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Orig: FILE  
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November 6, 2015

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

RE: Objection to New Hope Crushed Stone's Extension Request  
Compliance Order 15-5-048-N  
New Hope Crushed Stone & Lime Co.  
SMP No.: 7974SM3  
Solebury Township, Bucks County

Dear Mr. Menghini:

This letter responds to Louis F. Vittorio, Jr.'s letter of October 28, 2015 in which he requests, on behalf of New Hope Crushed Stone (NHCS), a 30-day extension to comply with the above-referenced Compliance Order. Solebury School strongly objects to the Department providing New Hope Crushed Stone (NHCS) any additional time to comply. As detailed below, it has been more than 15 months since the Environmental Hearing Board unanimously found that NHCS's mining activities were a public nuisance. It has also been more than a year since the Department first directed NHCS to submit plans for its compliance with the EHB's opinion. NHCS's request for additional time is simply another stalling tactic that will ensure its continued mining, to its significant financial gain and to the detriment of Solebury School and the community.<sup>1</sup>

As the Department is well aware, it first directed NHCS to submit plans to comply with the EHB's July 31, 2014 opinion by letter dated September 11, 2014. The Department found NHCS's response deficient. The Department then issued NHCS several additional written directives to submit adequate plans (including by letters dated February 24, 2015, July 10, 2015 and August 11, 2015). These directives were by and large ignored, which resulted in the Department's October 1, 2015 Compliance Order. Astonishingly, NHCS now requests additional time to comply. NHCS provides no adequate justification for its request.

NHCS bases its request on the alleged need to coordinate among various consultants, NHCS management and NHCS's accountants. Why this necessary coordination hasn't already been accomplished during the many months since the Department's September 2014 letter or

<sup>1</sup> As the Department is aware, several collapse sinkholes have opened recently on nearby properties. The School is fortunate that none have opened on School property but that could happen at any time.

following any of the Department's subsequent directives is completely unexplained. It is telling that the letter from Maurer & Scott (dated October 22, 2015) requesting more time to prepare a reclamation plan asks for an additional three weeks because "October is our busiest time of the year". This letter makes quite clear that NHCS did not request that Maurer & Scott perform this work until just recently. NHCS is claiming to need more time to complete what should have been completed in the prior 13 months. We assume that Maurer & Scott is unavailable because it is undoubtedly fully engaged to conduct near-constant blasting at NHCS. During the month of September, Solebury School received seven calls from NHCS in advance of their blasting; in October, we received six calls. Now, only six *days* into November, NHCS has already blasted rock three times, an unprecedented amount of blasting in my memory.

NHCS also cites very recent management changes as an excuse to ask for more time. Again, it is unclear how recent management changes could have possibly affected NHCS's obligations to conduct such work during the last 13 months. Moreover, such work is not primarily conducted by management; rather it is conducted by NHCS's technical consultants. Those consultants apparently have not performed this work so far in spite of the Department's previous letters and directives. The contrast between the behavior of an organization that intends in good faith to comply with its regulatory agency's directives and the behavior of NHCS could not be more revealing.

Also interesting and troubling is the October 28, 2015 letter from NHCS's accountant, which states that several weeks are needed to complete some unexplained "calculations" followed by "a review of the proposed time frames and financial feasibility." Putting aside that NHCS has known about these requirements for more than a year, the fact that NHCS's accountant raises the question of "financial feasibility" to perform the required work is of grave concern to Solebury School - and should be of grave concern to the Department. The suggestion of financial infeasibility to conduct proper closure planning - let alone actual proper closure - should be immediately investigated by the Department.<sup>2</sup>

Any claims of financial troubles by NHCS are simply not consistent with NHCS's current operations. As noted above, NHCS is very actively mining. In fact, Solebury School's experts have estimated that the rate of mining by NHCS for the last 9-12 months has more than doubled over the preceding several years. Our experts have conservatively estimated that the value of the rock excavated by NHCS per month has averaged well over \$1.2 million. Surely, any claim of financial inability is unfounded.

NHCS apparently has the managerial capability to continue, and even accelerate, its mining operations during the last several months and, apparently, the ability to engage management enough to make the decision to file an appeal of the Compliance Order<sup>3</sup>. Yet NHCS would have the Department believe that it is suddenly incapable of preparing technical plans that have been required for more than a year. Such claims by NHCS are patently absurd. Moreover, NHCS's request for additional time to comply with the Compliance Order is

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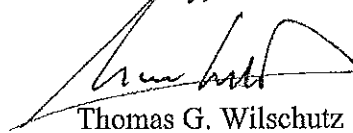
<sup>2</sup> The Department has failed to secure a bond from NHCS that will assure proper closure. NHCS's recent suggestion of financial inability to perform closure, regardless of its veracity, should be a sufficient basis for the Department to immediately secure a sufficient bond.

<sup>3</sup> Solebury School intends to file a Motion to Intervene in the appeal.

completely at odds with its decision to *appeal* the Compliance Order, in which it contends that the Order is an abuse of discretion, an error at law, and should be reversed. The fact that NHCS is taking these two contradictory actions is clear evidence that its true goal is nothing more than delay. NHCS has not come close to justifying any basis for additional time to comply.

One can only conclude that blast and delay, rather than compliance with the lawful directives of the Department, is and has been the objective of NHCS. Solebury School has invested considerable time and financial resources trying to protect the safety of its students, faculty and property, efforts that were, until the EHB's opinion, opposed by the Department. We have been cautiously optimistic that the Department has recently made some progress in holding NHCS's feet to the fire to require compliance with the EHB's determinations. Because NHCS's actions have made it abundantly clear that its objective is delay rather than compliance, now is not the time to back away from those efforts. It is clearly in NHCS's interest to delay as long as it can, to the continued detriment to the safety of Solebury School and the surrounding community. Again, Solebury School strongly objects to the Department providing New Hope Crushed Stone (NHCS) any additional time to comply and, in view of NHCS' continuing disregard of its obligations, urges the Department to take strong and immediate action to compel NHCS to comply with the EHB's opinion. As the EHB observed in its opinion at page 48, "enough is enough."<sup>4</sup>

Sincerely,



Thomas G. Wilschutz  
Head of School

Cc: Steven T. Miano, Esquire  
William J. Benner, Esquire  
Nels Taber, Esquire  
Michael Kutney, DEP

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<sup>4</sup> Should the Department grant additional time to NHCS, it should be expressly conditioned on the cessation of mining for a period of time equal to the additional time granted for compliance.