

Dry Ready-mix plant - Public Hearing Q&A's

Background: During the public hearings for the requested accessory use of dry ready-mix plant(s) associated with Windmill LLC (June 10, 2015), Kelly Aggregate (July 2, 2015) citizens raised a number of questions. During the process some of the questions were responded to but others were not.

Mines in Eureka Township are allowed as an Interim Use. Earlier this year the Town Board approved a text amendment that allowed dry ready-mix plants in level 3 mines. There are currently two mines in the Township that are affected by this change in the Mining Ordinance, Windmill LLC. and Kelly Aggregate. This does not apply to level three mines that were grandfathered prior to the Mining Ordinance being adopted.

This is an attempt to capture the questions that were raised during these meetings and provide the responses that were given at the meetings and/or subsequent meetings. If they were not provided during the meetings a follow up with the appropriate party was undertaken. You will note that some of the questions were similar; in some cases they are clustered/combine in a set.

Question(s): If a number of citizens are opposed to the dry ready-mix plant why is the Interim Use Permit (IUP) being allowed? If all the conditions are met is it just a "go" anyway even if citizens are opposed? The Planning Commission and Town Board are not obligated to recommend that a dry batch ready-mix plant be approved. Wait and see the effects of Windmill LLC before approving Kelly Aggregate.

Response: Attorney Lemmons stated, if the sole reason for recommending denial is because the residents are opposed to it, it is going to be an invalid decision. Case law is clear. The fact that the residents do not want it is not a basis for denying a permit, which would be considered arbitrary and capricious.

Response: Attorney Lemmons stated that once you have established conditions, if the applicant meets those conditions, you are bound to grant it to them. If you don't you are acting in an arbitrary and capricious manner. You have to grant it to them – you do not have the right to say no. Case law states that just because citizens oppose it, that is not enough to deny it, unless there is objective evidence why they think their objections are justified.

Question: What conditions have been placed on the dry ready-mix accessory use IUP's?

Response: Windmill LLC

- The concrete plant can be located no less than 1,000 feet from any dwelling.
- The concrete plant can located not less than 500 feet from and property lines.
- Hours of operation are Monday –Friday from 7:00 a.m. – to 5:30 p.m. with no Saturday operation.
- Dust-free surface on the area traveling to and from the mine.
- Notification to the Town Board and property owners within 1000 feet if there is any spillage or release of cement dust.

- The height of the structure shall not exceed the height of the berm and/or screening.

Kelly Aggregate:

- The concrete plant can be located no less than 1,800 feet from any dwelling
- The concrete plant can be located not less than 200 feet from and property lines
- Hours of operation are Monday –Friday from 7:00 a.m. – to 5:30 p.m. with no Saturday operation.
- Recycled bituminous dust-free surface on the area traveling to and from the mine, the turnaround and area in front of the facility.
- Any spills or release relative to the dry batch ready-mix plant need to be reported to the MPCA, the Township and property owners within 1,000 feet, consistent with MPCA regulations.
- The height of the structure shall not exceed the height of the berm and/or screening east of Dodd to Highview, and not portion of the plant shall be visible to houses on 235th Street, east of Dodd
- No truck hauling to and from mine of Eureka Township gravel roads except for sites within the Township.
- Subject to the applicant and the Township executing an amended development agreement.

Question - Is there a need to have an Environmental Assessment Worksheet (EAW) completed?

Response - Kirsten Pauly, PE, Sunde Engineering, Inc. stated that the permit needs to be amended to allow the ready-mix as an accessory use – that does not mean you have to do an EAW. There have already been permits issued for the mining site-there has already been an environmental review. The aggregate industry produces different mixtures and it is common for MN DOT or counties to require new types of processing, it is not uncommon to change some of the processing equipment or change some of the material as the market changes.

Kelly Aggregate owner stated there is a letter from the engineer (Kurt D. Quaintance, P.E. Vice President, James R. Hill, Inc.) indicating there are no concerns from an engineering standpoint for the addition of a ready-mix facility. If approved, the site operation, including the dry batch concrete production plan would operate in accordance with all previously mentioned local, state, and federal permits/standards, as well as the Groundwater Monitoring Plan, as described in the current IUP.

