
**FIRST REPORT TO THE BERNARDS TOWNSHIP COMMITTEE
BY THE QUARRY ADVISORY TASK FORCE**

Members:

Kevin C. Orr, Chair and Resident Member
James Baldassare, Mayor's Designee
Scott Guibord, Resident Member
Thomas Timko, P.E., CME, Bernards Township Engineer

Adopted: February 22, 2019

I. Introduction.

Pursuant to Resolution #2019-0082, Establishing a Quarry Advisory Task Force (the “QATF”), the task of the QATF is to:

- (1) review and report back to the Township Committee with their findings, any concerns, and recommendations, regarding MQI’s compliance with implementing the Last Approved Plan;
- (2) further review the Property’s environmental condition, documentation, and status, and make appropriate recommendations to the Township Committee in one or more reports on or before October 1, 2019, and the Township Committee may pursue outside professionals for technical input; and
- (3) advise on remediation status in accordance with the MOA, RIWP, RAWP, the RAO, and all other DEP filings in this matter, the governing statutes, regulations, and ordinances

The mandate of the QATF, as described above, clearly relates to the final rehabilitation plan approved by the Township. Accordingly, the QATF uses the term “Last Approved Rehabilitation Plan” in this report when referring to the “Last Approved Plan” described in Resolution #2019-0082 and recommends that all future references by Township Committee also use the same term, Last Approved Rehabilitation Plan.

This First Report of the QATF to the Bernards Township Committee is limited to the first task, regarding Millington Quarry, Inc.’s (“MQI”) compliance with implementing the Last Approved Rehabilitation Plan at its property, which consists of approximately 190 acres and is identified on the tax map as Block 6001, Lot 6, located at Stonehouse Road in Bernards Township (the “Property”), and is being issued now because the QATF believes that the items set forth herein require *immediate* action by the Township for the reasons set forth herein.

II. Last Approved Rehabilitation Plan

The Last Approved Rehabilitation Plan is not set forth in a single document, but rather a series of documents. Therefore, the QATF recommends that the Township Committee adopt a resolution that clarifies the scope of the documents comprising the Last Approved Rehabilitation Plan and that same be made available to the public on the Township’s website. A proposed Resolution is attached hereto as **Exhibit A**.

To determine the totality of documents that comprise the Last Approved Rehabilitation Plan, the QATF reviewed records of the Bernards Township Planning Board and Township Committee. The QATF notes that the Township Committee *did not* adopt the Planning Board’s “Report of the Bernards Township Planning Board to the Township Committee on the Review of the 2011 Millington Quarry Rehabilitation Plan” (adopted by the Planning Board on May 7, 2013). Instead, MQI and the Township

Committee agreed that the Last Approved Rehabilitation Plan would consist of the series of documents that MQI submitted and amended during the Planning Board's hearings on the "2011 Millington Quarry Rehabilitation Plan," and as further amended and modified by the Township Committee and MQI as set forth in a Settlement Agreement (dated April 29, 2014) between MQI and the Township. The QATF notes that at the time the Settlement Agreement was executed, MQI was continuing with its quarrying operations and renewing its annual quarrying license. Consequently, at that time, the rehabilitation plan was not considered as the last approved rehabilitation plan and pursuant to Bernards Township Ordinance § 4-9.5(a)(4), the rehabilitation plan was set to expire in three years. However, because MQI subsequently elected to cease its quarrying operations, that rehabilitation plan became the Last Approved Rehabilitation Plan. Accordingly, the Last Approved Rehabilitation Plan includes, but is not limited to, the following:

