

February 1, 2021

Mr. Roger Lane, Zoning Administrator
Dane County Planning & Development
City-County Building, Room 116
210 Martin Luther King Jr. Blvd.
Madison, WI 53703

RE: Summary of Concerns Regarding CUP #2510

Dear Mr. Lane:

Thank you for sending us the Summary of Concerns regarding CUP #2510 from the December 22, 2020 public hearing at the ZLR committee meeting. As requested, we are providing additional comments and information on the concerns as presented. These responses can be found below.

1. *Volume of Traffic: The applicant stated at the public hearing that they anticipated the proposed asphalt plant would either not increase, or perhaps even reduce, the traffic associated with the existing mineral extraction site. However, they did not quantify what those impacts might be. The applicant should set a definitive, numeric limit on the volume of truck traffic per day, and include this information in a revised Operational Plan.*

The entrance to the site is located on CTH MM, which is a Class A Highway and does not have any restrictions. Trucking from the existing operations for the last 15 years has not impeded the flow of traffic in the area.

A majority of the aggregate material leaving the Oregon Site is trucked 18 miles to the north to our Fitchburg asphalt plant. By locating a portable asphalt plant at the Oregon Site for the maintenance and repair of public roads, for each ton of asphalt the portable asphalt plant produces, it would reduce trucking the aggregate 18 miles north to the permanent asphalt plant and trucking hot-mix asphalt 18 miles back.

The portable asphalt plant will be a temporary use and will be located on site intermittently when required for construction and maintenance of public roads. Asphalt plant traffic will be minimal during the winter months because production is tied directly to construction activities.

The volume of trucking from asphalt plant operations on a typical day is 11 to 12 truck loads per hour. The volume of trucking from the asphalt plant is dependent upon the projects being constructed and may vary with changes in market conditions and project types.

2. *Air Pollution: Concerns were raised about whether or not the proposed plant would comply with recently revised EPA standards on asphalt production (see here: <https://www.epa.gov/stationary-sources-air-pollution/hot-mix-asphalt-facilities-new-source-performance-standards-nsp>). Concerns were also raised about the effect of high winds on the dispersal of dust, particulates and other pollutants. The applicant should revise the Operational Plan to specifically address these issues.*

Air emissions from asphalt plants are heavily regulated by the Wisconsin DNR and the federal EPA. All of Payne & Dolan's asphalt plants comply with Wisconsin DNR and EPA air emission standards and regulations. Asphalt plant operations at the Oregon site shall be conducted in accordance with the Federal EPA and the Wisconsin DNR air pollution control regulations.

Asphalt plants are not considered a major source of emissions. Over a decade ago, the EPA reviewed emissions from asphalt plants and determined that such facilities are not a major source of air pollution and were subsequently delisted by the agency. [EPA (2002). "National Emission Standards for Hazardous Air Pollutants: Revision of Source Category List Under Section 112 of the Clean Air Act." *Federal Register*, Vol. 67, No. 29, pp. 6521–6536. <http://www.gpo.gov/fdsys/pkg/FR-2002-02-12/pdf/02-3348.pdf>]

We have air operating permits, issued by the Wisconsin DNR under authority of the US EPA, for all of our asphalt plants including the portable asphalt plant that will be brought onto the site. All conditions of the air operating permit will be followed during asphalt plant operations.

Permitted asphalt plants are required to keep extensive records for their air permits. Stack tests must be performed by an independent third party regularly to ensure compliance with air quality regulations.

Dane County, the City of Fitchburg, the Town of Vienna, and the City of Stoughton, have not received any air pollution complaints from our asphalt plant operations in their communities.

We have hundreds of employees working safely around asphalt every day. The employees of many county highway departments, towns, villages, counties and local contractors also work safely with these materials every day. If you visit one of our plants, you will see that our employees are wearing typical construction safety equipment such as hard hats and gloves. We have not had any health problems with our employees working around asphalt, whether at a plant or on a road paving crew.

We have had no violations from the Wisconsin DNR for any of our asphalt plant air permits including the portable asphalt plant that will be brought onto the site.

We would support a condition to be included in CUP #2510 that the portable asphalt plant brought onto the site have and maintain in full force and effect an air permit issued under the authority of the Wisconsin DNR and the US EPA.

We would support a condition to be included in CUP #2510 that asphalt plant operations shall be conducted in accordance with the applicable state and federal air pollution control regulations.

