



Board of Directors

February 21, 2024

Charles Clusen
Chair

Via Email

James McMartin Long
Michael Wilson
Vice-Chairs

Bernard Melewski, Esq.
Bernard@BernardMelewski.com
Attorney for Barton Mines Company, LLC

Barbara Rottier
Secretary

Re: Barton Mines Company, LLC Application for Mine Expansion

David Quinn
Treasurer

Dear Bernie:

Nancy Bernstein
John Caffry
Andy Coney
Dean Cook
James C. Dawson
Lorraine Duvall
Robert Glennon
Roger Gray
Evelyn Greene
Sidney Haring
Sheila Hutt
Dale Jeffers
Patricia Morrison
John Nemjo
Peter O'Shea
Phillip Terrie
Chris Walsh

Peter Bauer has asked me to respond to your letter dated February 15, 2024, written on behalf of Barton Mines Company, LLC (“Barton”) which requests that Protect the Adirondacks! Inc. (“PROTECT”) remove from its website certain information concerning Barton’s application to expand its operations at the Ruby Mountain Mine in the Town of Johnsbury, Warren County. You claim that PROTECT’s website contains “false and misleading information” about the application, and that the information constitutes an “attack [on] the reputation” of Barton. As discussed below, with two minor exceptions that will be clarified, the statements on PROTECT’s website are legally defensible, factually accurate, and supported by Barton’s own application materials. I will address each of your claims in the order in which they are raised in your letter.

Staff

The Need for a Solid Waste Management Facility Permit

Peter Bauer
Executive Director

Your letter correctly notes that PROTECT sent a letter to the Department of Environmental Conservation (“DEC”) dated January 4, 2024, stating that the massive waste disposal site on the Ruby Mountain Mine property, which Barton euphemistically refers to as the “Resource Mineral Engineered Storage Facility,” is a solid waste management facility as defined by Environmental Conservation Law (“ECL”) § 27-0701(2) and therefore requires a Part 360 permit pursuant to ECL § 27-0707(1). As stated in Barton’s application, the waste disposed of at the facility is from an industrial process utilizing a crusher and milling operation that generates two waste streams: a slurry containing fine-grained particles and coarse-grained solid waste. The slurry is disposed of in the Middle Pond and Upper Pond on the waste pile and the coarse-grained waste is disposed of on the pile.

Claudia K. Braymer, Esq.
Deputy Director

Christopher Amato, Esq.
**Conservation Director
and Counsel**

As you note, the DEC Regional Attorney responded by letter dated January 18, 2024, stating that “[t]he tailings described in your letter were generated at the

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mine and are managed on-site and therefore do not require a solid waste management facility permit.” The Regional Attorney’s letter cited 6 NYCRR Part 363-2.1(e) as the basis for his conclusion. However, the cited regulation exempts from the solid waste permitting requirements only “mining and drilling waste;” in other words, wastes that are generated as a result of mining activity. In contrast, the two waste streams being disposed of at the waste pile are generated by an industrial process involving crushing and milling and are therefore not generated by mining activity. Because these two waste streams are created by an industrial process, not by mining, they do not fall within the exemption granted by 6 NYCRR Part 363-2.1(e). The fact that this industrial process occurs on Barton property and is co-located with a mine confers no independent exemption under either statute or regulation.

In fact, as pointed out in PROTECT’s January 4 letter, the DEC regulations specifically include certain mining wastes within the definition of “solid waste” and, because the disposal facility receives two industrial solid waste streams from the milling and crushing process, it meets the definition of a “solid waste management facility.” See 6 NYCRR §§ 360.2(a)(1), 360.2(b)(101). PROTECT’s letter also notes that Barton’s plan to “store” the coarse-grained industrial tailings waste in the waste pile in perpetuity constitutes disposal of that waste, *id.* § 360.2(b)(262) (specifying that “any waste retained on-site for a period in excess of 12 months constitutes disposal”), and that Barton’s APA permit repeatedly refers to the waste pile as a disposal site for unwanted/spent waste material. See 6 NYCRR § 360.2(a)(1) (defining “solid waste” as “discarded materials . . . resulting from industrial [or] mining . . . operations” when the “material” is “spent, worthless, or in excess to the generator”, and is “processed,” “place[d]” onto the land, or “accumulated or transferred instead of or before being processed or disposed”).

These factual and legal issues were fully set forth in our seven-page January 4 letter to DEC and the Adirondack Park Agency (“APA”). Significantly, the Regional Attorney’s one-page response fails to address the facts and law cited in PROTECT’s letter and provides no detailed factual or legal analysis to support his conclusion that the waste disposal facility is exempt from the Part 360 permit requirements.

As I’m sure you understand, a one-page letter from a DEC Regional Attorney that fails to address the legal and factual arguments in PROTECT’s letter does not constitute the last word on this issue and is certainly not binding on PROTECT. We respectfully disagree with the Regional Attorney’s conclusion—as is our right in this public regulatory process. However, to address your concerns we have updated the website post to refer to the Regional Attorney’s letter and our reasons for disagreeing with his legal conclusion.

Violation of APA Permit

You also claim as false PROTECT’s statements that Barton is “in violation of its APA permit, which sets specific limits on the allowable size and volume” of the waste disposal pile and that “the APA staff recently informed Barton that it has exceeded those limits.” As stated in our January 4 letter, the APA’s Notice of Incomplete Application (“NIPA”) requires Barton “to clearly indicate that RM pile expansion beyond what is currently permitted by Agency Permit 87-39B has not been authorized.” APA’s NIPA is confirmation of the accuracy of PROTECT’s statement that

Barton violated its current APA permit. Moreover, although not stated in PROTECT’s January 4 letter, it is our understanding that the APA has opened an enforcement file on this matter.