1. **Settlement Agreement** (Executed copy dated April 29, 2014);
 - A. **Exhibit A – "Clean Soil Acceptance Procedure"** prepared by JM Sorge last revised January 2013;
 - B. **Exhibit B – Bill of Lading**
 - C. **Exhibit C - "Cost Estimate"** prepared by Kevin G. Page, PE dated March 10, 2014;
2. **"2011 Reclamation"** plans prepared by Kevin G. Page, PE, PP (of Page Engineering) last revised January 17, 2013
3. **"Lake Management Plan"** prepared by Omni Environmental last revised January 17, 2013;
4. **"Vegetative Planning Areas"** landscape plan prepared by Bruce John Davies, LLA, ASLA, PP (of Davies Associates Landscape Architects) last revised January 17, 2013
5. **"Soil Specification"** prepared by Princeton Hydro dated July 16, 2012 (modified as noted in the Comment and Response Chart, identified below as No. 10)
6. **"Environmental Impact Statement"** ("EIS") prepared by Omni Environmental dated October 13, 2011;
7. **"Geotechnical Engineering Consultation"** prepared by Melick-Tully dated October 13, 2011;
8. **Initial submittal letter from the applicant's attorney**, Michael T. Lavigne, Esq. (of Day Pitney), to the Planning Board dated January 24, 2013;
9. **Supplemental submittal letter from the applicant's attorney**, Thomas J. Malman, Esq. (of Day Pitney), to the Township Committee, dated November 1, 2011, and the enclosures therewith (letter from Kevin G. Page, PE dated October 31, 2011 and letter from Omni Environmental dated October 31, 2011); and,
10. **Comment and Response Chart** last revised January 17, 2013.

The QATF anticipates adding to this document list based upon certain documents that are referenced within the above documents, and the QATF cites to these documents below as LARP-1, LARP-1A, etc.

III. Zoning Board’s Lack of Jurisdiction to Modify Last Approved Rehabilitation Plan

The QATF has received and reviewed MQI’s Zoning Board Application (ZB18-026) Block 6001, Lot 6; 135 Stonehouse Road; Minor Subdivision, Bulk Variance, D-2 Variance (the “ZB Application”), and believes that the Zoning Board lacks jurisdiction to modify *any* element of the Last Approved Rehabilitation Plan, including those specifically outlined below, the implementation of which has not been completed. Pursuant to Bernards Township Ordinance §4-9.5, only the Township Committee has jurisdiction over the Last Approved Rehabilitation Plan, including whether it should be modified to permit the office building to remain and/or a lake spanning two lots instead of a single lot.

Accordingly, the QATF recommends that the Township Committee direct the Township Attorney to notify the Zoning Board of this jurisdictional issue.

A. The Existing Office Building

The Last Approved Rehabilitation Plan requires that the office building be demolished and removed. *See* LARP-2, Sheet 3 (the “Grading Plan”) and LARP-1C (the “Cost Estimate”). The Grading Plan clearly shows that the office building must be removed – as it is no longer depicted. Further, the Cost Estimate, Item No. 1 reflects that MQI was required to bond \$25,000 for the purpose of “[d]emolition and removal of all existing structures.” The removal of the office building is just one part of MQI’s larger legal obligation under the Last Approved Rehabilitation Plan to “return the quarry property to conditions, that are permitted by the Township Zoning Ordinance, that do not endanger the health and safety of the public, and that do not endanger natural resources such as groundwater and soil erosion.” *See* Bernards Township Ordinance §4-9.5(a)(1).

The QATF notes that the while the Last Approved Rehabilitation Plan does not explicitly state the timeframe for every step required under the Last Approved Rehabilitation Plan, the removal of the existing office building clearly was considered the first step required to rehabilitate the Property and it should be removed forthwith.

By way of background, MQI was permitted to use the Property for stone quarrying pursuant to Bernards Township Ordinance § 21-10.9 M-1 Mining Zone, which states:

a. Uses.

1. Permitted Uses. This zone is designed for stone quarrying. **Until such time as all quarrying activity has ceased and the quarry use is abandoned, no other use shall be permitted in the zone** except child-care centers. At such time as all quarrying activity has ceased and the quarry use is abandoned, the following uses shall be permitted:

(a) Any uses permitted in the R-3 Zone and constructed in accordance with the requirements for that zone.

- (b) Public parks, roads and other public purpose uses.
- 2. Accessory Uses. Accessory uses customarily incidental to the above permitted uses.

Ord. § 21-10.9 (emphasis added). While quarrying was occurring, the existing office building was permitted to exist on the Property as an “Accessory Use.” However, now that quarrying ceased and that accessory use is no longer permitted, by allowing the building to remain, MQI is in violation of the Township’s zoning ordinances. Accordingly, the QATF recommends that the Township Committee direct the Township Zoning Official to issue a Notice of Violation to MQI requiring the existing office building’s immediate removal (the “Zoning Remedy”).

