



June 24, 2020

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

RE: Permit No. 39140301 and NPDES Permit No. PA0225444, Geryville Materials, Inc.

Dear Mr. Latsha,

The Delaware Riverkeeper Network (DRN), on behalf of our approximately 25,000 members throughout the Delaware River Watershed, urges the Pennsylvania Department of Environmental Protection (PADEP) to deny Geryville Materials' application for the commencement and operation of a quarry operation proposed off West Mill Hill Road in Lower Milford Township that would impact over 127 acres and operate for over 50 years. Since 2015, DRN has submitted several comments advocating for the denial of this permit. The time is long overdue for this needed action by PADEP. A denial is in line with Article 1 Section 27 of the Pennsylvania Constitution that states:

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

For over a decade, the PADEP has kept this application in review even though Geryville Materials has failed time and again to accurately and timely complete permit application materials. Criteria for permit denial include accuracy and completeness of the permit application and compliance with "the requirements of the act, the environmental acts and this chapter have been complied with."¹

PADEP first sent Geryville Materials a deficiency letter on October 22, 2015. That letter detailed 95 deficiencies in the above referenced application. Geryville Materials, via its consultant, EarthRes, subsequently requested 14 more months to address the deficiencies and complete monitoring.

¹ 25 Pa. Code § 77.126. Criteria for permit approval or denial.

On September 30, 2019, PADEP issued a second deficiency letter. In this letter, PADEP identified 84 technical deficiencies, including deficiencies from the first letter that remained unaddressed. PADEP also requested that Geryville Materials respond individually to over 60 comments from the Val Britton Group, LLC (submitted in response to EarthRes' response to the first deficiency letter).

In December 2019, after the second deficiency letter, Geryville Materials prepared a timeline, titled "Geryville Response Implementation Schedule" for PADEP outlining the time the company needed to develop the necessary data to respond to the second deficiency letter. Geryville Materials was again requesting additional time to respond. In January 2020, PADEP granted Geryville Materials until June 30, 2020 to respond.

Out of over 144 deficiencies identified in the second deficiency letter (PADEP and Britton comments and sub-items combined), Geryville Materials' timeline only lists 10 tasks to compile all of that data and implement a response to the second deficiency letter (which included deficiencies not yet addressed from the 2015 letter).

Among the deficiencies not yet addressed from PADEP's 2015 letter is the zoning and land use approval status (Item 6 in the second deficiency letter). On November 1, 2018, the Lower Milford Township Zoning Hearing Board (ZHB) unanimously denied the special exception requested by Geryville Materials. On January 14, 2019, Geryville Materials filed a lawsuit in Lehigh County Court of Common Pleas appealing the ZHB decision. The case was heard on July 24, 2019. It is our understanding that the judge made a partial ruling on December 31, 2019, and ordered the case back to the ZHB for more testimony on two matters: sections 471(c) and 411.10(c) of Lower Milford Township's Zoning Ordinance. Section 471(c) of the ordinance regulates steep slopes. Section 411.10(c) regulates outside storage for nonresidential uses. After additional testimony, the ZHB will issue a supplemental decision, that could again be appealed, which means that local zoning and land use approvals will not be secured by June 30, 2020.

This application has persisted for so long that many of the application materials are woefully outdated such as traffic studies from 2006. Despite the number of years that have passed, basic requirements such as a highway occupancy permit from the Pennsylvania Department of Transportation (PennDOT) have yet to be fulfilled.

A new Wetland Delineation is included in "Geryville Response Implementation Schedule." This new delineation should be made available to the public for review and comment given the risk this project poses to wetlands in the Hosensack Creek watershed. Wetlands in this watershed are designated as "Exceptional Value" or EV, due to the creek's listing, by the Pennsylvania Fish and Boat Commission (PFBC), as a Wild Trout Water.