In any event, PROTECT’s letter also notes that “by 2023 Barton by its own estimates had disposed of approximately 8.7 million cubic yards of waste in the RM pile—far above the 5.9 million cubic yards authorized by the APA permit.” Your letter does not dispute this. In fact, in a submission to DEC and APA dated January 2020, Barton stated that “[t]he current tailings pile foot print is +/- 73 acres with a peak elevation of ~2,275 ft. amsl.” Thus, Barton apparently did not know in 2020 whether the waste pile had already exceeded the APA permit’s size and elevation limits but was assuming that it was at, near, or already exceeding those limits. Since Barton annually disposes from 350,000 to 400,000 tons of waste in the pile, it appears from simple mathematics that Barton has exceeded the APA permit limits. Therefore, PROTECT continues to maintain that Barton has exceeded the waste pile limits specified in its APA permit.

Frequency of Blasting

You claim that Barton is not seeking to increase the frequency of blasting. However, it appears that additional blasting will be necessary to construct three new containment pits for industrial wastes from the milling process. Please advise if we are incorrect in this assumption.

Increase in Operations

You claim that PROTECT’s statement that Barton is seeking to increase operations at the site is incorrect. However, as your letter acknowledges in the very next paragraph, Barton is proposing to “extend[] its Monday-Friday Quarry operations for one hour, to 4:30 p.m.” In addition, Barton’s application proposes to increase trucking from the mine site from 5 trips per day to up to 16 trips per day. We therefore believe that is correct to characterize Barton’s application as seeking to increase operations.

Operate Equipment 24 Hours a Day

Your letter claims that the website’s statement that Barton is seeking to operate industrial equipment at the site 24 hours a day is incorrect because Barton is already operating its processing mill and crushing 24 hours a day, seven days a week. We agree that the website statement could be misinterpreted to suggest that Barton is not currently operating its mill and crushing operation 24 hours a day and have modified it to state that Barton is seeking to continue those operations 24 hours a day.

Engineering Design for the Waste Pile

You claim that the website’s statement that Barton “failed to provide any engineering designs” for its waste pile is incorrect because Barton “submitted detailed engineering designs” for the pile as part of Appendix T of its application.

There are several problems with your assertion. First, as noted by both DEC and APA in their recent NIPAs, the submission in Appendix T is not sealed by an engineer licensed in New York

State. Second, the submission referenced in your letter (Appendix T) is merely a “geotechnical certification letter,” which has as its stated limited purpose “to provide the results of . . . a high-level geotechnical evaluation of the H2H design concepts . . .” The letter states only that the H2H design concept is “geotechnically feasible” and includes the significant caveat that “due to the nature of the facility, *and the general lack of engineered fill placement*, an observational approach has been and will continue to be taken with regards to the geotechnical design and associated construction . . .” (Emphasis added). Thus, Barton’s own consultant has acknowledged that the disposal of waste at the pile lacks an “engineered” design. To remedy this lack of engineering design, the consultant recommends that “[t]o evaluate the performance of the facility and to identify potential modifications, it is imperative that a qualified geotechnical engineer remain closely engaged with the project as the facility evolves.”

Third, Barton’s Appendix T submission includes the express warning that “*this document should not be taken as engineering approval* to construct the entirety of the proposed facility without ongoing design work as needed . . . by a qualified engineer and appropriate QA/QC during the plan implementation.” For all of these reasons, PROTECT stands by its statement that Barton has failed to provide engineering designs for the waste pile.

Conclusion

Your letter states that “Barton and its employees deserve fair treatment,” but you fail to mention the residential community, local businesses and recreational users of nearby Forest Preserve lands that will bear the brunt of Barton’s proposed mine expansion. This omission unfortunately reflects Barton’s dismissive attitude toward the people who will have to live with the impacts of Barton’s expanded operations for years to come. Since Barton is apparently monitoring PROTECT’s website, it is fitting to conclude this response by quoting the following statement from PROTECT’s website post on the Barton project:

The expansion of Barton Mines will have major impacts on the quality of life of area residents, many of whom live in homes that pre-date mining on Ruby Mountain, and on the Forest Preserve in the Siamese Ponds Wilderness Area. Forest Preserve lands classified as Wilderness are supposed to be the most highly protected lands in the state. All involved in monitoring and scrutinizing Barton’s applications for this massive expansion are mystified by the company’s refusal to talk with or meet with local residents and business negatively impacted by their mining activities. Barton Mines has refused to undertake mitigation measures to control dust, abate noise, or screen or limit visual impacts. The company’s unwillingness to have any good faith discussions with neighbors to find solutions that allow the company to meet its objectives while ensuring that it is a good neighbor is a stark departure from how the company has conducted its affairs for decades. Protect the Adirondacks encourages Barton Mines to engage with the area residents and businesses negatively impacted by its mining activities.

I trust that this letter satisfactorily addresses the concerns raised in your letter. We have modified PROTECT’s website as set forth above and will also post your letter and our response.

Please feel free to contact me if you wish to discuss this matter further.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Amato". The signature is fluid and cursive, with a large initial "C" and a long, sweeping tail.

Christopher Amato
Conservation Director and Counsel

Cc: Corrie Magee, APA
Barbara Rice, APA
Sarah Reynolds Esq. APA
Beth Magee, NYSDEC
Aaron Love, Esq. NYSDEC