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April 21, 2011

Mr. Dale Johnson  
Attorney at Law  
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RE: *IMQ v. Jefferson County, et al.*

Dear Dale:

In response to your recent letter of April 15, 2011, I reject your statement that Jefferson County has failed "to engage in diligent SEPA review of Iron Mountain Quarry's project application." Your contention seems intended to heighten the conflict between our respective clients. Your contention has little relationship to the serious task of making an appropriate SEPA threshold determination for IMQ's project.

I was also disappointed by the accusatory tone of your letter because your theme breaks with the amicable communications that have taken place between our clients since the beginning of this year.

The record of prior communications demonstrates that the County has worked with your firm to review information and move the SEPA analysis forward to a new threshold determination. Although I understand that your client is eager to gain a new threshold determination as soon as possible, there is no basis in the record to claim that the County's efforts have caused any delay in this process. There are numerous supplemental technical reports that IMQ acknowledges are necessary to enable appropriate environmental review by the County, but which IMQ itself has not yet provided to the County.

I direct your attention to a recent email summary sent by your colleague, Mr. Brent Carson, on April 6, 2011. In his email, Mr. Carson acknowledged that, out of eight specific supplemental studies required by the County, and which IMQ has agreed to provide to address gaps in the previous SEPA documents of IMQ, four had not yet been transmitted from IMQ to the County. In particular, IMQ has accepted the need to supplement its previous SEPA documents on impacts relating to tribal/fisheries issues, wetlands, traffic, and blasting (including vibration and flyrock).

For certain other topics upon which IMQ has likewise accepted a duty to provide supplemental studies, several have been received by the County only within the last thirty days. The

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supplemental report on groundwater/aquifer recharge issues was received by the County on March 23, 2011, which is also the date of receipt of IMQ's supplemental study on air quality, wind effects, and greenhouse gas emissions. The updated noise study was received more recently still, on March 31, 2011.

The absence of a final statement from the County setting forth its review, analysis, and comprehensive response to these studies between the date of receipt by the County and our telephone call of April 8, 2011, is not evidence of lack of diligent review. The County is charged with the duty to perform appropriate review of the IMQ project proposal, and will continue to do so. The means and methods of its review will be orderly, rigorous, and as expeditious as possible. But the County does not accept IMQ's demand of segmental review of each supplemental study in any particular order. This demand implies that IMQ may dictate a specific course of review in order to exert control over the independence of the County's SEPA process. Nothing in SEPA law supports this view.

The County remains perfectly well aware of IMQ's pending damages claims. A timely new SEPA threshold determination is in the mutual best interests of the County and IMQ. But in performance of its SEPA duties, the County must resist the precise kind of litigation-based influence expressed in your letter of April 15, 2011. It is very important to the County that the integrity and independence of its SEPA threshold determination should not be vulnerable to criticism that the County has acquiesced to IMQ pressure tactics.

In order to help reach these aims the County will be working with the environmental land use planning firm of Shockey Planning Group, Inc., 2716 Colby Ave., Everett, WA 98201. Mr. Reid Shockey will be the lead contact person for purposes of reviewing IMQ's environmental documents and its underlying stormwater management permit application.

Mr. Shockey is expected to provide consulting advice and recommendations to the County and its SEPA responsible official as circumstances warrant. Please direct any future communications on IMQ's application materials to Mr. Shockey or to me. The consent I have previously provided to your law firm to engage in direct communications with Jefferson County DCD personnel is revoked.

Very truly yours,



Kenneth W. Harper

KWH:ksl

cc: Client  
Mr. Reid Shockey

April 15, 2011

**Via Email and First Class Mail**

Mr. Kenneth W. Harper  
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Re: SEPA review of the New Shine Quarry project

Dear Ken:

This is a follow-up to our call on April 8, 2011. As you will recall, during that conversation I requested that you ascertain the reason for Jefferson County's failure to engage in diligent SEPA review of Iron Mountain Quarry's project application. To date you have not responded. Accordingly, I reiterate my request.

