



EAST ROCKHILL TOWNSHIP BOARD OF SUPERVISORS

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October 21, 2020

Via Electronic Mail

Gary A. Latsha
District Mining Manager
Commonwealth of Pennsylvania
Department of Environmental Protection
Pottsville District Mining Office
5 West Laurel Boulevard
Pottsville, PA 17901

Re: Rock Hill Quarry
Response to Hanson Aggregates Pennsylvania LLC's Letter, dated October 9, 2020

Dear Mr. Latsha:

East Rockhill Township (the "Township") is in receipt of a letter from Hanson Aggregates Pennsylvania LLC ("Hanson") regarding the Rock Hill Quarry (the "Site") dated October 9, 2020. In that letter, Hanson requests that the Pennsylvania Department of Environmental Protection (the "Department") "continue to hold in abeyance the annual minimum tonnage removal requirement for active mine operations" for the Site. For the following reasons, we believe that Hanson's request mischaracterizes the Department's prior letter dated December 23, 2019, and otherwise requests an action that is not permitted under the Noncoal Surface Mining Conservation and Reclamation Act.

The Noncoal Surface Mining Conservation and Reclamation Act requires that once surface mining operations have commenced, an "operator shall maintain mining and reclamation equipment on the site at all times, shall conduct an active operation and shall conduct surface mining operations on the site on a regular and continuous basis." 52 P.S. § 3313(a). An "active operation" is defined as an "operation where a minimum of 500 tons of minerals for commercial purposes have been removed in the preceding calendar year." 52 P.S. § 3303. The only exception to the foregoing requirements is where the operator has requested in writing, and has received from the Department, approval of a temporary cessation of operations. 52 P.S. § 3313(b). A written application must be submitted by the mine operator before the temporary cessation of operations can be approved and must include: a statement of the number of acres that have been affected, the reason for cessation, the date on which temporary cessation is anticipated and the date on which the operator anticipates that operations will resume. 52 P.S. § 3313(b). The Department cannot approve the temporary cessation of an operation for a period exceeding 90 days unless the cessation is due to seasonal shutdown or labor strikes, or due to the absence of a current regional market for the mineral being mined where the operations produce highway or construction aggregates. 52 P.S. §§ 3313(b)-(c).

As the Environmental Hearing Board has observed, the reason that mining operations are required to remain active is “to prevent the abandonment of mining operations where there are outstanding reclamation operations which the Commonwealth will be left to perform to avoid public health, safety, welfare and environmental problems.” *New Hanover Twp. v. DEP*, 2014 EHB 834, 868. The limited statutory grounds that are available to allow the Department to approve requests for temporary cessations of mining operations for longer than 90 days reflect the overall legislative intention “to avoid having active mining operations with outstanding reclamation obligations slide into a state of abandonment.” *Id.* Indeed, in analyzing parallel requirements for coal refuse disposal operations, the Board recently observed that “[i]f coal refuse disposal operations are ceased for a period longer than allowed by the regulation for temporary cessation, *then the coal refuse disposal operation is, by operation of law, permanently ceased.*” *Eighty Four Mining Co. v. DEP*, 2019 EHB 585, 591 (emphasis added).

On December 5, 2018, upon discovery of asbestos in the rock being mined at the Site, the Department issued an order to Hanson to cease all mining and rock crushing activity at the Site. The Department stated that the cessation “will remain in effect until rescinded by the Department in writing.” The Department’s order to cease mining operations was issued for an indefinite period of time in response to human health and environmental concerns and was not a temporary cessation issued in response to a written request submitted by Hanson. Indeed, operations at the Site have been shut down for nearly two years, far longer than 90 days, and the exceptions to the 90-day limitation on temporary cessations were inapplicable as of December 5, 2018 and remain inapplicable to this day.

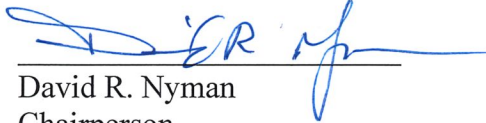
Hanson ultimately failed to remove a minimum of 500 tons of minerals for commercial purposes from the Site in 2019 and therefore has not maintained an active operation. In addition, Hanson has not maintained mining and reclamation equipment at the Site at all times and has not conducted surface mining operations at the Site on a regular and continuous basis.

In a letter dated December 23, 2019, the Department provided the following information with respect to Hanson’s failure to maintain an active mining operation in 2019: “At such time that DEP makes a decision regarding the status of the ongoing cessation, it will evaluate the requirement that the permittee remove a minimum of 500 tons of minerals in the preceding calendar year in order to be considered an active operation.” The Department did not hold the active operation requirement “in abeyance,” but rather explained that it did not intend to opine on the legal effect of Hanson’s failure to maintain an active operation until it might make a decision on whether to lift the cessation order that has been in place since December 5, 2018.

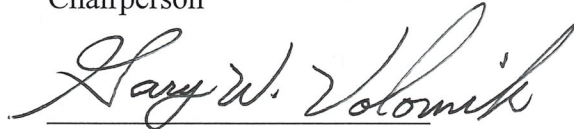
Mining activity at the Site has been shut down for nearly two years without the issuance of a temporary cessation approval covering that time period. In the intervening time period, Hanson could have attempted to take any number of actions to address this extended period of inactivity: (1) Hanson could have appealed the Department’s cessation order of December 5, 2018 (and also petitioned for supersedeas), but it did not; (2) Hanson could have applied for approvals of temporary cessations as provide for in the Noncoal Surface Mining Conservation and Reclamation Act, but it did not; or (3) Hanson could have attempted to apply for a permit modification to allow for the removal of only 500 tons of minerals per year from existing stockpiles, but it did not. To the extent that operations are permanently ceased, the operation is required to be backfilled or closed or otherwise permanently reclaimed in accordance with 25 Pa. Code Chapter 77 and the applicable surface mining permit. 25 Pa. Code § 77.652.

Thank you for your consideration of the foregoing comments.

Respectfully submitted,



David R. Nyman
Chairperson



Gary W. Volovnik
Vice Chairperson



James C. Nietupski
Member

cc: Township File
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