Attorney Lemmons (Finding of Fact) That the proposed amendment does not meet or exceed the threshold of any mandatory EAW categories listed in M.R. 4410.4300. That as a result, there is no need to require the applicant to conduct and prepare a new EAW.

Question: Could you provide some clarification on what would be considered structural alterations?

Response: Attorney Lemmons stated that the proposed dry batch ready-mix concrete plant is not permanently affixed and can be removed offsite. It is an independent unit.

Question: Isn't this an intensification of use with the bringing in raw material from offsite to manufacture a product with equipment that wasn't at the site before and has to be delivered by trucks that were not there before?

Response: Kirsten Pauly stated that the aggregate would be used in the ready-mix plant. Instead of being hauled offsite as raw aggregate, it will be hauled off site as finished product. Kirsten Pauly stated the plant would be swapping out the type of truck, not necessarily one-for-one, but it is not as if the plant is adding another 20-30 trucks. The existing permit has a maximum amount of truck traffic per hour and there is no request to increase that.

Attorney Lemmons stated there was no finding of intensification of use. Finding of Fact – That the proposed ready-mix concrete plant will not result in increased traffic. That it will not intensify the present use of the property as an aggregate extraction and processing operation.

Question: How is potential water pollution managed?

Response: Kristen Pauly, stated that in Minnesota (MN) certain activities require a storm water permit from the Minnesota Pollution Control Agency (MPCA). It is a state program that is required at a federal level. In the state of MN the PCA has develop general permit for non-metallic mineral mining and associated activities, and that permit covers sand and gravel mining and the associated activities to include ready-mix plants, hot mix asphalt plants. Within that permit is a requirement for a storm water pollution prevention plan and that plan has to make sure that the storm water is contained onsite and is allowed to infiltrate?, or if it is discharged there are monitoring requirements in accordance with this permit. The PCA has inspection requirements, and if there is ever a change in stockpile locations, it is a working document that as evolvment occurs the storm water prevention plan is reviewed to make sure all the current activities are addressed. Bringing in new portable equipment the storm water pollution plan would be updated. The permit is in place and is monitored yearly and a quarterly report is filed.

Windmill LLC owner stated that all of his state permits are updated and current.

Kelly Aggregate owner stated there are an existing storm water appropriation permit and a pollution control plan in place for the weir wastewater. There is also three ground water monitoring wells.

Question: What is the impact of increased water usage in the mine? What impact of well on site (Kelly Aggregate) and water table in the area? Neighbors well water?

Response: Kristen Pauly stated that the site does operate under a water appropriations permit, and they are permitted to utilize up to 600 gallons per minute. The Windmill LLC has this permit

with the Department of Natural Resources (DNR). This accessory use will operate within the existing permit.

Kelly Aggregate owner stated that monitoring is done quarterly and recorded to the Township yearly. American Engineering and Testing conducts the tests. They look for groundwater temperature, pollution, etc. Kelly Aggregate is permitted for a well for 1.1 million gallons per day.

Question: How much water is used in each truckload of ready-mix?

Response: Windmill LLC owner indicated ~ 350 gallons per load.

Question: Are the wash pits lined, and will they eventually leach away? How will the trucks be cleaned? Will hydrochloric acid be used? And if so what is the impact? (Note this question was asked at the Windmill LLC public hearing.)

Response: The Windmill LLC owner stated that the washout areas for the trucks are uncertified septic tanks. The water gets recycled as well as the sludge on the bottom of the tanks.

Kelly Aggregate owner stated, chemicals are not allowed anymore. State regulations went into effect five years ago that trucks cannot wash on site. All trucks have a cylinder tank on the back and that is how they wash the trucks out. Pollution control equipment will be installed in accordance with all local, state and federal pollution standards. The wastewater pond will be sized accordingly and operated to collect ready-mix truck wash water.

Question: What is the impact of introducing Portland cement, a toxic and hazardous material into the mine? What is impact of bring fly ash into the mine?

