

EI-16410



Danielle Gosselin/STB

02/23/2009 03:57 PM

To

cc

bcc

Subject Scoping documentation-disconnect

From: Darryl Farber
Sent: Friday, February 20, 2009, 10:26 AM
To: Danielle.Gosselin@stb.dot.gov
Cc: GosselinD@stb.dot.gov; Darryl Farber
Subject: Scoping documentation-disconnect

Hi Danielle,

I think I have found a significant disconnect. The original petition gives the vague impression that the applicant is permitted (or likely to be soon) for a large quarry (2,444 ac.) with local road access to haul significant tonnage, (730,000 tons/year) with significant local road traffic (32,850 trucks per year). And that the railroad activation would be avoiding this traffic from the local roads (which provide the separate utility). This is incorrect.

The applicant is actually permitted for a small limited production 5 acre quarry and limited to 10,000 tons per year and 400 trucks per year --about 1% of the total tonnage and truck traffic claimed. This is a significant difference that would also affect the economic justification and shows the need for larger action.

Attached is the Pennsylvania Department of Environmental Protection quarry permit issued Dec. 4, 2008, also attached is the initial construction and operation exemption - the application dated May 19, 2008 (May 20, 2008 in FD_35116 document #222416) for your convenience.

In the original petition for construction and operation exemption the claim is made:

"Both segments of the reactivated rail line will be operated by RJCP and will serve primarily a new quarry, landfill, and industrial park near Gorton, Pennsylvania currently being developed by Resource Recovery, LLC (Resource Recovery). Resource Recovery is developing approximately 2,443.78 acres of land previously strip-mined and not reclaimed. The site will be used for a sand and stone quarry, a landfill, and other industrial users " (p. 4).

The actual permit is for 5 acres for the quarry only.

Additionally, original petition makes the claim:

"At peak capacity, the quarry will produce approximately 2000 tons of sand and stone per day, and rail transportation of that material will keep approximately 90 trucks per day from the local roads and highways" (p. 6).

The site is permitted for a maximum of 10,000 tons per year that is 400 trucks per year.

Hawbaker is mining CLOG lands, CLOG is the Resource Recovery, LLC site.

The permitted quarry is only 0.2% or 0.002 of the original acreage stated in the Corman petition or 10,000 tons per year, which is only about 1% of the yearly tonnage and truck traffic claimed.

Since the petitioner does not have a permit for the claimed "2000 tons of sand and stone per day" it means there is no basis to conclude that "rail transportation of that material will keep approximately 90 trucks per day from the local roads and highways" so that one would conclude that the petitioner does not have a separate utility for the tonnage claimed in the original petition and that the action is intrinsically connected to future actions that are part of a larger action that may require an environmental impact statement.

Thank you,

Darryl

Penn State University,
Science, Technology and Society Program
102 Old Botany Building, UP

814-865-9951

814-865-3047

www.sts.psu.edu

FAX

Pages:

13

To: Danielle Gosselin

Fax: 202-245-8454

Date: [Pick the date] 2/20/89

Re: FD-35116

Fax: 814-865-3047

Phone: 814-865-9951

Cc:

Comments: Danielle,

FAXED is PA DEP quarry
permit plus letter to community
groups. Also relevant
pages noted in email with
cover sheet from original
petition

Best,

Daniel Faber

☐ Urgent

☒ For Review

☒ Please Comment

☐ Please Reply

☐ Please Recycle



Pennsylvania Department of Environmental Protection

186 Enterprise Drive
Philipsburg, PA 16866
January 14, 2009

Moshannon District Office

(814) 342-8200
FAX (814) 342-8216

People Protecting Communities
P. O. Box 38
Clarence, PA 16829

RE: Notice of Permit Action
Glenn O. Hawbaker, Inc.
SMP#14072801, Moshannon Aggregates Operation
Rush Township, Centre County

Ladies and Gentlemen:

On February 1, 2007, Glenn O. Hawbaker, Inc. submitted an application requesting authorization to surface mine on the lands of CLOG, Inc. located in Rush Township, Pennsylvania.

