outgoing load.
6. Driver Expectations and Safety
 - a. Safety shall remain of the utmost importance both inside the quarry related property area and outside the quarry facilities.
 - b. Proper insurance shall be maintained at all times.
 - c. Truck owners and drivers shall remain in good standing at all times with the USDOT.
 - d. Drivers shall remain in their trucks at all times while in the quarry and while being loaded.
 - e. Drivers shall follow all federal, State, and Local traffic laws.
 - f. Drivers shall yield to other pedestrians, trucks, and equipment while in the Quarry and related property.
 - g. Drivers shall wear a DOT approved seat belt at all times.
 - h. Drivers shall abide by all posted traffic signs while inside and outside the quarry and related property, including all applicable speed limit signs.
 - i. Driver recklessness will not be tolerated.
 - j. Drivers shall be courteous to others at all times.
 - k. Drivers shall continuously keep the public's general safety in mind at all times.

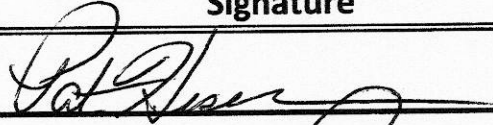
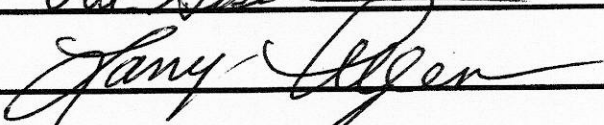




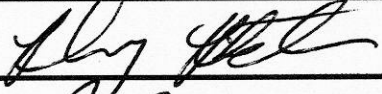
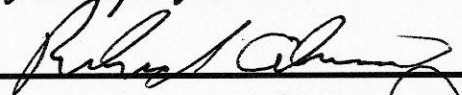
Date: October 1, 2009

Re: Quarterly Truckers Meeting Sign-In Sheet

Printed Name	Signature
DAN CUMBS	Dan Cumbs
Tim Bowers	Tim Bowers
John Akin	John Akin
Mike Ketter	Mike Ketter
Larry Stearns	Larry Stearns
Joan Howell	Joan Howell
Riley Rees	Riley Rees
Phil Harmon	PH
John Easley	John Easley
MARK HUXMAN	Mark Huxman
Arthur Stano	Arthur Stano
Larry J. Jones	Larry J. Jones
RAY CUNNINGHAM	Ray Cunningham
ROB VIERS	Rob Viers
Alan L. J.	Alan L. J.
Kirk Bradley	Kirk Bradley
JD Taggart	JAMES D TAGGART
Rex Dreascher	Rex Dreascher
Francis Bowers	

Date: October 1, 2009

Re: Quarterly Truckers Meeting Sign-In Sheet

Printed Name	Signature
Pat Hesse	
LARRY ALLEN	
Jason Insko	
Shane Insko	
Darren Adolph	
Brian Galvan	
Rocky Broder	
Richard Abrams	
Julio Ortiz	Julio Ortiz Angela Seaton DT

Memorandum
City of Lawrence
Planning & Development Services

TO: File

FROM: Mary Miller, Planning Staff

CC: Scott McCullough, Director of Planning and Development Services
Sheila Stogsdill, Assistant Director of Planning
Eric Bettis, Operator of Big Springs Quarry
Keith Dabney, Director of Zoning and Codes

Date: June 16, 2009

RE: Withdrawal of CUP-07-05-08 requesting revisions to the conditions of the Conditional Use Permit for Big Springs Quarry

The Board of County Commissioners approved the attached Consent Decree at their May 27, 2009 meeting. The Consent Decree contains measures that the Commission and the Quarry Operator agreed would address the compliance issues that the Board has determined exist at the Big Springs Quarry.

The quarry was originally approved with a Conditional Use Permit [CUP-7-2-90] which was later revised to permit additional acreage, the construction of a shop building, and the transfer of operator. The most recently approved Conditional Use Permit for the Quarry is CUP-12-09-06 which approved the transfer of operator from Martin Marietta to Mid-States Materials.

In July of 2008, the applicant submitted an application [CUP-07-05-08] requesting the revision of several conditions of the Conditional Use Permit. Section 10 of the Consent Decree stated that by signing this agreement, Mid-States withdraws this pending application.

The Consent Decree was signed by Eric Bettis, Managing Member of Mid-States Materials, LLC and Nancy Thellman, Chair of the Board of County Commissioners, on May 27, 2009; therefore, CUP-07-05-08, requesting revisions to the conditions of the Conditional Use Permit for Big Springs Quarry, is considered to have been withdrawn and is no longer an active file. The reclamation plans which were submitted with the application are also considered withdrawn as new plans will be provided in compliance with the terms of the Consent Decree.