The Zoning Remedy is being recommended for two reasons. First, according to the October 31, 2016 Memorandum from Thomas Timko, P.E., C.M.E., Township Engineer to the Planning Board, quarrying operations ceased on, or more likely prior, to October 31, 2016. Accordingly, for well over two-years, MQI failed to remove the office building, the removal of which is required by the Last Approved Rehabilitation Plan. Secondly, MQI’s filing of an application before the Township’s Zoning Board of Adjustment to retain the office building may be an attempt to sidestep the Township Committee’s jurisdiction over MQI’s implementation of the Last Approved Rehabilitation Plan – which requires its removal.

The QATF notes that the Township Committee has a second remedy available to it pursuant to Bernards Township Ordinance §4-9.6(b), which would entail declaring MQI in breach of the Last Approved Rehabilitation Plan’s requirement for removal of the existing office building and using the posted bond monies to perform the work itself (the “Breach/Bond Remedy”). However, at this time, the QATF recommends using the Zoning Remedy over the Breach/Bond Remedy to compel implementation of this element of the Last Approved Rehabilitation Plan.

B. Subdivision of the Lake

The Last Approved Rehabilitation Plan requires the construction of a lake, including all of the lake elements **on a single lot**. See LARP-1 (First Whereas Clause); LARP-2; LARP-3; and LARP-4. Further, the lake elements include vegetative planting areas / safety buffers, berms, spillways, forebays, riparian buffer, lake barrier floats/buoys, rockfall catchment ditch and berm, a safety ledge, and two chain link fences, all of which are to be constructed on a single lot. See LARP-2; LARP-3; and LARP-4. Bernards Township Ordinance §4-9.5(a) does not authorize the Zoning Board to modify these requirements; only the Township Committee has jurisdiction to modify the Last Approved Rehabilitation Plan.

IV. Lake Water Quality Sampling Locations, Frequency, and Results

The QATF recommends that the Township Committee direct the Township Attorney to send MQI a demand letter that it *immediately* confirms that the water quality testing

required under the Last Approved Rehabilitation Plan was performed and that the Township be provided with the results. As set forth below, two series of testing should have been completed (*i.e.*, the (a) Initial Baseline Lake Characterization Survey (2012); and, (b) Second Characterization). Further, the QATF recommends that the demand letter include a request that MQI identify the actual date that (a) quarrying operations ceased; and, (b) the filling period commenced.

Pursuant to the Last Approved Rehabilitation Plan's water quality testing requirements, an Initial Baseline Lake Characterization Survey (with sampling conducted on September 27, 2011, May 14, 2012, July 24, 2012 and August 22, 2012) should have been performed, together with a second characterization, with four sampling events conducted in the Spring (April through May), early Summer (June 15 through July 31), late Summer (August 1 through September 15) and Fall (September 16 through November 15) "after the reclamation construction is completed (*i.e.*, after final grading and the installation of rehabilitation related structures have been completed) and pumping of water from the quarry ceases (*i.e.*, at the beginning of the filling period)" (the "Second Characterization"). See LARP-3, Page 30; see also LARP-10, Pages 16-17. The Last Approved Rehabilitation Plan states further that "[t]hereafter, while the lake is filling, additional characterization surveys will be performed once every three years thereafter until the lake is filled."

According to the April 10, 2017 Report of Princeton Hydro, LLC, "[f]rom this point forward, there will be no more pumping activities associated with the lake." Consequently, the "beginning of the filling period" occurred on or prior to April 10, 2017, and the requirement to commence the Second Characterization was triggered and by now should have been completed.

The QATF is concerned that the Second Characterization was not performed, and if it was, why the results have not been provided to the Township Committee.

Lastly, the QATF notes the following obligation regarding test results:

MQI maintains that there is no basis to sample the epilimnion for priority pollutants and that sampling the hypolimnion only will provide a conservative scan of the water column concentration given that, in the event that they are present, priority pollutants will accumulate in the hypolimnion, closer to the lake bottom. **MQI agrees that if at any time priority pollutants are detected in excess of the NJ DEP Surface Water Quality Standards, MQI will notify the Township and coordinate with NJDEP as necessary to address the identified pollutants.**

LARP-10, Pages 16-17. While the Township has not received any notice from MQI of any exceedances, MQI's failure to provide any test results prevents verification by the QATF.