During the course of application review, you provided comments for our consideration. This letter is to inform you that a surface mining permit has been issued to Glenn O. Hawbaker, Inc. effective December 4, 2008.

Letters of concern regarding this application were received from the public and were considered in our review. Many of those concerns were the basis for modifications to their application and resulted in changes to Hawbaker's original mining plan. Please note that this permit is a small industrial mining permit, which limits Hawbaker's surface mining area to a maximum of 5 acres and limits production to 10,000 tons per year. Comments concerning the proposed landfill/interstate access interchange for Resources Recovery, LLC. were not applicable to this small noncoal mine.

A copy of the issued permit has been enclosed for your review. The permit includes several special conditions designed to safeguard the area's hydrologic balance from being affected by the mining operation. They include conditions that:

- Provide for the application of imported alkaline material to offset potential acid production. Glenn O. Hawbaker, Inc. must stockpile the alkaline material at the site prior to overburden removal and must blend the alkaline material with disturbed overburden materials. The final floor of the mine is to receive 100 tons of material prior to backfilling and reclamation.



- Glenn O. Hawbaker, Inc. must monitor the water quality at Mine Adit #1 and the unnamed tributary to Moshannon Creek on a quarterly basis upon activation of the mine. Water monitoring will verify the quality of water produced from the surface mining area. Monitoring would allow DEP to suspend mining activities or modify the permit if there are any indications of a potential water quality problem.
- The affected area of mine disturbance will be limited to the dimensions stipulated in the mine permit. The mine has been bonded at conventional large noncoal bonding rates to ensure that reclamation will be completed.

Relative to the Land Use Conflict, a letter from the Rush Township Board of Supervisors dated February 16, 2007 acknowledged that the mining project was consistent with the Townships Comprehensive Plan.



Several concerns were expressed over the increased truck traffic on township roads in Rush and Snow Shoe Townships. DEP's mining regulations do not give DEP jurisdiction over the use of the Commonwealth's roads. Citizens should relay their concerns to the Pennsylvania Department of Transportation or township officials who have jurisdiction over the haulage routes. It is also noted that the 10,000 annual tonnage limit equates to approximately 400 truckloads per year. Glenn O. Hawbaker, Inc. may need to obtain haulage agreements for the use of township roads to facilitate access to the mine site.

Thank you for your comments and interest in this surface mining permit application. The Department of Environmental Protection does its best to make sure that the concerns of citizens are carefully considered in its review of every application. The issued surface mining permit and application materials are available for review at our office. If you have any questions about this operation, please feel free to contact the Moshannon District Office. The Surface Mine Conservation Inspector (MCI) for this operation will be Mr. John DeHaas. MCI DeHaas can be reached by telephoning 814-342-8200.

Any person aggrieved by this action may appeal, pursuant to Section 4 of the Environmental Hearing Board Act, 35 P.S. Section 7514, and the Administrative Agency Law, 2 PA C. S. Chapter 5A, to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, 717-787-3483. TDD users may contact the Board through the Pennsylvania Relay Service, 800-654-5984. Appeals must be filed with the Environmental Hearing Board within 30 days of receipt of written notice of this action unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in braille or on audiotape from the Secretary to the Board at 717-787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

If you want to challenge this action, your appeal must reach the board within 30 days. You do not need a lawyer to file an appeal with the board.

Glenn O. Hawbaker, Inc.
SMP#14072801. Rush Township

3 January 14, 2009

Important legal rights are at stake, however, so you should show this document to a lawyer at once. If you cannot afford a lawyer, you may qualify for free pro bono representation. Call the Secretary of the Board (717-787-3483) for more information.

If you have any questions, please contact me at the Moshannon District Office at the above numbers.