Attachment H

PLANNING 09-16-09

The Board considered the following items dealing with Mid-States Materials' Big Springs Quarry, generally located at 2 N 1700 Road: a) A request of Mid-States Materials to amend the Consent Decree it entered into with the Board of County Commissioners to permit a rock wall along the north edge of the water feature in Phase 1A of the quarry; and b) detailed reclamation plans of Mid-States Materials for reclamation of Phases 1A, 2, 3 and 4 of the quarry. The requested amendment to the Consent Decree and the detailed reclamation plans are intertwined and, as a result, items "a and b" will be considered together. Mary Miller, Lawrence-Douglas County Metropolitan Planning Staff, presented the items.

Miller gave a presentation on the history of the pre-submittal meetings, the reclamation requirements for phases 1A, 2, 3 and 4, and discussed the neighbors concerns and goals. The applicant wishes to retain a rock wall along the north edge of the water feature in Phase 1A of the quarry to increase the stability of the bank. Staff has no objections to retaining this wall. The Consent Decree, however, states that all slopes will be graded to a gradient of 3:1 or less. Section 15 of the Consent Decree outlines modifications to the agreement that would permit the request. If the Board approves the amendment to the Consent Decree, the applicant may retain the rock wall. If not approved, the reclamation plans will be revised to remove the rock wall and add a 3:1 slope. The other item up for consideration is the reclamation plan. One of the requirements of the reclamation under the Consent Decree is the removal of an overburden pile in Phase 1A to an established elevation of 1070. The reclamation plan shows the pile removed to a 1070 elevation. It also requires that the elevation and grade of the water feature be shown with the grade reduced to 3:1 or less. The north wall does not show a reduced grade of 3:1 or less. The County Engineer indicated the rock wall may be more stable than a graded shore and had no objections to the retention of the rock wall. The Consent Decree also required that a Sequencing Plan be published for reclamation which is provided under Sheet 7. Reclamation at Big Springs is concurrent, so they are reclaiming one area just after it has been mined. Variations are acknowledged but not reflected in the reclamation plan. That is why it is difficult to know the exact size of the ultimate water features. Due to the concurrent nature of the quarrying, and uncertainty of the amounts and location of the limestone deposits, it is reasonable there will be some variations in the final elevations and water feature sizes on the site. Staff proposed the anticipated elevation and size and location of water features be shown on the plans along with an acceptable range of variation noted. Staff recommends an administrative review of changes to the final elevation, size and location of the water features if they vary beyond the acceptable range established on the reclamation plan. Staff suggested on the final analysis a plus 5 feet or minus 5 feet range. The operator does not have a problem with the higher end of the range not exceeding 5 feet, but they are concerned if excavation includes more limestone than initially anticipated, the lower end of the range could exceed 5 feet. The applicant does not want to be required to bring in material from elsewhere to bring the depth up to the lower range of 5' minus the shown elevation. The Conditional Use Permit for this project did not originally require water features to be a certain size. However, the principle concern is that water features added in the reclamation phase not impact the flow or capacity of nearby streams. Keith Browning, Director of Public Works, has been evaluating the size of the overall watershed compared to the contributions of the quarry to the watershed – what impacts the water features within the quarry will have on the stream and the overall watershed.

Staff recommends the Board of County Commissioners approve the detailed reclamations plans for Phases 1A, 2, 3, and 4 subject to the following conditions:

1. Provision of a detail sheet for the County Engineer's approval, showing the erosion control method which will be used for the removal of the overburden pile in Phase 1A. The detail should show the erosion control method to be used, the location, and which phase of the reclamation they will be installed in.
2. A modification from the Consent Decree has been requested by the operator to permit the natural strata along the north edge of the water feature in Phase 1A to remain. If the modification is not approved, the north slope of the water feature in Phase 1A shall be revised on the reclamation plan to a 3:1 slope or less.
3. The applicant shall make the following revisions to the reclamation plans:
 - a. General Note 3 on the Title Page should be revised to clarify that reclamation in these phases will be conducted per requirements of the Consent Decree and will not be concurrent with mining activity in those phases.
 - b. General Note 4 on the Title Page shall be revised to reflect the appropriate range of variations as determined by the County Engineer. The water features shall be shown to reflect the anticipated size on the plan and the anticipated surface area of the water features shall be noted on the plan. The Note shall also indicate that any variation beyond the approved range would require administrative review by the Planning Staff and approval by the County Engineer.
 - c. Note 3 on the General Sequencing Plan shall be revised to indicate that the utilization of natural strata rather than the 3:1 or less slope above the established water surface elevation shall require notification to the Planning Office and approval by the County Engineer.

