

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In The Matter Of:

Neiswonger Construction, Inc.	:	Violations of the Noncoal Surface Mining
17592 Route 322	:	Conservation and Reclamation Act &
Strattanville, PA 16258	:	Permit No.: 63100401
	:	Docket No.: 241042

CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement is entered into this 18th day of November, 2024, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection (“Department”) and Neiswonger Construction, Inc. (“Neiswonger”).

The Department has found and determined the following:

A. The Department is the agency with the duty and authority to administer and enforce The Clean Streams Law, Act of June 22, 1937, P.L. 1987, *as amended*, 35 P.S. §§ 691.1-691.1001 (“Clean Streams Law”); the Noncoal Surface Mining Conservation and Reclamation Act, Act of December 19, 1984, P.L. 1093, *as amended*, 52 P.S. §§ 3301 - 3326 (“Noncoal Surface Mining Act”); Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, *as amended*, 71 P.S. § 510-17 (“Administrative Code”); and the rules and regulations (“rules and regulations”) promulgated thereunder.

B. Neiswonger is a Pennsylvania corporation, whose business includes the surface mining of industrial minerals. Neiswonger has a mailing address of 17592 Route 322, Strattanville, PA 16258.

C. Vincent Neiswonger is President of, and has signature authority for, Neiswonger. Marissa McClain is Secretary of, and has signature authority for, Neiswonger.

D. Neiswonger is authorized to conduct coal mining activities in Pennsylvania pursuant to Mine Operator's License No. 6774.

E. Neiswonger operates an industrial mineral surface mine in Deemston Borough, Washington County, Pennsylvania pursuant to Surface Mining Permit No. 63100401 ("SMP"), known as the Maggie Lynn Quarry.

Applicable Law

F. Section 315(a) of the Clean Streams Law, 35 P.S. § 691.315, states, in part, "[n]o person . . . shall operate a mine or allow a discharge from a mine into the waters of the Commonwealth unless such operation or discharge is authorized by the rules and regulations of the department or such person . . . has first obtained a permit from the department."

G. Section 7(a) of the Noncoal Surface Mining Act, 52 P.S. § 3307(a), states, in part, ". . . no person shall operate a surface mine or allow a discharge from a surface mine unless the person has first obtained a permit from the department in accordance with this act. . . ."

H. Section 9(a) of the Noncoal Surface Mining Act, 52 P.S. § 3309(a), states, in part, "[a]fter a surface mining permit has been approved, but before the permit is issued, the applicant shall file, with the department, a bond for the land affected by each operation, on a form to be prescribed and furnished by the department, payable to the Commonwealth...."

I. Section 77.101(a) of the Regulations, 25 Pa. Code § 77.101(a), states, in part, "[a] person may not conduct noncoal mining activities or allow a discharge from a mine into waters of the Commonwealth without first obtaining a permit."

J. Section 77.193(b) of the Regulations, 25 Pa. Code § 77.193(b), states, in part, “[a]n operator may not disturb surface acreage or extend operations prior to receipt of approval from the Department of a bond and issuance of a permit or incremental phase approval covering the surface acreage to be affected.”

K. Section 77.525 of the Regulations, 25 Pa. Code § 77.525, states, “[a]ppropriate sediment control measures shall be designed, constructed and maintained under Chapter 102 (relating to erosion and sediment control).”

Status of Compliance

L. On May 20, 2024, the Department issued Compliance Order No. 241030 to Neiswonger for the following violations at the Maggie Lynn Quarry:

1. Violating Section 77.101(a) of the Regulations, 25 Pa. Code § 77.101(a), by conducting mining activities without first obtaining from the Department a permit authorizing mining. The Department determined that Neiswonger conducted mining activities outside the permit and bonding boundary in pit #2 and pit #3. Compliance Order No. 241030 required Neiswonger to reclaim the area by June 20, 2024.
2. Violating Section 77.193(b) of the Regulations, 25 Pa. Code § 77.193(b), by conducting mining activities without first obtaining a bond for the land affected by the mining activities. The Department determined that Neiswonger conducted mining activities outside the permit and bonding boundary in pit #2 and pit #3. Compliance Order No. 241030 required Neiswonger to reclaim the area by June 20, 2024.
3. Violating Section 77.525 of the Regulations, 25 Pa. Code § 77.525, by failing to construct adequate erosion and sedimentation controls in accordance with the Regulations.