Sincerely,



David Bisko, P.G.
Chief, Permits & Technical Services
Moshannon District Mining Operations

Enclosure

cc: David Bisko
MCIS Steven C. Starner
MCI John DeHaas
SCS
Permit File

DB/cav

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF MINING AND RECLAMATION

SMALL NONCOAL (INDUSTRIAL MINERALS)
SURFACE MINING PERMIT

NO. 14072801

Permittee Name	<u>Glenn O. Hawbaker, Inc.</u>	Location of Operation:
and Address	<u>1952 Waddle Road</u>	Municipality <u>Rush Township</u>
	<u>State College, PA 16803-1649</u>	County <u>Centre</u>
Name of Operation:	<u>Moshannon Aggregates</u>	
LICENSE NO.:	<u>2128</u>	AUTH. ID. <u>663057</u>

This Permit Approves the Following Type of Operation: Quarry

☐ Small Noncoal (Industrial Minerals) Surface Mine limited to a total annual production of 2000 tons for License #2128.

☒ Small Noncoal (Industrial Minerals) Surface Mine limited to a total annual production of 10,000 tons for this permit.

This approval is subject to the attached LIMITS OF AUTHORIZATION and any attached SPECIAL CONDITIONS OR REQUIREMENTS.

This mining authorization is for 5.0 bonded acres. The total permit acreage is 5.0 acres. Permittee may conduct Noncoal Surface Mining activities only within the area bonded under this Mining Authorization.

This permit for a Small Noncoal (Industrial Minerals) Mining Operation, as defined in Pa. code §77.108, is hereby issued in accordance with the provisions of the Noncoal Surface Mining Conservation and Reclamation Act, Act of December 19, 1984 (P.L. 1093, No. 219), as amended, 52 P.S. §§3301 *et seq.*; and The Clean Streams Law, Act of June 22, 1937 (P.L. 1987, No. 394), as amended, 35 P.S. §§691.1 *et seq.*, The Air Pollution Act, Act of January 8, 1960 (1959 P.L. 2119, No. 787), as amended, 35 P.S. §§4001 *et seq.*, and the regulations promulgated pursuant to these Acts. This permit is also issued in accordance with the following statutes and regulations if marked:

☐ Dam Safety and Encroachments Act, Act of November 26, 1978 (P.L. 1375, No. 325), as amended, 32 P.S. §§693.1 *et seq.*, and the regulations promulgated pursuant to this Act.

☐ Surface Mining Conservation and Reclamation Act, Act of May 31, 1945 (P.L. 1198, No. 418), as amended, 53 P.S. §§1396 *et seq.*, and the regulations promulgated pursuant to the Act.

Permittee is hereby authorized to conduct noncoal (industrial minerals) mining activities as described in the approved permit application and in accordance with, the laws and regulations and terms and conditions as referenced above. A violation of any provision of these laws and applicable regulations and terms and conditions is a violation of any provision of these laws and applicable regulations and terms and conditions is a violation of this permit.

Permit Issuance Date December 4, 2008 BY David Bisko
David Bisko, P. G., Chief

DB/hao TITLE Permit & Technical Services

Page 2
SMP #14072801

Glenn O. Hawbaker, Inc.
Rush Township Centre County

LIMITS OF AUTHORIZATION

1. The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights.
2. Nothing herein contained shall be construed to be an intent on the part of the Department to approve any act made or to be made by the permittee which is inconsistent with the permittee's lawful powers or with existing laws of the Commonwealth regulating noncoal mining activities and the practice of professional engineering. This permit shall not be construed to sanction any act otherwise forbidden by federal or state law or regulation, or by local ordinance, not to pre-empt any duty to obtain state or local consent required by law for the noncoal mining activity.
3. The permittee's failure to comply with the laws of the Commonwealth and the applicable rules and regulations of the Department regarding noncoal mining activities, or failure to comply with the terms and conditions of this permit, may result in an enforcement action, in permit termination, suspension, revocation and reissuance, or modification. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee of any responsibilities, liabilities, or penalties to which the permittee is or may be subject to under the Acts pursuant to which this permit is issued or any other applicable provision of law.
4. The permittee is responsible for complying with local ordinances adopted pursuant to the Municipalities Planning Code, and all zoning ordinances in existence before January 1, 1972. Nothing in this permit shall be construed to relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee may be subject under Federal, State, or Local laws.

