

Draft August 28, 2014



Regulatory Programs Committee  
August 14, 2014 Agency  
Meeting; REW:mlr

**Regulatory Programs Committee  
August 14, 2014**

Committee Members present: Sherman Craig, Chair, Richard Booth, and Lynn Mahoney (Department of State), Art Lussi and Chairwoman Ulrich voting.

Other Agency Members and Designees present: Daniel Wilt, Robert Stegemann (Department of Environmental Conservation), Bradley Austin, (NYS Department of Economic Development), William Thomas and Karen Feldman.

Agency Staff present: Terry Martino, Executive Director and James Townsend, Counsel.

Local Government Review Board Representative: Fred Monroe, Executive Director

The Committee convened at 9:45 am.

1. Approval of July Draft Regulatory Programs Committee Minutes

On motion of Mr. Lussi and seconded by Chairwoman Ulrich the Committee unanimously adopted the Draft Regulatory Committee Minutes of the July 2014 Agency meeting.

2. Deputy Director (Regulatory Programs) Report (R. Weber)

Mr. Weber reviewed the monthly statistics of applications received and permits issued. He discussed projects from the High Profile Report and welcomed questions from the Board.

Ms. Feldman asked Mr. Weber if the total number of project applications received were lower in comparison to last year's total number received. Mr. Weber did not have an explanation at this time. He said recent projects have been complex and there have been a higher number of variances submissions. Executive Director Martino said the total number of projects submitted is more consistent with prior years.

Mr. Weber acknowledged Agency staff's hard work in reviewing the NYCO projects over the past year. He said the project review has been a significant and careful effort of a team comprised of Legal, RASS and Regulatory Programs, and Agency staff had been in close consultation with the DEC as they conduct their review pursuant to the Mine Land Reclamation Act. Mr. Weber noted that DEC and APA will coordinate and recognize the conditions in the other agency permit and will coordinate the timing of the permit term.

Mr. Weber also noted that the original trucking proposals have been revised by the applicants since the public meeting and the close of the comment period. He stated that staff are aware of on-going investigations into potential expanded mining activity on adjoining lands, but did not speculate on the environmental impacts of a project that has not been developed or proposed to the Agency. He noted that the activities currently under review are not functionally dependent on any activities that may be under consideration in the future.

Projects

2013-138 & 96-76MR3

(T. Saehrig)

NYCO Minerals, Inc. (Seventy Road)

Essex: Town of Lewis

Industrial Use and Rural Use

96-76MR3

NYCO Minerals, Inc. (Oak Hill)

Essex: Town of Lewis

Industrial Use, Moderate Use, Rural Use and  
Resource Management

Mr. Saehrig recognized Brian Glackin, and Mark Buckley from NYCO, Kevin Bernstein, Esq., representing NYCO, and Lyndsey Stevens, Consultant, H2H Associates in the audience.

Mr. Saehrig described the background and history of staff review of the proposed projects for NYCO's Seventy Road and Oak Hill mines. Mr. Saehrig explained that comments received from the public resulted in staff holding an informational public meeting on July 2, 2014. Agency staff and NYCO discussed the comments received, and NYCO revised their proposal to keep the truck trip numbers at Seventy Road Mine at their currently-authorized levels, which are 63 daily truckloads from April 1 through June 30 and from September 1 through November 30, and 45 truckloads in July and August. Mr. Saehrig also noted that the original proposal had been for 150 truckloads from the

Oak Hill Mine to Graymont Industries, but NYCO also reduced that request, to 100 truckloads, which is a 9 load increase from currently-authorized levels.

Mr. Saehrig presented a slide show describing the history and current objectives of both Seventy Road Mine and Oak Hill Mine. He explained the Seventy Road Mine Expansion Plan.

Mr. Saehrig said there will be an excavation of approximately 1.06 acres of wetlands at the Seventy Mine, and construction of a wetland mitigation area approximately 2.2 acres in size at NYCO's Oak Hill Mine. Mr. Saehrig stated the wetland mitigation will be completed in accordance with a Wetland Mitigation Plan, and the impacts to an unnamed stream will be mitigated in accordance with a Stream Mitigation Plan and with approvals from the DEC and US Army Corps of Engineers.

