


COMMENT/RESPONSE DOCUMENT

**August 26, 2024 Public Hearing
East Bethlehem Volunteer Fire Department
Fredericktown, Pennsylvania**

**Neiswonger Construction, Inc.
Maggie Lynn Underground Mine
Surface Mining Permit Application No. 63192001
NPDES Permit Application PA0278360
Deemston Borough
Washington County**

Approved:



Chad Meyer, Environmental Program Manager
Pennsylvania Department of Environmental Protection
Bureau of District Mining Operations
New Stanton District Office

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Pennsylvania Department of Environmental Protection
Bureau of District Mining Operations
New Stanton District Office

Date: January 21, 2025

COMMENT/RESPONSE DOCUMENT

Neiswonger Construction, Inc.
Maggie Lynn Underground Mine
Surface Mining Permit Application No. 63192001
NPDES Permit Application PA0278360
Deemston Borough, Washington County
Public Comment Period Dates: August 3, 2024 through September 2, 2024
Public Hearing Date/Time: August 26, 2024, 6:00 pm
Public Hearing Location: East Bethlehem Township Volunteer Fire Department,
Fredericktown, PA

BACKGROUND

Neiswonger Construction, Inc. has applied for a large non-coal underground mining permit [No. 63192001] with associated surface activities and individual National Pollutant Discharge Elimination System (NPDES) water discharge permit [PA0278360] from Pennsylvania Department of Environmental Protection (DEP). If approved, the underground mine permit would encompass and replace the existing Maggie Lynn Quarry surface mining permit (SMP) [No. 63100401] and its associated individual NPDES permit [PA0252034], which were originally issued October 4, 2012. The draft permit also incorporates some area, and a discharge, from the adjacent PA Coal Reclamation, Inc. Hawkins permit [SMP No. 63813210; NPDES No. PA0615129]. The new operation, which would be known as the Maggie Lynn Underground Mine, proposes underground mining of limestone, and would discharge treated water, after settling of sediment, into an unnamed tributary to Tenmile Creek and into Tenmile Creek, which is a trout-stocked fishery within the Monongahela River Watershed. The draft effluent limits for the NPDES permit, which authorizes the discharges, were published in the August 3, 2024 edition of the *Pennsylvania Bulletin*.

The proposed location of the Maggie Lynn Underground Mine is within a half mile of East Bethlehem Township, which is an Environmental Justice (EJ) area. As such, DEP has engaged in enhanced public outreach. For the Maggie Lynn Underground Mine permit application, this included a public meeting held on December 13, 2023. Notice of the application was first published by the operator in the Washington Observer-Reporter Newspaper in January and February 2022. Subsequently, as the permit area was revised to include additional area, the operator published a new notice in the Washington Observer-Reporter Newspaper in January and February 2024, whereupon the public hearing was requested by Deemston Borough during the public comment period opened by this public notice. The August 3, 2024 publishing of the NPDES draft permit limits also opened a 30-day public comment period, expiring September 2, 2024. Therefore, both the Maggie Lynn Underground Mine application and its associated draft NPDES permit were available for public comment at the August 26, 2024 public hearing. DEP submitted a legal notice of a public hearing to The Observer-

Reporter newspaper which was published on August 4, 2024. A notice was also issued as a press release from the DEP Newsroom on August 2, 2024.

Attached is a list of individuals who submitted comments on the SMP application and draft NPDES permit before, during and after the public hearing. The comments are shown in italicized text and a response from the DEP follows each comment. Some of the comments, either written or verbal, from different individuals are combined as they were similar in nature (*i.e.* different speakers comments regarding dust may be combined in a single comment related to dust). Also, the comments and responses are numbered to assist with internal references within this document and do not reflect the order in which comments were made. In addition, the Environmental Protection Agency (EPA) also conducted a review of the draft NPDES permit.

A significant number the comments were related to air quality and dust, which are addressed under two different DEP programs. The stone processing plant operates under a General Permit issued by the DEP Southwest Region Bureau of Air Quality (BAQ) with enforcement by BAQ. Other potential sources of dust (roadways transportation, stockpiles, drilling) are subject to BAQ standards, with enforcement by both the New Stanton District Mining Operations (DMO) and BAQ. Although the hearing related to the mining permit and NPDES rather than the BAQ General Permit, all of the comments are addressed within this document to provide a better understanding of the operation proposed in the Maggie Lynn Underground Mine application. Personnel from BAQ provided input and review of the responses related to air quality and dust.