As we noted in our call last Friday, recent communications with DCD staff suggest that Jefferson County is intentionally avoiding work on this project as a result of IMQ's decision to withhold payment of fees associated with the review pending resolution of its outstanding damages claims against the County. If this is the case, it is incumbent upon the County to clearly state its position in order to allow the parties to address the issue.

As you know, on February 25, 2011, I responded to correspondence from Stacie Hoskins in which she voiced concerns about fee remittance by IMQ. I clearly stated in that letter that IMQ is under no legal obligation to remit payment for fees associated with the County's SEPA "review" that resulted in the March 22, 2010, Determination of Significance ("DS"). As I noted in my letter to Ms. Hoskins, the fees associated with the County's ongoing SEPA review, which resulted from the Court's vacation of the March 22, 2010 DS, are dwarfed by the substantial damages incurred by IMQ as a result of the County's arbitrary and capricious conduct. Although IMQ's damages claims have not yet been resolved, IMQ anticipates that any fees owed to the County will be offset against these damages. It makes little sense to remit payment for fees now only to have the County repay those funds later in the form of damages to IMQ.

The County never responded to my February 25, 2011 letter. Accordingly, IMQ justifiably assumed that the County would purposefully review IMQ's application. Over the course of several weeks following my letter to Ms. Hoskins, IMQ's representatives have contacted DCD staff to seek updates on the SEPA process. At no time, did anyone at DCD indicate that Jefferson County disagreed with IMQ's position regarding payment of SEPA

review fees or that DCD was unwilling to proceed with the SEPA review. On April 7, 2011, however, DCD staff suggested that this may be the case.

Moreover, IMQ recently received the DCD invoice for work performed on the IMQ application during the month of March, 2011. Despite IMQ's submission of at least five technical reports and other information to the County during the months of February and March, DCD dedicated a total of only 12.5 hours to the SEPA review during the month of March. Moreover, IMQ has received no substantive feedback pertaining to the information that it has submitted. In light of the quality of the information provided by IMQ the issues addressed may very well require no further staff review. It is nevertheless reasonable for IMQ to expect the County to provide timely feedback indicating that the issues have been adequately addressed.

Over six months have passed since the court vacated the original SEPA determination in this case. During that time IMQ has been forced to make numerous written demands for information pertaining to the County's SEPA review of the IMQ project. On its own initiative, IMQ hosted a meeting to determine if the County had any specific SEPA concerns. IMQ has been holding weekly telephone conferences with DCD staff (without seeing any significant progress in DCD's SEPA review, as hoped for by IMQ). IMQ has also spent thousands of dollars for expert studies, and has provided the County with hundreds of pages of additional expert reports. For its part, the County has provided no substantive feedback.

The County's dilatory actions are completely unacceptable and reflect the County's ongoing arbitrary and capricious treatment of IMQ, for which IMQ will seek compensation. If the County objects to IMQ's position with regard to payment of fees, it must state its objection so this issue can be resolved by the court, if necessary. The County can rest assured that it will receive payment in the event these fees are not offset by IMQ's damages as we expect. Nonetheless, IMQ is prepared to pay fees into a court administered or similar fund in order to address this issue in the event the court deems such a measure necessary to move forward with SEPA review.

In the interim, IMQ again requests that the County provide specific, substantive feedback pertaining to the technical information that it has already submitted. IMQ is making every effort to provide the remaining information that the County has requested and will do so as soon as possible.

In the event Jefferson County continues to delay the ongoing SEPA review, IMQ will be forced to seek relief from the court. This is a step that IMQ does not prefer but is fully prepared to undertake.

Please respond without delay.

Sincerely,

GORDONDERR LLP

A handwritten signature in black ink, appearing to read "Dale Johnson", with a long horizontal flourish extending to the right.

Dale Johnson