

**COMMONWEALTH OF PENNSYLVANIA
BEFORE THE ENVIRONMENTAL HEARING BOARD**

NEW HOPE CRUSHED STONE &
LIME CO.

: EHB DOCKET NO. 2016-028-L
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VS.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL
PROTECTION, SOLEBURY SCHOOL, AND
SOLEBURY TOWNSHIP, INTERVENORS

PETITION FOR SUPERSEDEAS

Petitioner, New Hope Crushed Stone and Lime Co. ("NHCS") petitions the Board to enter an Order to stay a portion of the Order now on Appeal in accordance with the Board's Practice and Procedure, Section 1021.61 et seq. In support NHCS states:

1. Petitioner "NHCS", is a Pennsylvania Corporation, with a principal place of business located at 6970 Phillips Mill Road, New Hope, Solebury Township, PA 18938.
2. NHCS operates a limestone quarry at its principal place of business.
3. The property on which NHCS operates its quarry is a 215.7 acre tract located within the Primrose Creek Basin, in Solebury Township, PA.
4. NHCS conducts surface mining on its property in an area that contains approximately 141 acres.
5. NHCS conducts surface mining pursuant to a surface mining permit that first issued on March 2, 1976 being Noncoal Surface Mining Permit No. 7974SM3 (the "SMP").
6. On July 31, 2014, at EHB Docket 2011-136-11, the Environmental Hearing Board (the "Board") sustained an Appeal brought by Solebury School that challenged an

action taken by the Department of Environmental Protection (the "Department") on July 29, 2011 that authorized NHCS to conduct mining operations to a depth minus 170 feet MSL. When the Board sustained the appeal, its Adjudication included an Order that revoked the Department's action. The Order stated:

"And now, this 31st day of July, 2014, it is Ordered that the July 29, 2011, depth correction to Surface Mining Permit 7974SM3C12 authorizing New Hope Crushed Stone & Lime Company to mine to a depth of 170 feet below mean sea level at the New Hope Crushed Stone quarry is rescinded."

7. The Adjudication made its Order effective immediately.

8. The Order did not revoke NHCS's SMP. In reaffirming NHCS's right to continue operating its quarry, the Board's Adjudication, stated in part:

"We understand that there has already been a substantial amount of mining below minus 120 feet MSL both illegally before the depth correction issued and legally after it issued. Our Adjudication is not intended to have any retroactive effect with respect to that mining. It is also not intended to prohibit any mining that may be performed in accordance with the permit above minus 120 MSL. Although it will take quite a while for the unsafe condition to abate movement toward that goal should commence immediately." Adjudication page 62. (emphasis added)

9. Following the entry of the Order and in compliance with the Order, NHCS immediately ceased all mining operations that it had been conducting below the depth of 120 feet MSL.

10. Because the Adjudication specifically stated that NHCS could continue surface mining operations at its quarry if confined in accordance with its existing mining permit above -120 feet MSL, NHCS continued to conduct surface mining operations.

11. To meet the wishes of the Board that expressed a desire that NHCS take affirmative steps to address what the Board found to be unsafe conditions related to its quarry operations, NHCS implemented the following measures:

a. NHCS amended its Mining Plan to protect the Furlong Fault. The amended Mining Plan reduced NHCS's permitted mining area limit to 50 feet west of the Furlong Fault. NHCS considers itself bound by that Mining Plan.

b. NHCS agreed to be bound by the protective permit conditions that had been written into the Depth Correction despite the revocation of the Depth Correction by the Adjudication's Order.

c. NHCS voluntarily withdrew a Notice of Appeal that it had filed before the Pennsylvania Commonwealth Court challenging the legal sufficiency of the Adjudication thereby making the Adjudication final. By electing not to pursue its Appeal to the Commonwealth Court, NHCS substantially reduced its mineable reserves and shortened the life of the quarry as a result.

d. NHCS agreed to continue enhanced water quality sampling and agreed to continue to monitor water quality and ground water levels within the Primrose Creek Basin. Because the data from such sampling and monitoring continues to show that groundwater levels within the Primrose Creek Basin respond to precipitation and other seasonal events and not to surface mining, water quality and groundwater levels within the Primrose Creek Basin appear unaffected by NHCS's surface mining operations.

e. NHCS has begun to implement its reclamation plan for its quarry now that its actions set forth above have substantially reduced its minable reserves. Reclamation efforts have included preparing the upper benches of the northern, eastern and western walls of its quarry in accordance with its reclamation plan. Reclamation on the north wall of the quarry is currently ongoing per the plan.

f. To address the Consent Order and Agreement reached with the

Department and Citizens for Pennsylvania's Future on May 24, 2013, NHCS has implemented enhanced water quality monitoring of its discharges into the Primrose Creek and has applied for all necessary permits to restore a stretch of the Primrose Creek as set forth in the Consent Order and Agreement. NHCS has also begun the restoration efforts

g. NHCS has also agreed that it will not mine a certain dike located within the quarry known as Dike No. 1 below -50 MSL on the western quarry wall thereby mitigating groundwater drawdown impacts associated with its mining activities.

