



Orig: File ^{New Hope}

CC: MJM

MIKE K.
NATE H.
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April 7, 2015

Mr. Michael Menghini, District Mining Manager
Pottsville District Mining Operations
PA Department of Environmental Protection
5 West Laurel Boulevard
Pottsville, PA 17901-2522

Dear Mr. Menghini,

Your office recently received a letter dated March 24, 2015 from Louis Vittorio of EarthRes Group, Inc. on behalf of New Hope Crushed Stone & Lime Co. (NHCS), requesting "...reissuance of the quarry's NPDES permit so that NHCS can complete quarrying and commence reclamation in a manner that is beneficial to all involved parties."

The assertions in the letter indicate that NHCS has taken certain required and voluntary actions to respond to the July 31, 2014 ruling of the Environmental Hearing Board (EHB).

In our view, neither legal compliance with the EHB ruling, nor limited voluntary constraints on mining are sufficient to warrant reissuance of the quarry's NPDES permit.

Before considering whether to reissue the NPDES and other permits, the DEP needs to thoroughly address the fundamental issues raised by the EHB in rendering its opinion. The DEP should be embracing the EHB's conclusions of law in the EHB adjudication starting on page 63 and apply much more rigorous and objective criteria. In doing so, the DEP should ensure that:

- Continued mining is not causing and perpetuating a hazardous condition endangering the public health, safety and welfare on neighboring properties
- The effect of mining is considered from the surface to the current or proposed MSL
- NHCS affirmatively demonstrates that its mining activities could be reasonably accomplished under the Noncoal Act and the regulations promulgated thereunder, as well as the Clean Streams and other environmental Acts
- The quarry is no longer creating a public nuisance
- The quality of the groundwater computer models is improved and objectively performed
- The quantity of surface and groundwater within the permit area and adjacent areas is protected
- The effect of NHCS's mining on the hydrologic balance is evaluated using natural conditions that existed before mining, or as far back as feasible
- There is thorough consideration for the use of grouting or other methods presented during the trial to mitigate any impact of mining that is creating unsafe conditions on neighboring properties.

In addition, the DEP should immediately re-evaluate and ensure that the reclamation plan is updated and sufficient for the quarry, and ensure that the performance bond is adequate to cover reclamation costs and protect the Commonwealth's Noncoal Surface Mining Conservation and Reclamation Fund from liability.

The EHB ruling stated "The quarry is creating a public nuisance".¹ The EHB opinion also referred to a principle of law under *Bonzer v. DER* (1981 EHB 34, 39) "No one can gain a prescriptive right against the public to continue a nuisance on his property."² While NHCS has taken steps to fulfill legal compliance obligations, it has not resolved the public nuisance issue.

Based on the EHB's findings that quarry pumping and mining activities are creating a public nuisance, a NPDES permit should not be issued until the concerns raised in the EHB decision have been fully and satisfactorily addressed by NHCS.

Very truly yours,



Paul Cosdon

Chairman, Solebury Township Board of Supervisors

CC: Michael Kutney, PG, PA DEP
Nate Houtz, PG, Permit Chief, PADEP
Gary Latsha, SMCIS, PA DEP
Aimee Bollinger, SMCI, PA DEP
George Riordan, Vice President, NHCS
Louis F. Vittorio, Jr., PG, EarthRes Group
John Quiqley, Acting PA DEP Secretary
Senator Chuck McIlhinney
Representative Scott A. Petri
Dennis Carney, Solebury Township
Primrose Creek Watershed Association

¹ Page 65 of EHB Adjudication on EHB Docket No. 2011-136-L Solebury School v. Commonwealth of Pennsylvania DEP and NHCS, Permittee, Issued July 31, 2014

² Page 62 of EHB Adjudication