

PERMIT

Original
for
State

703-249-9062

AUTHORIZING AGGREGATE PRODUCTS INC.,

TO CONSTRUCT, OPERATE AND MAINTAIN AN
INTERNATIONAL CONVEYOR BELT, ITS APPROACHES AND FACI
THE INTERNATIONAL BOUNDARY BETWEEN
THE UNITED STATES AND MEXICO

By the authority vested in me as Under Secretary of State for Economic, Business and Agricultural Affairs under Executive Order 11423 of August 16, 1968, 33 Fed. Reg. 11741 (1968), as amended by Executive Order 12847 of May 17, 1993, 58 Fed. Reg. 29511 (1993), (hereinafter "the Order") and Department of State Delegation of Authority No. 118-1 of April 11, 1973,

Having considered the proposed action in accordance with the National Environmental Policy Act of 1969 (83 Stat. 852; 42 U.S.C. § 4321 et seq.) and other statutes relating to environmental concerns; the National Historic Preservation Act (80 Stat. 917, 16 U.S.C. § 470f et seq.); Executive Order 12898 of February 11, 1994, 59 Fed. Reg. 7629 (1994), relating to federal actions to address environmental justice in minority and low-income populations; and having requested and received the views of various of federal departments and other interested persons in accordance with the notification and consultation requirements of sections 1(b), (c), (d), and (f) of the Order,

I hereby grant permission, subject to the conditions, provisions, and requirements hereinafter set forth, to Aggregate Products Inc., a corporation formed under the laws of the State of California with its principal place of business in Salton Sea Beach, California, (hereinafter "the Permittee"), to construct, operate and maintain a conveyor belt east of Calexico, California, and adjacent to Mexicali, Baja California, Mexico, crossing the international boundary and the All American Canal at approximately 3,800 feet east of the Calexico II Port of Entry, for the transport of aggregate materials (size-segregated rock and sand) in a northward direction from Mexico to Permittee's parcel of land in the Gateway of the Americas Specific Plan Area in Imperial County, California. The trans-canal portion of the conveyor will be mounted on a swing-arm structure and will be in its extended position only during materials transfer operations, and will otherwise be in its

stowed position completely within United States' territory on the north side of the All American Canal.

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The term "facilities" as used in this permit means the conveyor belt, its approaches and any land, structure or installations or equipment appurtenant thereto, as set forth in the "Environmental Assessment, Calexico/Mexicali Conveyor Project, Calexico P.O.E./Mexico Border" dated April 5, 2000, as amended and supplemented by the "Environmental Assessment for Aggregate Products Inc. Conveyor Belt Project" dated March 7, 2001, and as further amended and supplemented by the Department of State (collectively, the "EA").

The term "United States facilities" as used in this permit means that part of the facilities in the United States.

This permit is subject to the following conditions:

Article 1. The United States facilities and operations herein described, and all aspects of their operation, shall be subject to all the conditions, provisions and requirements of this permit and any amendment thereof. This permit may be terminated at the will of the Secretary of State or the Secretary's delegate or may be amended by the Secretary of State or the Secretary's delegate at will or upon proper application therefore. The Permittee shall make no substantial change in the location of the United States facilities or in the operation authorized by this permit until such changes have been approved by the Secretary of State or the Secretary's delegate.

Article 2. The construction, operation and maintenance of the facilities shall be in all material respects as described in the EA and in the Department's Finding of No Significant Impact (FONSI) dated December 27, 2002 published in the Federal Register Vol. 67, No. 249.

Article 3. The construction, operation and maintenance of the United States facilities shall be subject to inspection and approval by the representatives of any concerned federal or state agency. The Permittee shall allow duly authorized officers and employees of such agencies free and unrestricted access to said facilities in the performance of their official duties.

Article 4. The Permittee shall comply with all applicable federal and state laws and regulations regarding the construction, operation and maintenance of the United States facilities and with all applicable industrial codes. The Permittee shall obtain requisite permits from Mexican authorities, as well as the relevant state and local governmental entities, relevant Federal agencies, and the International Boundary and Water Commission, as applicable.

Article 5. Upon the termination, revocation or surrender of this permit, and unless otherwise agreed by the Secretary of State or the Secretary's delegate, the United States facilities in the immediate vicinity of the international boundary shall be removed by and at the expense of the Permittee within such time as the Secretary of State or the Secretary's delegate may specify, unless the Permittee has obtained the approval of the Secretary of State or the Secretary's delegate to take other appropriate action with respect to the United States facilities. Upon failure of the Permittee to remove, or to take other appropriate action, with respect to this portion of the United States facilities as ordered, the Secretary of State or the Secretary's delegate may direct that possession of such facilities be taken and that they be removed or other appropriate action, to be determined at the discretion of the Secretary of State or the Secretary's delegate, be taken at the expense of the Permittee; and the Permittee shall have no claim for damages by reason of such possession or removal.

Article 6. This permit and the operation of the United States facilities hereunder is subject to the regulations and limitations, terms and conditions contained in any order issued with respect to the United States facilities by any competent agency or authority of the United States Government. This permit shall continue in force and effect only so long as the Permittee shall continue the operations hereby authorized in accordance with such regulations and limitations, terms and conditions.

Article 7. When, in the opinion of the President of the United States, the national security of the United States demands it, due notice being given by the Secretary of State or the Secretary's delegate, the United States shall have the right to enter upon and take possession of any of the United States facilities or parts thereof; to retain possession, management or control thereof for such length of time as may appear to the President to be necessary; and thereafter to restore possession to the Permittee. In the event that the United States shall exercise such right, it shall pay to the Permittee just and fair

compensation for the use of such United States facilities upon the basis of a reasonable profit in normal conditions, and the cost of restoring said facilities to as good condition as existed at the time of entering and taking over the same, less the reasonable value of any improvements that may have been made by the United States.