Mr. Saehrig discussed the proposed changes to the hours of operation and trucking at the Seventy Road mine. He said NYCO's request to begin trucking and mining operations one-half hour earlier and to continue one-half hour later in the day than currently authorized will allow the trucks to get an earlier start and be off the road before school buses arrive. In the evening, the extra time will allow them to operate the crusher so materials are ready for trucking the following morning. He also stated that some storm events have slowed down production by creating a need to pump water from the mine before drilling, blasting, excavating, and trucking can continue. Mr. Saehrig also stated that an objective of the Seventy Road Mine is to allow NYCO to transport "aggregate" from the mine, with no change in the number of truck loads.

Mr. Saehrig then showed a slide depicting the Oak Hill Mine Plan renewal map for P96-76MR3. He explained the proposal to create 2.12± acres of wetland as mitigation at Oak Hill Mine for the wetland loss at Seventy Road. In addition, modifications to a culvert in Patterson Creek would serve as partial mitigation for impacts to the impacted tributary at the Seventy Road facility.

Mr. Saehrig noted that the Oak Hill proposal also includes increasing the number of truckloads of "aggregate" from the existing 91 loads to 100 loads per day between the mine and the Graymont processing facility 1.25 miles to the north on State Route 9. He again stated that the initial proposal was for 150 loads per day. Mr. Saehrig commented that in staffs' opinion the increase of 9 truckloads a day will not impact NYS Route 9. He also explained that the Oak Hill proposal includes using 20-ton trucks to transport aggregate, compared to the existing 22-ton minimum.

Mr. Saehrig explained that 196 public notices were sent by the Agency to all adjoining landowners of both mine sites and to landowners along the trucking routes. He discussed the main concerns received in letters and at the public information meeting, as well as comments supporting the proposal. Again, Mr. Saehrig reiterated NYCO's changes to their proposals for both mines after comments received at the Public Information Meeting.

Mr. Saehrig explained that NYCO has also requested that the Agency allow additional trucking to supply "aggregate" for state or municipal emergency projects from both mines.

Mr. Saehrig reviewed the wetland and stream impact mitigation conditions for the projects. In addition, he explained the monitoring of water quality will be consistent between the Agency and DEC.

Mr. Saehrig noted that NYCO has been contributing to road maintenance expenses and repairs on Seventy Road and Wells Hill Road as agreed upon with the Town of Lewis. He said this will continue as a condition of the Seventy Road permit.

Mr. Saehrig stated that the permit term dates will be coordinated with the DEC, from 2014 to 2019. Annual reports will continue to be provided and reviewed by the Agency and will now include aggregate, dates and number of blasts, and reclamation status; staff will respond to NYCO with any concerns.

Mr. Saehrig stated that DEC monitors mines independently from the Agency, and the Agency will be notified of any concerns from DEC. In addition, the Agency monitors the sites through site visits and mining reports.

Mr. Saehrig concluded his presentation by reiterating the proposals and noting that staffs' recommendation is to approve the draft permits with the conditions referenced in the presentation.

Chairwoman Ulrich asked Mr. Saehrig if the new stream was going to be created before the old stream is damaged. Mr. Saehrig responded that before any impacts occur from mineral extraction to the existing stream the new stream will be completely constructed and the stream will be diverted.

Mr. Saehrig was asked to explain the term "federally designated major collector route." Mr. Saehrig explained that the ore trucking route between the NYCO mines and the Willsboro plant follows a designated transport route between NYS Route 9 and the Northway and the Hamlet of Willsboro, and that this is a suitable route for heavy truck traffic and receives federal financial aid.

Mr. Wilt asked if there is a need for the increase in hours of operation, or instead a need to increase trucking. Mr. Saehrig explained that the increase in the hours of trucking is to allow the trucks to move in the morning from the overnight parking location near the Northway to the mine, and in the evening from the Willsboro plant to the parking location. He explained that the extra one-half hour in the morning will allow the trucks to move before the school buses arrive. Mr. Saehrig said that mining is a seasonal operation, and NYCO is asking for an increase in their approved trucking hours to allow the option of using the extended hours if needed.