The mining permit provides the requirements that must be met to ensure compliance with the Federal Surface Mining Conservation and Reclamation Act, Noncoal Surface Mining Conservation and Reclamation Act, Clean Streams Law, and Air Pollution Control Act. The NPDES permit provides the requirements that must be met to ensure compliance with the Federal Clean Water Act, Pennsylvania Clean Streams Law and all applicable regulations promulgated pursuant to these laws. These requirements protect existing and designated uses of the stream which include aquatic life, water supplies, and recreation.

The DEP attendees included: Emily Green, Southwest Region Office of Environmental Justice; Lauren Camarda, Southwest Region Communications Manager; Rocco Giammaria, Southwest Region Local Government Liaison; Elspeth Koehle, Northwest Region Office of Environmental Justice; Chad Meyer, Environmental Program Manager, DMO; and Diane Roote, PG, Lead Reviewer, DMO.

LIST OF COMMENTORS

Alphabetical list of all persons who provided testimony during the public hearing.
(No additional written comments were received during the public comment period
dates of August 3 through September 2, 2024.)

1. Lois Bower-Bjornson
2. Susan Gunchuck
3. Kathleen Martincic
4. David Smereczniak
5. Carol Zuchowski

LIST OF ACRONYMS

AVS – Applicant/Violator System
BAQ – Bureau of Air Quality (DEP)
COA – Consent Order and Agreement
DEP – Pennsylvania Department of Environmental Protection
DMO – District Mining Office (DEP)
DOT – Pennsylvania Department of Transportation
EPA – U.S. Environmental Protection Agency
GP3 – General Permit BAQ-PGPA/GP3 for Portable Nonmetallic Mineral Processing Plants
Neiswonger – Neiswonger Construction, Inc.
HOP – Highway Occupancy Permit
NPDES - National Pollutant Discharge Elimination System
OSMRE – U.S. Office of Surface Mining Reclamation and Enforcement
SMCRA - Surface Mining Conservation and Reclamation Act
SMP – Surface Mining Permit
SOOP – State-only Operating Permit – see new response below – if the SOOP is not to be referenced, delete acronym

COMMENTS/RESPONSES

Comment 1: *Many of the DEP people that attended the public meeting in December 2023 are not here at this August 2024 meeting. Would have thought the same staff would continue working on the site so they are familiar with the issues. (Community) voices are not being heard. The same issues exist as were discussed at the December 2023 meeting. DEP had the meeting in December 2023, but the residents were not helped by DEP and therefore did not come to the August 2024 meeting. Residents don't want operation to be shut down but want them to be compliant. DEP is asked to help the residents (living near the quarry).*

Response 1: The majority of the DEP staff that attended December 2023 public meeting are still involved with the review of the Maggie Lynn Underground permit application and/or the existing Maggie Lynn Quarry permit. DEP attended the August 2024 meeting with a limited number of staff because the public hearing format of the August 2024 meeting results in a transcript that can be shared as needed with appropriate personnel and staff do not have an opportunity to respond during a public hearing format. DEP explained the format of the public hearing to the individual who requested the hearing and the requestor concurred with having less staff present since the comments would be recorded.

Comment 2: *Speaker opposed to issuance of mining permit 63192001 and NPDES permit PA0278360. The Environmental Justice designation reflects the (recovering) community's heightened vulnerability to environmental impacts.*

Response 2: The Environmental Justice program has a goal of just treatment and meaningful involvement of all people without regard to income, wealth, race, color, national origin, or area of residence. DEP provides enhanced public participation opportunities regarding certain permitting actions located in or near Environmental Justice areas.

DEP is charged with reviewing permit applications for compliance with applicable laws and regulations and guided by DEP policy. If a permit application satisfies the applicable statutory and regulatory requirements, DEP issues a permit to the applicant, unless the applicant does not pass a compliance check of the national Office of Surface Mining Reclamation and Enforcement (OSMRE) Applicant/Violator System (AVS) database. The AVS database tracks unabated or uncorrected environmental violations of the Surface Mining Conservation and Reclamation Act (SMCRA). Any unabated or uncorrected violations must be in the process of being abated or corrected to the satisfaction of the agency with jurisdiction over the violation in order for the permit to be issued.

