

BEFORE THE OKLAHOMA DEPARTMENT OF MINES

IN RE: Permit Application of Arbuckle) Permit No. 2381
Aggregates to mine limestone, dolomite,) Date: May 7, 2010
shale, sand, gravel, clay and soil.)
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Protest, Objection and Comment to Permit Application

Pursuant to Oklahoma Constitution Art. II, § 7, The United States Constitution, Amendments 5 and 14, 45 O.S. § 724, and relevant rules of the Oklahoma Mining Commission, including but not limited to 460:10-10-2; 460:10-17-2; 460:10-17-10; 460:10-17-14; 460:10-17-15 and 460:10-17-16, the Citizens for the Protection of the Arbuckle Simpson Aquifer (hereinafter "CPASA") and its members hereby formally submit this protest, objection and comment to Permit Application No. 2381 filed by Arbuckle Aggregates as captioned above. This protest, objection and comment is filed timely by hand delivery on September 2, 2010. The last published notice in the Johnston County Capital Democrat appeared on August 19, 2010. *See* 460:10-1-9. CPASA and its members request a Public Hearing.

I. IMPACTS ON NATURAL RESOURCES INCLUDING HIGH QUALITY WATERS

CPASA is a public entity, and a citizens' group with members owning land and residing both within one mile, and at greater distances. The proposed mining application is likely to have real and detrimental effects to CPASA and its members, including those members who own land and reside less than one mile

from the proposed mine, as well as those members who own land and reside at further distances. The effects that are likely to occur include, *inter alia*:

- 1) Causing irreparable damage to the environment;
- 2) Depleting and contaminating High Quality Waters of the State of Oklahoma including Pennington Creek, nearby tributary springs and streams, Mill Creek, and the Arbuckle Simpson Aquifer;
- 3) Causing the deposit of dust and other materials including the overburden of rock and soil being mined on properties not owned or controlled by the Applicant;
- 4) Causing the dredging and filling of wetlands, including streams and springs which are tributary to the Washita River; and
- 5) Interfering with the natural flow of springs and streams emanating from a sole source aquifer in violation of Oklahoma law.

For example, Pennington Creek is listed as a High Quality Water of the State of Oklahoma. See 785:45 Appendix A.3. The proposed mine is likely to affect Pennington Creek. 460:10-13-3 sets out specific requirements a permit applicant must meet to obtain a permit to operate a mine that may affect a High Quality Water. Pursuant to 460:10-11-3 it is the responsibility of a non-coal surface mining permit applicant to provide to the Department all of the

information required by this Subchapter. Arbuckle Aggregates has failed in its Application to meet the requirements of the Mining Commission's rules relating to Natural Resources, High Quality Waters, and environmental protection. Accordingly, Arbuckle Aggregate's application is invalid and must be denied.

II. NECESSARY PERMITS NOT IDENTIFIED IN APPLICATION

Pursuant to 460:10-13-4, applicants submitting non-coal mining permits on or after August 1, 2001, that may affect High Quality Waters or may require permits from the Oklahoma Department of Environmental Quality or the Army Corps of Engineers, must submit approved copies of other state, federal, and local government permits or licenses that pertain to the site. These permits shall include but are not limited to, storm water permits, an approved pollution prevention plan, permits issued in compliance with Section 404 and 401 of the Clean Water Act as well as the National Pollutant Discharge Elimination System, stream water use permits, flood plain permits, and copies of notifications sent to the state and federal fish and wildlife agencies.

Arbuckle Aggregates has failed to comply with this requirement. It has attached and/or referred to some permit applications. However, certain permits and notifications are obviously missing from the application. For instance, the application does not contain copies of notifications sent to the state and federal fish and wildlife agencies. Moreover, there is no permit for the dredging and

filling of wetlands, nor is there documentation regarding Arbuckle Aggregate's impacts to High Quality Waters.

Pursuant to 460:10-11-3 it is the responsibility of a non-coal surface mining permit applicant to provide to the Department all of the information required by this Subchapter to be an approvable permit application. Arbuckle Aggregates has failed in its Application to meet the requirements of the Mining Commission's rules. Accordingly, Arbuckle Aggregate's permit is invalid and must be denied.

III. NECESSARY RECLAMATION PLAN NOT IDENTIFIED IN APPLICATION

Arbuckle Aggregates is obligated to identify and describe a reclamation plan in its permit application. 460:10-15-3. Arbuckle Aggregates has failed to identify and describe a reclamation plan that meets the requirements of the law, including, *inter alia*:

- 1) The methods to prevent or eliminate conditions that will be hazardous to animal or fish life in or adjacent to the affected land. For instance, the methods described include developing "an erosion and water management plan" in the "future." No such plan is provided, and preparing it in the future does not comply with the permitting rules. Moreover, there is a claim that "while operating" Arbuckle Aggregates will comply with federal, state and local laws. While this may or may not be true, Arbuckle does not provide any plan of how it intends to comply with these laws, particularly in light of its complicated project

that intends to excavate entire streams, and undercut highways. Simply put, Arbuckle fails to describe any “method” as required by the Department of Mines.