Article 8. In the event of transfer of ownership of the United States facilities or any part thereof, this permit shall continue in effect temporarily for a reasonable time pending approval of a proper application by the transferee for a new and permanent permit, provided that notice of such transfer is given promptly in writing to the Department of State accompanied by a statement by the transferee under oath that the United States facilities and the operation and maintenance thereof authorized by this permit will remain substantially the same as before the transfer pending issuance to the transferee of a new and permanent permit.

Article 9. (1) The Permittee shall acquire such right-of-way grants or easements, permits and other authorizations as may become necessary and appropriate.

(2) The Permittee shall save harmless and indemnify the United States from any and all claims or adjudged liability arising out of the construction, operation or maintenance of the facilities, including but not limited to environmental contamination from the release or threatened release or discharge of hazardous substances and hazardous waste.

(3) The Permittee shall maintain the United States facilities and every part thereof in a condition of good repair for its safe operation.

Article 10. (1) The Permittee shall provide to the Federal Inspection Services, at no cost to the Federal Government, office space, determined to be adequate by the Federal Inspection Services, within the Permittee's land containing the United States terminus of the conveyor belt. Such space will be mutually acceptable to the Permittee and the Federal Inspection Services.

(2) The Permittee shall provide security features as stated in correspondence from Aggregate Products Inc. with the United States Customs Service (hereinafter "USCS")

dated December 26, 2000 and identified in USCS Memorandum of October 5, 2000.

(3) Evidence of written agreement between the Permittee and the Federal Inspection Services of the provision of such space and security requirements will be provided to the Department of State prior to entry into operation of the conveyor belt.

(4) The Permittee shall ensure that adequate measures are implemented to ensure that no person, other than authorized members of the Federal Inspection Services, shall utilize the conveyor facilities as a border crossing point. Maintenance of the conveyor facilities shall be performed while the conveyor is in its stowed and locked position in the United States. Employees, when necessary, will use authorized ports of entry and display appropriate documentation.

Article 11. The Permittee shall take all appropriate measures to prevent or mitigate adverse environmental impacts or disruption of significant archeological resources in connection with the construction, operation and maintenance of the United States facilities, in accordance with all relevant state and federal laws.

Article 12. (1) The Permittee shall adhere to mitigation measures identified in the National Environmental Policy Act (NEPA) documentation (EA and FONSI) and comply with all agreed actions and obligations undertaken to be performed in its Application dated April 17, 2000, as amended through correspondence with the relevant federal agencies and incorporated herein by reference. Construction of the conveyor facilities shall be performed in conformity with the proposal contained in the Application, the EA, and the FONSI.

(2) The Permittee shall comply with all of the obligations imposed on it pursuant to the "License Relating to an International Transportation Conveyor Belt Crossing the All-American Canal System" between the Bureau of Reclamation, Department of the Interior, the Imperial Irrigation District, and Aggregate Products Inc., dated November 19, 2001.

(3) The Permittee shall comply with obligations identified in correspondence dated December 5, 2002, from the U.S. Fish & Wildlife Service (hereinafter, "USFWS") to

the Department of State, as modified by correspondence of December 17, 2002, from the USFWS to the Department of State, including, but not limited to:

- (a) The Permittee shall place a 5-foot earthen berm along the eastern margin of the project property with a 10-foot fence (sheet metal construction is proposed) atop the berm, creating a 15-foot barrier between activities on the project site and the adjacent Alamo River.
- (b) The Permittee shall construct the above-noted berm and fence along the eastern margin of the property shall outside the months of March through June in order to reduce noise impacts during the peak of the Yuma clapper rail breeding season. The berm and fence shall be erected prior to any other proposed construction activities.
- (c) The Permittee shall install artificial burrows in the berm at the eastern edge of the property at a 2:1 ratio to replace those that will be destroyed as a result of construction. These artificial burrows must be installed prior to any impact to the existing burrows.
- (d) The Permittee shall develop a landscaping plant palette in accordance with guidelines set forth by Imperial County which will meet USFWS requirements.
- (e) The Permittee shall not use the Imperial Irrigation service road located to the east of the project site.

Article 13. The Permittee shall notify the Department of State and the California State Office of Historic Preservation if historic or archaeological resources or properties are located before or during construction and shall not undertake, or if construction has already started, cease immediately any construction. Prior to the resumption of any construction activity, the Permittee shall undertake to prepare the relevant documentation required by Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470f, to address particular site, building, structure, or object that may be directly impacted by the project and that may be identified as requiring in situ preservation.

Article 14. The Permittee shall file with the appropriate agencies of the United States Government such statements or reports under oath with respect to the United States facilities, and/or permittee's activities and operations in connection therewith, as are now or may hereafter be required

under any laws, executive orders or regulations of the United States Government or its agencies.

Article 15. The Permittee shall provide written notice to the Department of State at such time as the construction authorized by this permit is initiated, and again at such times as construction may be completed, interrupted or discontinued.

IN WITNESS WHEREOF, I, Alan Larson, Under Secretary of State for Economic, Business and Agricultural Affairs of the United States, have hereunto set my hand this 21st day of April, 2003 in the City of Washington, District of Columbia. This permit shall become effective fifteen (15) days after the date of signature.



Alan P. Larson
Under Secretary, Economic, Business
and Agricultural Affairs