A mining permit provides the requirements that must be met to ensure compliance with applicable statutes, including the Federal Surface Mining Conservation and Reclamation Act, Noncoal Surface Mining Conservation and Reclamation Act, Clean Streams Law, and Air Pollution Control Act. The NPDES permit provides the

requirements that must be met to ensure compliance with the Federal Clean Water Act, Pennsylvania Clean Streams Law and all applicable regulations promulgated pursuant to these laws. Noncoal processing plants may be covered by a General Permit (BAQ-PGPA/GP3 for Portable Nonmetallic Mineral Processing Plants) upon approval of an operator's application for coverage. The processing plant at the Maggie Lynn existing quarry was historically covered by this GP3, with the coverage authorized and administered by the DEP Bureau of Air Quality (BAQ). BAQ inspectors check for compliance with the GP3 on a regular basis. District Mining Office (DMO) inspectors check for compliance with additional items that are part of Module 17 (Air Pollution and Noise Control Plan) of the mining permit, such as dust control from roads, stockpiles, and truck tarping.

A Consent Order and Agreement (COA) was agreed upon by Neiswonger and DEP on October 23, 2024, in which, among other things, Neiswonger is obligated to submit a new Air Quality State-only Operating Permit (SOOP) application to ensure the implementation of appropriate air cleaning devices and techniques, monitoring, reporting, and recordkeeping. Unlike the GP3, which is a General Permit that imposes standard conditions on a specified class of sources, the SOOP will be site-specific and tailored to the Maggie Lynn site..

Comment 3: *Increasing mining activities could exacerbate existing environmental health concerns. DEP must thoroughly review the draft permit to ensure effluent limits are strict enough to safeguard water and air quality. Consideration should also be given to cumulative health effects, since this is a 50-year project and (the quarry) has already been operating over ten years. Neiswonger should be required to do a cumulative health impact (study) of combined impact of their operations. A comprehensive assessment of the combined impact of these operations is crucial to prevent adverse environmental impacts.*

Response 3: DEP has evaluated the water and air pollution aspects of this proposed operation in accordance with applicable statutes and regulations. DEP's approach to permitting water discharges through the NPDES program is designed to be protective of water quality in the receiving stream for designated uses. The NPDES Permit authorizes discharges to an unnamed tributary to Tenmile Creek and to Tenmile Creek. The designated use of these receiving streams are trout stocked fisheries. DEP reviewed the application and determined that operation pursuant to the NPDES Permit maintains the trout stocked fisheries.

The standards for air emissions from the processing plant are based on visible dust, in accordance with the General Permit (GP3) for Portable Nonmetallic Processing Plants. Opacity, a measurement of how much light visible emissions block, is used to gauge the amount of allowable visible dust. Processing equipment (crushers, screens, belts, transfer points) must meet the standard of zero visible emissions, and use of roadways and stockpiling must meet the standard of taking all reasonable actions to prevent particulate

matter from becoming airborne, as noted in 25 Pa. Code § 123.1(c). In addition, fugitive particulate matter emissions may not be visible at the point the emissions pass outside the property on which the source is located.

DMO inspectors are on site once per quarter to inspect for compliance with the mining and NPDES permits, including Module 17 of the mining permit, which covers Air Pollution and the methods the permittee is to use to reduce dust from their operations. Visible dust may arise from periodic blasting activities, however dust generated from blasting activities in open mine pits may not be visible at the point the emissions pass outside the property lines. If the underground permit is issued, the blasting activities would eventually transition to underground, with the exception of blasting needed for initial or future portal development. An Air Quality inspector goes to the facility at least once per year to perform an annual inspection with additional follow-ups as needed. Complaints are addressed as soon as possible when they are received by the Southwest Region Air Quality Program. Additionally, with the issuance of the SOOP, there will be more controls put in-place to provide dust relief.

Comment 4: *Wetlands complete with saturated soil and wetlands flora are present along Tenmile Creek, north of the quarry. This area remained soggy during the hot, dry summer weather. This area is valuable to our biodiversity, water cycle, and climate. These wetlands are clearly visible on satellite images and are not shown on the resource maps for the permit. (Residents) want the wetlands to be documented and assurances that the underground mine does not affect this exceptional resource.*

Response 4: As a result of this comment, the DEP performed a site visit and subsequently required the applicant to visually identify and map three areas of potential wetlands, including the wetland identified by the commentor, and two others. These wetlands have been added to the site map and are located outside the permit boundary. The three wetland areas will not be undermined by the proposed underground mine operation, and the underground workings will be located approximately 175 to 200 feet below the surface at the closest point any of the three wetlands are to the proposed underground mining. It is therefore unlikely that any impacts will occur to these wetlands from mining. The wetlands located within the permit boundary are documented in Module 14 and mitigation will be required if they are impacted. DEP is requiring mitigation for the 0.3-acre Wetland E, as its water source has been decreased by the quarry operation. If the underground permit is issued, it will include a special condition to comply with this mitigation.