V. Other Issues

The QATF has identified other issues, including, but not limited to, the following which will be the subject of future reports:

1. Organic Content of the Vegetative Layer

The QATF is concerned whether MQI is in compliance with its obligation to install the vegetative layer required by the Last Approved Rehabilitation Plan. This issue was identified as a potential problem in 2017, when MQI requested to reduce the bond required under the Last Approved Rehabilitation Plan.

The QATF intends to review the Vegetative Layer requirement and make any appropriate recommendations in a future report.

2. Accuracy of Lake Filling Projections and Location of Spillway Design Features

The QATF is concerned whether the Lake's fill projections are correct. If they are not correct, the Lake's safety features may not be installed at the correct elevations. The overflow features consist of (1) the landscape berm, and rip-rap lined basin with 50' wide rip-rap spillway as set forth on LARP-2, Sheet 3A, and (2) the four-water quality forebays, designated A, B, C and D on LARP-2, Sheet 3.

Pursuant to the Last Approved Rehabilitation Plan's hydraulic budget (also referred to as the "Lake Maintenance (until final lake elevation)"), MQI projected that "[t]he lake is expected to reach elevation 168 feet above msl, the bottom of the constructed bank (see Figure 3), in the first 16 months and rise to its expected final elevation of 220 feet above msl in 7.9 years." See LARP-3, Page 10; LARP-1C, Item No. 10. The QATF is uncertain of the precise date the lake commenced filling, and therefore as set forth above, recommends that the Township Committee determine that date.

Once the filling date is disclosed to the Township Committee, the QATF will be in a position to examine this issue and make any appropriate recommendations.

3. Lake/Cliff Safety Elements

The Last Approved Rehabilitation Plan's lake/cliff safety elements include vegetative planting areas / safety buffers, berms, spillways, forebays, riparian buffer, lake barrier floats/buoys, rockfall catchment ditch and berm, a safety ledge, and two chain link fences. See LARP-2; LARP-3; and LARP-4.

The QATF notes that the Existing Conditions Survey, prepared by Kennon Surveying Services, Inc, last revised September 18, 2017 (the "September 18, 2017 Conditions Survey") that was filed with the Zoning Board as part of the ZB Application does not depict these features. Also, missing is the lake itself, which was very large as of August

8, 2017, even though the filling only commenced some four months earlier on or prior to April 10, 2017. *See* Photo Nos. 1 and 2 from the August 8, 2017 Report of Princeton Hydro, LLC.

The QATF notes further that the filling lake is an attractive nuisance, likely to attract children who are unable to appreciate the risks posed by the lake and/or the high cliffs immediately above the lake. The Last Approved Rehabilitation Plan states the following:

A number of safety features are incorporated into the reclamation design in order to minimize potential risks to health and safety (Ordinance § 4-9.5.a.13). In order to protect people who might accidentally fall into the lake, a safety ledge is incorporated into the bank slope such that protection is provided for a final lake elevation of 220 feet (Figure 4). Two safety features are proposed in order to protect against falling rocks from the wall beneath the railroad (Ordinance § 4-9.5.a.14). A rock fall catchment ditch will be used where the wall is adjacent to the land, to prevent risk from falling rocks bouncing off the land and injuring people or damaging property. In the lake, a row of buoys will be installed 50 feet away from the wall in order to keep watercraft away from the range of falling rocks. The top of the wall is already essentially inaccessible because of the railroad corridor and the existing chain link fence. However, a thorny vegetated area (approximately 10 feet wide) will be installed on top of the wall to further prevent people from accessing the precipice. Also, additional chain link fence will be installed perpendicular to the existing fence on each end to prevent access from the sides.

See LARP-3, Page 8.

The QATF intends to review the lake/cliff safety elements and make any appropriate recommendations in a future report.

4. Review of Security

The Township Committee is authorized to reconsider the adequacy of the security bond every twelve months pursuant to Bernards Township Ord. §4-9.5(c), which states:

Review of Security. The adequacy of the security shall be reviewed by the Township Committee every 12 months. After its review, the Township Committee may permit the security to remain unchanged, may require an increase in security, or may permit a partial release or refund in security.

The QATF intends to review the adequacy of the security and make any appropriate recommendations in a future report.

5. Implementation of Grading Plan

The September 18, 2017 Conditions Survey, in addition to failing to show the existing lake and the Last Approved Rehabilitation Plan's lake/cliff safety elements discussed above, fails to show other major required features such as three twenty-foot-wide, three-feet-deep "Back Pitched Swales" in the area MQI has previously identified as the Meadow Area. *See* LARP-3, Sheet 3.