12. The combination of the revised Mining Plan that protects the Furlong Fault, NHCS's decision to allow the Adjudication to become final, and the willingness of NHCS to protect Dike No.1 substantially not only reduces its mineable reserves, it also accelerates the implementation of its reclamation plan now on file with the Department. That plan shows that groundwater elevations within the Primrose Creek Basin will be restored to predicted post-mining levels upon completion of the reclamation.

13. On January 29, 2016, the Department issued a letter that modified NHCS's Reclamation Plan (the "Reclamation Order"). A copy of the Reclamation Order is attached hereto and marked Exhibit "A".

14. On February 29, 2016, NHCS appealed the Reclamation Order to the Board. NHCS incorporates herein by reference its Notice of Appeal from the Order.

15. In its Notice of Appeal to the Board, NHCS alleged that the Department abused its discretion and committed error at law when it issued the Reclamation Order contending:

a. When the Department issued the orders contained in its January 29, 2016,

letter, NHCS had a valid reclamation plan that remained in effect by the Adjudication that specifically re-affirmed NHCS's SMP if limited to mining above -120 msl.

b. Prior to issuing the orders contained in the January 29, 2016, letter, the Department had not notified NHCS that its reclamation plan violated its existing permits, violated applicable mining regulations, or violated applicable mining statutes.

c. When the Department issued its January 29, 2016, letter, NHCS's quarry operations were in compliance the applicable statutes, regulations, and its permit conditions.

d. The Reclamation Order, letter effectively revokes NHCS's existing Surface Mining Permit and its existing NPDES Permit because paragraph 4 of that Order limits the amount of water that NHCS may pump out of its quarry to 500,000 gpd. Such a limit will necessarily cause water to accumulate on the floor of the quarry thus substantially curtailing the ability of NHCS to conduct mining operations and to complete reclamation as required in accordance with its existing permits that continue to remain in effect.

16. Following the filing of the Notice of Appeal, the Department administratively extended the date on which NHCS had to comply with paragraph 4 of the Reclamation Order to April 15, 2016.

17. On April 14, 2016, the Department, acting through its regional counsel notified NHCS that by the close of business on April 15, 2016, the previously issued administrative stay would expire and that NHCS was expected to immediately limit the amount of water to be discharged from its quarry to no more than 500,000 gpd.

18. Attached hereto and marked as Exhibits "B" and "C" are Affidavits for Christina Cursley and Louis Vittorio, P.G.

19. The Affidavits show that unless the Board issues a supersedeas to paragraph 4 of the Reclamation Order, NHCS will suffer immediate short term irreparable harm and long term irreparable harm.

20. NHCS contends that it is likely to prevail on the merits of its Notice of Appeal.

21. The granting of the supersedeas will likely not injure the public or any person including, specifically, Solebury School or Solebury Township, parties to this Appeal because:

a. The quarterly monitoring reports that NHCS continues to file with the Department show consistently that its zone of influence associated with surface mining has not expanded since 2008;

b. Mining operations have not caused any water losses within its zone of influence;

c. Since July, 2014, 4 sinkholes have developed within the Primrose Creek basin. Of those, only 2 were new occurrences, and 2 were at the location of prior basin sinkholes that developed within NHCS's zone of influence. These were not located on Solebury School property and they were assessed and mitigated in a timely fashion per the Sinkhole Minimisation and Mitigation plan that is part of the current mining permit.

22. The granting of a supersedeas will not result in any pollution or injury to the public health, safety or welfare; nor will the threat of pollution increase during the period that the supersedeas would remain in effect.

23. The granting of a supersedeas will not alter the status quo as it now lawfully exists. That is, status quo is that since the entry of the Adjudication in July, 2014, neither

the Board nor the Department has revoked NHCS's surface mining permit or its NPDES permit. Paragraph 4 of the Reclamation Order upsets the status quo because NHCS's existing NPDES permit allows NHCS to pump that amount of water to keep the floor of the quarry dry to allow it to engage in mining operations. If NHCS must immediately comply with the paragraph 4 of the Reclamation Order, water will accumulate on the floor of the quarry within one to two weeks, and such condition will not enable surface mining of primary reserves in accordance with NHCS's existing surface. These conditions will make mining unsafe and impossible to complete.