Comment 5: *The water suppression equipment is obviously inadequate as fugitive dust violations continue to occur today. Neiswonger is currently under investigation by a DEP Air Quality Inspector for the current continuing violations. The new online permit application of July 2024 (03230101) has a typo at the bottom of page 17-20. The June 202 is stated and therefore the year is not discernable. In the same permit, they included a nozzle location map with no water suppression nozzles at the truck dump hopper or at the ends of the*

conveyors. From a direct view of the excavation, dust from blasting and stone crushing is visible. DEP has provided videos of inadequate or improper water sprays.

Response 5: The applicant was required to correct the typographical error noted by the commenter. On October 23, 2024, DEP entered a Consent Order and Agreement (COA) with Neiswonger requiring corrective action at the site to prevent unlawful fugitive dust emissions. The COA requires Neiswonger to, among other things, (1) apply for an Air Quality operating permit to establish necessary emissions control devices and techniques, monitoring, reporting, and record keeping requirements, (2) perform and maintain facility-wide emission and odor inspections each day the facility operates, (3) train personnel in appropriate inspection techniques, (4) install permanent water spray bars with multiple nozzles at emissions points, and (5) operate road sweepers and water trucks to prevent fugitive emissions violations. The COA also imposes stipulated civil penalties for violations of the COA. Also see response to Comment 3.

Comment 6: *DEP has cited Neiswonger several times for no pressure gauges on the water system. The water spray equipment is obviously substandard. Photos of a single spray nozzle were provided (to residents) by DEP. There should be several nozzles and much more pressure.*

Response 6:

See response to Comment 5 above.

Comment 7: *Because of Neiswonger's continuous disregard of the law, I request that you do not issue a mining permit until the proper dust suppression equipment is in place and operating. Residents have no desire to stop operations, but to make Neiswonger a good neighbor. I further request that the current permit be converted to a state permit so that engineering can specify the correct dust suppression equipment be installed before the permit is activated. The quarry must take immediate, real action to mitigate this dust pollution at the source.*

Response 7: See response to Comment 5, above. Pursuant to the October 23, 2024 COA, Neiswonger must apply for an Air Quality operating permit and install appropriate dust suppression equipment no later than February 20, 2025, among other requirements.

Comment 8: *Contractors have informed a resident that the siding on our home, which is only about four years old, must be replaced due to dust from the quarry.*

Response 8: See response to Comments 3 and 5, above. The Department does not have the statutory or regulatory authority to order repair or compensation for structural damages from alleged damages from dust emissions.

Comment 9: *EPA has just tightened the standards on air pollution from soot and dust, and even these stricter limits don't go far enough. We know that exposure to tiny particles are likely to exacerbate heart problems, there is no safe limit, and these particles stay suspended longer and travel further than visible dust. In addition to residents breathing dust, so do children who attend Bethlehem Schools just over a mile from the quarry.*

Response 9: The nearest Air Monitoring Station, located in Charleroi, consistently demonstrates compliance with the National Ambient Air Quality Standards (NAAQS), including the recently updated standards for particulate matter (PM2.5). These standards are set by the U.S. Environmental Protection Agency (EPA) based on extensive scientific evidence about the health effects of air pollution. While we recognize that certain populations, such as children and individuals with heart or respiratory conditions, are more sensitive to air pollution, adherence to the NAAQS is designed to provide a level of protection that is suitable for public health, including sensitive groups.

Also see responses to Comments 3 and 5, above.

Comment 10: *Continuous dust monitors must be put in place at points around the 1,000-foot buffer around the quarry and the (west side of the school) campus to ensure the quarry is in compliance. The monitoring data must be accessible to residents and school directors so we can know our health is not at risk. The health of residents, children, and workers at the quarry is more valuable than the limestone commodity.*

Response 10: While the existing air monitoring network shows compliance with NAAQS, continuous dust monitoring at specific locations, like the school or near the buffer zone, is not currently required under the quarry's general permits. However, PA DEP regularly evaluates whether additional monitoring or controls are needed, especially when new concerns are raised. Commentors are also welcome to provide input during public comment periods for any future permits or modifications related to the quarry, including the air quality operating permit required under the October 2024 Consent Order and Agreement reference in the response to Comment 8.