BOND DESCRIPTION

☒ Original Bond ☐ Transfer ☐ Additional Bond ☐ Replacement Bond

☒ Surety Bond No. 327009198 in Amount of \$15,533.00 dated November 1, 2008 with Liberty Mutual Insurance Company as surety.

cc: Inspector Supervisor James McDonald
Inspector John DeHaas
Mylar Section - 5th Fl. RCSOB/facesheet/appl. facesheet/topo
Conservation District/w topo
Rush/w topo
Liberty Mutual Insurance Company
Resources Technologies Corporation
Permit File

NONCOAL07

**SMALL NONCOAL (INDUSTRIAL MINERALS)
SURFACE MINING PERMIT**

SPECIAL CONDITIONS OR REQUIREMENTS

The following special conditions or requirements are hereby incorporated into this small noncoal permit and represent permit conditions.

1. There will be no blasting within this permit until the operator has secured the Department's written approval of a phase-specific blast plan.
2. Erosion and sedimentation control facilities shall be constructed and maintained as necessary to ensure compliance with Chapter 102 (relating to erosion control).
3. The highwall height may not exceed 55 feet.
4. Reclamation shall be conducted concurrently with mining operations.
5. The outer limits of the area approved by this permit are to be clearly field marked for duration of mining.
6. The operator is prohibited from mining more than 10,000 tons of industrial materials during any calendar year. A production record of all minerals removed from this operation must be maintained on site during working days. This record must show the tonnage removed per working day, date of removal, type of mineral, and name of buyer.
7. The haul road shall be maintained in accordance with Title 25 Section 77.631 of the PA Code for Noncoal Mining.
8. Mining, including material extraction and support activities, shall be confined to the area bonded under this mining authorization.
9. There will be no casting of overburden or spoil material down slopes.
10. The operator must comply with the regulations governing general permits for small noncoal operations as described in Title 25, Section 77.108 of the Pennsylvania Code.
11. The permittee is responsible for complying with local ordinances adopted pursuant to the Municipalities Planning Code of July 31, 1968. Nothing in this permit shall be construed to relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee may be subject to under any federal, state, or local laws.
12. Included in the 5.0 acres bonded under this authorization to mine is 0.72 acres of haul road.

13. The affected area will be no more than maximum pit-acreage acres and the mine pit will conform to the following dimensions: maximum width of 200 feet, maximum length of 315 feet.
14. Topsoil and subsoil will be striped from the initial mining area and segregated and placed in a stabilized stockpile.
15. The permittee must apply 450 tons of imported alkaline material (baghouse waste lime or equivalent alkaline material) on this exploration site. During spoil material removal, imported alkaline material must be mixed with the spoil material at a rate of 350 tons. Imported alkaline material at 100 tons must be placed on the final pit floor prior to backfilling. A total of 450 tons of imported alkaline material is required for this site. The total amount of imported alkaline material must be stockpiled at the site prior to the start of overburden removal.
16. The permittee must monitor the water quality and quantity at monitoring point #4 (Mine Adit #1) on a monthly basis and DS-1 (unnamed tributary to Moshannon Creek) on a quarterly basis at the start of site activation. Water samples must be submitted to the Moshannon District Office on a quarterly basis. The permittee must request cessation of water monitoring when the site has been reclaimed and planted.

FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832

RONALD A. LANE
(312) 252-1503
rlane@fletcher-sippel.com

222416

Phone (312) 252-1500
Fax (312) 252-2400
www.fletcher-sippel.com

May 19, 2008

VIA FEDERAL EXPRESS

Ms. Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20024

FILED

MAY 20 2008

**SURFACE
TRANSPORTATION BOARD**



Re: Finance Docket No. 35116
R.J. Corman Railroad Company/Pennsylvania Lines Inc. -
Construction and Operation Exemption - Clearfield County, PA

Dear Secretary Quinlan:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of the Petition for Exemption of R.J. Corman Railroad Company/Pennsylvania Lines Inc., dated May 19, 2008. A check in the amount of \$63,800, representing the appropriate fee for this filing, and a diskette containing the text of the Petition in MS Word 2003 format also are enclosed.