DRN notes that Item 19 in the second deficiency letter asks Geryville Materials to address comments from the PFBC. In a March 2019 memo from PFBC to PADEP, PFBC underscores that it manages the Hosensack Creek as a Wild Trout fishery. PFBC specifically noted that three unnamed tributaries (UNTs) to Hosensack Creek are also managed as wild trout fisheries: the UNT at rivermile (RM) 3.08, the UNT to Hosensack Creek at RM 1.00, and the UNT to Hosensack Creek at RM 1.08. PFBC notes that:

Accordingly, all wetlands that are hydrologically connected to these streams are considered Exceptional Value (EV) under Pennsylvania Code Title 25 § 105.17(1)(iii).

PFBC further concludes that:

[T]he mining activities as currently proposed will not effectively avoid EV wetland impacts, and that mining activities will likely impact 2.85 acres of EV wetlands, in violation of Pennsylvania Code Title 25 § 105.18(a). Existing wild trout populations as well as an endangered species rely on the functions of these EV wetlands and associated streams, and diminution of these aquatic resources would ultimately result in impacts to these biota. The PFBC does not support approval of this permit with the potential proposed impacts to EV wetlands.

DRN restates concerns expressed in our comment of November 12, 2017, that PADEP is required to make a final determination regarding the “existing uses” of all surface waters which may be impacted by the proposed quarry. This determination necessarily includes wetlands. Existing uses are those uses actually attained in the water body on or after November 28, 1975, whether or not they are included in water quality standards.²

Neither PADEP nor Geryville Materials specifically identified any existing uses for the EV wetlands within the surface mine permit (SMP) boundaries. Consequently, PADEP could not have come to any reasonable conclusions regarding whether the proposed activity will degrade those specific existing uses as prohibited by Chapter 93. PADEP has identified a test for determining the degradation of existing uses of streams, but no such parallel test exists for wetlands.

PADEP’s “Test for Non-Degradation of Water Quality” expressly excludes a consideration of wetlands.³ PADEP states that it:

uses a two-part test that evaluates all facets of the discharge’s potential effect on the receiving stream to make [its degradation analysis].⁴

There is no mention of wetlands in the entire Section of the Department’s guidance with regard to its “Test for Non-Degradation of Water Quality.” Therefore, even if PADEP or Geryville Materials did identify existing uses for EV wetlands impacted by the proposed quarry, PADEP cannot determine that the existing use would be protected because it has not developed an applicable test to evaluate whether degradation of that EV wetland has, or is likely, to occur. Not only has PADEP failed to identify any existing uses for EV wetlands, it also lacks a specifically defined methodology or test to determine whether or how those existing uses could be degraded by proposed project construction and operational activities. As such, the permit cannot be issued.

In addition, if mining operations commence at the quarry, there is no way to prevent the dust generated by mining from settling in the Hosensack Creek, degrading water quality and negatively impacting the aquatic ecosystem. On February 3, 2015, DRN and co-petitioners submitted a petition to PADEP to upgrade the Hosensack Basin and all of its tributaries to EV status. The Hosensack hosts a diverse macroinvertebrate

² 25 Pa. Code § 93.1. Definitions

³ Pennsylvania Department of Environmental Protection. (2003). Water Quality Antidegradation Implementation Guidance.

⁴ Pennsylvania Department of Environmental Protection. (2003). Water Quality Antidegradation Implementation Guidance.

community as well as naturally reproducing brown and brook trout. Wetlands within the Hosensack Watershed are considered EV due to the presence of the federally threatened bog turtle and PFBC's Wild Trout Water listing. All of these resources would be put at an unnecessary risk from mining operations at the quarry.

DRN also notes that it also appears that at this time the mining license issued to Geryville Materials, Inc. is expired. A [search](#) of eFACTS shows a license issued to Geryville Materials in 2017, but does not show licenses issued in 2018, 2019, or 2020.

Geryville Materials has failed time and again to accurately and timely complete permit application materials. After over a decade of incomplete, inaccurate, and/or outdated application materials, after multiple deficiency letters and subsequent requests for extensions, the time has come for PADEP to deny this application once and for all. Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Maya K. van Rossum". The signature is written in a cursive style with a long horizontal line extending to the right.

Maya K. van Rossum
the Delaware Riverkeeper

cc: Michael Kutney, P.G., Pottsville District Mining Operations, Pennsylvania Department of Environmental Protection
Donna L. Wright, Chair, Board of Supervisors, Lower Milford Township