Also see responses to Comments 3, 5, and 9 above.

Comment 11: *Fredericktown relies on the aesthetic and recreational value of the creeks and the river and is in economic recovery. There are (approximately) five marinas and people come from Pittsburgh, Ohio, and West Virginia to boat and recreate. People who are boating, rafting, kayaking do not want to see plumes of silica dust floating down on them.*

Response 11: PA DEP recognizes the importance of preserving Fredericktown's natural beauty, recreational value, and economic recovery. Visible dust and silica emissions are addressed through operational best practices at the quarry, and compliance is enforced

through inspections and permit conditions. If there are specific incidents of concern, such as visible dust emissions, residents may report them to PA DEP for investigation.

Also see responses to Comments 3, 5, and 9 above.

Comment 12: *Resident's driveway is dirty due to untarped trucks and is in close proximity to school so school is also getting dust. There are plumes of dust along the road (cannot have car windows down near quarry), but when it is raining it turns to muck. A nearby school triathlon event was held and the children were cautioned that where they were riding their bicycles could be affected with dust.*

Response 12: DEP's DMO served a Compliance Order to Neiswonger on October 10, 2024 for failure to maintain haul roads and access roads, the observation of mud and debris tracked onto Morey Road from the haul road, and failure to adhere to permit conditions that require the tarping of loaded trucks leaving the quarry. Compliance with this Order is required prior to issuance of the Maggie Lynn Underground permit. DMO does not have regulatory authority for vehicles once they are on public roadways. Trucks observed leaving the site without a tarp are subject to further compliance action.

DEP encourages the public to report complaints to the New Stanton District Mining Office at 724-925-5500 (during business hours) or 412-442-4000 (after hours). The public may also submit complaints via DEP's website: <https://www.dep.pa.gov>

Comment 13: *While traveling on Morey Road, it is incredibly dangerous to be in a private vehicle or a school bus (because) there are so many trucks going in and out of the quarry and they are not covering their loads. Wondering if DEP has coordinated with DOT – many triaxles have been pulled over by the state police because they've received calls for speeding, unsafe driving, and uncovered loads. Postmaster asked residents to move mailboxes to opposite side of the road because it was dangerous to stop and deliver mail due to the truck traffic. Safety should be DEP's main concern.*

Response 13: DEP does not enforce truck traffic safety beyond requiring the applicant to obtain a Highway Occupancy Permit (HOP) from the Pennsylvania Department of Transportation as part of the mining permit application. Residents may wish to call the local or State Police with concerns regarding speeding and unsafe driving. As noted in Response 12, DEP is enforcing the current requirement to tarp trucks at Maggie Lynn Quarry. The underground mine permit, if issued, will include a requirement to cover truck beds with tarpaulins and continue to meet the terms of the Compliance Order discussed in Response 12.

Comment 14: *Resident offered to have DEP staff park in driveway and view trucks coming out of quarry. State police have done so; DEP has not. Resident living near Bethlehem High School driveway has photos of trucks going by untarped. Neiswonger stated they have signage that loads must be tarped, but truckers are not doing so and Neiswonger must*

enforce it. Neiswonger also stated that for certain sizes of stone or load size (freeboard from top of truck) the loads do not have to be tarped.

Response 14: Please see responses to Comments 12 and 13.

Comment 15: *At the December 2023 meeting, there was discussion that the trucks are not being washed. (DEP) said there would be a truck wash, and if that were the case, the road should be wet and it is not. It is an incredibly dry area. (Private) vehicles are constantly covered with limestone dust. A (truck) wash station is needed, but it must be designed so that the dust that comes off the truck does not enter the environment.*

Response 15: DEP DMO stated at the December 2023 meeting that a truck wash was an action the DMO could investigate. DEP has since determined that the issue with debris and mud on the roads is directly related to haul road maintenance. The underground mine permit, if issued, will include a requirement to maintain continued compliance with the Compliance Order requiring maintenance of the haul roads. Also see the response to Comment 12.

Comment 16: *Tenmile Creek is a trout stocked fishery on the Monongahela River and the potential impact on water quality could harm the creeks of the water ecosystem and disrupt the local fisheries. The discharge from the quarry must meet rigorous standards to prevent contamination and protect these sensitive aquatic environments.*

Response 16: DEP agrees with this statement and will ensure that NPDES discharge limits are protective of designated uses for Tenmile Creek. The NPDES permit effluent limits are also sent to the U.S. Environmental Protection Agency for review. Also see the response to Comment 3.