Response: Kristen Pauly answered the question regarding toxicity of Portland cement noting Material Safety Data Sheets (MSDS) are required for companies to describe potential hazards that are associated with their products. The mine safety is overseen by Mining Safety Health Administration (MSHA) and Occupational Safety and Health Administration (OSHA) which are separate entities, but the MSDS are there for worker's right-to-know. Portland cement is hazardous to inhale and the data sheets indicate that there is crystal and silica in the cement and those particles can cause silicosis and that is hazardous. It lists precautions workers have to take if they are working around dry cement. Under normal use the cement is not hazardous to the environment. It is similar to fertilizers in that there are certain criteria for how to use them, but they are not hazardous waste. The material should be kept dry and enclosed.

Kristen Pauly indicated the types of materials being brought into the site are aggregate, sand and gravel to mix with cement and water, fly ash, and some stabilizers. The Minnesota Pollution Control Agency (MPCA) has a number of regulations regarding ready-mix plants and mining operations in general, in terms of how you store chemicals and materials. In the case of fly ash, it is in an enclosed silo loaded pneumatically and has a dust suppression system associated with the silo to prevent the escape of particles. The cement is also dry and has to be enclosed. The

plant itself operates under an Air Emissions Permit from the MPCA, which requires certain measures to be in place. There is also a storm water pollution plan and a Storm Water Permit issued by the MPCA – part of this amendment would involve the review and updating of that storm water pollution prevention plan to address the storage of these new materials and the operation of the plant itself.

Windmill LLC owner stated that cement powder is always contained as it cannot get wet or it will harden. There is a dust-bag (as part of the dry ready-mix plant) house that acts like a vacuum cleaner sucking dust away (cement powder). The bag house captures the dust and reuses it. It fits tightly around the truck and muffles the noise and empties into the bag house. The dust and air quality is monitored once a year; there is an operation test to certify that there are limits on dust. If the vacuum system goes down, the whole operation shuts down.

Kelly Aggregate owner stated the plant comes with common dust control. All materials are loaded into the truck dry, the water is added to the barrel of the truck and it is mixed while on its way to its destination. The products used are the same products being mined and screened and removed from the site every day. The cement will be in a silo that is sealed with a pressurized container – it is virtually impossible for the Portland cement to leak out.

Question/statement from Public Hearing: A citizen stated that silicosis is an irreversible lung disease that is caused from cement dust and the crushing of asphalt and concrete. Tests conducted by OSHA in Chippewa Falls, Wisconsin indicated that silica dust was measured a mile away.

Response: Kirsten Pauly addressed the silicosis issue and the study that was brought up in Chippewa Falls regarding silica dust in ambient air adjacent to the three mining operations. Kirsten Pauly is familiar with the study and the MPCA has reviewed the data. Her understanding of the study is that the elevated levels were the result of an agricultural field where they were tilling, and the elevated levels were in the air as a result. The plant sites where they are processing the sand have not shown violations of silica dust in the ambient air. The issue has been studied in Wisconsin and Minnesota. She also stated it is regulated for workers in a mine, but there are no standards in the state of Minnesota.

Kelly Aggregate owner stated, silicosis is not a product of manufacturing cement in any way, shape or form. Only the cutting of hardened concrete and the fracking of certain sands are the cause of silicosis, which has been a concern in the past.

Question: How will dust be controlled?

Response: See conditions of permit relative to dust from trucks hauling in and out of mine.

Kelly Aggregate owner stated that the plant has over two miles of conveyor and it is not covered. Rock and sand is the only thing on the conveyors. There is not dust at all. All material is washed within 700 feet of conveyor.

Windmill LLC owner stated the storage bin will be the stockpile. Within the year, Mr. Leroy Chard of Rivers Edge Concrete will install a plastic canvas cover over the structure to control noise and dust in the bins. The biggest storage is the stockpile of gravel which holds 2-3 truckloads of gravel each. The dust-bag house is like a vacuum cleaner sucking dust away (cement powder). The bag house captures the dust and reuses it. It fits tightly around the truck and muffles the noise and empties into the bag house. Storage bins are fed by a 60-foot conveyor, which is inside the building. The bag house is a greater help environmentally.

Question: Will truck traffic increase?