- d. Sequencing Note 1 on Plan Sheet 7 shall also state that the erosion control measures will be 'maintained' as required in the Stormwater Pollution Protection Plan.
- e. The sentence in the first paragraph under the heading 'Sequencing Plan' on Plan Sheet 7 shall be revised: "Reclamation of each quarried area within a phase is planned to occur concurrently with mining operations and will be completed as soon as practical after quarrying is complete; however Phase 1-A is an exception as quarrying is complete but reclamation is occurring to resolve a pre-existing condition and portions of Phase 1-A and Phase 2 will be disturbed to facilitate this reclamation."
- f. Revise the reclamation plan shown on Plan Sheet 5 to remove the grading change over the Mid-American Pipeline.
- g. Sheet 5 shall be revised to show accurately the 160 ft setback along the western property line.
- h. The plan should note that each pond will have an 'outflow' and indicate the approximate location.

It was determined by the Board the items "1" and "2" will be discussed separately.

Thellman open the item for public comment.

The first item discussed was the request of Mid-States Materials to amend the consent Decree to permit a rock wall along the north edge of the water feature in Phase 1A of the Quarry.

David Henry, neighboring resident, stated he has safety concerns that animals or children might fall in the water features.

Bart Christian, 1719 E 150 Road, stated ideas he had related to planning staff were not addressed well in this plan. He suggested the wall be made on the south side of the water feature sloping 3:1 the other way. He is concerned there will be a 20-foot drop to the water from the rock wall.

John Hutton, presenting Mid States Material, stated it was the engineering firm who suggested leaving the rock wall. There is no 20-foot cliff or drop created by the wall. He referenced photos of the site and stated the drop from the edge of the wall was only 3-4 foot.

Gaughan asked Keith Browning if he had looked at the wall. Browning stated he had only looked at photos but it appears the obvious answer would be not to move the wall. There is no reason to slope back 3:1 when you already have a stable slope.

Henry stated the General Note indicates the applicant is requesting that high walls be left at other locations. Miller confirmed that under General Note 3 on the title page, that rock wall status could be retained on several of the water features. If the Board approves the requested Consent Decree modification the plan note will be revised to indicate only the water feature in Phase 1A will be allowed to retain the existing rock wall. If the Board denies the Consent Decree modification it is staff's recommendation that all reference to the rock wall on the existing and future water features be removed and replaced with 3:1 slope requirements.

Christian stated that sloping to the south would change the drainage study and would take water away from his creek.

Hutton stated the water feature in Phase 1A is being pumped west to a feature on Phase 1. The operator does not want water to overflow to the east because Lone Oak had a lawsuit against Martin Marietta over too much water flowing toward Lone Oak in Phase 1A.

Eric Bettis, owner of Mid-States Materials, stated he is pumping Phase 2 into 1A and then moving water from Phase 1A over to Phase 1. There would have been too much water coming out of the Phase 1A pond back in March if they had not pumped out the water. In terms of a drop off in Phase 1A, there is not a 20-foot drop off at the rock wall.

The second item discussed was the detailed reclamation plans submitted by Mid-States Materials for reclamation of Phases 1A, 2, 3, and 4 of the Quarry.

Hutton stated his client agrees with staff's recommendations. A drainage study has already been approved by Keith Browning. Nothing other than the size of water features and elevation of these features needs to be decided. He considers the plan in its present state a good one.

Flory asked if it is possible for the Commission to set parameters for the maximum upper limit of the size of the

water features in the reclamation plan. Then, if the operator thought he would exceed that limit, it would need to come back to the Commission. Hutton stated he doesn't disagree with setting a maximum size. They are proposing 45% of the disturbed area as the maximum upper limit for water features per phase. The neighbors want Mid-States to be as specific down to the acreage as possible. They cannot be that specific, because they are doing the reclamation concurrently with the mining.

Thellman commented that quarrying and mining concurrently is a more environmentally friendly way to do mining.

Gaughan asked if the excessive height or elevation below the 1070, or agreed upon elevation, impacts the floodplain to the east of the site with runoff.

Mike Berry, Engineer with Professional Engineering Consultants, stated it was his opinion the runoff will not vary significantly for agricultural or pasture type land for this location.