An extra copy of the Petition and of this transmittal letter are included as well. I would request that you date-stamp those items to show receipt of this filing and return them to me in the provided envelope.

Should any questions arise regarding this filing, please feel free to contact me. Thank you for your assistance on this matter. Kind regards,

Respectfully submitted,

Ronald A. Lane
Attorney for R.J. Corman Railroad Company/
Pennsylvania Lines Inc.

RAL:tjl

Enclosures

cc: Parties on Certificate of Service

FEE RECEIVED

MAY 20 2008

**SURFACE
TRANSPORTATION BOARD**

Subsequently, in 1995, Conrail abandoned additional lines in the area that it referred to as the "Snow Shoe Cluster." *Consolidated Rail Corp - Abandonment Exemption -- In Clearfield and Centre Counties, PA*, Docket No. AB-167 (Sub-No.1146X) (ICC served September 8, 1995). The Snow Shoe Cluster abandonment included the line from Wallaceton Junction to Winburne (what RJCP now calls the "Western Segment"), and is not subject to any trails agreement. In this proceeding, RJCP seeks authority under 49 U.S.C. § 10901 to reconstruct the Western Segment, to be operated by RJCP as part of its new Beech Creek Branch Line. The roadbed is still largely intact, and RJCP will reacquire the right to use that roadbed for railroad purposes through voluntary sales or, to the extent necessary, by condemnation.

Although RJCP contends that no construction approval is necessary with respect to the Eastern Segment, *see Iowa Power - Const. Exempt. - Council Bluffs, IA*, 8 I.C.C.2d 858, 866 n.12 (1990), and is concurrently filing a motion to dismiss this petition as to the Eastern Segment, RJCP conditionally requests authority under 49 U.S.C. § 10901 with respect to the Eastern Segment to the extent that the Board determines such authority is necessary to reactivate the line from Winburne to Gorton.

Both segments of the reactivated rail line will be operated by RJCP and will serve primarily a new quarry, landfill and industrial park near Gorton, Pennsylvania currently being developed by Resource Recovery, LLC ("Resource Recovery"). Resource Recovery is developing approximately 2443.78 acres of land previously strip-mined and not reclaimed. The site will be used for a sand and stone quarry, a landfill and other industrial users. In addition, it has recently been determined that the remaining coal on the site may now be commercially feasible to transport in backhaul empty trash cars and burn with current scrubber technology. Resource Recovery's landfill operations will be governed by permits issued by the Pennsylvania

Department of Environmental Protection and the U.S. Army Corps of Engineers. Resource Recovery supports this Petition, as well as the accompanying notice and petition that RCJP is concurrently filing in Finance Docket No. 35143 and Docket No. AB-167 (Sub-No.1004N), respectively.

II. PETITIONER

R.J. Corman Railroad Company/Pennsylvania Lines Inc. is one of a family of short line railroads controlled indirectly by Mr. Richard J. Corman. RJCP is a Class III railroad, and its acquisition of its current lines in the vicinity of Clearfield, Pennsylvania was authorized pursuant to *R.J. Corman Railroad Company/Pennsylvania Lines, Inc. - Acquisition and Operation Exemption - Lines of Consolidated Rail Corporation*, Finance Docket No. 32838 (STB served January 26, 1996). As relevant here, RJCP operates over a former Conrail light density line that extends from an interchange with NS at Keating, through Clearfield and Wallaceton, to Osceola Mills, Pennsylvania. The reactivation proposed in this and the related proceedings will extend from a point on the current RJCP line at Wallaceton Junction, Pennsylvania to the site of the development near Gorton, Pennsylvania.