24. As more fully set forth in the Affidavits attached, immediate compliance with the Reclamation Order will prevent NHCS from the ability to mine its available reserves. If NHCS is unable to mine its available mineable reserves, it will not have the ability to complete reclamation nor the ability to comply with a certain Consent Decree that obligates NHCS to restore portions of the Primrose Creek.

WHEREFORE, Petitioner New Hope Crushed Stone & Lime Co. respectfully moves the Board to stay the effective date of paragraph 4 of the Reclamation Order pending resolution of the pending Notice of Appeal.

Benner and Wild

By: 
William E. Benner, Esquire
174 West State Street
Doylestown, PA 18901
wbenner@bennerwild.com
(215) 230-4900

Dated: April 15, 2016



pennsylvania
DEPARTMENT OF ENVIRONMENTAL
PROTECTION

POTTSVILLE DISTRICT OFFICE

January 29, 2016

New Hope Crushed Stone & Lime Co.
P.O. Box 248
New Hope, PA 18938

Re: New Hope Crushed Stone & Lime Co.
Noncoal Surface Mining Permit No. 7974SM3
Solebury Township, Bucks County
Proposed Reclamation Plan dated Nov. 30, 2015

Ladies and Gentlemen:

The Department has reviewed the proposed Reclamation Plan, Cost Timing and Sequence ("Reclamation Plan") dated November 30, 2015 submitted by your consultant, EarthRes Group, Inc. (ERG). The Reclamation Plan is unacceptable. The reasons for this determination include, but are not limited to, the fact that the proposed Reclamation Plan timetable does not abate the public nuisance noted in the Environmental Hearing Board (EHB) Adjudication dated July 31, 2014, in a timely manner. The proposed Reclamation Plan also does not propose to reclaim the quarry as concurrently as possible. Additionally, the proposed timetable appears to be based on the time needed to mine the currently permitted mineral reserves, and not on the time needed to perform the required Primrose Creek stream work and the required highwall backfilling and reclamation work.

Therefore, the Department cannot approve the Reclamation Plan as submitted. To address the deficiencies in the Reclamation Plan, the Department is modifying the Reclamation Plan. NHCS must perform work in accordance with the following modifications to the Reclamation Plan in order for the Department to consider that NHCS is abating the public nuisance declared by the Environmental Hearing Board in a timely manner, and concurrently reclaiming the affected areas on SMP No. 7974SM3:

1. The Primrose Creek stream work and/or the highwall reclamation work currently underway shall continue to be conducted on a continuous basis until completed to the Department's satisfaction.
2. NHCS shall conduct the stream and reclamation work for a minimum of 160 hours per week, utilizing at least four (4) workers/laborers who each work a 40 hour week.
3. NHCS shall place a minimum of 200 cubic yards per hour of backfill material for reclamation purposes during the highwall reclamation phases of operation.
4. The flooding of the quarry and lowering of the required daily pumping of pit water to the permit-required minimum of 500,000 gallons per day shall begin immediately. Pumping rates may increase only if water levels rise to an elevation that prohibits safe reclamation of the quarry walls. There shall be at least two (2) safety benches below the active highwall

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www.dep.pa.gov

EXHIBIT A

reclamation area and the pit water. The Department reserves the right to modify pumping rates based on site conditions and other related issues.

5. A reclamation progress report shall be included with the quarterly groundwater and surface water monitoring report.
6. The quarterly report shall include the Mine & Reclamation Phase Development Plan map with the current +48' MSL contour and the inflow and outflow structure locations highlighted.
7. NHCS shall install a monitoring well designed to monitor groundwater elevations on the Solebury School property within 90 days of the date of this letter. Prior to installation of the monitoring well, NHCS shall discuss NHCS' plans for placement and design of the monitoring well with the Department.

The Department reserves the right to modify this work plan should safety or environmental concerns arise that were not considered or known at this time.

New Hope Crushed Stone & Lime Co. may propose its own work plan at any time. However, any plan submitted by NHCS requires formal, written approval from the Department prior to its implementation. Until the Department approves an alternate work plan, NHCS shall perform stream and reclamation work in accordance with the requirements set forth in this letter.

If you have any questions concerning this letter or any related matters, please contact me at 570.621.3118.

