

## Paradise Watchdogs Ban the Quarry

P.O. Box 115, Frederick, PA 19435

[www.banthequarry.org](http://www.banthequarry.org)

August 2020

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### **EHB Decision – Gibraltar Rock mining permit**

### **Land Development**

### **Hoff VC site remediation**

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**Paradise Watchdogs** is a not-for-profit, environmental preservation community group in New Hanover Twp, established in **1987**. Following a 12-year battle, the Watchdogs were successful in preventing a landfill. The acreage was later sold to Gibraltar Rock and Sahara Sand, of Fairless Hills, Bucks County, PA.

#### **In 2000:**

Gibraltar Rock applied to New Hanover Twp to construct a hard-rock quarry, concrete plant, and asphalt plant, on approximately 240 acres. At that time, a group of local residents formed **Ban-the-Quarry**. Eventually, the Paradise Watchdogs & Ban-the-Quarry joined together to educate residents & work with the township on environmental impacts to the community.

#### **In 2011:**

The Penna. Dept. of Environmental Protection identified the former Good Oil Company as a hazardous waste site. Gibraltar Rock has since purchased approx. 18 acres of the hazardous site.

#### **In 2020:**

The quarry has not started because there is currently a court-ordered injunction preventing Gibraltar Rock from starting any quarry activity on the land they own, until they have all the necessary permits and a township-approved final land development plan.

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## **WE HAVE GREAT NEWS!**

## **EHB decision of April 24, 2020**

The Penna. Environmental Hearing Board (EHB) is the judicial arm and is completely independent of the Dept. of Environmental Protection (DEP). The EHB has the sole power to hear and decide appeals from DEP actions.

In 2018, the Penna. DEP renewed Gibraltar Rock's non-coal surface mining permit, which includes the NPDES permit. The NPDES permit program was created in 1972 by the Clean Water Act (CWA) and helps address water pollution by regulating point sources that discharge pollutants to the waters of the Commonwealth of Penna. and the entire U.S. The basis of the CWA was enacted in 1948 and was called the *Federal Water Pollution Control Act*, but the Act was significantly reorganized and expanded in 1972.

The renewal of these permits in 2018 was appealed by New Hanover Twp and our group, PWD-BTQ. Beginning in June 2018, our attorney, Chris Mullaney, & township attorney, Andy Bellwoar, worked long, hard, and quickly to identify the facts and issues spanning 19 years. Two experts were hired, and their work was excellent: Toby Kessler, Licensed Professional Geologist who specializes in environmental site assessments and remediation and conducts hydrogeologic studies related to water resource protection. Also, Dr. Charles McLane, a hydrogeologist and environmental scientist from Princeton, NJ. His specialties include analysis of environmental data, fate and transport of chemicals in the environment, and exposure assessment and risk assessment.

***We are grateful to our Board of Supervisors for voting to hire these two qualified experts!***

The trial was held at the DEP-Southeast Regional Office in Norristown, PA, from Oct 21-25, 2019. The EHB judge was very interested in the health and welfare of the citizens who have private wells and would be exposed to quarry blasting adjacent to the hazardous waste site. Our attorneys submitted their final briefs for this case in January 2020. **The EHB decision was received on April 24, 2020.**

### ***The Environmental Hearing Board wrote in their decision:***

*The State DEP failed to coordinate its permitting activity with its hazardous site clean-up activity in violation of its duties under Article I, Section 27 of the Pennsylvania Constitution. The DEP mistakenly concluded that the applicant had affirmatively shown that there was no presumptive evidence of potential pollution of the waters of the Commonwealth because quarry pumping would in fact extend the plumes of contaminated groundwater from the hazardous waste site. The DEP's permit issuance was inconsistent with other statutory and regulatory requirements. The DEP's effort to insert "special conditions" into the mining permit and the DEP's promises of future enforcement action did not justify issuance of the permits. The DEP's witnesses, during the hearing on the merits, expressed doubt whether the permits should have been issued, at least without further study. The permits are rescinded rather than remanded because there is no schedule for future cleanup activities at the HSCA site.*

**Following the EHB decision, New Hanover Solicitor, Andy Bellwoar, wrote:**

"One thing is certain: the minerals sought to be mined by Gibraltar rock will remain long after the Hoff VC contamination no longer poses a substantial threat to human health and the environment.

The Department, Gibraltar, and most importantly the residents of the Commonwealth, would be better served by addressing the root of the problem first (remediation of the Hoff VC contaminant plume) rather than permitting the spread of dangerous chemicals and responding with reactionary measures."

**WHAT HAPPENS NEXT?**

Gibraltar Rock, unhappy with the above EHB decision, filed a "Petition for Review" with the Penna. Commonwealth Court. On June 22, we joined the appeal. New Hanover Township has also filed a "Notice of Intervention" in this case.

**Our goal is to convince the Court not to overturn the EHB decision.** The court hearing will, most likely, be held in Harrisburg. As yet, we do not have a date.

**Gibraltar Rock's Application #4:**

... was filed with the NHT Zoning Hearing Board in 2014. Adhering to state law, the ZHB granted a "special exception" to quarry in the township. The ZHB also included 16 conditions to be met by Gibraltar Rock. This decision was appealed to the Court of Common Pleas in Norristown. The trial was held on July 9, 2019, in Norristown. Judge Jeffrey Saltz gave his *Order* on 8-16-2019, as follows:

The Judge upheld the ZHB's granting of the special exception.

The ZHB had included "16 conditions" to the special exception.

Judge Saltz modified five (5) of the conditions. Some modifications benefit us, and some benefit Gibraltar Rock.

The remaining (11) conditions ordered by the ZHB must be met by Gibraltar Rock.

*Judge Saltz also stated, "The Court does not pass on the merits of the environmental issues argued by the Township and individual Intervenors (Ban the Quarry). Those issues are of significant concern."*

*The Judge explained that some of our issues are pre-empted by the Non-Coal Act (PA law), and that it is the responsibility of the State DEP to address our concerns.*

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**Final Land Development Plan submission by Gibraltar Rock:**

In August 2017, Gibraltar Rock submitted a Final Plan for the quarry. This year, Gibraltar Rock requested a review of the plan by township consultants. The reviews were completed this summer and the consultant fees paid by Gibraltar Rock. G.R. would also like a decision by the Township, but due to the pandemic has agreed to several extensions for the decision. The preliminary plan *Resolution* requires that the company have approved mining permits before a final plan can be approved, and currently Gibraltar Rock has no mining permits. Gibraltar Rock can revise the final plan and request another review, at their expense.

**Hoff VC HSCA site remediation:**

At the current time, the Penna. DEP has no plans to remediate this site. Take note - Judge Saltz (*above*) wrote that it's the responsibility of the DEP to protect our health, safety, and welfare.

**New Hanover Town Center:**

The developer, Wynstone, submitted another plan in late-2019. One meeting was held before the Planning Commission (with the Board of Supervisors present) in January 2020. No progress was made with this plan.

**How can you help?**

Make a donation to help with legal and consultant fees. All operating expenses are paid by our committee.

Any amount would be greatly appreciated. (envelope enclosed)

**Monthly Bake Sales**

... at Freed's Supermarket were suspended in 2020, due to the coronavirus pandemic.

*Please make checks payable to:*

*Paradise Watchdogs OR Ban the Quarry*

**Mailing address:**

*PWD – BTQ  
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Frederick PA 19435*

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**THANK YOU**