Dave Buffo, Attorney for Lone Oak, stated the history of the issue is that any time there has been a complaint against the quarry; the Quarry operators have argued that the condition is ambiguous. He stated the Commission asked staff to come back with a detailed grading plan in a final form. The plan here tonight is not. He is not even sure what we are voting on tonight.

Christian stated he wants a drainage study done. He also stated mining should not be done within 300 feet of other property. He feels this is a complex issue and engineers need to resolve it.

Rick Henry, neighboring property owner, stated he has a problem with not knowing the exact location of the water features. What is expected (acceptable) is a small variation from what is shown on the drawings. He voiced concerns that the drawing shown for Phase 4 water features has the potential of being too large an area.

Hutton stated the total body of water can not reach more that 45% of the disturbed area. If that is not pleasing, Browning can make a proposal.

Henry pointed out that the wording on the plan was for each water feature not the total number of water features per phase.

Hutton acknowledged this was not the operator's intention and that could be corrected on the plan.

Martha Silks, Groundwater Consultant representing Lone Oak, suggested that a water budget be performed on the drainage to include the contributing area of surface water flow, the groundwater contribution to the lakes, the loss to evaporation and the net impact to the downstream users.

Thellman asked if this study is typical for reclamation plans. Silks stated when she participates in underground water studies done for residential areas in western Kansas; she has to account for the evaporation loss of water in the pond. This is a loss to a surface water stream so that needs to be accounted for.

Christian also stated he is concerned about the size of the water features in the quarried areas reducing the outflow of his water impoundment facility.

Dennis Baker, staff for the Kansas State Conservation Commission, stated there are a lot of other quarries in Douglas County and none of them face this type of scrutiny. He indicated this reclamation plan was more detailed than many he had seen required or approved.

Flory asked if the reclamation plan, with respect to the water issues, is in conformance with Kansas Law.

Baker confirmed "yes" it is. He also stated high walls can be approved by the Kansas State Conservation Commission. Four people in his office reviewed the reclamation plan submittal. Their review covered all requirements in state review were present or had been met. Actually, the plan was more detailed than the State required.

Dave Henry stated the County has established both through the CUP process and the Consent Decree, reclamation requirements that exceed those of the State. He said what he and the neighboring property owners

are trying to accomplish is not to have their property devalued any further.

At 8:50 p.m., Thellman moved to recess the meeting until 9:05 p.m. Motion was seconded by Gaughan and carried unanimously.

The Board returned to session at 9:05 p.m.

Hutton suggested the Commission speak with Mr. Baker regarding any questions about the specificity of the plan or in relation to other plans in the State of Kansas, then Baker could enlighten the Board on how detailed the applicants plan really is.

Thellman moved to close the public comment period; Gaughan seconded and the motion carried unanimously.

Thellman stated a good deal of progress has been made from the start of their involvement in the quarry's compliance. The outstanding issue of concern is the General Note 4 and what reasonable variation limits to place on water features; whether that is creating unfair burden on the operator; whether neighbors are satisfied; and, somewhere in the middle, a good result can be made. The Board's goal is to try to reach a reasonable agreement between the parties. The comments from Dr. Baker were helpful in establishing that the plan before the Commission is more detailed than what the State requires. Thellman suggested tabling the item to review the information presented.

Gaughan stated he is not interested in revisiting this item again and again, but he is not confident he can make a decision tonight.

Flory stated he has one point or issue and that is staff recommendation in respect to General Note 4, on acceptable range of variation. Anything else as operation goes forward, if it is clear the operator is going to exceed the acceptable range of variation, he would have the item come back to Board instead of to the County Engineer, to request an amendment to the plan. He suggested that the applicant and staff determine some definition of what is an acceptable range of variation before a vote on the plan is taken.

Gaughan moved to approve a modification from the Consent Decree as requested by the operator to permit the natural strata along the north edge of the water feature in Phase 1A to remain. Motion was seconded by Thellman and carried unanimously.

It was also the consensus of the Board that the plans of Mid-States Materials for reclamation of the quarry were generally acceptable, except that revisions to general note 4 were needed. The Commission wants Note 4 to be revised to provide: 1) a more specific delineation of the acceptable range in size that each water feature could be, and 2) to set a maximum limit as to how much variation of the water features could be approved by the County Engineer, after which it would be brought before the County Commission for review and action.

It was also the consensus of the Board that the approval of the reclamation plans should be placed on the County Commission agenda for September 30. At that time, public discussion would be limited to the proposed revisions to General Note 4.

The County Commission also committed to make the staff recommendations available for public review before it is discussed by the County Commission.