Sincerely,



Michael J. Menghini
District Mining Manager
District Mining Operations

cc: John Stefanko
William Plassio
Nathan Houtz
Michael Kutney
Gary Latsha
Amiee Bollinger
Nels Taber
Alicia Duke
EarthRes Group, Inc.
Solebury Township
Solebury School
Primrose Creek Watershed Association
File
MS1-NHCS Reclamation (1-16)

MJM:tmr

**COMMONWEALTH OF PENNSYLVANIA
BEFORE THE ENVIRONMENTAL HEARING BOARD**

NEW HOPE CRUSHED STONE &
LIME CO.

EHB DOCKET NO. 2016-028-L

VS.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL
PROTECTION, SOLEBURY SCHOOL, AND
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AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF BUCKS

CHRISTINA CURSLEY, being sworn according to law deposes and says as follows:

1. I am a Vice President of New Hope Crushed Stone & Lime Co., Inc. (the "Company") and am authorized to take this Affidavit on its behalf in support of its Petition for Supersedeas. I assumed the position of Vice President for the Company in 2015. My background as an Accountant equips me to discharge my responsibilities to the Company. I am responsible for overseeing and managing the Company's day-to-day business affairs including managing its finances.

2. I consult regularly with the Company's principal mining consultant, Louis F. Vittorio, Jr. P.G., thus, I am aware generally of the Company's mining permits and the obligations that flow from its mining permits including those relating to reclamation, those relating to the filing of quarterly monitoring reports, and those relating to a Consent Decree. The latter settled previous litigation with the Primrose Creek Watershed Association and PennFutures relating to an appeal taken by those parties challenging a

EXHIBIT B

Depth Correction issued by the Department of Environmental Resources in 2011.

3. I also manage the Company's cash flow from its mining operations. As such, I have personal knowledge of the costs associated with mining and the sales revenue generated from the sale of crushed stone.

4. My responsibilities to the Company also involves preparing budgets for future obligations including those related to reclamation required by the Company's mining permit and stream restoration required by the Consent Decree referenced above.

5. Mr. Vittorio has advised me that the Company has approximately 6.7 million tons of minable reserves that it could mine in accordance with its existing permits.

6. Unless paragraph 4 of the Reclamation Order is stayed, Mr. Vittorio has informed me that within a one to two week period and perhaps sooner if there is an intervening rain, the floor of the quarry will begin filling with water making it impossible for the Company to mine the lowest level of the Company's reserves. That lower level accounts for approximately one-third of the available 6.7 million tons of minable reserves. The consequences to the Company if it loses the ability to mine the lowest level of reserves are both short and long term.

7. The short-term consequences, apart from the loss of approximately 33% of the minable reserves and the corresponding loss of revenue associated with the Company's inability to sell those reserves to existing customers with the resultant loss of revenue, is that the Company will be unable to meet its financing obligations owed to the Bank of Princeton. Presently, the Company has an outstanding loan with the Bank of Princeton in the principal amount of \$3,250,000.00, secured by a first mortgage on the quarry property. At the present time, the Company is able to manage its loan obligations

from revenue derived from the sale of crushed stone. Presently, the Company pays \$24,000.00 monthly to the Bank of Princeton for principal and interest payments. The Bank of Princeton has expressed concern about the possible loss of reserves and has advised me that it may accelerate payment on the outstanding loan if the Company loses a significant amount of its reserves as a result of the Reclamation Order.

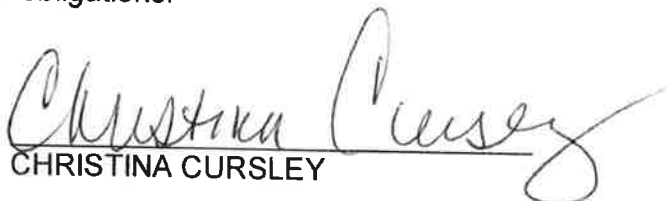
8. If the Board denies the request for the supersedeas, I consider the loss of the reserves to be a material event for which the Company has an obligation to notify the Bank of Princeton. I reasonably believe that the Bank of Princeton will consider the loss of these reserves to be an event of default and will declare the outstanding balance due under the Note immediately due and payable. That outstanding loan balance is \$2,907,500.00. The Company would not have the ability to pay loan if it does not have the revenue realized from the sale of stone mined from the lost reserves. I believe the Company would have few, if any, legal options apart from seeking protection under the Bankruptcy Laws of the United States.