Mr. Booth asked Mr. Saehrig what a truck trip involves. Mr. Saehrig explained that a truck trip is a loaded truck leaving the mine. Mr. Booth stated that the local residents are seeing double that number because of the return trips. Mr. Saehrig agreed.

Mr. Craig reiterated that the number of truckloads from Oak Hill Mine is only being increased by 9, and that the Seventy Road truckloads are not increasing at all.

Ms. Feldman noted her concern for the residents along the truck route caused by increasing the hours of operation to 7am to 6pm.

Chairwoman Ulrich asked Mr. Saehrig to describe the nature of the truck routes. He stated the county highways from Route 9 to the processing plant are mixed with residences and farms. Mr. Saehrig noted he is not sure but believes that 45 miles per hour is the speed limit for the county roads.

Ms. Ulrich asked Mr. Saehrig if the hours have been increased over the years and Mr. Saehrig responded that to his knowledge there has only been one increase in hours.

Mr. Booth stated the 63 - 45 truckloads is a daily count, not an average amount of truck trips. Mr. Saehrig agreed that it is the maximum number each day.

Mr. Booth noted his concern that there is no Finding of Fact referencing any trucking complaints in the draft permits. He stated that trucking is the main concern of the community. Mr. Booth suggested language be included in the draft permit regarding the lack of trucking incidents along the truck route and that trucking has not been a problem. He asked for documentation of the character of the road and the concerns regarding trucking, and summarization of whether trucking has been a problem.

Associate Counsel Reynolds reminded the Board that only the Oak Hill Mine is requesting an increase of 9 truckloads, and that the truck routes are very different. She also stated that staff did not incorporate all of the Findings from all of NYCO's past permits. Mr. Saehrig said that 196 public notices were sent by staff to adjoining landowners and landowners along the truck route, and only a handful of comments were received. Associate Counsel Reynolds stated that truck traffic issues are required to be submitted with each annual report. Mr. Lalonde confirmed Ms. Reynolds' statement that there is a condition in the existing permits that all truck traffic issues have to be submitted with each annual report, along with an explanation of how each incident was resolved. He also stated and there have been very few incidents in his history with the Agency. Mr. Booth commented that this is the impact that the community will feel on a daily basis.

Ms. Ulrich suggested that a Finding of Fact be included in the draft permit regarding any trucking issues and concerns.

Ms. Reynolds reiterated that staff concentrated their review on the specific route where the applicant was requesting an increase in the number of truckloads. In response to Chairwoman Ulrich's earlier question regarding any past increases in hours of operation at the Seventy Road mine, Ms. Reynolds stated that there was an adjudicatory hearing in 1982 that authorized hours from 7 am to 5 pm, except in the summer when the hours were from 9 am to 5 pm. In the 1990s the hours were from 7:30 am to 5 pm; currently the hours are from 7:30 am to 5:30 pm.

Mr. Austin asked if the NYCO annual reports are available to the public. Mr. Saehrig answered that he believes the public would be able to FOIL the reports. Mr. Saehrig noted that there have been FOIL requests related to NYCO permits, but was not sure if the annual reports have been requested.

Ms. Ulrich questioned a draft condition that the Agency may excuse NYCO if staff is not able to monitor a specific site. Mr. Saehrig replied that condition regarded "Noise" monitoring and explained that if a piece of property was located next to a brook where the noise was very high or if a new landowner did not allow Agency staff to enter their property to perform a monitoring evaluation, staff would discuss with NYCO and DEC to monitor from another location.

Mr. Wilt stated his concern regarding NYCO changing from a 22-ton to a 20-ton truck.

Ms. Feldman asked how "aggregate" has been handled in past permits. Mr. Saehrig answered that "aggregate" has always been transported from Oak Hill, but NYCO has only been permitted to transport "wollastonite" from the Seventy Road Mine. The draft permit would allow NYCO to transport "aggregate." Ms. Feldman then questioned if the change required a hearing or any additional follow up review. Mr. Weber answered that if the proposal alone was to extract and transport "aggregate," there would be no material change to require a new permit; instead that would be an amendment potentially reviewed and approved by staff. He explained that "aggregate," or caprock, is a necessary part of the mine operation, and that NYCO has been encouraged by DEC to make the "aggregate" available, as it is an important product. The applicants are aware of the amount of aggregate necessary for their reclamation plan. The only change is that the applicants would now be allowed to truck the excess material off-site. Mr. Weber said that in his opinion the request from NYCO is not a reason to send this project to a hearing.