Response: Kelly Aggregate owner stated, truck traffic will not increase. To date, the pit has not exceeded more than 40% of the truck traffic that was listed in the traffic report and is under the current EAW.

Attorney Lemmons Finding of Fact – That the proposed ready-mix concrete plant will not result in increased traffic.

Question: Won't this increase the amount of noise?

Response: Kirsten Pauly stated the state does have noise standards and there is the ability to monitor noise levels to be in compliance. The predicted noise is not anticipated to increase or exceed noise standards.

Windmill LLC owner stated the berms would shield noise from the backup loader, motors and noise of the dry ready-mix plant. The generator is muffled and will probably be quieter than the present operation. There would be more noise from the backup alarms than the equipment running in the plant. He also stated that he and Mr. Chard, his partner, will be relocating the crusher slightly and will put the dry batch ready-mix plant where the crusher is now and this will help with the noise and will be moving it behind the wash plant.

Kelly Aggregate owner stated a concrete plant is virtually silent. The noise will come from the trucks as the plant does no mixing. The concrete is mixed in the drum. The diesel truck is revved up but it would not be any louder than a tractor going by. The plant will be 18 feet below grade. The berm on the west side is 10 feet high. There is no one on that side at all. The only noise people could complain about is the building of the berms and the scraper that will be completed by the end of July.

Question: Impact on home values?

Response: Kelly Aggregate owner stated with a level three mine, there are not depreciable values of neighbors' homes and he has had an assessment done confirming that by an independent firm. Any accessory use will knock years off the pit. Rather than haul the rock away, some will be processed right there, using sand for concrete.

Attorney Lemmons stated that there would have to be concrete testimony to that fact, or it will be over turned. The only type of evidence that the court will recognize would be from an appraiser to determine the effects on surrounding properties.

Question: What is the effect on property taxes?

Response: Per Quinn Doheny, Administrative Coordinator, Dakota County, Phone #: 651-438-4372. Tax Revenue for Eureka Township from mining operations:

- .15 cents per ton or 21.5 cents per cubic yard
- 2014 revenue was: \$15,4515.62
- 2015 revenue for first two quarters of 2015 will be: \$15,428.15

There is an annual review fee for IUP mineral extraction facility: \$150.00 or \$6.00 per 1000 cubic yards of material removed the previous calendar year whichever is greater.

Question: Was the Public Hearing posted in the paper?

Response: Attorney Lemmons stated that at the reorganization meeting, it was designated to have two official papers for the posting of notices. Attorney Lemmons also stated that as long as it is in one paper, (we have two designated papers) that is sufficient.

The Deputy Clerk stated the Public Hearing was posted in the Dakota County Tribune.

Question: What is being dumped over the hill at the Windmill LLC site?

Response: Supervisor Jennings inquired about the status of complaints made against Mr. Miller. Chair Budenski stated that all the issues in the complaint have been addressed by Mr. Miller.

Question: If there are any complaints by residents, could additional conditions be added at the annual review?

Response: Attorney Lemmons stated yes, and that the purpose of the annual review is to discuss things of that nature.

Question: Not effective communication with residents of the Township?

Response: The newsletter, Eureka! The News, is now electronic! If you wish to receive a copy (e-mail or hard), please contact the Town Clerk at: 952-469-3736 or clerk@eurekatownship-mn.us. There will no longer be a blanket mailing to property owners and residents. The newsletter is also available for viewing on the website <http://eurekatownship-mn.us>. You can find information on meetings, agendas, land use and building zoning, calendar of events, the newsletter, ordinances, helpful links, contact information and much, much more.

A change to the zoning ordinance, Ordinance 3 requires a public hearing. Notification is to be posted on the Town Hall bulletin board located on the outside south end of building and in the

official newspapers: Dakota County Tribune (Farmington/Rosemount) and the Sun ThisWeek (Eagan/Lakeville) no less than ten (10) days prior to the hearing.

Question: Where are we going from here? Do we have a plan? Will it lead to concrete blocks, asphalt plants etc? Are we allowing the Township future growth, whether we want it or not? Are we adhering to our long term plan or vision for the Township?

Response: