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orig File *79745MB*

February 29, 2016

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

✓ Commonwealth of Pennsylvania
Department of Environmental Protection
Pottsville District Mining Office
5 West Laurel Boulevard
Pottsville, PA 17901-2522
Attention: Michael J. Menghini

File

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 orders contained in a letter issued January 29, 2016, by the Pottsville District Mining Office.

Very truly yours,


William E. Benner

WEB/epr

VIA EMAIL with attachment to the following:

Nels J. Taber, Esquire
Steven T. Miano, Esquire
Jessica R. O'Neill, Esquire
Jordan B. Yeager, Esquire



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. ("NHCS")
6970 Phillips Mill Road, 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.)

NHCS appeals from an order, issued in the form of a letter, dated January 29, 2016, from the Pottsville District Mining Office for the Department of Environmental Protection. A copy of the letter is attached.

(b) Which Department official took the action?

Michael Menghini, District Mining Manager

(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?

Appellant received the letter by certified mail on January 31, 2016.

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 statement attached

4. Specify any related appeal(s) now pending before the Board. If you are aware of any such appeal(s) provide that information.

2011-136-L; 2015-164-L; 2015-187-L

NOTICE OF APPEAL FORM PROOF OF SERVICE

In addition to filing this form with the Environmental Hearing Board, the Appellant *must* certify, by indicating below, how the Notice of Appeal was served on the Department under numbers (1) and (2) below, and where applicable, upon other interested parties indicated by numbers (3) and (4). Failure to do so may result in dismissal of your appeal. Please check the box indicating the method by which you served the following:

- (1) Department of Environmental Protection
Office of Chief Counsel
Attn: April Hain
16th Flr. Rachel Carson State Office Building
400 Market Street, P.O. Box 8464
Harrisburg, PA 17105-8464
- via*
- first class mail, postage pre-paid
 overnight delivery
 personal delivery
 electronic filing

AND

- (2) The officer of the Department
who took the action being
appealed.
- via*
- first class mail, postage pre-paid
 overnight delivery
 personal delivery
 electronic filing

Note to Attorneys who **electronically** file a Notice of Appeal: A copy is automatically served on the Department's Office of Chief Counsel and the officer who took the action being appealed. There is no need for you to independently serve the Department.

Additionally, if your appeal is from the Department of Environmental Protection's issuance of a permit, license, approval, or certification to another person, you *must* serve the following, as applicable:

- (3) The entity to whom the permit,
license, approval, or
certification was issued.
- via*
- first class mail, postage pre-paid
 overnight delivery
 personal delivery

AND

- (4) Where applicable, any of the following:
- Any affected municipality, its municipal authority, and the proponent of the decision, where applicable, in appeals involving a decision under Sections 5 or 7 of the Sewage Facilities Act, 35 P.S. §§ 750.5, 750.7;
 - The mining company in appeals involving a claim of subsidence damage or water loss under the Bituminous Mine Subsidence and Land Conservation Act, 52 P.S. § 1406.1 et seq.;
 - The well operator in appeals involving a claim of pollution or diminution of a water supply under Section 3218 of the Oil and Gas Act, 58 Pa.C.S. § 3218;
 - The owner or operator of a storage tank in appeals involving a claim of an affected water supply under Section 1303 of the Storage Tank and Spill Prevention Act, 35 P.S. § 6021.1303.

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: February 29, 2016.



Signature of Appellant or Appellant's Counsel

Date: **February 29, 2016**

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

William E. Benner

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.

**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 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."

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.

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 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.

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. Following the entry of the Adjudication, the Department has been urging NHCS to modify its existing reclamation plan. These efforts included the issuance of Compliance Orders that NHCS appealed as reflected in EHB Docket 2015-164-L and 2015-187-L.

16. On January 29, 2016, the Department issued an Inspection report that found NHCS to be in compliance with Compliance Order 15-5-048-N and Compliance Order 15-5-048-N(A). Following the issuance of that Inspection report, NHCS withdrew its appeals referenced in Paragraph 15, above.

17. Notwithstanding that the Department found that NHCS complied with the directives contained in the Compliance Orders, on January 29, 2016, the Department issued a new order, in the form of a letter that ordered NHCS to modify its reclamation plan. A copy of the letter is attached as Exhibit A.

18. The Department abused its discretion and committed error at law when it ordered NHCS to modify its reclamation plan in the manner stated in the January 29, 2016, letter. That is:

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 with the applicable statutes, regulations, and its permit conditions.

d. The January 29, 2016, letter effectively revokes NHCS's existing Surface Mining Permit and its existing NPDES Permit because it limits the amount of water that NHCS may pump out of its quarry to 500,000 gallons per day. 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 permits that remain in effect.


19. Department also abused its discretion and committed error at law when it

issued the January 29, 2016, letter, relying on non-adjudicatory parts of the Adjudication that are not self-executing.

20. The action taken by the Department in its January 29, 2016, letter is contrary to law and represents an abuse of discretion.

Wherefore, New Hope Crushed Stone & Lime Co. respectfully requests the Board to vacate the orders contained in the Department's January 29, 2016, letter.

Benner and Wild

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

Dated: February 29, 2016

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

NEW HOPE CRUSHED STONE &
LIME CO.

VS.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL
PROTECTION

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the Notice of Appeal made by New Hope Crushed Stone and Lime Co. from the Orders contained in a January 29, 2016, letter, February 29, 2016, upon the following by first class mail, postage prepaid addressed as follows:

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

2. Commonwealth of Pennsylvania
Department of Environmental Protection
Pottsville District Mining Office
5 West Laurel Boulevard
Pottsville PA 17901-2522
Attention: Michael J. Menghini


I further certify that on February 29, 2016, I served a true and correct copy of New Hope Crushed Stone & Lime Co.'s Notice of Appeal upon the following by e-mail addressed as follows

1. Department of Environmental Protection
Nels J. Taber, Regional Counsel
ntaber@pa.gov

Alicia R. Duke, Assistant Counsel
alduke@pa.gov

2. Solebury School
Steven T. Miano, Esquire
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3. Solebury Township
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Benner and Wild

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

February 29, 2016