Mr. Thomas asked if the "aggregate" is going to Graymont. Mr. Saehrig replied that for the Oak Hill Mine there is an agreement with Graymont Industries, but there have been emergencies where it has gone off site to other locations. Ms. Reynolds stated that if "aggregate" from Oak Hill is to be transported any where else other than Graymont Industries, or elsewhere in an emergency, the applicants need to come to the Agency for an amended permit. She said Agency permits are very specific because the truck route is important.

Mr. Thomas asked if other markets other than Graymont were to develop for the "aggregate" would the Oak Hill Mine require an amended permit. Ms. Reynolds answered yes that is correct. She explained that Seventy Road at this time does not have an agreement with any specific truck route; therefore, Seventy Road is allowed to truck the "aggregate" anywhere.

Mr. Thomas asked staff if there were any complaints from landowners between Oak Hill and Graymont. Ms. Reynolds replied that the Agency had received no comments from anyone along that route.

Ms. Feldman asked staff if the mitigation is being completed off or on-site. Mr. Saehrig answered that the wetland mitigation for Seventy Road is at Oak Hill and the stream mitigation is at Seventy Road.

Ms. Feldman asked if staff were comfortable with the stormwater plan. Mr. Lalonde answered that there was new stormwater review only for the Seventy Road Mine because there were no changes to the Oak Hill Mine. Mr. Lalonde stated that the stormwater plan is appropriate, and that staff have set conditions.

Mr. Saehrig discussed the edits and revisions to draft P2013-138.

Mr. Craig asked the Regulatory Committee for a motion to move P2013-138 to Full Agency for approval. Designee Mahoney made the motion and Chairwoman Ulrich seconded. Mr. Craig noted that Mr. Booth was not present at the table and Chairwoman Ulrich stated Mr. Booth made the request that a Finding of Fact be added referencing the trucking route and truckloads from the Seventy Road Mine. Ms. Ulrich made a motion to amend the motion to send the draft permit to Full Agency with the added language.

Mr. Saehrig discussed edits and/or revisions to the draft P96-76MR3.

Mr. Craig asked the Regulatory Committee for a motion to move P96-76R3 to Full Agency for approval. Mr. Booth made the motion and it was seconded by Designee Mahoney.

Mr. Craig informed Mr. Booth that his request for a Finding of Fact regarding truckloads and/or the truck route will be added to P2013-138.

Mr. Craig asked for the vote from the Committee to move the proposed project P2013-138 forward to Full Agency for approval. The Regulatory Committee vote was unanimous in favor of the motion.

Mr. Craig asked for the vote from the Committee to move the proposed project P96-76MR3 forward to Full Agency for approval. The Regulatory Committee vote was unanimous in favor of the motion.



Project

2014-100           The Lyme Timber Company, LLC  
(A. Ziemann)       Town of Tupper Lake: Franklin County  
                    Resource Management, Low Intensity  
                    Moderate Intensity

Mr. Ziemann reminded the Board that a presentation on the Lyme Timber was presented to the Board in December 2013 for a 42-acre shelterwood treatment removal that the Agency approved. Mr. Ziemann stated this is the first permit request in a series to be proposed by the applicant that will be reviewed by Agency staff.

Mr. Ziemann presented a slide show which described the proposal as a forest management consisting of thinning, shelterwood removal and salvage harvests on a 642 acre portion of a 4,100 acre parcel. He discussed Agency jurisdiction as a timber harvesting proposed clearcutting of any single unit of land of more than twenty-five acres. He stated this project is a Class A project in Moderate and Low Intensity and Resource Management land use areas. He reviewed the clearcutting definition pursuant to 9 NYCRR Part 573.7(a)(1) and Part 573.7(b)(1).

Mr. Ziemann presented a slide show describing the various lands owned by Lyme Timber located throughout in the Park. He described the project site as a 900±-acre portion of a 4,100±-acre parcel located in the Town of Tupper Lake.