M. Compliance Order No. 241030 required Neiswonger to construct erosion and sedimentation controls in accordance with the Regulations, specifically, to construct a collection ditch and riprap apron in the correct locations within the permit boundary by June 20, 2024.

N. On July 9, 2024, the Department conducted an inspection at the Maggie Lynn Quarry, which is documented in Inspection Report ID 3795739. The Inspection Report states that Neiswonger has not yet reclaimed the areas where mining outside the permit boundary occurred, and the collection ditch and riprap apron has not yet been constructed in the correct locations within the permit boundary.

O. The violations described in Paragraph L, above, constitute violations of Section 7(a) of the Noncoal Surface Mining Act, 52 P.S. § 3307(a); Section 9(a) of the Noncoal Surface Mining Act, 52 P.S. § 3309(a); 25 Pa. Code §§ 77.101(a), 77.193(b), and 77.525.

P. The violations described in Paragraph O, above, constitute unlawful conduct under Section 23 of the Noncoal Surface Mining Act, 52 P.S. §3323, and subject Neiswonger to civil penalty liability under Section 21 of the Noncoal Surface Mining Act, 52 P.S. §3321.

ORDER

After full and complete negotiation of all matters set forth in this Consent Order and Agreement and upon mutual exchange of covenants contained herein, the parties desiring to avoid litigation and intending to be legally bound, it is hereby ORDERED by the Department and AGREED to by Neiswonger as follows:

1. **Authority.** This Consent Order and Agreement is an Order of the Department authorized and issued pursuant to Section 21 of the Noncoal Surface Mining Act, 52 P.S. §3321, and Section 1917-A of the Administrative Code, 71 P.S. § 510-17.

2. ***Findings.***

a. In any matter or proceeding between Neiswonger and the Department, Neiswonger shall not challenge or deny the Department's assertion of the truth, accuracy, or validity of Paragraphs A through P, above.

b. The parties do not authorize any other persons to use the findings in this Consent Order and Agreement in any matter or proceeding.

3. ***Corrective Action.***

a. Within 15 days of the date of this Consent Order and Agreement, Neiswonger shall contact the Department of Conservation and Natural Resources (DCNR) to seek approval by letter from DCNR to add to the permit the area affected adjacent to Pit # 3 where mining off-permit occurred and the current location of D-1, which was also constructed off-permit.

b. Within 365 days of the date of this Consent Order and Agreement, Neiswonger shall reclaim and backfill Pit # 2 where mining off-permit occurred.

If approval is obtained by DCNR to add Pit #3 to the permit:

c. Within 6 months of approval, Neiswonger shall submit an application for a major mining permit revision, which includes the new acreage to the Department.

If approval is NOT obtained by DCNR to add Pit #3 to the permit:

d. Within 90 days of the denial, Neiswonger shall reclaim and backfill Pit # 3 where mining off-permit occurred.

e. Within 120 days of the denial, Neiswonger shall construct the diversion ditch (D-1) and riprap apron in the correct locations within the permit boundary in accordance with 25 Pa.

Code § 77.525 and Pa. Code Chapter 102 and reclaim the previously installed D-1 outside the permit boundary.

Wetland Mitigation Plan:

f. Wetland mitigation plan: Within 90 days of this Consent Order and Agreement, Neiswonger shall revise Module 14 by submitting a wetland mitigation plan for Wetland E in accordance with 25 Pa. Code §105.20a through:

1. Purchasing credits from an approved wetland mitigation banker.
2. Providing a plan for on-site or off-site wetland replacement.