Also, the September 18, 2017 Conditions Survey reflects that the large paved area at the foot of the paved entrance road (*i.e.*, the former site of the quarrying scales) has not been removed as required by the Last Approved Rehabilitation Plan.

The QATF intends to further review the Grading Plan and make any appropriate recommendations in a future report.

EXHIBIT A

Proposed QATF Resolution Suggested for Use by Township Committee

Resolution # Last Approved Rehabilitation Plan - Defined

WHEREAS, Bernards Township Ordinance § 4-9.1 provides that the purpose of Ordinances §§ 4-9.1 to 9.14, inclusive, is to “license and regulate quarries for the protection of persons and property” and among other things, “to insure that quarried areas shall be suitably and reasonably rehabilitated after quarrying operations have been completed or otherwise terminated”;

WHEREAS, Bernards Township Ordinances §§ 4-9.3, 4-9.4, 4-9.5 and 4-9.10 provide that a property owner engaged in the “business of quarrying within the township” must first obtain and maintain a current annual license, and prior to the issuance of any such annual license, the township’s “approval” of either an initial or renewal “Rehabilitation Plan”;

WHEREAS, Bernards Township Ordinance § 4-9.6(b) provides that “[p]rior to the approval of any new or renewal license application, the applicant shall agree in writing to rehabilitate the quarry property and shall provide security sufficient to adequately assure the ability to comply with the [last approved] rehabilitation plan”;

WHEREAS, Bernards Township Ordinances §§ 4-9-1, 4-9.5(a)(1), 4-9.5(b)(8), 4-9.5(b)(9), 4-9.6(b) provide that the last approved rehabilitation plan shall be implemented when quarry operations cease;

WHEREAS, Bernards Township Ordinance § 4-9.5(d) provides that “[i]f the responsible person(s) do not implement the rehabilitation plan in accordance with the schedule in the approved plan, and there is a delay of more than 12 months, then the township may undertake the rehabilitation using the security provided under Subsection 4-9.6” and that “[t]he Township Committee may permit extensions of the rehabilitation plan where proven reasonable and appropriate”;

WHEREAS, Millington Quarry, Inc. ("MQI") is the record owner of the Millington Quarry, which consists of approximately 190 acres and is identified on the tax map as Block 6001, Lot 6 located at Stonehouse Road in Bernards Township (the "Property");

WHEREAS, MQI has, for years applied for and obtained a license to quarry at the Property, and in connection therewith, MQI submitted its 2011 Rehabilitation Plan (the "2011 Plan") to the Bernards Township Committee on October 17, 2011, and the Township Committee thereafter referred the 2011 Plan to the Bernards Township Planning Board (the "Board") for review and report pursuant to ordinance §§ 4-9.5.a.4 and 4-9.5.a.2;

WHEREAS, on April 29, 2014, the township approved a settlement agreement and release by and between Bernards Township and Millington Quarry involving certain disputes, including the terms and conditions of the rehabilitation plan (the "Settlement Agreement");

WHEREAS, MQI ceased its quarrying operations and terminated its license on or prior to October 31, 2016, and thereafter it was required to implement the Last Approved Plan;

NOW THEREFORE BE IT RESOLVED, by the Township Committee of the Township of Bernards that we do hereby find that:

A. the Last Approved Rehabilitation Plan includes, but is not limited to, the following documents:

1. **Settlement Agreement** (Executed copy dated April 29, 2014);
 - A. **Exhibit A – "Clean Soil Acceptance Procedure"** prepared by JM Sorge last revised January, 2013;
 - B. **Exhibit B – Bill of Lading**
 - C. **Exhibit C - "Cost Estimate"** prepared by Kevin G. Page, PE dated March 10, 2014;
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10. **Comment and Response Chart** last revised January 17, 2013.

- B. the findings herein do not relieve MQI of any other requirements set forth in any ordinance, statute or rule which applies to the Property.

Agenda and Date Voted: ___/___/2019

CERTIFICATION

I hereby certify this is a true and exact copy of a resolution adopted by the Bernards Township Committee on ___/___/2019.

Denise Szabo, Municipal Clerk

QATE DRAFT