In response to questions regarding the actual boundaries of the treatment area, Mr. Ziemann referenced Condition 5 in the draft permit that states a revised harvest plan map shall be submitted to the Agency depicting the actual boundaries of the treatment area.

Mr. Ziemann stated that the treatment proposed could be conducted and be non-jurisdictional but by doing so it would require the applicant to leave behind a higher percentage of undesirable stems. The applicant sought an Agency permit to enable their foresters to conduct the best sustainable forest management.

Mr. Ziemann's presentation included examples of the three distinct treatment types: thinning, salvage harvest and shelterwood removal with reserves, and several photos of the existing project site.

Mr. Ziemann reviewed for the Board APA Regulations Section 573.7(d) standards for the review of clearcutting.

Mr. Ziemann noted there were no comment letters received for the proposed project.

Mr. Booth asked Mr. Ziemann when the permit application was received by staff and Mr. Ziemann replied June 27, 2014.

Mr. Monroe asked Mr. Ziemann if the prior cutting was done for asilvacultural purpose or to avoid agency jurisdiction. Mr. Ziemann replied he believes both scenarios are correct. He noted it is clear the applicants were trying to increase diversity and age class and species but at that time the communication between the applicants and the agency were not what it is today.

Mr. Ziemann stated the harvest is projected to be undertaken during the fall, during the time when yellow birch drops seed. The proposed harvest will take about two months to complete once undertaken depending on what contractor they choose and how many people will be involved.

Designee Stegemann said that the process is to improve the long term economics of the forest.

Mr. Craig asked for a motion to move the proposed permit to Full Agency for approval. Mr. Booth made the motion and Mr. Lussi seconded the motion. The Committee vote was unanimous in favor of the motion.

Mr. Booth congratulated staff and the project sponsor for a well-designed project and process.

Designee Stegemann noted the time frame from the project application being received and reviewed. He asked if this time frame will be continued as a normal practice.

Mr. Craig answered each project will be reviewed individually and will depend on how thorough the permit application is prepared and received at the Agency. In this particular case, Lyme Timber's application was well prepared and because of prior discussions with the applicant a well-prepared application was submitted to the Agency.

Executive Director Martino stated the Board, staff and the applicant have benefited from discussions in 2012 and 2013, which enabled the applicants to submit their application in December of 2013.

Variance

2014-80 (T. Darrah)

Town of Wilmington

Town of Wilmington, Essex County

Hamlet

Ms. Darrah introduced Mr. Preston, Supervisor, Town of Wilmington in the audience and acknowledged Steve Brewer and Shaun Lalonde Agency staff who assisted her with the review of the proposed project.

Her slide show presentation described the proposed project site in the Hamlet of the Town of Wilmington. The project is located on the shoreline of the West Branch AuSable River.

Ms. Darrah reviewed the proposed project and Agency jurisdiction for construction of a deck within 50 feet of mean high water mark of navigable river.

She explained details of the proposed site plan submitted by the applicant and showed several photos of the existing and proposed project site.

Ms. Darrah reviewed for the Board the Variance criteria Part 576.1 of APA Regulation. She noted the public hearing held July 23, 2014. She said no members of the public were present at the meeting and no comment letters were received.

Chairwoman Ulrich stated that the Park is beautiful and well maintained.

Mr. Booth asked if there are monies being received by the Town of Wilmington to help with the construction of the dock. Ms. Darrah answered yes. She said the Essex County of Public Works assisted the Town of Wilmington for the grant.

Ms. Darrah noted minor edits to the proposed draft permit.

Mr. Booth made a motion to move the proposed permit with the minor edits to Full Agency for approval. Designee Mahoney seconded the motion. The Committee vote was unanimous in favor of the motion.

6. Old Business: No

7. New Business: No

**Adjournment:** The Regulatory Committee meeting adjourned at 11:15 am.

Regulatory Programs Committee

July 10, 2014

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Note: The power point presentations referred to herein are on file at the Agency. Copies are also available for inspection on request and can be viewed at [http://nysapa.granicus.com/ViewPublisher.php?view\\_id=2](http://nysapa.granicus.com/ViewPublisher.php?view_id=2) of this meeting: