

**BENNER AND WILD**  
ATTORNEYS AT LAW  
174 WEST STATE STREET  
DOYLESTOWN, PA 18901  
WWW.BENNERWILD.COM

WILLIAM E. BENNER  
EDWARD M. WILD

215-230-4900  
TELECOPIER:  
215-230-9470

December 2, 2015

7974SM3

Orig: Fil  
CC: AMIE  
GARY  
MIKE  
NATE H  
MJM

Department of Environmental Protection  
Office of Chief Counsel  
Attn: April Hain  
16<sup>th</sup> Floor Rachel Carson State Office Building  
400 Market Street, P. O. Box 8464  
Harrisburg, PA 17105-8464

Commonwealth of Pennsylvania  
Department of Environmental Protection  
Bureau of Mining and Reclamation  
P. O. Box 8461  
Harrisburg, PA 17105-8461  
Attn: Gary Latsha

**RE: New Hope Crushed Stone & Lime Co. Notice of Appeal**

Dear Ladies and Gentlemen:

Enclosed is a copy of the Notice of Appeal filed electronically this date with the Environmental Hearing Board appealing the amended Compliance Order received by the appellant on November 4, 2015.

Very truly yours,

  
William E. Benner

WEB/epr  
Cc: John Mehok  
Christina Cursley  
Lou Vittorio, P.G.



COMMONWEALTH OF PENNSYLVANIA  
ENVIRONMENTAL HEARING BOARD

**NOTICE OF APPEAL FORM**  
**APPEAL INFORMATION**

1. Name, address, telephone number, and email address (if available) of Appellant:

New Hope Crushed Stone & Lime Co.  
P. O. Box 248, New Hope, PA 18938  
(215) 862-5293

2. Describe the subject of your appeal:

(a) What action of the Department do you seek review?

*(NOTE: If you received written notification of the action, you must attach a copy of the action to this form.)* A Compliance Order issued by the Department of Environmental Protection, Bureau of Mining & Reclamation, Docket 15-5-048-N(A) on November 2, 2015. A complete copy of the Compliance Order is attached

(b) Which Department official took the action?

The Department official that issued the Compliance Order is  
Gary Latsha

(c) What is the location of the operation or activity which is the subject of the Department's action (municipality, county)? Solebury Township, Bucks County, Pennsylvania

(d) How, and on what date, did you receive notice of the Department's action? Advance notification of the Compliance Order was sent to Applicant by e-mail on November 3, 2015. Appellant received the Compliance Order by certified mail on November 4, 2015.

3. Describe your objections to the Department's action in separate, numbered paragraphs.

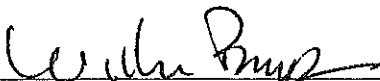
*(NOTE: The objections may be factual or legal and must be specific. If you fail to state an objection here, you may be barred from raising it later in your appeal. Attach additional sheets, if necessary.)*

See attached statement.

4. Specify any related appeal(s) now pending before the Board. If you are aware of any such appeal(s) provide that information. The Compliance Order relates to an adjudication issued by the Environmental Hearing Board on July 31, 2014 in EHB Docket 2011-136-L. The Compliance Order is an Amended Compliance Order. Hew Hope Crushed Stone appealed the initial Compliance Order. Its Appeal is pending at EHB Docket 2015-164-L.

**NOTICE OF APPEAL FORM**  
**SIGNATURE PAGE**

By filing this Notice of Appeal with the Environmental Hearing Board, I hereby certify that the information submitted is true and correct to the best of my information and belief. Additionally, I certify that a copy of this Notice of Appeal was served upon each of the individuals indicated on Page 2 of this form on the following date: December 2, 2015

  
\_\_\_\_\_  
Signature of Appellant or Appellant's Counsel

Date: December 2, 2015

If you have authorized counsel to represent you, please supply the following information  
(Corporations must be represented by counsel):

William E. Benner, Esquire  
\_\_\_\_\_  
Attorney Name (Type or Print)

Benner and Wild  
\_\_\_\_\_

174 West State Street  
\_\_\_\_\_

Doylestown, PA 18901  
\_\_\_\_\_  
Address

Telephone No.: 215-230-4900  
\_\_\_\_\_

Email: wbenner@bennerwild.com  
\_\_\_\_\_

\_\_\_\_\_  
TDD users please contact the Pennsylvania Relay Service at 1-800-654-5984. If you require an accommodation or this information in an alternative form, please contact the Secretary to the Board at 717-787-3483.

\_\_\_\_\_  
**Please see the attached Filing Instructions for additional information and requirements regarding the filing of this form.**

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

NEW HOPE CRUSHED STONE &  
LIME CO.

VS.

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION

**APPELLANT'S OBJECTIONS TO THE  
DEPARTMENT'S ACTION**

1. Appellant is New Hope Crushed Stone & Lime Co. ("NHCS"), 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 29, 2011, the Department issued a permit correction, 7974SM3C12, to NHCS's SMP authorizing NHCS to conduct mining operations to a depth of -170 feet MSL (the "Depth Correction").

7. Solebury School, Solebury Township, and two environmental organizations

appealed Depth Correction. NHCS reached settlement with Solebury Township and the two environmental organizations, but not with Solebury School.

8. On July 31, 2014, at EHB Docket 2011-136-L, the Environmental Hearing Board ("The Board") sustained the Appeal of Solebury School. Its Adjudication included an Order that revoked the Depth Correction. Order stated:

"And now, this 31<sup>st</sup> 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."

9. The Adjudication made its Order effective immediately.

10. 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)

11. 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.

12. 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 following the entry of the Order.

13. To meet the wishes of the Board that expressed a desire that NHCS take

affirmative steps to address what the Board found to be an 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 has 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 is ready, willing and able to undertake the restoration work and has filed the required permit applications in a timely manner.

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.

14. 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.

15. Notwithstanding these affirmative voluntary steps taken by NHCS to mitigate the effects of surface mining on nearby properties including that of the Solebury School, the Department nevertheless issued a Compliance Order on October 1, 2015.

16. NHCS appealed the Compliance Order. Its Appeal is pending at EHB Docket 2015-164-L.

17. Following the issuance of the Compliance Order, the Department issued an

Amended Compliance Order that is the subject of the instant Appeal.

18. The Amended Compliance Order differs from the initial Compliance Order only with respect to the date by which NHCS must address the Corrective Actions set forth in the Amended Compliance Order by extending the Compliance Date from October 30, 2015, to November 30, 2015.

19. On information and belief NHCS avers that the Department issued the Amended Compliance Order on the erroneous belief that certain Findings of Fact and Conclusions of Law contained within the Adjudication were self-executing. NHCS contends, that the only part of the Adjudication that is self-executing or regulatory in effect was the Order.

20. Because the Adjudication specifically reconfirmed NHCS's right to continue surface mining in accordance with its valid permits, the Department abused its discretion and committed error at law by requiring NHCS to undertake the affirmative steps stated in the Amended Compliance Order.

21. Department abused its discretion and committed error at law when it issued the Amended Compliance Order because at all times relevant, NHCS's quarry operations were in compliance the applicable statutes, regulations, and its permit conditions.

22. Department abused its discretion and committed error at law when it issued the Amended Compliance Order relying on non-adjudicatory parts of the Adjudication that are not self-executing.

23. The Amended Compliance Order effectively revokes NHCS's existing Surface Mining Permit. Such an action is contrary to law and represents an abuse of discretion.



Wherefore, New Hope Crushed Stone & Lime Co. respectfully requests the Board  
to reverse the Amended Compliance Order.

Benner and Wild

By:  \_\_\_\_\_

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