9. The longer term consequences of the loss of these reserves will be the inability of the Company to discharge its reclamation obligations under its existing permits and its obligations under the Consent Decree relating to the restoration of the a portion of the Primrose Creek. In particular, relying on reasonable estimates to complete reclamation and the stream restoration costs done by EarthRES Group, I find that its estimate of the cost of reclamation and stream restoration of \$1,963,000.00 to be reasonable. Taking into account the costs associated with mining a ton of crushed limestone, I have calculated that the amount of reserves needed to fully fund reclamation and stream restoration at approximately 7.5 million tons.

10. The Company is committed to completing its reclamation and stream restoration obligations. Despite the present shortfall in available funds to fully fund reclamation and restoration from the 6.7 million tons of minable reserves, I reasonably believe that with reasonable adjustments in cost savings and good business practices, the Company can meet its reclamation and stream restoration obligations if it can mine its existing reserves.

11. The immediate loss of approximately one-third of these existing reserves will make it impossible for the Company to complete its reclamation and stream restoration obligations.

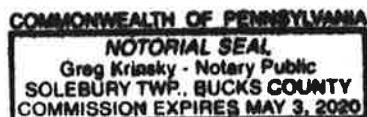
12. If the Company immediately loses of one-third of its mineable reserves, although difficult to measure with specificity, I reasonably believe that the loss of one-third of the Company's mineable reserves will result in loss of customers to competitors thus further reducing revenues and further compromising the Company's ability to operate and complete its reclamation and stream restoration obligations.


CHRISTINA CURSLEY

Sworn to and subscribed before
me this 15 day of April, 2016.,



Notary Public



**COMMONWEALTH OF PENNSYLVANIA
BEFORE THE ENVIRONMENTAL HEARING BOARD**

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LIME CO.

EHB DOCKET NO. 2016-028-L

VS.

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DEPARTMENT OF ENVIRONMENTAL
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AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF BUCKS

LOUIS F. VITTORIO, JR., P.G., being sworn according to law deposes and says
as follows:

1. I am a Registered Professional Geologist in Pennsylvania with a specialty in mining and mining related hydrogeology. I have been the primary environmental consultant and hydrogeologist for New Hope Crushed Stone & Lime Co., Inc. ("NHCS") since 2002.

2. As the primary environmental consultant and hydrogeologist for NHCS, I also oversee and supervise all environmental and permitting concerns associated with NHCS's mining operations including mine planning, permitting, regulatory compliance and other related concerns by managing other professional engineers and geologists employed by EarthRes Group, Inc., the company that employs me in the capacity as Vice President and Principal Hydrogeologist.

3. I am intimately familiar with the mining operations of NHCS. I meet

EXHIBIT C

regularly with the management team of NHCS that includes Christina Cursley and Gregory Rodrigo on matters related to mining, permit compliance, mine planning and other related mining matters.

4. I recently calculated the mineable reserves for NHCS at 6.7 million tons assuming that NHCS mines its reserves as permitted by its existing Surface Mining Permit. My calculations show that 68% per cent of the mineable reserves are found in the two lowest benches of NHCS's quarry.

4. With a reasonable degree of scientific certainty, I have concluded that if condition 4 of the Reclamation Order is not stayed, the floor of the quarry will begin to fill with water and within two weeks and NHCS will be unable to mine the lowest bench that contains 33% of the quarry's reserves. Further, I have concluded that mining the next bench that contains 35% of the quarry's reserves will also be difficult, if not impossible.

5. As NHCS's primary hydrogeologist, I continue to be responsible for the filing of quarterly monitoring reports to the Department's District Mining Office. Since the entry of the Adjudication in July, 2014, the quarterly monitoring reports consistently show:

a. That the quarry's zone of influence has not expanded; and in fact, it corresponds with the zone of influence that existed in 2008;

b. That there have been no water loss complaints, a condition that has remained constant since 2008;

c. That there have been four small sink holes that have emerged in the Primrose Creek Basin. Two of those sinkholes were sinkholes that developed years earlier and re-opened. NHCS facilitated their repairs immediately upon notification.

6. As the consultant primarily responsible for NHCS' regulatory compliance,

since the entry of the Adjudication, to the best of my knowledge, the mining operations of NHCS have not violated any mining regulation or condition contained in NHCS Surface Mining Permit or its NPDES permit.

7. It is my opinion that Paragraph 4 of the Reclamation Order now on appeal has effectively amended and superseded NHCS' existing NPDES permit and will effectively restrict NHCS' ability to operate.



LOUIS F. VITTORIO, JR. P.G.

Sworn to and subscribed before
me this 15 day of APRIL, 2016,



Notary Public

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Mary P. Shirel, Notary Public
Plumstead Twp, Bucks County
My Commission Expires June 17, 2018