3. *Water pollution: Concerns were raised about the potential for arsenic pollution in private and/or municipal wells. A suggestion was made that the applicant pay for local well monitoring. The applicant should provide evidence of steps taken to minimize or eliminate arsenic emissions, runoff or groundwater contamination in the asphalt production process.*

Asphalt plant operations do not present a risk to groundwater quantity or quality. Asphalt is inert: it does not leach materials. In fact, it is used in constructing porous pavements to reduce stormwater runoff in urban areas. It has also been used as a liner for fish hatcheries and water reservoirs.

Arsenic is an element that occurs naturally in soil and bedrock formations and has been detected in every county in the State of Wisconsin. See the attached Arsenic in Drinking Water document (PUB-DG-062 2017) prepared by the Wisconsin DNR.

We have had no issues with arsenic at any of our asphalt plant or aggregate operations.

Water is not used for production at the asphalt mixing plant. Small amounts of water may be used to water haul roads as a dust suppressant.

The Wisconsin DNR regulates all facilities engaged in asphalt production activities and requires all such facilities to apply for and obtain a WPDES permit that regulates discharges as provided in Chapter 283, Wis. Statutes. These discharges include exposure of asphalt plant operations to storm water. We have stormwater (WPDES) permits issued by the Wisconsin DNR for all of our asphalt plants including the portable asphalt plant that will be brought on to the site. All conditions of the stormwater permit will be followed during asphalt plant operations.

Any fuel tanks associated with the portable asphalt plant will be well maintained and will have spill containment that meets Wisconsin DATCP and US EPA specifications as a safeguard to prevent accidental release to the environment.

The portable asphalt plant that will be brought on to the site has a spill prevention control and countermeasure plan in place as required by the US EPA.

The aggregate operation on the site approved by CUP #2334 already has its own stormwater permit, spill prevention and countermeasure plan, and a stormwater management plan previously submitted and approved by Dane County (Permit #74-123).

Payne & Dolan has been successfully operating other asphalt plants within Dane County and throughout Wisconsin which have not been detrimental to the groundwater.

Dane County, the City of Fitchburg, the Town of Vienna, the City of Stoughton, and the Town of Oregon have not received any water pollution complaints from our operations in their communities.

We have no violations of our stormwater permits or for water pollution from the Wisconsin DNR for our asphalt plant or aggregate operations.

We would support a condition to be included in CUP #25120 that asphalt plant operations shall be conducted in accordance with the applicable state and federal stormwater and ground water protection regulations.

4. *Odor Control: Some members of the public questioned how effective proposed odor-controlling technologies would be at minimizing nuisance odors to neighboring properties. Applicant should provide evidence that similar plants using proposed technologies have successfully met performance standards described in NR 429, Wisconsin Administrative Code.*

Potential odors emitted from the site can and will be controlled by utilizing the latest odor control additives or technologies.

The most effective odor additive to date that Payne & Dolan uses is Ecosorb, which is produced by Odor Management, Inc. Ecosorb is a non-toxic, non-hazardous, biodegradable odor additive made with natural ingredients. This odor additive suppressant product acts as an oxygen scavenger that significantly reduces the release of compounds that are responsible for the characteristic asphalt smell.

The Ecosorb family of asphalt odor control additives have been used and proven effective in preventing or reducing odors associated with the production of paving materials throughout North America, Europe, Australia, and Pacific Rim countries. According to a Technical Data Sheet provided by Ecosorb, use of their product during asphalt production has resulted in a 96% reduction in perceived odor emission realized through the addition of the Ecosorb additive. See attached documents for additional information regarding Ecosorb.

We have not had any odor complaints at any of our asphalt plants at which we use Ecosorb.

Dane County, the City of Fitchburg, the Town of Vienna, and the City of Stoughton, have not received any odor complaints from our asphalt plant operations in their communities.

We would support a condition to be included in CUP #2510 requiring the use of Ecosorb or a similar product to control odor during asphalt production.

5. *Pollutant Monitoring: The applicant should revise the Operations Plan to identify ongoing monitoring practices that will be implemented to ensure compliance with pollution regulations and permit conditions. Information about how to access such monitoring data should be made available to the public.*

All aggregate sites and asphalt plants are required to have various environmental permits, which include compliance with all environmental regulations, monitoring of working procedures, implementation of best management practices, inspections, compliance testing and recordkeeping.

Our plants have received the Wisconsin Asphalt Pavement Association (WAPA) Diamond Achievement award and the National Asphalt Pavement Association Diamond Quality award for environmental excellence. We have also been awarded the national plant of the year award on several occasions.