4. ***Civil Penalty Settlement.*** Neiswonger consents to the assessment of a civil penalty of **THREE THOUSAND DOLLARS (\$3,000)**, which shall be paid in full upon signing.

This payment is in settlement of the Department’s claim for civil penalties for the violations documented in Compliance Order 241030 and set forth in Paragraph O, above, covering the period from May 20, 2024 through the date of execution of this Consent Order and Agreement. The payment shall be made by corporate check or the like made payable to the “Commonwealth of Pennsylvania” and submitted to:

Environmental Protection Compliance Specialist
Department of Environmental Protection
New Stanton District Mining Office
131 Broadview Road
New Stanton, PA 15672

5. ***Stipulated Civil Penalties.***

a. In the event Neiswonger fails to comply in a timely manner with any term or provisions of this Consent Order and Agreement, Neiswonger shall be in violation of this Consent Order and Agreement and, in addition to other applicable remedies, shall pay a stipulated civil

penalty in the amount of \$750 per day for each day the violation remains uncorrected beyond the due date.

b. Stipulated civil penalty payments shall be payable monthly on or before the fifteenth day of each succeeding month and shall be submitted in accordance with Paragraph 4 (Civil Penalty Settlement), above.

c. Any payment under this paragraph shall neither waive Neiswonger's duty to meet its obligations under this Consent Order and Agreement nor preclude the Department from commencing an action to compel Neiswonger's compliance with the terms and conditions of this Consent Order and Agreement. The payment resolves only Neiswonger's liability for civil penalties arising from the violations of this Consent Order and Agreement for which the payment is made.

d. Stipulated civil penalties shall be due automatically and without notice.

6. ***Additional Remedies.***

a. In the event Neiswonger fails to comply with any provision of this Consent Order and Agreement, the Department may, in addition to the remedies prescribed herein, pursue any remedy available for a violation of an order of the Department, including an action to enforce this Consent Order and Agreement.

b. The remedies provided by this paragraph and Paragraph 5 (Stipulated Civil Penalties) are cumulative and the exercise of one does not preclude the exercise of any other. The failure of the Department to pursue any remedy shall not be deemed to be a waiver of that remedy. The payment of a stipulated civil penalty, however, shall preclude any further assessment of civil penalties for the violation for which the stipulated penalty is paid.

7. ***Reservation of Rights.*** The Department reserves the right to require additional measures to achieve compliance with applicable law. Neiswonger reserves the right to challenge any action which the Department may take to require those measures.

8. ***Liability of Operator.*** Neiswonger shall be liable for any violations of the Consent Order and Agreement, including those caused by, contributed to, or allowed by its officers agents, employees, or contractors. Neiswonger also shall be liable for any violation of this Consent Order and Agreement caused by, contributed to, or allowed by its successors and assigns.

9. ***Transfer of Site.***

a. The duties and obligations under this Consent Order and Agreement shall not be modified, diminished, terminated or otherwise altered by the transfer of any legal or equitable interest in the Site or any part thereof.

b. If Neiswonger intends to transfer any legal or equitable interest in the Site which is affected by this Consent Order and Agreement, Neiswonger shall serve a copy of this Consent Order and Agreement upon the prospective transferee of the legal and equitable interest at least thirty (30) days prior to the contemplated transfer and shall simultaneously inform the New Stanton District Mining Offices of the Department of such intent.

