



EAST ROCKHILL TOWNSHIP

BOARD OF SUPERVISORS

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January 13, 2021

Via Electronic Mail

Gary A. Latsha
District Mining Manager
Commonwealth of Pennsylvania
Department of Environmental Protection
Pottsville District Mining Office
5 West Laurel Boulevard
Pottsville, PA 17901

Re: Rock Hill Quarry
Response to Letter from Pennsylvania Department of Environmental Protection
Dated December 22, 2020

Dear Mr. Latsha:

East Rockhill Township (the "Township") is in receipt of a letter from the Pennsylvania Department of Environmental Protection (the "Department") regarding the Rock Hill Quarry (the "Site") dated December 22, 2020. In that letter, the Department states that the requirement to maintain an active operation by removing a minimum of 500 tons of minerals for commercial purposes each year is "precluded" by the Department's Order dated December 5, 2020 ceasing all mining and rock crushing activity at the Site. The language in the Department's letter was repeated verbatim from a letter issued by the Department dated December 23, 2019. The more recent letter, however, was issued after receipt of a letter from Hanson Aggregates Pennsylvania LLC ("Hanson") dated October 9, 2020, in which Hanson requested that the Department "continue to hold in abeyance the annual minimum tonnage removal requirement for active mine operations" for the Site. In response to Hanson's letter, East Rockhill Township (the "Township") submitted a letter dated October 21, 2020, explaining that Hanson's request mischaracterized the Department's letter dated December 23, 2019 and otherwise requested an action that is not permitted under the Noncoal Surface Mining Conservation and Reclamation Act (the "Noncoal Act"). The Township writes to reiterate its interpretation of the Noncoal Act.

The Noncoal Act provides only one exception to the requirement to maintain an "active operation," which is to request in writing, and receive from the Department, approval of a temporary cessation of operations. 52 P.S. § 3313(b). The reason that mining operations are required to remain active is "to prevent the abandonment of mining operations where there are outstanding reclamation operations which the Commonwealth will be left to perform to avoid public health, safety, welfare and environmental problems." *New Hanover Twp. v. DEP*, 2014 EHB 834, 868. The limited statutory grounds that are available to allow the Department to approve requests for temporary cessations of mining operations for longer than 90 days reflect the overall legislative intention "to avoid having active mining operations with outstanding reclamation

obligations slide into a state of abandonment." *Id.* Indeed, in analyzing parallel requirements for coal refuse disposal operations, the Board recently observed that "[i]f coal refuse disposal operations are ceased for a period longer than allowed by the regulation for temporary cessation, *then the coal refuse disposal operation is, by operation of law, permanently ceased.*" *Eighty Four Mining Co. v. DEP*, 2019 EHB 585, 591 (emphasis added).

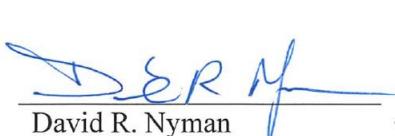
The statutory requirement to remove 500 tons of minerals for commercial purposes each year is not precluded by the Department's Order dated December 5, 2018. In the intervening two years since the Department issued its Order, Hanson could have attempted to take any number of actions to address this extended period of inactivity: (1) Hanson could have applied for approvals of temporary cessations as provided for in the Noncoal Act, but it did not; (2) Hanson could have attempted to apply for a permit modification to allow for the removal of only 500 tons of minerals per year from existing stockpiles, but it did not; or (3) Hanson could have appealed the Department's cessation order of December 5, 2018 (and also petitioned for supersedeas), but it did not.

The Township and its residents remain deeply concerned about the presence of asbestos at the Site and support the Department's efforts to protect them from the human health and environmental risks associated with the presence of asbestos. Nevertheless, that the Department's discovery of a positive asbestos sample properly resulted in an Order to Hanson to cease all mining and rock crushing activity at the Site does not obviate Hanson's obligations to comply with its statutory obligations.

Without prior approval from the Department, Hanson failed to remove a minimum of 500 tons of minerals for commercial purposes from the Site in 2019 and 2020 and therefore has not maintained an active operation. To the extent that operations are permanently ceased, the operation is required to be backfilled or closed or otherwise permanently reclaimed in accordance with 25 Pa. Code Chapter 77 and the applicable surface mining permit. 25 Pa. Code§ 77.652.

Thank you for your consideration of the foregoing comments.

Respectfully submitted,


David R. Nyman
Chairperson

 
Gary W. Volovnik James C. Nietupski
Vice Chairperson Member

cc: Township File
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