- 2) The outline of the proposed final limits of the excavation, during the number of years for which the permit is requested;
- 3) The outline of the tailing disposal area, both before and after reclamation;
- 4) The outline of the disposal area for the spoil and refuse area, both before and after reclamation;
- 5) The approximate location of any impoundment or water body which will remain upon final reclamation;
- 6) The proposed location of ditches to provide for drainage. The location of diversions, terraces, or other Best Management Practices to be used for preventing or controlling erosion and off-site siltation;
- 7) The boundaries of the affected area for the anticipated life of the mine; and
- 8) The boundaries of the 100-year floodplain.

Additionally, the application does not indicate that the reclamation will occur simultaneously as required by 460:10-15-2.

Finally, the operational and reclamation plan is completely silent on how the mining will comport with 82 O.S. § 1020.9, which provides that “each groundwater protection agency shall be responsible for developing and enforcing

groundwater protection practices to prevent groundwater contamination.” There is nothing in the proposed mining plan or the permit application that will ensure that the springs and streams are not contaminated either by the release of hazardous substances, or by depletion of the aquifer itself. There are some minor provisions in the plan relating to oil storage tanks, but given the specific requirements applicable to the Arbuckle Simpson Aquifer, and the requirements of 82 O.S. § 1020.9 and 27A O.S. § 2-14-101, *et seq.*, there is nothing addressing the operation and reclamation of the mine to prevent contaminating the aquifer by the release of materials or by depletion.

In this case, Arbuckle Aggregates plans to build a mine essentially at the location of the “Holder Spring”. The mine would reasonably be expected to eliminate the spring, frustrating the purposes of 82 O.S. § 1020.9 and 27A O.S. § 2-14-101, *et seq.* There is no plan for the maintenance of the spring flow during mining, or its reclamation after mining is completed. Moreover, the excavation of the mine will cause the dredging and removal of entire wetlands. There is no compliance with the Clean Water Act in regard to this planned activity.

Accordingly, Arbuckle Aggregate’s permit application is invalid and must be denied.

IV. ARBUCKLE AGGREGATES HAS ALREADY WILFULLY VIOLATED STATE LAW

Upon information and belief, Arbuckle Aggregates has already caused the realistic threat of waste by contamination by drilling bore holes using the services

of unlicensed well drillers, and by not properly certifying that the bore holes were properly plugged. Bore holes are a known conduit for the pollution of an aquifer, including by the direct runoff of oils and pesticides, as well as fecal coliforms and other biological contaminants.

“Willful violation” means an act or omission which violates 45 O.S. (1981) Section 721 et seq., or this Chapter, or individual permit conditions, committed by a person who intends the result which actually occurs.

The act of drilling bore holes using unlicensed well drillers and failing to plug them is a violation of Oklahoma law. Certain directors and officers of Arbuckle Aggregates have engaged in this violation of Oklahoma law in the past, and knew better on this occasion. Pursuant to 460:10-17-9 (c), because Arbuckle Aggregates is a repeat, willful violator, the Application must be denied.

PRAYER FOR RELIEF

CPASA requests a formal hearing concerning this protest, objection and comment, and regarding any issues or claims that may be addressed by other parties or learned in discovery of this matter. CPASA reserves the right to protest, comment or object based upon information that may be learned in the future, or upon legal bases that are not apparent at this time.

For the foregoing reasons, CPASA respectfully requests that Arbuckle Aggregate’s permit application No. 2381 be denied.

**BEFORE THE OKLAHOMA DEPARTMENT OF MINES
2915 N Class Blvd, Suite 213, Oklahoma City, OK 73106**

IN RE: Permit Application of Arbuckle) Permit No. 2381
Aggregates to mine limestone and
other minerals and materials.

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**MOTION FOR LIMITED ADMISSION TO PRACTICE IN
THIS ADMINISTRATIVE HEARING**

In accordance with 5 O.S. §§ 1981, & 17.1 and Article II, Sec. 5 of the Rules of the Oklahoma Bar Association, I, the undersigned attorney, move this Hearing Examiner to admit me to practice law before this tribunal in the above-referenced administrative hearing.

I do solemnly swear that I will support, protect and defend the Constitution of the United States, and the Constitution of the State of Oklahoma; that I will do no falsehood or consent that any be done in court, and if I know if any I will give knowledge thereof to the judges of the court, or some one of them, that it may be reformed; I will not wittingly, willingly or knowingly promote, sue or procure to be sued, and false or unlawful suit, or give aid or consent to the same; I will delay no man for lucre or malice, but will act in the office of attorney in this court according to my best learning and discretion, with all good fidelity, as well to the court as to my client, so help me God.

I, the undersigned, further file the following statement as to my qualifications to practice law:

I, Jason B. Aamodt, obtained my jurist doctorate degree from the University of Tulsa College of Law, 3120 East 4th Place, Tulsa, OK 74104 in May 1996. I am licensed to practice by the Supreme Court(s) of the State(s) of Oklahoma as well as by the United States District Court for the Northern, Eastern and Western Districts of Oklahoma, as well as the United States