We have also received the Environmental Leadership Award to recognize hot mix asphalt plants that have exceeded the already high environmental standards that are set for the asphalt industry. The award criteria were developed by a subcommittee of the Environmental Technology Transfer Team, which included DNR and WAPA along with representatives from the Wisconsin Towns Association, Wisconsin County Highway Association, League of Wisconsin Municipalities and Marathon County Zoning Department

We would support a condition to be included in CUP #2510 requiring the applicant must obtain and continue to meet all legally required and applicable local, county, state and federal licensing requirements. Copies of approved licenses or other evidence of compliance will be provided to the zoning administrator upon request.

We would also support a condition to be included in CUP #2510 that the Zoning Administrator or designee may enter the premises of the operation in order to inspect those premises and to ascertain compliance with these conditions or to investigate an alleged violation.

6. *Compliance with Existing CUP 2334 Standards: Some in attendance questioned whether the existing mineral extraction operation was operating in compliance with CUP 2334 standards, particularly with respect to dust control. The Zoning Division should inspect the mineral extraction site and verify whether permit conditions continue to be met.*

Payne & Dolan has operated the Oregon Aggregate Site in full compliance with all of the conditions of CUP 2334.

We have had Open Houses at the existing Oregon Site since the new portion of the site was opened in 2016. However, we were not able to have an Open House in 2020 due to the current Covid health emergency. The Open House allowed neighbors and town officials the opportunity to visit the site, have a tour of the operations, ask questions, express concerns, and gain insight into current and upcoming site operations. Hopefully, we will be able to resume the Open House in the near future.

We attend a Town of Oregon board meeting every year and provide an update on the Oregon Aggregate Site operations (CUP 2334).

Dane County and the Town of Oregon have received no complaints regarding the Oregon Aggregate Site (CUP 2334).

We have had no contact from the Wisconsin DNR regarding any complaints that they may have received regarding the Oregon Aggregate Site (CUP 2334).

We have had no violations from the Town of Oregon, Dane County or the Wisconsin DNR for the Oregon Aggregate Site (CUP 2334).

We support the Zoning Division inspecting the mineral extraction site to verify compliance with CUP 2334.

7. *Noise: The applicant stated that the noise of the proposed asphalt plant would be “similar” to that of the existing mineral extraction site. Members of the public asked if that meant that the total noise level would then double. Proposed conditions on the permit should be amended to set an absolute, peak noise level, **from all combined operations on the site**, of no more than 75 decibels, as measured from the property line.*

As discussed, the noise created by operation of the asphalt plant will be of a similar nature to the existing mineral extraction operation.

The asphalt plant will be located near the middle of the existing operation and 20-30 ft. below the top of the screening berms. This location will help mitigate potential noise from leaving the site by placing the plant below existing grade, taking advantage of existing topography and vegetation, and keeping distance from surrounding neighbors.

The plant will follow all EPA, DNR, local laws, and company policies & procedures to minimize noise.

We would support a condition to be included in CUP #2510 placing a limit for the peak noise level of no more than 75 decibels, as measured from the property line.

8. *CUP Termination Date: Members of the public proposed a shorter initial Conditional Use Permit term, to evaluate the impact of the asphalt plant, before a longer-term permit is approved.*

No matter what the duration or term of the Conditional Use Permit, all conditions of the approved permit must be complied with or the permit may be revoked. Therefore, there is no reason for a shorter permit duration than what is requested.

We would support the recommended conditions #16 and #19 from the Dane County staff report be included in CUP #2510.

9. Hours of Operation: *The applicant should revise the Operational Plan to identify the specific activities (and their potential traffic, noise and other impacts) that would occur during “start-up,” “shut-down” and “maintenance and repair” periods. Permit conditions should make clear that performance standards continue to apply while these activities are taking place. At least one member of the public testified that they would prefer a 7:00 a.m. plant operation start time.*

The activities to occur during the “Start-up” and “Shut-down” periods include incidental activities that may occur at the site outside of the production hours. These activities include pre/post shift safety inspections of equipment, warming up of equipment, daily maintenance (like greasing) of equipment, quality control technicians taking daily moisture samples, plant clean up and daily safety huddles. There would be no asphalt production during these times.

Asphalt production would be limited to the same production hours as the current aggregate operations.

We would support a condition to be included in CUP #2510 requiring that performance standards continue to apply while these activities are taking place.

10. Property Values: *Representatives from Payne and Dolan testified that similar asphalt plants did not result in a diminution of value in neighboring properties. The applicant should provide assessment or appraisal information to verify this claim.*

The portable asphalt plant will be a temporary use and will be located on site intermittently when required for construction and maintenance of public roads.

The operation of the existing Oregon Aggregate Site has not prohibited growth as the area surrounding the site has had significant development over the last 15 years. See attached map.