10. ***Correspondence with Department.*** All correspondence with the Department concerning this Consent Order and Agreement shall be addressed to:

Chad Meyer
Environmental Program Manager
Department of Environmental Protection
131 Broadview Road
New Stanton, PA 15672
cmeyer@pa.gov

11. ***Correspondence with Neiswonger.*** All correspondence with Neiswonger concerning this Consent Order and Agreement shall be addressed to:

Vincent Neiswonger
17592 Route 322
Strattanville, PA 16258
(814) 229-0240
vinnie@neiswongerinc.com

Neiswonger shall notify the Department whenever there is a change in the contact person's name, title, or address. Neiswonger agrees that service of any notice, document, or any legal process for any purpose under this Consent Order and Agreement, including its enforcement, may be made electronically by email to the above email address or by mailing a copy by first class mail to the above address.

12. ***Severability.*** The paragraphs of this Consent Order and Agreement shall be severable and should any part hereof be declared invalid or unenforceable, the remainder shall continue in full force and effect between the parties.

13. ***Entire Agreement.*** This Consent Order and Agreement shall constitute the entire integrated agreement of the parties. No prior or contemporaneous communications or prior drafts shall be relevant or admissible for purposes of determining the meaning or extent of any provisions herein in any litigation or any other proceeding.

14. ***Attorney Fees.*** The parties shall bear their respective attorney fees, expenses and other costs in the prosecution or defense of this matter or any related matters, arising prior to execution of this Consent Order and Agreement.

15. **Modifications.** No changes, additions, modifications, or amendments of this Consent Order and Agreement shall be effective unless they are set out in writing and signed by the parties hereto.

16. **Titles.** A title used at the beginning of any paragraph of this Consent Order and Agreement may be used to aid in the construction of that paragraph but shall not be treated as controlling.

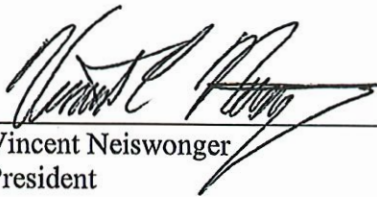
17. **Termination.** The obligations of this Consent Order and Agreement shall terminate when the Department determines that Neiswonger has complied with the requirements of Paragraph 3 and all civil penalties have been fully paid.

18. **Execution of Agreement.** This Consent Order and Agreement may be signed in counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument. Counterpart signatures may be transmitted electronically using portable document format (.pdf).

IN WITNESS WHEREOF, the parties hereto have caused this Consent Order and Agreement to be executed by their duly authorized representatives. The undersigned representatives of Neiswonger certify under penalty of law, as provided by 18 Pa. C.S. § 4904, that they are authorized to execute this Consent Order and Agreement on behalf of Neiswonger; that Neiswonger consents to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that Neiswonger hereby knowingly waives its right to appeal this Consent Order and Agreement and to challenge its content or validity, which rights may be available under Section 4 of the Environmental Hearing Board Act, Act of July 13, 1988, P.L. 530, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa. C.S. § 103(a) and Chapters 5A and 7A; or any other provisions of law. (Signature by

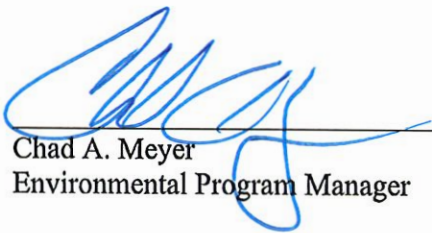
Neiswonger's attorney certifies only that the agreement has been signed after consulting with counsel.)

FOR NEISWONGER
CONSTRUCTION, INC.:



Vincent Neiswonger
President

FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:



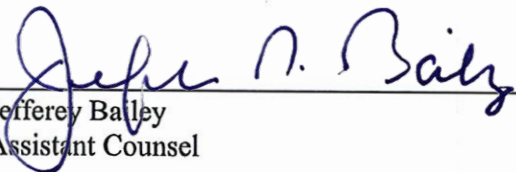
Chad A. Meyer
Environmental Program Manager



Marissa McClain
Secretary

waived

Attorney for Neiswonger Construction, Inc.
(If waiving opportunity for attorney review,
write "waived" on the attorney signature line)



Jeffrey Bailey
Assistant Counsel