RJCP is controlled directly by R.J. Corman Railroad Group, LLC, a holding company that controls eight operating Class III carriers. R.J. Corman Railroad Group, LLC is majority-owned and controlled by Mr. Richard J. Corman. See *Richard J. Corman and R.J. Corman Railroad Group, LLC - Continuance in Control Exemption - R.J. Corman Railroad Company/Tennessee Terminal, LLC*, Finance Docket No. 34775 (STB served February 3, 2006). None of the R.J. Corman companies, including non-rail carrier affiliates, has any affiliation with Resource Recovery through stock ownership, control or otherwise.

III. THE PROPOSAL

Resource Recovery wishes to gain access to rail service at the quarry, landfill and industrial park it is developing near Gorton, Pennsylvania. RJCP wishes to provide that service over the existing Conrail roadbed from RJCP's station at Wallaceton Junction to the facilities, and NS wishes to provide line haul service via the NS-RJCP interchange at Keating. To that end, RJCP, Resource Recovery and NS have agreed to cooperate to restore rail operations over the Beech Creek Branch Line. In summary, NS will transfer to RJCP its³ residual right to reactivate rail service over the Eastern Segment. Resource Recovery will fund most of the construction costs to rebuild a single-track rail line approximately 20 miles in length over both the Western Segment and the Eastern Segment. RJCP will operate, maintain and provide common carrier service over its existing lines and the restored Beech Creek Branch Line, and NS will provide line haul service from its interchange with RJCP at Keating.

It is anticipated that RJCP will haul unit trains of sand, stone and perhaps coal outbound from the quarry within the Gorton development to Keating, and will haul unit trains of municipal solid waste and/or construction and demolition debris inbound from the Keating interchange to the landfill portion of the development. Other carload traffic for the industrial park at Gorton will move as needed with the unit trains. At peak capacity, the quarry will produce approximately 2000 tons of sand and stone per day, and rail transportation of that material will keep approximately 90 trucks per day from the local roads and highways. At peak capacity the landfill will receive about 5000 tons of solid waste per day, and rail transportation

³ On August 27, 2004, NS obtained all of Conrail's rights with respect to the Snow Show Industrial Track. See *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company - Control and Operating Leases/Agreements - Conrail Inc. and Consolidated Rail Corporation*, Finance Docket No. 33388 (Sub-No.94) (STB served November 7, 2003).

will keep 250 trucks of waste per day off the highways – not only in the immediate vicinity of Gorton in central Pennsylvania, but all the way to the Eastern Seaboard.

There is currently no other rail service in the area, and this project will not cross the line of any other railroad. Reconstruction of the track will simply restore the line to the same conditions that existed for decades before it was abandoned in the 1990s. RJCP anticipates that it will serve the Gorton facility – when quarry and landfill operations reach full capacity – with one or at most two unit trains daily.

With regard to waste traffic, RJCP will not engage in any transloading or unloading activity. RJCP will simply deliver trains to Resource Recovery, the permitted operator of the landfill, and Resource Recovery will unload and process such materials pursuant to its permit like any other industry. Because the landfill will be fully permitted by the Pennsylvania Department of Environmental Protection and the U.S. Army Corps of Engineers, neither Resource Recovery nor RJCP will seek to preempt the application of any local public health, safety or environmental laws or regulations.⁴

IV. THE LINE

RJCP seeks exemption from the requirements of 49 U.S.C. § 10901 for the reconstruction of tracks and operation over the existing railway roadbed extending from a point of connection with RJCP at milepost 11.7 near Wallaceton (Wallaceton Junction) to milepost 22.5

⁴ As such, this petition does not implicate the Consolidated Appropriations Act of 2008, Pub. L. No. 110-161, § 193, 121 Stat. 1844 (2007), because RJCP will not be taking any action with respect to solid waste outside the original shipping container (railcars), and because the Board will not be authorizing any activity at any solid waste rail transfer facility. RJCP will not conduct any transfer operations, and the activities at the Resource Recovery landfill will be authorized by the Pennsylvania Department of Environmental Protection and the U.S. Army Corps of Engineers. Further, in the absence of rail service, the same activities would be conducted at the landfill using solid waste transported to the landfill by truck.