Payne & Dolan currently operates other asphalt plants in Dane County and other communities throughout Wisconsin and the operation of those plants has not impeded development or improvement of the surrounding properties. Several maps are attached showing the development and improvement of properties surrounding our facilities.

Dane County, the City of Fitchburg, the Town of Vienna, the City of Stoughton, and the Town of Oregon have not received any complaints regarding our aggregate sites or asphalt plants having a negative effect on property values.

11. Public Contact for Applicant: *Payne and Dolan should identify a particular individual the public may contact with concerns about plant operations or impacts. This information should be updated as staff changes, and should be included in posted information at the site and online.*

The application submitted to the Town of Oregon and Dane County for CUP #2510 did include the contact information for a company representative that the public may contact regarding the CUP application. The Town of Oregon clerk and Dane County planning staff have contact information for Payne & Dolan representatives.

We understand from discussions with staff that a standard condition for recent mineral extraction CUP approvals requires a sign that includes the name and contact information be located at the site entrance.

We would support a condition to be included in CUP #2510 requiring a sign with the recommended contact information be located at the site entrance.

12. *Additional Public Hearings: Some members of the public asked if there could be additional public hearings in the Town of Rutland or the Village of Brooklyn on this proposal. Given the COVID-19 pandemic, it may be difficult for these entities to hold in-person hearings. The ZLR committee should decide if there is additional information or testimony that could be provided at subsequent hearings that was not available at the 12/22/2020 ZLR public hearing.*

Payne & Dolan went through the required application and public hearing process with the correct regulatory authorities for the CUP 2510 application. Two public hearings have been held on this application. The Town of Oregon Plan Commission held a public hearing on this item on November 17, 2020. The Dane County ZLR Committee held a public hearing on December 22, 2020.

We have only received one phone call from a neighbor that wanted to discuss the application.

13. *Similar Asphalt Plants Elsewhere: Members of the public asked if Payne and Dolan operates other, similar, asphalt plants, particularly at a similar distance to residential neighborhoods. The applicant should identify similar sites. If feasible, the ZLR may wish to consider a site visit of such operations.*

Payne & Dolan operates many asphalt plant facilities in urban communities across Wisconsin with similar distances to residential neighborhoods and schools. Many of these asphalt plants are permanent plants and not a temporary and intermittent portable plant like the one proposed at the Oregon Aggregate Site. Attached are maps showing some of these locations.

We are willing to give staff, ZLR committee members or neighbors a site visit to our operations as allowed under the current health emergency. We have had Open Houses at the existing Oregon Site since the new portion of the site was opened in 2016. However, we were not able to have an Open House in 2020 due to the current Covid health emergency. The Open House allowed neighbors and town officials the opportunity to visit the site, have a tour of the operations, ask questions, express concerns, and gain insight into current and upcoming site operations. Hopefully, we will be able to resume the Open House in the near future.

14. *Summary of Village of Brooklyn's Extraterritorial authority: Members of the public requested a written*

summary of the Village of Brooklyn's regulatory authority beyond its municipal boundaries.

- a. The Village of Brooklyn may object to **land divisions, but not CUPs** within 1.5 miles of its boundaries under its current ordinances.*
- b. If the Village chose to do so, it could, in cooperation with the Town of Oregon, enact a extraterritorial zoning ordinance under s. 62.23(7)(a), Wis. Stats. which could give the Village direct authority over CUPs. To date, however the Village has not done so.*

Payne & Dolan followed the CUP application procedures required by the Town of Oregon and Dane County at the time of application.

We appreciate all of the time that you and your staff continue to take to review our submitted plans. We have submitted enough substantial evidence to meet the conditions of approval. We have demonstrated that the application and all requirements and conditions established by the Dane County relating to the conditional use are or shall be satisfied. There has been no substantial evidence provided that would prohibit us from meeting the conditions of approval. The Town of Oregon Plan Commission and Town Board voted unanimously to approve CUP 2510.

Payne & Dolan has been operating aggregate sites and asphalt plants in Dane County for many decades. The establishment, maintenance and operation of these sites and plant has not been detrimental to or endangered the public health, safety, comfort or general welfare. The proposed portable asphalt plant will be held to the same standards of public health, safety, comfort and general welfare to insure that the Town of Oregon and Dane County are not negatively affected by the proposed plant.

Thank you for your time and consideration. If you have any questions and/or need additional information, please do not hesitate to contact me at (262) 524-1258.

Sincerely,

Payne & Dolan, Inc.

A handwritten signature in blue ink, appearing to read "Clint S. Weninger".

Clint Weninger, P.G.
Land Resources Manager

Attachment